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Lies, Gaslighting and Propaganda

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It is commonplace to observe that digital technologies facilitate our access to information on a scale unimaginable in previous eras, leading many to call this the "Information Age." The vaunted advantages of unprecedented data flow obscure a dark corollary: the more modes of engaging with data are available to a people, the more modes are available for manipulating them. Whether through social media, blogs, email, newspaper headlines, or doctored images and videos, the public is indeed bombarded by information, and much of it is misleading or outright false. Much of it, in fact, is propaganda. As the methods for manipulating mass audiences continue to multiply, a clear understanding of the concept of propaganda has never been more relevant.

This Article constructs a precise, novel account of propaganda, incorporating notable scholarly insights into the concept as well as the overlooked lessons of the law's fragmented efforts to regulate it. To bring this new theoretical framework into focus and demonstrate its importance in the Information Age, the Article connects the underlying theory to contemporary communications practices, many of which are enhanced by the availability of new technology. Notably, in doing so, the Article also develops the first systematic account of political gaslighting, which properly understood (and counterintuitively, perhaps) constitutes a form of propaganda.

INTRODUCTION

On January 21, 2017, Sean Spicer made his debut as the first White House Press Secretary of the Trump Administration.[1] He gave a peculiar and memorable performance, tearing into the press for its coverage of President Trump's inauguration, which had taken place the day before.[2] Spicer was particularly incensed at press reports that highlighted the size of the crowd that attended the inauguration, taking exception to the suggestion that it was visibly smaller than the crowd that attended President Obama's first inauguration in 2009.[3] Photographs taken from comparable angles plainly show much larger crowds amassed in 2009, and Washington Metro ridership records align with the photographs.[4] Nevertheless, against the overwhelming weight of the evidence, Spicer angrily insisted that President Trump's inauguration featured "'the largest audience ever to witness an inauguration' in person and in the world."[5] Not only that, but reporting to the contrary was "shameful and wrong," an attempt "to minimize the enormous support" for President Trump.[6]

Although Spicer would later express regret at his handling of the briefing,[7] his brazen dishonesty introduced the world to a style of communication that came to

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1. Elle Hunt, *Trump's Inauguration Crowd: Sean Spicer's Claims Versus the Evidence*, GUARDIAN (Jan. 22, 2017, 4:36 PM), https://www.theguardian.com/us-news/2017/jan/22/trump-inauguration-crowd-sean-spicers-claims-versus-the-evidence.

2. *See generally id.* (referring to Spicer's "blistering debut" in the role on January 21, 2017, noting his "briefing room tirade[,]" and showing photographs from President Trump's inauguration dated January 20, 2017).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Abigail Abrams, *'I Screwed Up': Sean Spicer Says He Regrets Comments on Inauguration Crowd Size and Hitler*, TIME (Jan. 4, 2018, 5:35 PM), https://time.com/5088900/sean-spicer-screwed-up-inauguration-hitler/.

characterize the Trump administration.[8] Perhaps the most notable characteristic of this style includes a willingness to state and re-state demonstrably false propositions about a wide range of topics—not just stretching the truth here and there, or falling back on contested claims, but actively, consistently, and angrily contradicting the historical record. It is a practice that many commentators now refer to, somewhat loosely, as "gaslighting."[9] But it also evokes echoes of the more venerable concept of propaganda, albeit without insidious subtlety.

Both "gaslighting" and "propaganda" are difficult to define, and thus the relationship between the two concepts is murky at best. As described below, "gaslighting" is a relatively new term. For most of its short history, it has captured certain forms of interpersonal manipulation, where it was never the subject of legal regulation per se. The term "gaslighting" has only recently found its way into the political domain—controversially at that—and it has never been systematically theorized in the political context.

Propaganda, on the other hand, has been the subject of significant attention, both in the law and in scholarly work—so much so that it has splintered into competing variants of divergent meaning and moral valence. The fragmented efforts at legal regulation of propaganda both reflect and reinforce the confusion about what it is and why it should, at least at times, be subject to restrictions under the law. Nevertheless, the term "propaganda" continues to perform heavy work in contemporary political and legal discourse. Often undefined, the term routinely appears in media reports about persuasive messaging campaigns, and it typically carries a vague but decidedly negative connotation

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8. *See* Megan Garber, *The First Lie of the Trump Presidency*, ATLANTIC (Jan. 13, 2019), https://www.theatlantic.com/politics/archive/2019/01/the-absurdity-of-donald-trumps-lies/579622/ ("In his inaugural appearance as White House press secretary, Sean Spicer set the tone for the next two years.").

9. *See infra* Section II.A.

of illegality or other impropriety.[10] Scholars have offered numerous engagements with the concept that help illuminate its possible meanings, but most such accounts are historical, relatively general in nature, or focus on a specific variety of propaganda.[11]

Responding in part to calls from human rights bodies to develop public understanding of propaganda and misinformation in the media,[12] this Article demonstrates the need for a comprehensive and clear definition of propaganda and then satisfies that need. Part I of this Article identifies

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10. *See, e.g.*, Christian Davenport, *Trump campaign pulls ad about SpaceX launch after former astronaut calls it political propaganda*, WASH. POST (June 5, 2020, 2:53 PM), https://www.washingtonpost.com/technology/2020/06/05/trump-campaign-nasa-ad-pulled/ (quoting a former astronaut displeased about President Trump's reelection campaign using footage featuring her and her son, calling the video "political propaganda"); Anna Fifield, *China is waging a global propaganda war to silence critics abroad, report warns*, WASH. POST (Jan. 15, 2020, 7:25 PM), https://www.washingtonpost.com/world/asia_pacific/china-is-waging-an-aggressive-propaganda-campaign-to-distort-media-landscape-report-warns/2020/01/15/30fd4d58-374a-11ea-a1ff-c48c1d59a4a1_story.html (utilizing the term "propaganda" to refer to a public relations campaign by China that may lead to "corrosive effects on public debate").

11. *See generally, e.g.*, EDWARD S. HERMAN & NOAM CHOMSKY, MANUFACTURING CONSENT (Pantheon Books, 1988) (arguing that the mass media has historically operated on a "propaganda model," misleading the public and defending powerful interests); RANDAL MARLIN, PROPAGANDA AND THE ETHICS OF PERSUASION 5–11 (2d ed. 2013) (quoting a variety of fairly general definitions of the term); JASON STANLEY, HOW PROPAGANDA WORKS XIII (2015) (focusing on political propaganda defined "as the employment of a political ideal against itself[,]" rather than the concept of propaganda in its broader, classical sense).

12. *See generally* Special Rapporteur on Freedom of Expression of the U.N. Office of the High Commissioner for Human Rights, *Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda*, ¶ 6(a), U.N. Doc. FOM.GAL/3/17 (Mar. 3, 2017) (adopting the joint declaration, the U.N. Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information called on "[a]ll stakeholders – including intermediaries, media outlets, civil society and academia – [to] be supported in developing participatory and transparent initiatives for creating a better understanding of the impact of disinformation and propaganda on democracy, freedom of expression, journalism and civic space, as well as appropriate responses to these phenomena").

the necessary and sufficient conditions for labeling a communication propagandistic (in a comprehensive but pejorative sense); distinguishes various moral and functional levels on which that label may operate; and charts the concept graphically to demonstrate the relationships between some of its different instantiations. I will call this model the "comprehensive account of propaganda." To develop this novel account, Part I begins in a fashion uncommon among scholarly engagements: it systematically collects and analyzes notable instances of the legal regulation of propaganda, focusing on international law and domestic federal law from the United States. Even within those limited domains, the law's approach to propaganda is muddled, yet the Article identifies genuine, hidden insights in the law and combines them with significant scholarly contributions of the past to build a compelling new account.

In Part II, the Article demonstrates the contemporary significance of propaganda—and the need to understand it as a form of communication—by applying the comprehensive account to myriad communications practices of legal and political significance today. Most notably, the Article offers (so far as I know) the first effort to develop a rigorous and sophisticated theoretical account of political gaslighting before clearly illuminating the reasons for which political gaslighting amounts to propaganda. Notably, the fact that political gaslighting rises to the level of propaganda explains in large part why it is objectionable. The Article also connects the new model of propaganda to astroturfing, crocodile tears, doctored photographs and videos, hacking and selective leaking, and other phenomena of contemporary political and legal significance. In doing so, the Article underscores a growing (if justified) cost of our storied commitment to freedom of expression, and lays the groundwork for a clear, principled, and focused discussion of the settings in which propaganda ought to be regulated.

I. DEFINING "PROPAGANDA"

The concept of propaganda has received significant scholarly attention over the past several decades, often from a historical perspective.[13] It has also featured heavily in certain influential works of fiction over that same span.[14] At the most general level, the term refers to a particular form of persuasive communication, but consensus dissipates beyond that point. "Propaganda" has been defined in numerous different ways[15] and, perhaps more confounding, is often deployed without a definition attached at all. In the latter instances, the term threatens to function primarily as an insult directed at the content of another's speech rather than its mode or method. As to the former, some of the definitions or uses are morally neutral and even favorable, whereas others—perhaps most—are decidedly negative. Notably, divergent and undefined uses of the term arise not just in scholarship and political commentary, but also in the law itself. As explored in more detail below, the term "propaganda" appears without meaningful definition at points in international human rights law and international humanitarian law. It also appears in a variety of contexts in U.S. federal law—again, sometimes defined and sometimes not. These uses have not been adequately accounted for in analyses of the concept of propaganda.

Untangling the welter of uses and definitions requires deliberation, but it is valuable because the concept of propaganda is widely used in the law and in public commentary, and because the term can have significant freestanding analytic value. Depending on the definition we

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13. *See* MARLIN, *supra* note 11, at 4–13 (identifying numerous scholars who have worked on the concept).

14. *See, e.g.*, RAY BRADBURY, FAHRENHEIT 451 (Simon & Schuster 2012) (1953); ALDOUS HUXLEY, BRAVE NEW WORLD (Everyman's Library 2013) (1932); GEORGE ORWELL, 1984 (Signet Classics 1961) (1949).

15. *See* MARLIN, *supra* note 11, at 4–11 (collecting definitions from a variety of thinkers).

adopt, propagandistic practices may well date back to ancient history.[16] The term "propaganda" itself likely originated more recently, but nevertheless dates back at least to the 16th century, when the Pope created the Sacred Congregation for the Propagation of the Faith—originally to resist the Reformation, but thereafter to support Catholic missionary efforts.[17] (In Latin, the name is Sacra Congregatio de Propaganda Fide.[18]) In that religious context, the term carried a positive connotation for those operating under the label, referring to the dissemination of ideas that the Congregation believed to be both true and of extraordinary significance.[19]

Although there is a long history of other positive uses of the term, including some relatively recent ones,[20] the term has now acquired a negative connotation, at least in English-speaking countries.[21] It is now often associated, for example,

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16. *See id.* at 36–45 (describing instances from ancient Greece and Rome).

17. *See id.* at 4 (describing the arc of the name).

18. *Id.*

19. By contrast, others with conflicting and deeply-held religious convictions may well have regarded the term negatively. *See id.* (noting that the Protestant response to these Catholic efforts may have prompted a negative association with the term).

20. *See* STANLEY, PROPAGANDA, *supra* note 11, at 37 ("For the average person, the word 'propaganda' has evil and malicious overtones. Propaganda is considered something used by the demagogue to spread evil ideologies. Because of the high state of development that propaganda has reached in totalitarian nations, it is readily dismissed as something to be condemned and avoided. But propaganda does not have to be evil. There is a noble sense in which propaganda can be used. Remember that the term originated in the Catholic Church." (quoting Martin Luther King's "Propagandizing Christianity" sermon)); *id.* at 38 (describing W.E.B. Du Bois's call to African American artists to deploy propaganda, which Stanley interprets as "emotional appeals to win the respect, empathy, and understanding of whites"); s*ee also* MARLIN, *supra* note 11 at 10–11 (quoting Brendan Bracken and John Grierson expressing favorable views of propaganda).

21. *See* MARLIN, *supra* note 11, at 4 ("There is a strong association, in English-speaking countries, between the word 'propaganda' and the ideas of lying or deception[.] . . . Politicians and bureaucrats generally avoid using the term to describe their own activities, tending to reserve it for those of their opponents."); *see also* STANLEY, PROPAGANDA, *supra* note 11, at 38 ("In English, the word

with the efforts of the Third Reich to demonize Jews and other minorities in the 1930s and 1940s.[22] A relevant account of the term "propaganda" must account for the negative connotation the term has undeniably acquired. Moreover, to maximize its analytic value, it would be ideal to derive an *objective,* negative definition, one that can pick out certain problematic communication practices themselves rather than functioning merely as a pejorative description of disfavored messages. In other words, if possible, the term should attach to communication of a certain form or type rather than being defined according to the ideology of communication content. If "propaganda" merely refers to expressions of viewpoints that a particular speaker rejects, then the term will simply stand in for her unstated objections to the substance of the message in question. The proper use of the term would then be rendered both indexical and *ad hominem* by definition.

Moreover, once we separate the mode of communication from (dis)approval of its content, the divergent valence of various uses of "propaganda" come into focus. One can approve both of a mode of communication and its content; disapprove of both the mode and its content; favor the mode and disfavor its content; or disfavor its mode but favor its content. These various configurations can explain the possibility of people adopting favorable attitudes toward the concept of propaganda, even if we define the term objectively and negatively. For example, one who prioritizes above all persuading an audience of a particular viewpoint may see the ends of doing so as justifying problematic communicational means, thus being unmoved by allegations of trafficking in propaganda.[23]

'propaganda' has acquired a pejorative connotation.")

22. *See, e.g.*, David Welch, *History: Nazi Propaganda*, BBC (Mar. 30, 2011), http://www.bbc.co.uk/history/worldwars/wwtwo/nazi_propaganda_gallery.shtml ("The story of the Nazi rise to power in the Germany of the 1930s is often seen as a classic example of how to achieve political ends through propaganda.").

