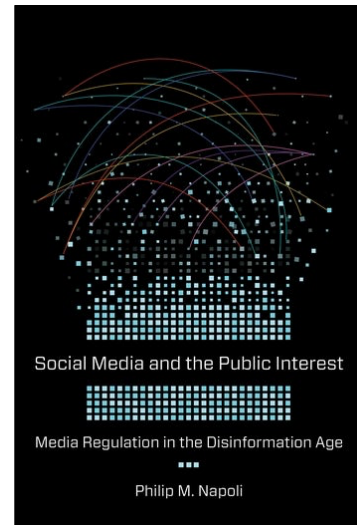Philip M. Napoli, **Social Media and the Public Interest: Media Regulation in the Disinformation Age,** New York, NY: Columbia University Press, 2019, $35.00 (hardcover).

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As broadcast networks in the 1960s tackled some of the most explosive issues of the era, viewers complained to the Federal Communications Commission (FCC) that their telecasts had distorted or staged news events. In response, the FCC determined that though it would not arbitrate the news' veracity, it would consider the deliberate staging or distortion of the news a public interest concern. However, the FCC would require extrinsic evidence, proof outside the broadcast itself, that the licensee or station management explicitly intended to distort. The FCC thus at once deemed the intentional distortion of news about significant matters to be a violation of broadcasters' public interest obligations, but set an exceptionally high bar to finding a licensee culpable (FCC, 1969).

As author Philip M. Napoli's excellent and vital ***Social Media and the Public Interest: Media Regulation in the Disinformation Age*** explains, even a policy as tepid as this broadcast news distortion rule does not currently exist for social media platforms. Under Section 230 of the Communications Decency Act (1996), social media platforms like Facebook, Twitter, and YouTube are not legally liable for content hosted on their platforms (pp. 33–34). This legal indemnification holds even as they engage in content curation. As Napoli explains, social media platforms enjoy the editorial authority of media outlets and the legal protections of common carriers while, by and large, facing none of the regulatory obligations of either. Social media platforms can circulate and amplify false, misleading information without facing any legal consequences, even if such information is demonstrably untrue and undermines trust in democratic processes and institutions.

The deliberate circulation of disinformation via social media platforms is the problem that Napoli's *Social Media and the Public Interest* defines and addresses. Though Napoli's tone is measured throughout, the implications of the speech environment he identifies are dire: Deliberative democracy is imperiled if a sizable part of the population embraces false claims, hews to conspiracy theories, and maligns mainstream news outlets as themselves purveyors of fake news. The result is a dangerous epistemic divide that poses an existential threat to democracy itself. The urgency of the moment, for Napoli, requires a rethinking of extant legal and regulatory paradigms that have stymied, rather than facilitated, addressing this problem.

In his early chapters, Napoli focuses on the technical affordances and financial incentives that undergird the circulation of fake news and the cultivation of filter bubbles. If Web 1.0 jettisoned gatekeepers and activated audiences to shape the contours of their own media consumption, it also disbursed audiences across an enormous range of websites and lacked the capacity to collect demographic data on website

visitors. The solution would be in the reaggregation function of Web 2.0. The ascent of sites like Facebook streamlined how users access content online *and* facilitated the collection of information about users that could better match with advertisers. The active audiences of Web 1.0 were repassified by news feeds that pushed posts in front of them, curated by algorithms that have functioned themselves as gatekeepers, filtering what users see based on predictions about user engagement rather than on journalistic norms or democratic values. This resulted in the twin problems of the distribution of fake news and the creation of information and opinion siloes.

Napoli then outlines how inherited approaches to law and policy are insufficient to address this moment. In a chapter developed from his masterful article in the *Federal Communications Law Review* (2018), Napoli discusses how a cornerstone of free speech jurisprudence, the counterspeech doctrine, is anachronistic. Counterspeech presumes the best remedy for false or hateful speech is *more* speech, not government regulation. While defamation laws protect individuals and organizations from intentional lies, there are no legal prohibitions against the circulation of false information; counterspeech, for the courts, has been a sufficient check on this form of speech's capacity to harm.