23. *See, e.g.*, MARLIN, *supra* note 11, at 4 ("Lenin and Goebbels did not mind

Further, previous definitions offered by scholars do not contend sufficiently with the legal uses of the term, which provide genuine (if hidden) insights into how we ought to understand the concept. Collecting both legal and scholarly uses will thus permit us to distill the essence of propaganda and build up an informed and functional account that renders it useful for application to contemporary communications, including political gaslighting. The following sampling of different uses and definitions of the term will thus equip us to isolate a particular form of problematic communication that can be defined objectively, without losing the term's negative connotation.

A. *Legal Uses of the Term*

The objective of this Section is not to catalog every single use of the term "propaganda" in the law, a lengthy exercise that promises diminishing returns for analytical purposes. Rather, the objective is to gather a representative sample of sources of law (carrying both linguistic and legal relevance to the United States) with the aim of deriving meaningful lessons about the concept of propaganda. Accordingly, this Section will focus both on key international legal statements (as rendered in English) that concern the United States, as well as on uses of the term in domestic federal law.[24]

1. International law

In 1947—during the early days of the United Nations, shortly after the conclusion of World War II—the United Nations (UN) General Assembly passed a resolution entitled, "Measures to be taken against propaganda and the inciters of a new war."[25] Like much of the initial activity of the UN,

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applying the term 'propaganda' to describe their attempts to mold opinion.").

24. From the standpoint of offering exemplars of legal uses of the term, including a thorough canvassing of American state law adds little; the types of uses for the term in state law appear to overlap in significant respects with the types of uses in federal law.

25. G.A. Res. 110 (II) A, Measures to be taken against propaganda and the

the resolution responded directly to concerns about large-scale international military conflict. The General Assembly offered its resolution in light of the UN Charter's joint commitment "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind" and to "promot[e] . . . universal respect for, and observance of, fundamental freedoms, which include freedom of expression . . . ."[26] Without defining the term, the resolution went on to "[c]ondemn[] all forms of propaganda, in whatsoever country conducted, which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression."[27] Yet the resolution also requested that each Member state "take appropriate steps within constitutional limits . . . to promote, by all means of publicity and propaganda available to them, friendly relations among nations based upon the Purposes and Principles of the Charter . . . ."[28]

The resolution plainly uses the term "propaganda" to refer to a mode of communication that must be defined independently of the message conveyed. It also pegs the General Assembly's attitude toward propaganda completely to the content of the message; the UN supports the persuasive efforts of its member states to promote peaceful international cooperation and opposes persuasive efforts to promote international conflict. But it is entirely unclear from the resolution what the voting states understood the term "propaganda" to encompass, or how propagandistic communications differ from non-propagandistic ones.

A similar understanding of propaganda appears in the International Covenant on Civil and Political Rights (ICCPR), which was drafted during roughly the same era and

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inciters of a new war (Nov. 3, 1947).

26. *Id.*

27. *Id.*

28. *Id.*

ultimately ratified by the United States in 1992.[29] As one component of the International Bill of Rights, the ICCPR lays out fundamental civil and political rights that are familiar to many Americans, including freedoms of thought and expression.[30] Article 20 of the ICCPR, however, bans "propaganda for war," as well as certain forms of advocacy of "national, racial, or religious hatred."[31] Once again, the instrument suggests that propaganda is a form of communication rather than a label to be applied to a particular message, and it expresses disapproval only of a subset of propaganda—namely, that which promotes war. And, once again, no definition of the term is otherwise available.[32]

International humanitarian law (IHL), sometimes known as the law of war or the law of armed conflict, also bans some uses of propaganda. IHL by definition applies largely in contexts that the UN propaganda bans discussed above are meant to discourage from arising in the first place, and its own ban on propaganda is quite limited. Specifically,

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29. *Status of Treaties: International Covenant on Civil and Political Rights*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&lang=en (last visited July 30, 2020) (dating the Covenant to 1966 and documenting the United States' ratification of the Covenant on June 8, 1992).

30. International Covenant on Civil and Political Rights, art. 18-19, Dec. 16, 1966, 999 U.N.T.S. 171.

31. *Id.*

32. *See also* MICHAEL G. KEARNEY, THE PROHIBITION OF PROPAGANDA FOR WAR IN INTERNATIONAL LAW 3 (2007) ("Both the words *propaganda* and *war* suffer from a distinct lack of definition for the purposes of international law . . . ."). Kearney's book offers a detailed examination of the prohibition of propaganda for war under international law. Note that, as a party to the ICCPR, the United States would have been obliged to enact legislation accordingly except that it "reserved" on Article 20. Specifically, the U.S. conditioned its acceptance of the terms of the ICCPR on, *inter alia*, the proposition that "Article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States." 138 CONG. REC. 8068, 8070 (1992); *see also* Kristina Ash, *U.S. Reservations to the International Convention on Civil and Political Rights: Credibility Maximization and Global Influence*, 3 NW. UNIV. J. INT'L HUM. RTS. [i], [viii]–[ix] (2005) (describing the U.S. reservation).

Article 51 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (also known as the Fourth Geneva Convention) states: "The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted."[33] This restriction dates to 1949,[34] the same general period as the General Assembly resolution on propaganda and the drafting of the ICCPR. Once more, the treaty does not define "propaganda," though by implication we may understand it to mean some sort of persuasive or even manipulative communication, in this case one designed to get persons protected by the convention to join the military services.[35]

By contrast with the international legal restrictions arising in the wake of World War II, some of the more recent action on the freedom of expression appears to accept the negative connotation of the word "propaganda." For example, in 2017, expert representatives from the UN, the Organization for Security and Cooperation in Europe (OSCE), the Organization of American States (OAS), and the African Commission on Human and Peoples' Rights (ACHPR) issued a Joint Declaration on Freedom of Expression and "Fake News," Disinformation and Propaganda.[36] The declaration addresses the tension

33. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 4, Aug. 12, 1949, 973 U.N.T.S. 287, 320.

34. *Treaties, States Parties and Commentaries*, INT'L COMMITTEE RED CROSS, https://ihl-databases.icrc.org/ihl/INTRO/380 (last visited Jan. 28, 2020) (dating and providing background to the Fourth Geneva Convention).

35. Before it was adopted, the restriction on propaganda in Article 51 was the subject of some controversy. It constituted an expansion on the restrictions that had previously been accepted on compelled military service, as expressed in the Hague Conventions. *See id.* Some of the negotiating delegations proposed deleting the second sentence of Article 51 altogether, bringing the text more into alignment with the restrictions that had been previously recognized, but, "[r]emembering the painful impression left by certain propaganda during the last two world wars, the Conference decided to keep the prohibition as it was." *Id.*

36. Special Rapporteur on Freedom of Expression of the U.N. Office of the High Commissioner for Human Rights, *supra* note 12.

between preserving freedom of expression and banning certain modes of communication, and it gestures at a general definition of the term "propaganda."[37] The declaration specifically discourages state actors from "mak[ing], "sponsor[ing], encourag[ing] or further disseminat[ing] statements which they know or reasonably should know to be false (disinformation) or which demonstrate a reckless disregard for verifiable information (propaganda)."[38]

One important feature of these provisions is that they target states or government actors rather than private actors. That may seem to be of limited relevance because it is well known that, under international law, the primary bearers of duties are states (International humanitarian law imposes duties on individuals as well although, in practice, a substantial majority of the individuals who feel those constraints fight on behalf of a state). But as the following subsection demonstrates, domestic U.S. law also frequently associates the concept of propaganda with governmental communications.

2. Domestic law

a. Regulating foreign propaganda

For nearly half a century, U.S. federal law offered a detailed definition of "political propaganda" in the Foreign Agents Registration Act of 1938 (FARA). The FARA originated "out of the investigations of the House Un-American Activities Committee, formed in 1934 to investigate Nazi propaganda activities in the United States and the dissemination of subversive propaganda controlled by foreign countries attacking the American form of government."[39] It remains in effect but no longer utilizes all of the same language. The act regulates certain activities

37. *See id.*

38. *Id.*

39. Meese v. Keene, 481 U.S. 465, 486 (1987) (Blackmun, J., dissenting in part).

undertaken by individuals on U.S. soil on behalf of "foreign principal[s]"—that is, foreign governments, people or entities—including political activities and lobbying, public relations, solicitation and disbursement of money, or representation of a foreign principals' interest "before any agency or official" of the U.S. federal government.[40]

Qualifying individuals must file registration statements with the Attorney General, essentially identifying themselves as foreign agents.[41] Notably, in addition to being "comprehensive," the registration requirement applies "equally to agents of friendly, neutral, and unfriendly governments."[42] Moreover, individuals subject to the registration requirement who disseminate "informational materials for or in the interests of . . . foreign principals" must label such materials appropriately and file copies with the federal government.[43] Although the statute now refers to these as "informational materials," it formerly referred to such media as "political propaganda"[44]—and the relevant section heading still does so.[45] In essence, the FARA requires, *inter alia*, that foreign agents identify certain of their communications and media as propaganda.

Indeed, the FARA makes plain its purpose to moderate the spread of propaganda, and more specifically:

> [T]o protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the Government and the people of the United States may be informed of the identity of such persons

40. 22 U.S.C. § 611(b)–(c) (repealed 1995); § 612 (2012).

41. § 612.

42. *Meese*, 481 U.S. at 469–70.

43. *See* 22 U.S.C. § 614 (laying out some of the specific requirements).

44. *See infra* note 47.

45. *See* 22 U.S.C. § 614 (entitled "Filing and labeling of propaganda").

> and may appraise their statements and actions in the light of their associations and activities.[46]

The term "propaganda" remains in certain headings in the statute as well. The relevant chapter of the U.S. Code that contains the FARA—Chapter 11 of Title 22—is entitled "Foreign Agents and Propaganda," and the relevant subchapter is entitled "Registration of Foreign Propagandists."

Until Congress removed many FARA references to "political propaganda" via the Lobbying Disclosure Act of 1995, the statute defined the term "political propaganda" as follows:

> The term 'political propaganda' includes any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government or a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence.[47]

This is a broad definition primarily encompassing different forms of media that advance the interests of foreign entities or harm specific U.S. interests. The definition

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46. *Meese*, 481 U.S. at 469 (quoting 56 Stat. 248–249); *see also id.* at 486–87 (Blackmun, J., dissenting in part) ("The Act mandated disclosure, not direct censorship, but the underlying goal was to control the spread of propaganda by foreign agents. This goal was stated unambiguously by the House Committee on the Judiciary: 'We believe that the spotlight of pitiless publicity will serve as a deterrent to the spread of pernicious propaganda.'" (quoting H.R. REP. NO. 75-1381, at 2 (1937))).

47. *Id.* at 471–72 (majority opinion) (citing 22 U.S.C. § 611(j) (1994) (repealed 1995)).

focuses on the content of the messaging (or the anticipated, substantive effect of media as a result of its content) rather than any particularly troubling mode of communication, such as media that mislead in any particular way.

Before Congress removed this definition, the Supreme Court entertained a lawsuit concerning the constitutionality of labeling material "political propaganda" under the FARA. The plaintiff—who had won an injunction below on a First Amendment argument—sought to screen a trio of Canadian movies that had been labeled "political propaganda" under the FARA because "they contain[ed] political material intended to influence the foreign policies of the United States, or may reasonably [have been] adapted to be so used."[48] The plaintiff did not want "the Department of Justice and the public to regard him as the disseminator of foreign political propaganda."[49]

The nature of the plaintiff's objection compelled the Court to confront the divergent meanings of the word "propaganda" discussed above.[50] The Court observed that, "[i]n popular parlance many people assume that propaganda is a form of slanted, misleading speech that does not merit serious attention and that proceeds from a concern for advancing the narrow interests of the speaker rather than from a devotion to the truth."[51] According to the Court, the version of FARA in dispute captured "propaganda" both in this negative sense, and in its broader, more neutral sense as "advocacy materials that are completely accurate and merit the closest attention and the highest respect."[52]

The plaintiff ultimately lost his challenge, but undisputed affidavits in the record and dissenting justices

48. *Id.* at 470.

49. *Id.* at 467.

50. *See supra* Part I.

51. *Meese*, 481 U.S. at 477.

52. *Id.*

accepted the stigmatizing and therefore dissuasive force of labeling media "propaganda."[53] More importantly, even with the relatively recent edits, the FARA reflects a concern about subversion of Americans' opinions that may result from the surreptitious circulation of media and messaging for the benefit of foreign entities.[54] Additional, sporadic references in Executive Orders, Congressional statements, or the U.S. Code—generally in sections related to international relations—also describe the communications strategies of foreign states and some non-state entities as "propaganda," typically without defining that term.[55]

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53. *See id.* at 490 (Blackmun, J., dissenting in part) (referring to the affidavits and noting that they were uncontested).

54. *See id.* at 488 ("[I]t is fair to say that the original act reflected a perceived close connection between political propaganda and subversion.").

55. *See, e.g.*, Global Magnitsky Human Rights Accountability Act, Pub. L. No. 114-328, § 1287, 130 Stat. 2000, 2546 (2016), as amended by Act of Aug. 13, 2018, Pub. L. No. 115-232, § 1284, 132 Stat. 2076 ("The purpose of the [Department of State Global Engagement] Center shall be to direct, lead, synchronize, integrate, and coordinate efforts of the Federal Government to recognize, understand, expose, and counter foreign state and foreign non-state propaganda and disinformation efforts aimed at undermining or influencing the policies, security, or stability of the United States and United States allies and partner nations."); Act of Apr. 3, 2014, Pub. L. No. 113-96, § 1, 128 Stat. 1098, 1098 ("Congress finds and declares . . . Russian forces have seized more than five television stations in Crimea and taken over transmissions, switching to a 24/7 Russian propaganda format; this increase in programming augments the already robust pro-Russian programming to Ukraine [and] United States international programming has the potential to combat this anti-democratic propaganda."); National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, § 1032 125 Stat. 1298, 1571 (2011) ("For each specified geographic area, a description, analysis, and discussion of the core problems and contributing issues that allow or could allow al-Qaeda and its violent extremist affiliates to use the area as a safe haven from which to plan and launch attacks, engage in propaganda, or raise funds and other support, including any ongoing or potential radicalization of the population, or to use the area as a key transit route for personnel, weapons, funding, or other support."); Exec. Order No. 13,848, 83 F.R. 46843 (Sept. 14, 2018) ("I, DONALD J. TRUMP, President of the United States of America, find that the ability of persons located, in whole or in substantial part, outside the United States to interfere in or undermine public confidence in United States elections, including through the unauthorized accessing of election and campaign infrastructure or the covert distribution of propaganda and disinformation, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.").

b. Regulating American propaganda

In addition to regulating foreign propaganda, the federal government trafficked in its own propaganda, eventually creating a legal framework to control the domestic dissemination of its own messaging materials.[56] In 1917, President Woodrow Wilson created the Committee on Public Education (CPI), which worked to drum up domestic and foreign support for U.S. involvement in World War I.[57] George Creel, the chair of the CPI, described the committee's function as disseminating "[n]ot propaganda as the Germans defined it, but propaganda in the true sense of the word, meaning the 'propagation of faith.'"[58] According to communications scholars, however, the CPI may not have lived up to that description; it "has been widely criticized for its use of intellectuals and journalists 'to sell an unpopular war to a dubious American public,'" including by "promoting hatred toward Germans as enemies and monitoring of suspicious neighbors."[59] A similar effort unfolded during World War II, although this time operated by the Office of War Information.[60]

After World War II, however, Congress formally took organized steps to promote the international dissemination of messaging by the federal government, as well as certain measures to limit dissemination of such messaging domestically. In 1948, Congress passed the United States

56. This Section does not provide a comprehensive survey of propaganda efforts by the U.S. government. As a starting point for locating further information on other such efforts, see Allen W. Palmer & Edward L. Carter, *The Smith-Mundt Act's Ban on Domestic Propaganda: An Analysis of the Cold War Statute Limiting Access to Public Diplomacy*, 11 COMM. L. & POL'Y 1, 3 (2006).

57. *Id.* at 5.

58. William M. O'Barr, *Public Service Advertising and Propaganda*, ADVERT. & SOC'Y REV. (2012), https://muse.jhu.edu/article/484935 (at start of Section 2; pagination unknown). This quote refers to the origins of the term "propaganda" in the evangelizing efforts of the Catholic Church. *See* MARLIN, *supra* note 11, 17 and accompanying text.

59. Palmer & Carter, *supra* note 56, at 5 (internal quotation marks omitted).

60. *Id.* at 5–6.

Information and Education Act—also known as the Smith-Mundt Act—which "authorized our government for the first time in its history to conduct international information and educational exchange activities on a permanent basis."[61] Notably, the statute does not use the word "propaganda"; its stated purpose is "[t]o promote the better understanding of the United States among the peoples of the world and to strengthen cooperative international relations."[62] But the genesis for the law lay partly in the perceived necessity to counteract propaganda emanating from the Soviet Union,[63] and members of Congress have described the efforts licensed by the Smith-Mundt Act as constituting "U.S. Government propaganda."[64]

The law provided for the exchange of information, educators and students between the United States and other countries, and it authorized the State Department to

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61. Burton Paulu, *The Smith-Mundt Act: A Legislative History*, 30 JOURNALISM Q. 300, 300 (1953).

62. United States Informational and Educational Exchange Act of 1948, Pub. L. No. 80-402, 62 Stat. 6, 6.

63. *See* Paulu, *supra* note 61, at 310 ("The case for the [bill that became the Smith-Mundt Act] was fundamentally that which Secretaries Byrnes and Marshall, and Assistant Secretary Benton, had presented earlier in connection with [an earlier bill that did not become law]. It was said again that wide dissemination of information about ourselves, our true ambitions, our strength, and our policies would contribute to world understanding and peace, although much more emphasis than before was placed on the need for an international information program to reply to Russian propaganda attacks."); *see also* Palmer & Carter, *supra* note 56, at 8 (quoting legislative history of the Smith-Mundt Act to acknowledge that "[t]he present hostile propaganda campaigns directed against democracy, human welfare, freedom, truth, and the United States, spearheaded by the Government of the Soviet Union and the Communist Parties throughout the world, call for urgent, forthright, and dynamic measures to disseminate truth. The truth can constitute a satisfactory counter-defense against actions which can only be described as psychological warfare against us as well as the purposes of the United Nations.").

64. *See* Gartner v. U.S. Info. Agency, 726 F. Supp. 1183, 1186 (S.D. Iowa 1989) (quoting Senator Edward Zorinsky as justifying an amendment to the Smith-Mundt Act because "[t]he American taxpayer certainly does not need or want his tax dollars used to support U.S. Government propaganda directed at him or her.").

disseminate "information about the United States, its people, and its policies, through press, publications, radio, motion pictures, and other information media, and through information centers and instructors abroad."[65] Initially, the State Department did the latter through the distribution of films, news bulletins, and Voice of America programming.[66] Control over international broadcasting and exchange services shifted in 1953, when President Dwight Eisenhower established the United States Information Agency (USIA) to manage these functions instead.[67]

Although the original version of the law did not explicitly prohibit the State Department from disseminating its programming domestically, some believed that such a ban was intended.[68] Eventually, in 1972, Congress eliminated any doubt and amended the statute to state that media produced pursuant to it by the U.S. government "[s]hall not be disseminated within the United States, its territories, or possessions."[69] Later edits would reinforce that ban in part

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65. Palmer & Carter, *supra* note 56, at 7 (2006) (quoting United States Informational and Educational Exchange Act of 1948, Pub. L. No. 80-402, § 501, 62 Stat. 6, 9–10).

66. Weston R. Sager, *Apple Pie Propaganda? The Smith-Mundt Act Before and After the Repeal of the Domestic Dissemination Ban*, 109 NW. U. L. REV. 511, 518 (2015).

67. *Id.* at 518–29. The USAI shut down in 1998, after its responsibilities shifted to the Broadcasting Board of Governors. *See id.* at 524–25 (describing the transition in greater detail).

68. *See* Palmer & Carter, *supra* note 56, at 9–10 (describing one instance of such a dispute).

69. *Id.* at 10 (quoting Foreign Relations Authorization Act of 1972, Pub. L. No. 92-352, § 204, 86 Stat. 489, 494 (codified at 22 U.S.C. § 1461 (2018))). Such media would remain available under certain limitations to "representatives of United States press associations, newspapers, magazines, radio systems, and stations, and by research students and scholars, and, on request . . . to Members of Congress." *Id.* (quoting Foreign Relations Authorization Act of 1972, Pub. L. No. 92-352, § 204, 86 Stat. 489, 494 (codified at 22 U.S.C. § 1461 (2018))). Congress arguably clarified its intent even earlier; in 1965, it passed a resolution authorizing the domestic distribution of a single USIA film, the very need for which suggests a ban was already in effect. *See* Sager, *supra* note 66, at 520–21 (describing the incident).

because Congress did not want domestic audiences targeted by their own government's propaganda.[70]

The ban ultimately lifted when Congress passed the Smith-Mundt Modernization Act of 2012 (as part of the National Defense Authorization Act for Fiscal Year 2013).[71] Congress's about-face on the domestic dissemination ban reflected at least two concerns. First, the ban was undesirable in the context of the War on Terror because Congress perceived the need to push back against the radicalization of domestic audiences; and, in any event, technological advancements (and greater fluidity of media generally) had come to limit the power of the government to restrict domestic dissemination of its materials.[72] The U.S. Code nevertheless continues to bar certain forms of domestic propaganda efforts, such as any funded by the Department of Defense.[73]

Less information is available about a structurally similar effort to regulate American messaging that began in 1999, when President Clinton secretly issued Presidential Decision Directive 68 (PDD 68) to create an International Public Information Core Group "to counteract propaganda by

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70. *See* Essential Info., Inc. v. U.S. Info. Agency, 134 F.3d 1165, 1167 (D.C. Cir. 1998) ("The statute's plain language is reinforced by the Congress's repeated amendment of the Act to clarify and strengthen the ban on domestic distribution of USIA materials."); Palmer & Carter, *supra* note 56, at 10–11 (noting that "Congress has tinkered with the language of the domestic dissemination ban several times" and offering some details); *see also* Gartner v. U.S. Info. Agency, 726 F. Supp. 1183, 1186 (S.D. Iowa 1989) (quoting Senator Edward Zorinsky as justifying an amendment to the Smith-Mundt Act because "[t]he American taxpayer certainly does not need or want his tax dollars used to support U.S. Government propaganda directed at him or her.").

71. *See* John Hudson, *U.S. Repeals Propaganda Ban, Spreads Government-Made News to Americans*, FOREIGN POL'Y (July 14, 2013, 7:06 PM), https://foreignpolicy.com/2013/07/14/u-s-repeals-propaganda-ban-spreads-government-made-news-to-americans/ (describing the legislative change).

72. *See* Sager, *supra* note 66, at 526–27.

73. *See* 10 U.S.C. § 2241a (2018) ("Funds available to the Department of Defense may not be obligated or expended for publicity or propaganda purposes within the United States not otherwise specifically authorized by law.").

enemies of the United States."[74] Although the purpose of the Group was to "influence the emotions, motives, objective reasoning and ultimately the behavior of foreign governments, organizations, groups and individuals," the information it was to disseminate purported to be "truthful," and it does not appear that PDD 68 characterized the Group's activities as propagandistic.[75] Much like the later revisions to the Smith-Mundt Act, PDD 68 noted that IPI Core Group activities should be "overt and address foreign audiences only."[76] It is possible that the Group never got off the ground,[77] but its similarities to the Smith-Mundt Act are instructive.

c. Other miscellaneous references to "propaganda" in federal law

Both statutes and courts have occasionally used the term "propaganda" in a variety of other contexts. The term sometimes describes communications that advocate for a particular type of ideology, such as religious,[78] racist,[79] or political views.[80] These scattered uses are individually too

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74. *See International Public Information (IPI) Presidential Decision Directive PDD 68 30 April 1999*, FED'N AM. SCIENTISTS, https://fas.org/irp/offdocs/pdd/pdd-68.htm (last visited June 15, 2020). The full text of the directive does not appear to be publicly available.

75. *See id.*

76. *Id.*

77. *See* William P. Kiehl, *Seduced and Abandoned: Strategic Information and the National Security Council Process*, *in* AFFAIRS OF THE STATE 356-57 (Strategic Studies Institute, 2008) (suggesting the group only met once during the Clinton administration).

78. *See* United States v. Suarez, 893 F.3d 1330, 1332 (11th Cir. 2018), *cert. denied*, 139 S. Ct. 845 (2019) (upholding a terrorism conviction of an individual who, *inter alia*, posted "ISIS propaganda" on Facebook); Busey v. District of Columbia, 138 F.2d 592, 594 (D.C. Cir. 1943) (considering the constitutionality of enforcing certain fees against "street sellers of religious propaganda").

79. *See* Hernandez v. Superintendent, Fredericksburg-Rappahannock Joint Sec. Ctr., 800 F. Supp. 1344, 1345 (E.D. Va. 1992) (entertaining a challenge to the arrest of a member of the Ku Klux Klan effected while he was "distributing Klan propaganda").

80. *See* Heilberg v. Fixa, 236 F. Supp. 405, 406 (N.D. Cal. 1964), *aff'd sub*

infrequent to provide much guidance for an investigation into the nature of propaganda, although collectively they show that advocacy of a particular viewpoint—especially an unpopular or disfavored viewpoint—is at times described as "propaganda."[81] Indeed, courts have upheld prosecutions for treason undertaken against individuals who participated in German propaganda efforts during World War II.[82] Sometimes the use of the term specifically captures the dissemination of false information.[83] But that is not always so. One of the few contexts in which the term consistently appears relates to information circulated in connection with union elections in matters handled by the National Labor Relations Board.[84] Here the label attaches to persuasive

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nom. Lamont v. Postmaster Gen. of U.S., 381 U.S. 301 (1965) (striking down a statute that prohibited the mailing of "communist political propaganda").

81. In the context of taxation, it is less clear that a negative connotation attaches to the term "propaganda." For example, the tax code limits tax exemptions for certain types of organizations if a "substantial part of [their] activities [involve] carrying on propaganda, or otherwise attempting, to influence legislation." 26 U.S.C. § 501(c)(3) (2018); *see also* Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, 104 Stat. 3359, Sec. 1264(j), as amended Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Pub. L. No. 102-237, 105 Stat. 1905 (adopting a similar usage of the term by stipulating that the "[Tree Planting] Foundation shall not engage in lobbying or propaganda for the purpose of influencing legislation and shall not participate or intervene in any political campaign on behalf of any candidate for public office.").

82. *See* Gillars v. United States, 182 F.2d 962, 966 (D.C. Cir. 1950) (upholding a treason conviction based in part on allegations that the defendant participated in "the psychological warfare of the German Government against the United States" by assisting with "radio broadcasts and the making of phonographic recordings with the intent that they would be used in broadcasts to the United States and to American Expeditionary Forces in French North Africa, Italy, France and England," and describing such efforts as spreading "German propaganda").

83. *See* Sexual Minorities Uganda v. Lively, 960 F. Supp. 2d 304, 320 (D. Mass. 2013) (noting, in connection with allegations that the defendant aided and abetted crimes against humanity, that he had "generated and distributed propaganda that falsely vilified the [LGBTI] community to inflame public hatred against it").

84. *See, e.g.*, NLRB v. Big Three Indus. Gas & Equip. Co., 441 F.2d 774, 775 (5th Cir. 1971) (referring, in a neutral way, to "campaign propaganda" disseminated by a union shortly after it filed an election petition); NLRB v. TRW-

information, often but not necessarily false or dubious, associated with a specific side in a formal campaign. We will revisit these various legal uses of the term below.