As Napoli explains, faith in counterspeech is misplaced in a media ecosystem defined by filter bubbles delivered by the algorithmic curation of social media platforms. A key part of addressing the problem of news and political speech, then, is recognizing that First Amendment jurisprudence developed in an age of mass media is ill-equipped to address speech rights in an age of social media. In this, Napoli extends the essential work of legal scholars who have called for, in Balkin's (2018) words, a "new school of speech regulation" (p. 1172), one that recognizes that search engines and especially social media platforms—not the state—are, in Klonick's (2018) words, the "new governors" (p. 1603) of speech rights: They determine the contours of expression in the digital age. These platforms, in other words, have assumed powers historically associated with the state, yet operate without the accountability that comes with democratic elections or the due process afforded by courts of law.

Napoli similarly illuminates how media policy in the United States has historically hewed to a technological particularism to justify regulatory intervention. Aspects of broadcast regulation that would have been impermissible had they been applied to newspapers or motion pictures were justified by the scarcity of the broadcast spectrum and the pervasiveness of broadcasting in people's environments. Whether analogous justifications exist for the regulation of social media platforms is an open question, though Napoli offers some generative possibilities.

Napoli's solutions embrace a media governance approach that embraces a range of stakeholders, such as policy makers, industry actors, civil society organizations, and media users. This all-hands-on-deck approach to the problem both underlines the necessity of action and, perhaps, speaks to the limits of U.S. media regulation to handle the crisis. Napoli, for example, enjoins social media platforms to curate for algorithmic diversity, to ensure that users are exposed to diverse, credible sources of information. He also argues for the reinstatement of the gatekeeping function of professional journalists and the creation of a social media council to set industry standards. Napoli further calls for a return of an interventionist First Amendment that presumes an affirmative role for the state to enable the speech conditions required for democratic self-governance. And, as his book's title anticipates, he argues that this moment of technological

change should move us to reimagine and reinvigorate the "public interest" applicable to social media platforms and should animate new modes of government regulation (pp. 163–198).

Though not explicitly articulated in *Social Media and the Public Interest*, Napoli presumes what Schudson (1998) has labeled the ideal of the "informed citizen" (pp. 6–10) or the belief in a rational voter whose participation in public life is guided by informed, educated choices. This belief in the rational decision-making citizen is perhaps clearest in his discussion of the 2016 election, in which he points to voters who chose a candidate (Donald Trump) who would govern against their economic interests as potential evidence that disinformation had played a role in one of the most vital rituals of a democracy.

However, as Kreiss (2018) has suggested, while disinformation certainly circulated during the 2016 election, it was not fake news that propelled voters toward Donald Trump, but rather his appeals to White racial anxiety. Trump voters were not duped by disinformation, but had been groomed by conservative media for decades to see politics not as the terrain of rational citizen decision making, but as blood sport that pitted cultural elites against "real" Americans whose status had been imperiled by liberal efforts to accommodate the diversity of U.S. society. For Kreiss, blaming fake news for the Trump election propels the myth of the rational voter while occluding how racism, sexism, and homophobia are animating drivers for many voters.

The January 6, 2021, insurrection on the U.S. Capitol both underlines the urgency of Napoli's work and underscores the need to nuance the role it ascribes to media in our current political crisis. Social media not only provided the organizational scaffolding for the attack but propelled its justification—the Big Lie that the 2020 election was stolen via widespread voter fraud. It is hard to imagine a form of disinformation that cuts more to the heart of democratic processes than this one. And yet the panoply of White supremacist iconography on display that day, from Confederate flags to Nazi symbols, also highlights how the insurrection may have been catalyzed by disinformation but came into being for reasons far deeper and more insidious within U.S. culture that shifts in media governance alone cannot fix.

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