B. *Scholarly Uses of the Term*

As part of a book-length treatment of the subject, philosopher Randal Marlin collects and analyzes a number of definitions of "propaganda." He sorts the definitions into different categories: descriptive, stipulative, hegemonic, persuasive, negative, neutral, and favorable.[85] A number of these categories manifest in the legal uses canvassed in the preceding Section. The neutral definitions gathered by Marlin are especially helpful because they provide an objective baseline against which we might find a negative definition to differ. Neutral definitions include: "the spreading of information whether it be true or false, good or bad—literally 'spreading the faith'";[86] "the attempt to influence the public opinions of an audience through the transmission of ideas and values";[87] and "dissemination of ideas, information or rumor for the purpose of helping or injuring an institution, a cause or a person."[88] Note that these definitions apply the label "propaganda" to particular modes of communication.

Semiconductors, Inc., 385 F.2d 753, 755 (9th Cir. 1967) (considering a petition to enforce a decision of the National Labor Relations Board against an employer that disseminated "anti-union propaganda . . . in an attempt to persuade its employees to vote against a union in a representation election being held by the Board").

85. *See* MARLIN, *supra* note 11, at 5–10. The "favorable definitions" offered by Marlin are not in fact actual definitions; they are more statements of support for undefined communication methods that the speakers regard as propaganda. *See id.* at 10–11 (quoting Brendan Bracken and John Grierson as adopting the label "propaganda" for communications methods they each endorse).

86. *Id.* at 10 (quoting Vernon McKenzie).

87. *Id.* (quoting Richard Taylor).

88. *Id.* (quoting WEBSTER'S THIRD INTERNATIONAL NEW DICTIONARY (1966)).

Given the turn toward viewing propaganda negatively, it is unsurprising that Marlin's largest sample of definitions qualify as negative.[89] Consider a subset of these:

> •"Propaganda is concerned with the management of opinions and attitudes by the direct manipulation of social suggestion rather than by altering other conditions in the environment of the organism."[90]
>
> •Propaganda is "a means of gaining power by the psychological manipulation of groups or masses, or of using this power with the support of the masses."[91]
>
> •"Propaganda is the more or less systematic effort to manipulate other people's beliefs, attitudes, or actions by means of symbols (words, gestures, banners, monuments, music, clothing, insignia, hairstyles, designs on coins and postage stamps, and so forth). A relatively heavy emphasis on deliberateness and manipulativeness distinguishes propaganda from casual conversation or the free and easy exchange of ideas."[92]
>
> •"Propaganda is the deliberate and systematic attempt to shape perceptions, manipulate cognitions, and direct behavior to achieve a response that furthers the desired intent of the propagandist."[93]
>
> •"Propaganda can be called the attempt to affect the personalities and to control the behavior of individuals toward ends considered unscientific or of doubtful value in a society at a given time."[94]

These are objective, negative definitions of the sort we seek. After sorting through the variety of definitions he has culled, Marlin concludes that the term should be defined negatively as well. He offers the following definition: "[t]he organized attempt through communication to affect belief or action or inculcate attitudes in a large audience in ways that circumvent or support an individual's adequately informed,

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89. *See id.* at 8–9 (offering nine negative definitions).

90. *Id.* at 8 (quoting Harold Lasswell).

91. *Id.* (quoting and translating Jacques Ellul).

92. *Id.* at 9 (quoting Bruce L. Smith).

93. *Id.* (quoting Garth Jowett and Victoria O'Donnell).

94. *Id.* at 8 (quoting Leonard Doob).

rational, reflective judgment."[95] Marlin's definition incorporates the notion of manipulation by implication, though, unlike many of the definitions he collects, he omits that word itself due to concerns about how to define it.[96] Marlin also adds two notable features that seem especially relevant for analyzing something like political gaslighting: organization and the targeting of large audiences. I will argue below that these conditions are erroneous if understood as essential elements of propaganda; on my favored interpretation of the concept, however, there is good reason that these conditions correlate frequently with propaganda.

Philosopher Jason Stanley has also contributed significantly to making sense of the concept of propaganda. Stanley's primary treatment of the subject, *How Propaganda Works*, focuses on a particular type of propaganda—namely "masking propaganda," or "the kind that characteristically masks the gap between the given ideal and reality by the propagandistic use of that very ideal."[97] Stanley pursues this form of propaganda because he is especially interested in how propaganda operates in democratic societies, where norms of free speech lay the groundwork for the spread of propaganda, which in turn constitutes "a serious threat to democracy."[98] Stanley also identifies a "classical sense" of the term, which is broader than the form of propaganda he

95. *See id.* at 12 ("The word 'manipulation' would be convenient for [a key] idea [in Marlin's definition of "propaganda"], but there are definitional problems arising in connection with that term itself."). Specifically, Marlin believes it "is crucial . . . that the propagandist sets the stage to provide some false or unexamined premise in the picture of reality affecting a propagandee's action." *Id.*

96. *See infra* note 108 and accompanying text (explaining Marlin's concern in greater detail).

97. *See* STANLEY, PROPAGANDA, *supra* note 11, at 51. Stanley is interested in certain implications of "masking" propaganda of this sort—for example, because "[f]ailures of democracy could be hidden by the propagandistic use of the very vocabulary of liberalism." *Id.*

98. *Id.* at 34.

devotes his book to elucidating.[99] Although he declines to explore the connections between masking propaganda and the classical sense of propaganda,[100] he defines the latter to mean "the manipulation of the rational will to close off debate."[101] He also attributes a more nuanced version of this classic sense of propaganda to Noam Chomsky, a view that defines propaganda as a form of "biased speech," or "speech that irrationally closes off certain options that should be considered."[102]

C. *Refining the Definition of "Propaganda" to Derive a Comprehensive Model*

The legal uses of "propaganda," although often undefined, impliedly reflect quite varied and divergent uses of the concept, whereas the inconsistencies among scholarly views—especially those focused on an objective, negative definition—are somewhat narrower. To the extent scholars have disagreed about the term, that is expected and perhaps ideal; it reflects robust engagement, from a variety of perspectives, with a complex phenomenon of substantial public concern. It is interesting and meaningful that, notwithstanding the diverse and numerous viewpoints reflected above, it is clearly possible to identify some consistent features among the various definitions available.

The inconsistent use of the term in the law is a different matter. Law is designed in large part to guide human behavior, and its undefined use of complex terms leaves open the possibility of misunderstanding or good-faith disagreement about what it stipulates. Moreover, the law

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99. *See id.* at 48 (defining "the classical sense of propaganda").

100. *See id.* at 49 (describing this choice).

101. *See id.* at 48. In an interview with Vox, Stanley provided a similar definition: "Propaganda is the use of images or language to manipulate people." Sean Illing, *How Propaganda Works in the Digital Age*, VOX (Oct. 20, 2019, 8:47 AM), https://www.vox.com/policy-and-politics/2019/10/18/20898584/fox-news-trump-propaganda-jason-stanley.

102. STANLEY, PROPAGANDA, *supra* note 11, at 49.

does not label all regulated communications as propaganda, even when they are best understood as such.[103] However, the law's uneven handling of propaganda contains key insights that can be integrated into an objective and negative definition of "propaganda"—*even in instances where the law's use of the term implies acceptance of a definition that is not negative, or not objective, or neither*. Incorporating those insights into a preferred definition of "propaganda" will make that definition more palatable because it will reflect the concerns that have led to regulation of speech in the law across a broad range of contexts.

1. Manipulation

Let us begin with one point of near-consensus at the scholarly level: propaganda, in its negative sense, involves the manipulation of an audience (or something like it). That is the most salient theme both in the definitions Marlin marshals and in Stanley's treatment of the classical sense of propaganda. This is a valuable starting point because manipulation is a mode of communication and not per se about the content of communications; there may be a correlation between a communication's manipulative propensity and certain types of content, but in theory one can manipulate another with respect to just about any factual proposition.[104] Adopting manipulation as a cornerstone of the

103. For example, the federal government regulates certain types of claims that it regards to be dubious or false, threatening legal action against certain speakers who make them, even without labeling those claims propagandistic. *See, e.g.*, Neena Satija & Lena H. Sun, *A Major Funder of the Anti-Vaccine Movement has Made Millions Selling Natural Health Products*, WASH. POST (Dec. 20, 2019, 5:50 PM), https://www.washingtonpost.com/investigations/2019/10/15/fdc01078-c29c-11e9-b5e4-54aa56d5b7ce_story.html#click=https://t.co/mX9SmEatQ3 (describing warnings issued by the Food and Drug Administration to an osteopathic physician who has marketed a number of his own products on the basis of questionable or false claims about their health effects).

104. Note that "communication" is itself a broad term. It covers not just speech, written language, images, videos, and so forth, but other more nuanced means of disseminating a particular message. *See, e.g.*, Daniel Bessner (@dbessner), TWITTER (June 9, 2020, 5:36 PM), https://twitter.com/dbessner/status/1270469851916546048?s=20

definition of propaganda conduces to an objective and negative understanding of the term, as discussed above.

Manipulation is an elusive concept, which is why Marlin ultimately shies away from it. The scholarly definitions above suggest agreement that propaganda is persuasive in some illicit sense, and more specifically that it manipulates by distorting the rational will of an agent— interfering with her ability to take warranted logical steps in processing information. For example, it "irrationally closes off certain options that should be considered,"[105] or operates by "social suggestion."[106] There is disagreement about whether manipulation requires deception, although a particularly focused attempt to understand the concept of manipulation by Joel Rudinow argues that deception is not essential.[107] It is this account that gives Marlin pause.[108]

Even Rudinow concedes that manipulation typically involves deception, however, and his argument for the need to account for other types of cases is curious.[109] Further, if

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(offering a photograph of a board game entitled "Clintonopoly! The Great American Sell-Off Game," which features caricatures of Bill and Hillary Clinton on the cover and clearly conveys a political message).

105. STANLEY, PROPAGANDA, *supra* note 11, at 49 (citing HERMAN & CHOMSKY, *supra* note 11).

106. MARLIN, *supra* note 11, at 8 (quoting Harold Lasswell).

107. *See generally* Joel Rudinow, *Manipulation*, 88 ETHICS 338 (1978) (arguing that it is possible to manipulate a person without deceiving him).

108. *See* MARLIN, *supra* note 11, at 12 (citing Rudinow to support the conclusion that "there are definitional problems arising with" the word "manipulation").

109. Rudinow ultimately settles on a rather complicated definition of "manipulation." He claims that a person attempts to manipulate another if and only if he "attempts the complex motivation of [another's] behavior by means of deception or by playing on a supposed weakness of [that person]." Rudinow, *supra* note 107, at 346. Complex motivation involves "attempt[ing] to motivate someone's behavior in a way which one presumes will alter (usually by complicating) the person's project (complex of goals)." *Id.* at 345. Complex motivation contrasts with "simple motivation," the latter of which occurs when one attempts "to motivate someone's behavior in a way which one presumes to be consonant with the person's antecedently adopted or already operative goals." *Id.* Rudinow elaborates on the distinction as follows:

previous scholarly work on the concept tells us anything, propaganda concerns itself with *a particular type* of manipulation: the type that irrationally shapes the beliefs of generally rational agents. As a result, I contend that deception is an essential element of the manipulation that lies at the heart of propaganda: a communication cannot function as propaganda unless at least one thing about it—its source, its phrasing, its imagery, its delivery—deceives an agent into make incorrect judgments when processing it. In other words, the communication hijacks or corrupts the rational processes of the audience to lead the audience to

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> Thus, for instance, if I respond to your request for directions by deceiving you about them, I am probably attempting to motivate your behavior, but in a way which I presume to be consonant with your present project. But if I falsely indicate an interest in joining you in some activity which I secretly hope thereby to get you to stop, I am attempting to motivate your behavior, but not in a way which I presume to be consonant with your present project. Your project now becomes more complicated because you now have the goal, which presumably was not operative in your undertaking and pursuing the activity, of frustrating my attempt at cooperation with you.

Id. The complications Rudinow incorporates into his definition appear to me unnecessary. The reason Rudinow distinguishes between simple and complex motivation is essentially that he does not intuitively regard unsophisticated misdirection—such as deliberately giving someone bad directions—as skillful enough to amount to manipulation. *See id.* at 343–44 (explaining this view). This strikes me as a classic (albeit unsophisticated) example of manipulation, although note that the sophistication of a communication's manipulative power remains relevant to our assessment of it as propaganda. *See infra* Section I.C.2. (explaining the significance of persuasive power to an assessment of propaganda).

Moreover, the case Rudinow offers to show that deception is not essential to manipulation is questionable. Rudinow envisions Smith presenting himself to an admitting officer at a psychiatric clinic, seeking admission for reasons of convenience. After being denied admission, Smith tells the admitting officer that he will simply climb to a building rooftop and claim to be suicidal, forcing the police to bring him in and have him admitted. Smith then executes his plan, as a result of which he reappears before the admitting officer later, now escorted by police. The circumstances compel the admitting officer to admit Smith on pain of being accused of professional irresponsibility. *See* Rudinow, *supra* note 107, at 340 (presenting the case). Although it is arguable that Smith manipulated the police officers into bringing him to the psychiatric clinic, the nature of the pressure on the admitting officer is categorically different—it is more like a form of coercion—and I see no reason to gloss over that distinction by adopting the same label for both.

incorrect conclusions.[110] Frequently, this will arise because the communication contains false information (offered as true) or omits germane, true information (without noting its absence),[111] but more subtle variations include misleading implications carried by a communication in virtue of its source or its form.

We may distinguish two primary forms of manipulation on this model: manipulation as to *content*, and manipulation as to *confidence*. Manipulation as to content generally occurs when a communication inserts false premises into an agent's deliberative process (while suggesting those premises are true), or primes the agent to draw improper inferences or deductions from a true premise. It leads to false beliefs, or to conclusions that do not follow. Manipulation as to *confidence* induces the agent to give improper weight to the communication, even if that communication does not mislead the audience as to content. Often manipulation as to confidence arises when the communication purports to be, or is misunderstood to be, something it is not (such as when someone interprets fiction to be nonfiction, or reads advocacy materials originating from one source while believing them to be from another).

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110. I use the term "incorrect" rather than "irrational" to account for the fact that one can manipulate others without corrupting the rationality of their thinking in the strongest sense. For example, if a communication manipulatively asserts a false proposition, the audience might take that proposition to be true and therefore draw whatever conclusions logically follow. Strictly speaking, those conclusions could be rational—the proper conclusions to draw from the premises in hand—even though they may be mistaken because a fundamental premise behind them is false. At a higher level, however, a communication that operates in this way still interferes with the rational processes of the audience because it deceptively uses those processes to lead the audience to a conclusion that is (*ex hypothesi*) false. That approach should be sufficient for my account to capture the typical concerns about the effects of propaganda, which are often described in terms of its effects on rationality.

111. In any given dispute about whether a particular communication is manipulative in this sense, among the most difficult matters to resolve might be whether it omits germane information.

Although these two categories are distinct in theory, they will often overlap in practice. Both forms of manipulation may result from the affirmative provision of false information or the withholding of true information, and often manipulation as to content on one matter will set the stage for manipulation as to confidence on another. If I falsely present myself as a trained medical professional before asserting a series of true propositions about the merits of a particular medical intervention, I will manipulate my audience both as to the content of their beliefs about my identity and as to their proper level of confidence in the merits of the medical intervention. A notable implication of this view is that a true communication may still manipulate. Although that may be a controversial view, it is not novel. For example, Jason Stanley convincingly rejects the idea that, to operate as propaganda, a communication must be false.[112] He points out that true propositions can be (and often are) deployed to imply false ones, such as by suggesting threats. He gives the example of a politician claiming, "There are Muslims among us," which is plainly true in many contexts but which may be uttered with the intent of implying a hidden threat.[113]

Antidotes to these forms of manipulation include full disclosure of relevant facts about the source, accurate content, and sensitivity to the unwarranted implications of a communication (which includes the provision of relevant context and qualifications). These antidotes are in essence a demand for additional information; media premised on brevity—memes, tweets, headlines—carry particular potential to manipulate because they possess no mechanism for providing much of the additional information that staves off erroneous processing by a rational audience.

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112. *See* STANLEY, PROPAGANDA, *supra* note 11, at 42 (labeling the assumption that propaganda must be false the "falsity thesis" and explaining that he will reject it).

113. *See id.* at 42–43 (using this example to support his rejection of the falsity thesis).

Several clarifications are in order. First, creatures below a certain level of rationality are not eligible to be manipulated in this way. Many animals and especially young children, for example, are incapable of processing language or other information in a sufficiently rational manner to be duped in a meaningful sense by manipulative communications. Within audiences that cross the requisite threshold for rationality, the propensity of a communication to manipulate may still depend in significant part (among other things) on the epistemic sophistication of the audience.[114] Even above the line of requisite rationality, there is no reason to assume all members of an audience share the same level of resistance to manipulation.

Second, this broad way of understanding manipulation allows us to make incredibly important moral distinctions between communications that are designed or used for manipulation and those that simply happen to function in a manipulative way for unintended reasons.[115] This is a desirable feature of the present account, for it is essential to identify the distinctions we might otherwise miss: A communication can be *created* as propaganda if its creator intends it to manipulate an audience in this sort of way. It can be *disseminated* as propaganda when it is circulated for the purpose of manipulating an audience in this sort of way. It can *function* as propaganda even if it is not inherently manipulative, so long as the agent interpreting it is deceived in some way by it or by its implications.[116]

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114. *But see* WALTER LIPPMANN, THE PHANTOM PUBLIC 3–4 (1927) (expressing a much less optimistic view of the capacities of adults to make sense of the world around them—that is, to be rational in the sense in which I make use of that term here).

115. Compare that to the narrow account of propaganda offered by Sheryl Tuttle Ross. Sheryl Tuttle Ross, *Understanding Propaganda: The Epistemic Merit Model*, 36 J. AESTHETIC EDUC. 16–30 (2002) (requiring propaganda, even if true, to be delivered with a specific purpose).

116. It is plausible that people generally operate under a defeasible duty not to create or disseminate communications for propaganda purposes, and likewise that they ought generally to avoid communicating in a manner that is likely to

It is important to be able to talk about propaganda in each of these senses. To do so requires a definition of propaganda broad enough to account for the fact that these categories can come apart. For example, let us stipulate that much World War II-era Nazi propaganda was created to manipulate audience attitudes toward certain minorities. It was likely also disseminated (originally) with the purpose of manipulating audiences, and it may well have succeeded in convincing people to fear, hate, or mistrust the targeted minorities. Such communications would therefore qualify as propagandistic in all three senses identified above: based on the purpose behind their creation, the purpose behind their dissemination, and their ultimate effect. But one can take the very same communications today and disseminate them to a class as part of a study of propaganda—plainly not with the purpose of manipulating one's audience and, by placing the materials in their historical context, not in fact doing so. In such a situation, the materials at issue were still created to function as propaganda, but they were not distributed as propaganda and did not actually function as propaganda.

The categories can come apart in the other direction as well. Material can be created as art or fiction, meant to evoke emotional responses but not to manipulate audiences into accepting unfounded factual propositions, and then be coopted for propaganda purposes, or misunderstood to propagandistic effect. Thus, certain material may function as propaganda even if the creator or disseminator bears no moral blame, or bears only a relatively small share of blame for knowingly creating or circulating material that is likely to be misunderstood (rather than the greater share of blame one might bear for intending to manipulate people).

The fact that these categories are clearly severable is only one reason for adopting a definition of propaganda that admits of their separation. One of the features of legal

function as propaganda. Those serving in roles in which communications carry special weight with an audience—political figures, journalists, teachers, parents, and so forth—likely operate under a particularly stringent version of this duty.

regulation of propaganda is a strong concern with the function of certain communications. Recall the former FARA definition of "political propaganda," which:

> includes any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government or a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions . . . .[117]

This language encompasses communications that serve a particular persuasive purpose, as well as those that are "reasonably adapted" to do so regardless of the intentions of the person circulating them. Whether or not this is a good definition, to the extent the law ever seeks to regulate propaganda, it is plainly easier to target communications with an arguable propensity to mislead than it is to require that the distributor meets demonstrated state-of-mind requirements.[118]

This leads to a further key point about why we should carve out space for communications that function as propaganda regardless of why they were created or shared. In his book on propaganda, Stanley rejects not just the idea that propaganda must be false, but also the idea that, to constitute propaganda, a communication must be offered insincerely.[119] For him, the sincere delivery of propaganda is

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117. Meese v. Keene, 481 U.S. 465, 471–72 (1987) (citing 22 U.S.C. § 611(j) (repealed 1995)).

118. I take no general position here on the desirability of legal regulations of propaganda because much of the wisdom and constitutionality of doing so depends on particular circumstances, but it is plainly important to understand what constitutes propaganda in any given context before one can propose effectively to regulate it.

119. STANLEY, PROPAGANDA, *supra* note 11, at 41–42 (labeling these two assumptions the "falsity thesis" and the "insincerity thesis," respectively, and explaining that he will reject both).

possible because of the connection "between propaganda and flawed ideological belief."[120] The account here creates conceptual space for that result. Distinguishing between the motives behind the creation or dissemination of a communication on one hand and the communication's function on the other allows us, in turn, to distinguish those who seek to manipulate their audiences from true believers who manipulate their audiences incidentally.

A third clarification: like "propaganda," the word "manipulation" has multiple meanings, but it carries a negative connotation in the sense explained in this Section. To constitute the sort of manipulation essential to propaganda, a communication must be created as, disseminated as, or functioning as manipulative *in a manner that is illicit according to the operative norms set by the context*. For example, deceptive strategies that are permitted by the rules of sports or games—such as trick plays or fakes—are not manipulative in any illicit sense, and they therefore would not amount to the sort of manipulation essential to propaganda. That is not to say that trickery in sports would otherwise amount to propaganda; as discussed below, illicit manipulation of rational will is not a sufficient condition for propaganda, and the other conditions all but rule out the possibility of propaganda arising in the context of sport or game. But it is an important qualifier to bear in mind.

Rudinow puzzles over this fact. "Interestingly enough," he observes, "one almost never hears the word 'manipulation' used in describing the various stratagems, fakes, feints, and finesses of competitive sports and games, though these often exhibit nearly every feature of manipulation."[121] His explanation is that "typically the competitor in such a contest seeks not the complex but the simple motivation of his

120. *Id.* at 41.

121. Rudinow, *supra* note 107, at 346.

opponent's behavior."[122] The more direct and compelling explanation is simply that misleading an opponent about how one plans to move a ball down the field of play, for example, or how one plans to trap the opponent's king on a chessboard, is part of the enterprise at issue; these are contexts in which we allow for or even honor trickery.

The norms are similar in a relevant respect in litigation, where it is understood that counsel for opposing sides advance the interests of their respective clients—within certain established parameters set by applicable court rules and rules of professional conduct. Making one's case effectively involves minimizing certain facts and emphasizing others, even if (or especially because) the effect of doing so may be tendentious. Although deliberately advancing falsehoods is not permissible, even the selective presentation of facts to support a helpful narrative could easily be manipulative in another setting. In litigation, however, both sides should possess a roughly equal opportunity to present competing narratives, and the audience should understand the purpose of each side's presentation and the broader nature of the enterprise. Legal advocacy in this form, when it conforms to governing norms, is therefore not manipulative in the illicit sense defined here.

Consider one further example. Although the law of armed conflict prohibits certain forms of perfidy,[123] other forms of misdirection targeting opposing forces—leaking information to falsely suggest a strategic retreat, for example—would not violate acceptable norms of the enterprise at issue, and thus would not be eligible to be considered propaganda, even if they met the further criteria described below. The absence of relevant and clear-cut norms distinguishes that situation from one where military forces

122. *Id.*

123. *See* Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, art. 37, June 8, 1977, 1125 U.N.T.S. 3.

provide misleading communications to civilians on an opposing side about their own government, as well as more general situations involving the dissemination of manipulative communications that bear on democratic deliberation about matters of public concern.

Finally, note that on this understanding of manipulation, like any other, there will be close cases. In many instances, earnest and good faith disagreement may arise about whether a communication is manipulative. That is neither here nor there from an analytic standpoint—it is certainly not a strike against the account—but it may be helpful to clarify that fact from the outset.

2. Persuasive power and persuasive effect[124]

Suppose we adopt the definition of "manipulation" discussed in the preceding subsection, and we conclude that it is a necessary component of propaganda. It remains true that interpersonal manipulation is relatively common, but it does not seem to rise, intuitively, to the level of propaganda—even in situations where it is morally unacceptable. Partners, friends and acquaintances lie to each other all the time, sometimes for (at least arguably) acceptable reasons. The various legal restrictions surveyed above reinforce such intuitions because they do not appear to concern themselves with run-of-the-mill interpersonal manipulation either. This subsection argues that routine interpersonal manipulation falls short of propaganda because it typically lacks both of the other key ingredients:

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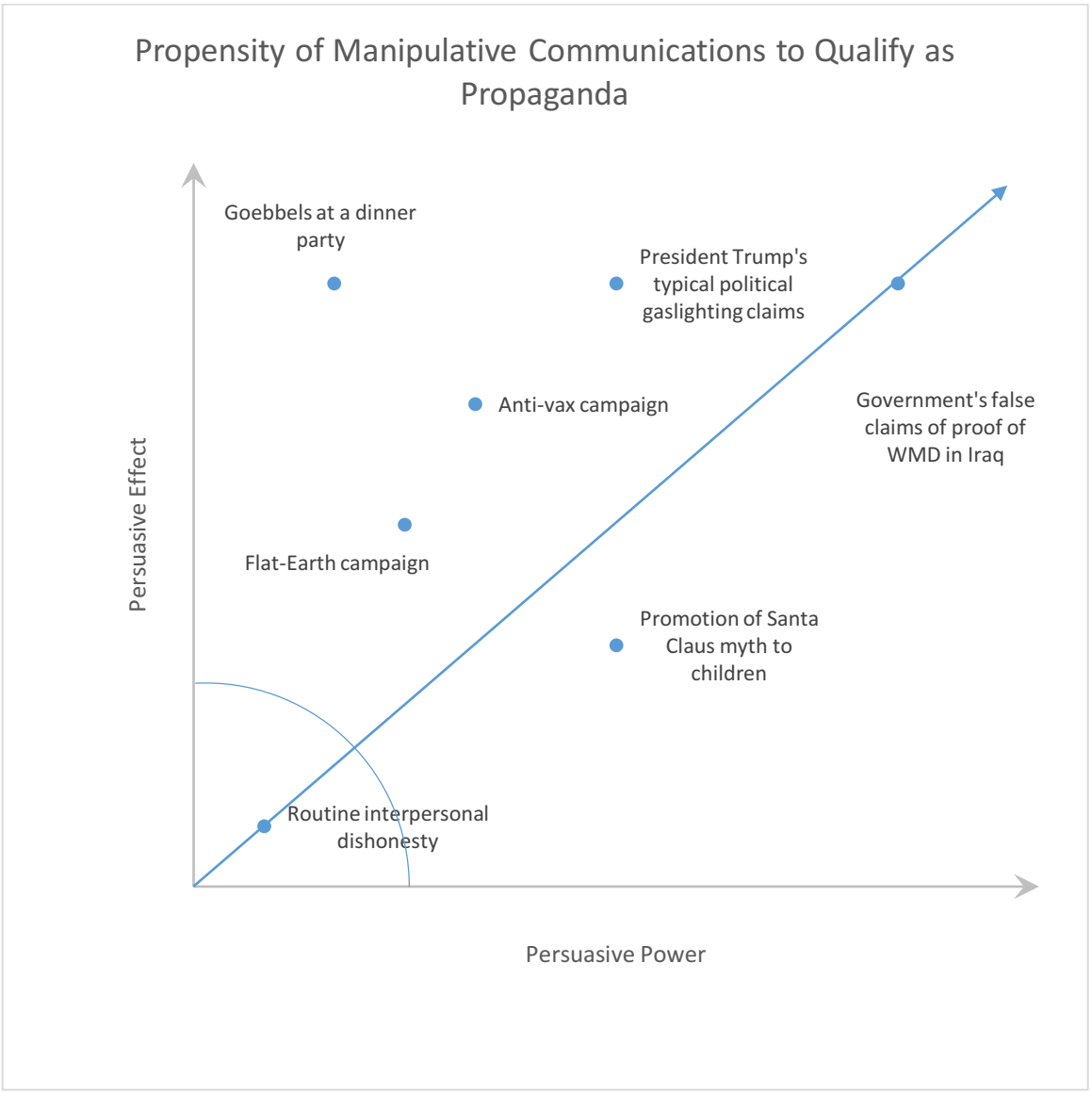
124. The following Section deploys a number of examples of campaigns that could, on my account, amount to propaganda. Whether they ultimately amount to propaganda will depend in the first instance on whether they manipulate audiences in a relevant respect as described in the preceding subsection. Some of these cases will amount to propaganda, if they do, because they advance false propositions. Although many will agree that the selected examples involve the advancement of false belief, others will not. I do not mean to suggest, in any event, that it is improper to debate the truth of the propositions associated with the campaigns identified below; instead, the lessons from this account are that commentators must take particular care in debating propositions that run against the grain of evidence.

persuasive power and *persuasive effect*. Persuasive power refers to the sophistication or resources behind the manipulative message, such as whether it emanates from authority or is amplified or corroborated by multiple additional sources. Persuasive effect refers to the broader social or political significance of the proposition(s) being advanced.

Imagine a teen manipulating his father into accepting a false proposition about why he missed his curfew the night before. Absent special circumstances, I want to suggest that his efforts fall short of traditional understandings of propaganda both because of the trivial social or political implications of the proposition he is advancing and because of the relatively unsophisticated means at his disposal to advance it. The teen's whereabouts may be of massive significance to his parents, but they do not generally have wider consequences for the community at large, let alone his country. And the sophistication of his efforts to prop up a lie may vary by circumstance—perhaps he enlists the assistance of a friend to provide a false alibi—but those efforts do not rise to the same level as quintessential propaganda campaigns, which involve the coordinated use of multimedia broadcast by numerous sources.

I therefore propose that a comprehensive, objective, and negative understanding of the term "propaganda" encompasses any manipulative communication (as defined above) backed by significant persuasive power and bearing significant persuasive effect. As described above, whether it is manipulative in the qualifying sense depends in part on the context for its origination and use, and, in analyzing it as propaganda, we must remain sensitive to the distinctions between the intention behind its creation, the intention behind its dissemination, and its ultimate effect. We can identify the criteria for the comprehensive account of propaganda in visual form, with a few examples plotted for illustrative purposes:


Propensity of Manipulative Communications to Qualify as Propaganda
Goebbels at a dinner party
President Trump's typical political gaslighting claims
Anti-vax campaign
Government's false claims of proof of WMD in Iraq
Flat-Earth campaign
Promotion of Santa Claus myth to children
Routine interpersonal dishonesty
Persuasive Effect
Persuasive Power

Assume that this chart depicts the entire universe of communications that are manipulative in the sense defined in Section I.C.1. The arc in the bottom-left corner carves out those communications that do not rise to the level of propaganda because they are neither of sufficient social importance nor sufficiently powerful or sophisticated. We might quibble about the size of the arc, but the tricky teenager's case should fall within it regardless of the precise placement of the boundary.[125]

By contrast, a sophisticated, government-orchestrated campaign to generate support for an armed conflict—such as a coordinated, multi-pronged effort to persuade the public that Iraq possessed weapons of mass destruction—would score high on both axes and fall clearly outside of the arc. Leaving aside the contested question of whether (and to what extent) individual actors in the government at the time genuinely believed this key proposition to be false, it is now clear that Iraq did not have such weapons and thus that those communications functioned to mislead the public into accepting a proposition that was relevant to their support for the war.[126] In other words, those communications operated as propaganda—and that would remain the case even if the government's push to persuade the public reflected nothing but good faith.[127] That is a function of both the persuasive effect of the key proposition (the implications of its truth for

125. As with the size of the arc, we might also legitimately debate the precise placement of any of the points on the graph—and indeed some of the dots will naturally shift somewhat over time—though the broader analytic claims about them should stand.

126. *See* Glenn Kessler, *The Iraq War and WMDs: An Intelligence Failure or White House Spin?*, WASH. POST (Mar. 22, 2019, 3:00 AM), https://www.washingtonpost.com/politics/2019/03/22/iraq-war-wmds-an-intelligence-failure-or-white-house-spin/ (noting that Iraq did not ultimately possess weapons of mass destruction and exploring the question of whether officials within the Bush administration conveyed information to the contrary deliberately or mistakenly).

127. *See supra* Section I.C.1. (distinguishing the creation or dissemination of communications for the purpose of manipulation from the circulation of communications that function to manipulate the audience).

public support for large-scale, international armed conflict), and the underlying persuasive power of relevant messaging (the complex and sophisticated nature of the machine that generated the messaging in support of it). Notably, it is worth observing that the government consistently relied on claims that it possessed unique information—intelligence unavailable to the public—that served to heighten its persuasive power.[128]

Other sorts of cases may divide intuitions, but they also sharpen our views about where to draw the arc and help define the scope of the account presented here. Consider the case of propaganda with significant persuasive power but limited persuasive effect. For example, let us assume that at least some of the children targeted by parents and media spreading the Santa Claus myth are rational enough to qualify as targets of rational manipulation. The relatively sophisticated and coordinated means of spreading that myth give it substantial persuasive power: Santa shows up in cartoons and commercials, on food packaging and in songs, and even (purportedly in person) at local malls. Many parents simultaneously instill the myth in their children as if by silent or unstated agreement, as a result of which most children see the myth reinforced by their peers. But the public policy implications (persuasive effect) of the proposition that Santa exists are relatively minor, albeit not necessarily trivial. The proposition is also one that tends to fade when confronted with the level of skepticism brought to bear by older children, so its lasting effects are inherently limited.

There are also examples of propaganda with less persuasive power but greater persuasive effect, such as the anti-vaccine ("anti-vax") movement. The public health

128. The United States Senate Select Committee on Intelligence assembled an entire report on the intelligence used to justify the invasion of Iraq in 2003. *See* SELECT COMM. ON INTELLIGENCE, 108TH CONGRESS, REP. ON THE U.S. INTELLIGENCE COMM.'S PREWAR INTELLIGENCE ASSESSMENTS ON IRAQ (2004), https://fas.org/irp/congress/2004_rpt/ssci_iraq.pdf.

consequences of the claims advanced by the anti-vax movement are significant, and some of those consequences have in fact materialized as a result of advocacy from associated groups.[129] The sophistication of the campaign is significant but not overwhelming; the group has an Internet presence and certain celebrity supporters,[130] but it is not as well funded or coordinated as certain government or powerful corporate campaigns. Somewhat similarly, there is a recognized community of people who believe the Earth is flat. Adherents are bitterly divided about what lies beyond our planet's edges,[131] but collectively the group is sizable enough to host conferences,[132] has some high-profile

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129. *See* Ben Guarino, Neena Satija & Lena H. Sun, *Deadly Measles Outbreak Hits Children in Samoa After Anti-Vaccine Fears*, WASH. POST (Nov. 27, 2019, 3:55 PM), https://www.washingtonpost.com/health/2019/11/26/deadly-measles-outbreak-hits-children-samoa-after-anti-vaccine-fears/ (reporting on an outbreak of thousands of measles cases in Samoa, leading to dozens of deaths, traced to "anti-vaccine fears").

130. *See* Tarpley Hitt, *Jessica Biel Comes Out as Anti-Vaxx Activist, Joins Robert F. Kennedy Jr. to Lobby Against CA Vaccination Bill*, DAILY BEAST (June 13, 2019, 11:56 AM), https://www.thedailybeast.com/jessica-biel-comes-out-as-anti-vaxx-activist-joins-robert-f-kennedy-jr-to-lobby-against-ca-vaccination-bill (reporting that Jessica Biel has joined the anti-vax movement); Jordan Julian, *Comedian Rob Schneider Has Become Hollywood's Loudest (and Wackiest) Anti-Vaxxer*, DAILY BEAST (July 27, 2019, 4:10 AM), https://www.thedailybeast.com/comedian-rob-schneider-has-become-hollywoods-loudest-and-wackiest-anti-vaxxer (reporting that Rob Schneider has also joined the movement).

131. *See* Alan Burdick, *Looking for Life on a Flat Earth*, NEW YORKER (May 30, 2018), https://www.newyorker.com/science/elements/looking-for-life-on-a-flat-earth (quoting flat-Earther Robbie Davidson as being "careful to note that the conferences [he had been planning] are unaffiliated with the Flat Earth Society, which, he said, promotes a model in which Earth is not a stationary plane, with the sun, moon, and stars inside a dome, but a disk flying through space. 'They make it look incredibly ridiculous . . . . A flying pancake in space is preposterous.'").

132. *See id.*; *see also, e.g.*, FLAT EARTH INT'L CONF., https://flatearthconference.com (last visited Jan. 27, 2020) (serving as the website for a flat-Earth conference held in Dallas, Texas in November of 2019).

supporters,[133] and also maintains an Internet presence.[134] The public implications of flat-Earther beliefs may be difficult to assess, but they provide a basis for skepticism about other claims with public policy significance as well.[135]

Additionally, it is worth noting that atypical interpersonal manipulation can very well amount to propaganda. For example, it is easy enough to generate examples of propaganda being spread to an audience of one in an informal or casual setting. Joseph Goebbels directed Nazi propaganda efforts for years. Let us stipulate that many of those efforts were manipulative in the sense defined above in Section I.C.1. Imagine Goebbels engaging in a political discussion with his wife's friend at a dinner party, and articulating the same messages he ordinarily directed toward mass audiences through the Ministry of Public Enlightenment and Propaganda.[136] Whether his communications are created, disseminated, or actually functioning as propaganda will depend, of course, on unspecified details; but assume for the sake of argument that

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133. *See* Sarah Valenzuela, *History's Most Famous Flat Earth Believers: Athletes, Celebrities, and Ancient Greeks,* NY DAILY NEWS (April 18, 2019), https://www.nydailynews.com/sports/photos/nydn-history-s-most-famous-flat-earth-believers-athletes-celebrities-and-ancient-greeks-20190418-photogallery.html (identifying several celebrities who have expressed support for the possibility that the Earth is flat).

134. *See, e.g.*, FLAT EARTH INT'L CONF., *supra* note 132 (serving as the home page for one of multiple flat-Earther groups).

135. *See, e.g.*, Sam Kriss, *Flat-Earthers Have a Wild New Theory About Forests*, ATLANTIC (Sept. 9, 2016), https://www.theatlantic.com/science/archive/2016/09/flat-earth-truthers/499322/ (reporting on flat-earthers who believe that many of the world's trees are fake).

136. *See* Paulo Trevisani, *Brazil Minister Ousted Over Remarks Echoing Nazi Propaganda*, WALL ST. J. (Jan. 17, 2020, 2:11 PM), https://www.wsj.com/articles/brazil-minister-ousted-over-remarks-echoing-nazi-propaganda-11579288317 (noting that Goebbels was named Minister of Public Enlightenment and Propaganda in 1933). To help eliminate variables that could drive us to the right result for the wrong reason, let us assume that some of the messaging Goebbels issues in his professional capacity comes in the form of spoken words, rather than exclusively in the form of posters or other media that cannot naturally be replicated at a dinner party.

Goebbels knows his arguments are manipulative and that manipulating his audience is his intent. Surely it is appropriate to say that his intent is to spread propaganda to his guest.

We can even assume that the dinner party takes place the night before Goebbels assumes his government post, so that there is no confusion about whether the source is a private person or a government agent. His statements will nevertheless manifest greater persuasive power to the extent they dovetail with, and can be bolstered by references to, a broader ongoing campaign to advance similar propositions. The more significant axis for charting this example, however, is persuasive effect: if his statements concern (for example) the threat posed to the state by certain minorities, the social implications of that proposition being widely adopted are of the utmost importance. Although this case may be atypical as an example of the spread of propaganda, it is simultaneously perfectly mundane as an example of interpersonal interaction. Cases such as these account for the possibility of someone spreading propaganda to small audiences in casual conversation, which will most likely arise when the claims at issue concern matters of public significance and align with or advance a freestanding, broader campaign around the same ideas.

Notice that the account of propaganda depicted in this chart synthesizes the key lessons of the law of propaganda and relevant scholarly discussions. First, this definition is both objective and negative. Although the content of a communication is not irrelevant to a determination of whether a communication amounts to propaganda, for we must assess the persuasive effect of the relevant propositions advanced, the label can fairly and simultaneously be applied to communications on either side of the same important issue. Additionally, the preceding Section notes the scholarly consensus about the need for manipulation to play a role, and that is built into this chart and elaborated on in Section I.C.1.

It is noteworthy, however, that the law reflects some concern about manipulation as well. That concern manifests most clearly in the FARA and the Smith-Mundt Act. The FARA ensures that informational materials designed or adapted to advance foreign interests could be viewed in the United States only if their source and likely intent are clearly identified. The worry is not that the messages advanced by foreign governments are inherently harmful, but rather that they would function to subvert Americans' beliefs—that is, they would be processed improperly from a rational standpoint—if American audiences were not well aware of the messages' source. The worry makes sense from a structural standpoint, as foreign entities disseminating messaging in the United States are unlikely to do so with American interests at heart. The same worry, albeit driven by an inverted calculation, is implicit in the need for a domestic dissemination ban under the Smith-Mundt Act: messaging designed to advance American interests abroad, perhaps by manipulating civilian populations, is not necessarily simultaneously designed to inculcate true beliefs in Americans themselves.

Persuasive power and persuasive effect explain a number of the remaining features of scholarly and legal views on propaganda. For one, some scholars identified above have gravitated to the idea that propaganda must typically target a mass audience.[137] The account defended here can explain that: intuitive criteria for propaganda naturally correlate strongly with targeting mass audiences

137. MARLIN, *supra* note 11, at 8 (quoting and translating Jacques Ellul to define "propaganda" as "a means of gaining power by the psychological manipulation of groups or masses, or of using this power with the support of the masses"); *id.* at 12 (offering his own definition of "propaganda" as "[t]he organized attempt through communication to affect belief or action or inculcate attitudes in a large audience in ways that circumvent or suppress an individual's adequately informed, rational, reflective judgment"); *see also* ADOLF HITLER, MEIN KAMPF 476 (John Chamberlain, et al. eds., Reynal & Hitchcock 1941) (1925) ("Propaganda, in its contents and form, has to be directed at the great masses and its efficiency has to be measured exclusively by its effective success.").

both because propaganda concerns the shaping of peoples' beliefs about matters of public concern and because more sophisticated campaigns are larger, multi-pronged and only justifiable from a cost standpoint if they reach large numbers of people.

Somewhat similarly, diverse legal regulations of propaganda underscore a deep (although not exclusive) focus on regulating communications *issuing from or on behalf of governments*. The international law domain naturally focuses on actions by state governments, as states bear the lion's share of international legal duties. But the same concern manifests in domestic law as well. The FARA concerns itself primarily with the possibility of foreign governmental messaging making its way into American discourse without being recognized for its source. The definition of "political propaganda" formerly codified in that statute explicitly encompassed, among others, communications that were intended to (or could reasonably be expected to) "influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of *a government or a foreign country or a foreign political party* or with reference to the foreign policies of the United States."[138] Similarly, the domestic dissemination ban that remained in effect for decades under the Smith-Mundt Act focused on messaging from the U.S. government specifically. And many one-off references to propaganda in the U.S. Code point to foreign governments in particular.[139]

The focus on governments tracks concerns about persuasive power. The sophistication or power of a communication depends first and foremost on its source, and there is no source of information as powerful as a government. Although governments vary in many ways, they

138. Meese v. Keene, 481 U.S. 465, 471–72 (1987) (emphasis added) (quoting 22 U.S.C. § 611(j) (repealed 1995)).

139. *See supra* notes 78–84 and accompanying text.

generally possess significant material resources to create and disseminate communications for a variety of purposes; unique access to massive amounts of proprietary data that they collect and analyze—including information *about* their audiences; a monopoly on the use of force *against* their audiences (which entails a certain leverage to disseminate information); and, in many cases, substantial credibility *with* their audiences. Governments also have, and often use, the power to suppress competing messages, and the ability to mask the purpose for which they are disseminating particular communications in the first place.[140] And, to further reinforce the point above, governments typically address mass audiences with their messaging.

To the extent that the law associates propaganda with a persuasive campaign undertaken by a non-governmental entity—such as in the context of union elections—there is once again a recognition of the power asymmetry between the communicator and his or her audience, a key feature of persuasive power. Although that asymmetry may be greatest when comparing a government and its citizens, especially wealthy corporate entities are also quite sophisticated. Like governments, powerful corporations possess the capacity to produce and widely disseminate effective communications to an extent not shared by most members of their audiences. News organizations, whether associated with powerful corporations or otherwise, similarly acquire significant persuasive power, especially as they grow in influence and general credibility.

At the same time, the law reflects a concern about the persuasive effect of certain communications—albeit, interpreting "effect" as *negative* rather than *significant*. The UN's understandable and overriding concern with peace in the late 1940s led it to approach propaganda in just this

140. In fact, government messaging contains so much inherent power and sophistication as a general matter that, even when demonstrably false, their persuasive power should still score outside the safe harbor arc near the origin in the graph. *See supra* Table 1.

functional manner, banning propaganda for war and encouraging propaganda for peace. Similarly, the uses of "propaganda" in the law to refer simply to unpopular or dangerous ideologies suggests an understanding of propaganda calibrated to its ultimate effects. The push to remove the domestic dissemination ban in the Smith-Mundt Act may also be explicable in this way, as a central motivating factor behind it was the perceived need to counteract the effects of extremist, anti-American messaging. In other words, Congress deemed the subversive potential of American government propaganda, when aimed at Americans, less significant than (and possibly antidotal to) the threat of extremist propaganda. The account provided here captures that consistent legal concern but helpfully channels it into an objective form.

II. APPLYING THE COMPREHENSIVE MODEL OF PROPAGANDA TO CONTEMPORARY COMMUNICATIONS PRACTICES

In addition to its ability to accommodate central legal and scholarly concerns about propaganda, the comprehensive account offers us the power to classify and analyze a number of troubling, contemporary communications practices of political significance. In doing so, it frames the legal options for regulating propaganda across numerous crucial contexts. This Part demonstrates those features of the model.

A. *Political gaslighting*

One of the most notable features of the Trump administration is its willingness to disseminate demonstrably false information on a consistent and repeated basis, for which some political commentators have adapted the term "gaslighting." The term "gaslighting" derives from a movie entitled "Gaslight," produced in the 1940s, in which a man manipulates his spouse's sense of sanity by "dim[ming] and "brighten[ing] the gaslights and then insist[ing] she is imagining it."[141] According to one scholar, psychotherapists first adapted the term in the 1960's for analyzing "involuntary hospitalization as a form of abuse."[142] The term has traditionally been applied in the context of interpersonal relationships, specifically where one "manipulate[s another] by psychological means into questioning [his or her] own sanity."[143] Gaslighting is commonly understood to operate through the speaker's use of false statements, including his denial of true assertions by

141. Paige L. Sweet, *The Sociology of Gaslighting*, 84 AM. SOC. REV. 851, 851 (2019) (summarizing the film).

142. *Id.* at 853.

143. *Gaslight*, LEXICO, https://www.lexico.com/en/definition/gaslight (last visited July 30, 2020); *see also* Sweet, *supra* note 141, at 852 ("Despite the recent journalistic use of gaslighting to name Trump's political strategy, gaslighting is traditionally understood as an interpersonal, psychological dynamic.").

another—at minimum with the effect (if not the specific intention) of destabilizing his listener's confidence in her beliefs, or even her sense of reality.[144]

To the extent that the term connotes brazen dishonesty with significant manipulative effect, there is no theoretical reason for which it cannot be applied outside of interpersonal settings.[145] A powerful politician who routinely denies evident propositions or embraces logical contradictions without hesitation can wreak havoc on the public's relationship with its government, triggering doubts among the people about their own recollections of settled matters of historical fact, and inviting difficult questions about the

144. *See* Ariel Leve, *Trump is Gaslighting America – Here's How to Survive*, BUS. INSIDER (Mar. 18, 2017, 9:30 AM), https://www.businessinsider.com/trump-is-gaslighting-america-heres-how-to-survive-2017-3 ("The term 'gaslighting' refers to when someone manipulates you into questioning and second-guessing your reality."). For more philosophical treatments of the concept, see Andrew Spear, *Epistemic Dimensions of Gaslighting: Peer-Disagreement, Self-Trust, and Epistemic Justice*, INQUIRY (Apr. 25, 2019), https://doi.org/10.1080/0020174X.2019.1610051 (defining gaslighting as arising "where one agent seeks to gain control over another by undermining the other's conception of herself as an independent locus of judgment and deliberation"); Kate Abramson, *Turning Up the Lights on Gaslighting*, 28 PHIL. PERSPECTIVES 1, 2 (2014), https://doi.org/10.1111/phpe.12046 (defining gaslighting roughly as "a form of emotional manipulation in which the gaslighter tries (consciously or not) to induce in someone the sense that her reactions, perceptions, memories and/or beliefs are not just mistaken, but utterly without grounds—paradigmatically, so unfounded as to qualify as crazy"); *see also* MIRANDA FRICKER, EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING (2007) (providing an account of epistemic injustice that would seem to encompass gaslighting).

145. My definition of political gaslighting does not focus on the gaslighter's intentions so much as his brazenness and the effect of his dishonesty. There are good reasons for this. Most notably, political figures speak to audiences with whom they have little if any interpersonal connection, which necessarily modifies the terms in which we can analyze their conduct. Nevertheless, the definition I propose is arguably consistent with some of the philosophical underpinnings identified by other theorists who are interested in intention. *See supra* note 144 (citing Spear and Abramson). For example, brazen dishonesty by a political figure—dishonesty that is manifest and therefore causes dissonance and destabilization in the audience—is very much an assertion of power over truth, whatever motivates it specifically. Moreover, politicians will often be able to convince at least a portion of their audience of the (possible) truth of demonstrably false claims.

mental state of the speaker. In fact, in the political context, brazen dishonesty takes on a distinctive character because it can be difficult to believe that a public figure would intend to offer a demonstrably false statement to an audience so large that a demonstration of the statement's falsity is all but assured. The destabilizing effect of such statements is only magnified by the power asymmetry between the speaker and his audience,[146] reflecting the government's inherent persuasive power, as described above. Once again, this power asymmetry manifests along numerous axes, including the relative influence of the speaker and his audience, and the speaker's special access to information (such as government intelligence) that could in some instances buttress or undermine his claims.

Many have already endorsed the transfer of the term "gaslighting" to the political context,[147] though others remain

146. Power differentials are also arguably extremely important for interpersonal gaslighting. *See* Sweet, *supra* note 141, at 852 (offering a sociological theory of interpersonal gaslighting that recognizes the heightened consequences of gaslighting efforts "when abusers mobilize macro-level inequalities related to gender, sexuality, race, nationality, and class").

147. *See, e.g.*, Aaron Blake, *Kayleigh McEnany's Latest Briefing is a Case Study in Gaslighting, Whataboutism and False Claims*, WASH. POST (May 26, 2020, 4:30 PM), https://www.washingtonpost.com/politics/2020/05/26/kayleigh-mcenanys-latest-briefing-is-case-study-gaslighting-whataboutism-false-claims/#click=https://t.co/NIxpSExI8f (using "gaslighting" to describe the conduct of White House Press Secretary Kayleigh McEnany); Dan Froomkin, *Fact-Checking Needs to Make Way for Reality-Testing and Gaslighting-Fighting*, PRESS WATCH (Oct. 28, 2019, 9:54 AM), https://presswatchers.org/2019/10/fact-checking-needs-to-make-way-for-reality-testing-and-gaslighting-fighting/ (describing President Trump as "engaged in gaslighting" when he tries "to make people doubt reality"); Brian Hiatt, *The Triumph of Stephen Colbert*, ROLLING STONE (Aug. 29, 2018), https://www.rollingstone.com/tv/tv-features/stephen-colbert-late-show-rolling-stone-interview-716439/ (quoting Stephen Colbert as saying: "The thing is that you're not crazy. . . . [Trump's] gaslighting the audience. As a Catholic, I was taught that the worst thing was heresy because not only are you sinning, you're also dragging somebody else into your sinful state. Well, Donald Trump is a heretic against reality; he lives in this fantasy world where only his emotions count and therefore only his reality is real.") (alteration in original); Leve, *supra* note 144 (transferring the term from the author's personal relationships with her mother and applying it to President Trump's relationship with the American public); Jennifer Mercica, *When Trump Says He Was Being 'Sarcastic,' it's Just*

skeptical.[148] The structural similarity between gaslighting in the interpersonal and political contexts is obvious in any event, rendering the term apt for present purposes. Moreover, my use of a modified version of the term in the political context carries no particular implications for its more traditional use—for example, to suggest anything about the relative personal costs of political gaslighting and

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Part of His Gaslighting, WASH. POST (Apr. 25, 2020, 6:06 PM), https://www.washingtonpost.com/outlook/2020/04/25/when-trump-says-he-was-being-sarcastic-its-just-part-his-gaslighting/#click=https://t.co/SUFXTePqMz (using "gaslighting" to describe President's Trump's pattern of explaining away controversial remarks by claiming they were "sarcastic"); Eugene Robinson, *Trump Apparently Thinks He's a Master at Gaslighting*, WASH. POST (Oct. 3, 2019, 5:00 PM), https://www.washingtonpost.com/opinions/trump-apparently-thinks-hes-a-master-at-gaslighting/2019/10/03/b87d192c-e60d-11e9-a6e8-8759c5c7f608_story.html (claiming, in the context of impeachment proceedings, that "Trump is trying to gaslight Americans by claiming, over and over again, that the smoking-gun evidence against him was actually a 'perfect' phone call [with the president of Ukraine]"); Stephanie Sarkis, *Donald Trump is a Classic Gaslighter in an Abusive Relationship with America*, USA TODAY (Oct. 3, 2018, 5:00 AM), https://www.usatoday.com/story/opinion/2018/10/03/trump-classic-gaslighter-abusive-relationship-america-column/1445050002/ (analogizing President Trump to an abusive partner, a "classic gaslighter in an abusive relationship with America"); *see also* Sweet, *supra* note 141, at 851 (at least recognizing the current usage if not endorsing it, noting that "[t]oday, gaslighting is an increasingly ubiquitous term used to describe the mind-manipulating strategies of abusive people, in both politics and interpersonal relationships").

148. *See, e.g.*, Conor Friedersdorf (@conor64), TWITTER, (Nov. 6, 2019, 6:11 PM), https://twitter.com/conor64/status/1192218008321572866 ("Usage note: A lying politician is not 'gaslighting.' The intent is not to make anyone question their sanity. It is to put one over on supporters and undecideds."). There are two obvious difficulties with this position. First, it is impossible to make a sound universal statement about the intentions of all chronically dishonest politicians, and thus it is possible that some of them are in fact engaged in political gaslighting even on Friedersdorf's standard. Beyond that, even in interpersonal contexts, I understand gaslighting to encompass repeated denial of true propositions for any number of reasons, including the perceived self-interest of the speaker—not necessarily for the specific purpose of, but at least incidentally, causing the listener to doubt his or her sanity or sense of reality. Friedersdorf's usage does not appear to be the typical one, and it is in any event so narrow as to be both extremely difficult to diagnose and extremely rare. A broader definition of the sort utilized here is both increasingly well accepted and analytically useful for addressing a genuinely important political phenomenon. *See, e.g.*, Leve, *supra* note 144 (in which the author describes her own mother's gaslighting without ever attributing to her the specific intention of making the author question her own sanity).

gaslighting in the context of an abusive interpersonal relationship.

I define political gaslighting as follows: trafficking in dubious or outright false information about matters of public significance by a politician or political apparatus when the speaker knows or should reasonably know that the information is likely to be incorrect, and the audience has a reasonable basis for doubting the speaker's claims. "Trafficking" encompasses both direct assertions and the implied endorsement of propositions that are dubious or outright false. A political gaslighter might rely explicitly on, or collectively endorse, demonstrably incorrect propositions and logical contradictions. In those cases, his political gaslighting is *overt*—that is, it can be demonstrated beyond question that the statements are erroneous in such a way that the speaker should at minimum know they are false.

At other times, political gaslighting may be *covert*, namely when a speaker makes statements that cannot be conclusively proven false, but which the audience has a reasonable basis to doubt. For example, a speaker may misrepresent his own personal views or beliefs—say, stating a basis for supporting a particular policy that he knows to be untrue. We might describe such a figure as operating in bad faith, articulating views he knows to be false in a context where he also knows it will be difficult or impossible to prove that he is lying.[149] Misrepresentations of the speaker's own state of mind are thus among the more pernicious forms of political gaslighting (a matter explored further below), and not just because a politician's state of mind often carries significant social consequences.[150]

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149. Overt political gaslighting may also manifest a form of bad faith, but it has a somewhat different character, as explored further below.

150. *See, e.g.*, Darren Samuelsohn, *Mueller Secrets Would Help Determine Whether Trump Lied, Democrats Tell Court*, POLITICO, (Nov. 18, 2019, 2:36 PM), https://www.politico.com/news/2019/11/18/mueller-secrets-trump-democrats-court-071378 (quoting Democratic House Representative Jamie Raskin on the difference between President Trump inadvertently providing inaccurate

Requiring the audience to have a reasonable basis for doubting the speaker's claims ensures that political gaslighting is sufficiently similar to interpersonal gaslighting to warrant transferring the term. The stronger the basis for the audience's skepticism of the politician's claims, the stronger that similarity will be. This is because the audience will be more likely to question reality, or to be torn between crediting propositions they believe with confidence and crediting contrary representations from a prominent and noteworthy source (the politician). Lies that provide no basis for audience skepticism—undetected or functionally undetectable lies—are not gaslighting. Additionally, sporadic or stand-alone incorrect statements are less likely to reflect political gaslighting unless they are especially significant and brazen (that is, unless the basis for audience skepticism is particularly strong). Propositions that are genuinely and meaningfully contested do not by themselves amount to gaslighting, though contested claims may take on a different character or may be appropriately analyzed less charitably when issued by officials who consistently stand by more brazen or clearly erroneous misstatements.

This definition of "political gaslighting" does not require that qualifying speakers intend specifically to make listeners doubt their own sanity; it does, however, require them to be engaged in the trafficking of misinformation recklessly if not knowingly, and with the suggestion that the information is or could well be true. Mere indifference to the truth is no defense to an allegation of political gaslighting, though genuine cognitive limitations could be if they morally excuse one from failing to distinguish fact from fiction. Of course, certain misinformation is easier to spread recklessly than

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information to Special Counsel Robert Mueller and President Trump doing so deliberately: "[I]t's a crime to lie to federal prosecutors in the course of a federal proceeding . . . . That's perjury. It was also the basis for the GOP-controlled House's impeachment of Bill Clinton for lying under oath, for committing perjury.").

knowingly. The basis on which one endorses a particular policy or the details of one's own personal experience, for example, are likely to be known directly by a speaker. Typically, therefore, they will be misstated or denied knowingly, not recklessly. By contrast, more remote factual propositions, such as historical employment statistics or the states of mind of people other than the speaker, more naturally conduce to reckless (rather than knowing) misrepresentation. It is certainly possible to misrepresent such propositions knowingly as well, but it may be more difficult to ascribe to the speaker the higher level of intent.

Put another way, in precisely calibrating the appropriate moral response to political gaslighting, there may at times be a minor but meaningful distinction between facts to which the speaker has direct access and those to which he has indirect access. It may also be true that, in assessing the moral deficiencies of a political gaslighter, it makes a difference whether he engages in the practice intentionally or simply with reckless disregard for the truth; and that seems a tricky matter, for it is notoriously difficult to discern another's state of mind. However, given the self-evident obligations of governments to keep their citizens accurately informed (subject only to limited and narrow exceptions),[151] I will presume without argument that even a government official's reckless disregard for the widespread dissemination of misinformation is seriously problematic from a moral standpoint.[152]

For the purposes of the following analysis, it is also helpful further to distinguish two types of political gaslighting, both of which may be undertaken either covertly or overtly. The first type involves the promotion of sufficiently clear or copious misinformation about a

151. The need for the government to classify certain information is one salient exception.

152. I also presume that a person immune from accusations of gaslighting due to his cognitive inability to separate truth from falsehood will typically be unfit to hold most (if not all) public offices.

particular subject or topic, such as a politician's putative efforts to keep a particular campaign promise, or his statements in response to a specific allegation of misconduct. We may call this "thematic political gaslighting." The second type describes the consistent or habitual promotion of false propositions that are unrelated to each other in substance, as when a politician routinely expresses false statements on a variety of matters because (for example) doing so is self-serving. I will refer to this as "indiscriminate political gaslighting." The two categories are not mutually exclusive. For example, for reasons explained below, President Trump engages in overt, indiscriminate political gaslighting that can be subdivided into different thematic categories. A generally honest politician—that is, one who does not engage in indiscriminate political gaslighting—could, however, engage in thematic gaslighting about a specific issue.[153]

It is likely impossible to set a precise quantitative threshold for the number or collective weight of the false or misleading statements necessary to qualify as "indiscriminate political gaslighting," but it is also unnecessary. Acknowledging and naming the phenomenon is more important at this stage than defining the precise boundaries. A direct, demonstrable lie about a specific point may be enough to qualify as thematic political gaslighting, whereas a more pronounced pattern of information on discrete subjects will be necessary to qualify as indiscriminate political gaslighting. The question is whether the extent or directness of the misrepresentation functions to undermine manifest or likely reality. Ultimately, the virtue of identifying political gaslighting as a phenomenon is to create a theoretical category for analyzing situations where political forces contradict the truth so blatantly or

153. Sweeping and general denials of facts (rather than a wide array of specific denials) can also reflect indiscriminate political gaslighting. *See, e.g.*, Froomkin, *supra* note 147 (providing video of President Trump telling an audience at a Veterans of Foreign Wars convention: "What you're seeing and what you're reading is not what's happening.").

pervasively (even on specific points) that "reality itself is cast into doubt," as a result of which "[w]e can't agree on truth."[154] On any number of metrics—moral, practical, historical—political gaslighting is categorically different from the intermittent (often good-faith) use of questionable claims, which is understandably common among political figures whose roles frequently demand unrehearsed and extemporaneous public remarks.

1. President Trump's overt political gaslighting

Under the definition adopted above, and barring an undisclosed cognitive limitation of the relevant sort,[155] President Trump is an overt, indiscriminate political gaslighter.[156] He routinely states and restates propositions that are demonstrably false.[157] Even his most brazen

154. JASON STANLEY, HOW FASCISM WORKS 57 (2018).

155. I have no special insight into President Trump's mental states and do not make any assumptions about the existence of undisclosed cognitive limitations. As noted above, someone who literally lacks the ability to distinguish truth and falsity would be unsuited for high office.

156. This Article makes no assertions about historical patterns of gaslighting across politicians of different political parties, and the analysis provided here does not turn in any way on whether politicians from one party are more likely to engage in the practice than politicians of another. But the impetus for conducting the following analysis is that President Trump and many of the officials around him consistently engage in political gaslighting—not just thematically, but indiscriminately. The phenomenon is so pronounced that it has arguably begun to reshape the practice of journalism itself. *See* Alex Pareene, *How Political Fact-Checkers Distort the Truth*, NEW REPUBLIC (Jan. 8, 2020), https://newrepublic.com/amp/article/156039/political-fact-checkers-distort-truth?__twitter_impression=true (arguing that in recent years "fact-checkers have expanded their purview from checking strictly empirical statements to 'checking' contestable political statements," and that such a shift "serves the interests of power" in the current era). I will therefore utilize examples of President Trump's gaslighting to motivate the following analysis. Readers who harbor greater concerns about apparent gaslighting by politicians of other political stripes are welcome to substitute their own examples for the purposes of engaging with the theoretical framework presented here.

157. *See, e.g.*, Glenn Kessler, *Trump's Very Inaccurate Claim That the Whistleblower is 'Very Inaccurate,'* WASH. POST (Oct. 9, 2019, 3:00 AM), https://www.washingtonpost.com/politics/2019/10/09/trumps-very-inaccurate-claim-whistleblower-is-very-inaccurate/ (identifying numerous false statements

misrepresentations cut across a significant variety of subjects, including the state of the economy,[158] the results of political polls[159] and elections,[160] the activities of his political opponents,[161] the effects of any number of his

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President Trump has made about the whistleblower complaint at the center of his impeachment proceedings and about the related matter of one of the president's phone calls with the president of Ukraine, and providing links to the whistleblower complaint and the White House's own summary of the relevant call, which illustrate that those claims are false).

158. *See* Glenn Kessler, *President Trump's Repeated Claim: 'The Greatest Economy in the History of our Country*,' WASH. POST (Sept. 7, 2018, 3:00 AM), https://www.washingtonpost.com/politics/2018/09/07/president-trumps-repeated-claim-greatest-economy-history-our-country/ (collecting numerous demonstrably false statements made by President Trump about the state of the U.S. economy).

159. *See* Philip Bump, *In Back-to-Back Tweets, Trump Shares a Fake Poll Number and Dismisses a Real Poll Number as Fake*, WASH. POST (May 22, 2020, 11:47 AM), https://www.washingtonpost.com/politics/2020/05/22/back-to-back-tweets-trump-shares-fake-poll-number-dismisses-real-poll-number-fake/ (reporting that, "[f]or more than a year, Trump's just occasionally shared random assessments of his popularity within his party, never offering any explanation for where the figure came from"); Sean Collins, *Trump Cites Fake Polls to Make the Case That Support for Impeachment is Falling*, VOX (Sept. 9, 2019), https://www.vox.com/policy-and-politics/2019/11/25/20981672/trump-impeachment-polls-support-decreasing (reporting that no known polls supported President Trump's statements about the purported unpopularity of impeachment proceedings against him when in fact public polling had consistently shown a much stronger level of support); Aaron Rupar, *Trump's Approval Rating is Strong with Republicans. He Exaggerates it Anyway*, VOX (Sept. 9, 2019, 11:10 AM), https://www.vox.com/policy-and-politics/2019/9/9/20856738/trump-94-percent-republican-approval-lie (documenting several of President Trump's false statements about polls that showed his level of support among Republicans).

160. *See* Mary Papenfuss, *Trump's Baseless Election Fraud Claim Zooms From 3 Million to 16 Million Votes*, HUFFINGTON POST (Aug. 19, 2019, 8:53 PM), https://www.huffpost.com/entry/trump-fake-vote-fraud-16-million_n_5d5b27aee4b0d1e11366c6ab (reporting on President Trump's false claims that between three and 16 million fraudulent votes were cast for Hillary Clinton in the 2016 presidential election).

161. *See* Jeremy Stahl, *Trump Falsely Claims Four Congresswomen Used the Slur "Evil Jews,"* SLATE (July 19, 2019, 6:45 PM), https://slate.com/news-and-politics/2019/07/trump-falsely-claims-aoc-omar-tlaib-pressley-said-evil-jews.html (detailing and debunking President Trump's repeated statements that several Democratic congresswomen had called Americans "garbage" and Jews "evil").

administration's policies,[162] the progress his administration has made in fulfilling campaign promises,[163] the achievements of his family and staff,[164] his own behavior,[165] the expressions of gratitude he receives for his leadership,[166]

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162. *See* Ryan Bort, *Trump's Most Blatant Lie is His Lie About Tariffs*, ROLLING STONE (May 13, 2019, 11:06 AM), https://www.rollingstone.com/politics/politics-news/trump-blatant-lies-tariffs-834548/ (documenting President Trump's record of false statements to the effect that China rather than domestic consumers and businesses pay for tariffs he has imposed on Chinese goods); Glenn Kessler, *President Trump's Tax Cut: Not 'The Biggest' in U.S. History*, WASH. POST (Nov. 1, 2017, 6:00 AM), https://www.washingtonpost.com/news/fact-checker/wp/2017/11/01/president-trumps-tax-cut-not-the-biggest-in-u-s-history/?arc404=true (documenting President Trump's false assertions—made nearly 200 times—that his tax cut was the biggest in U.S. history); Miriam Valverdi, *Donald Trump, Again, Falsely Says Obama had Family Separation Policy*, POLITIFACT (June 21, 2019), https://www.politifact.com/truth-o-meter/statements/2019/jun/21/donald-trump/donald-trump-again-falsely-says-obama-had-family-s/ (reporting on President Trump's false statements that he was reuniting families that tried to cross the southern U.S. border and that President Obama had actually instituted a family separation policy at the border when in fact the reverse is the case).

163. *See* Glenn Kessler, *President Trump Says his 'Beautiful Wall' is Being Built. Nope.*, WASH. POST (April 5, 2018, 3:00 AM), https://www.washingtonpost.com/news/fact-checker/wp/2018/04/05/president-trump-says-his-beautiful-wall-is-being-built-nope/?arc404=true (documenting a range of false statements President Trump has made about progress to fulfill his promise of building a wall on the U.S. border with Mexico).

164. *See* Aaron Rupar, *Trump Just Claimed Ivanka Created 14 Million Jobs. The Entire Economy Added 6 Million*, VOX (Dec. 12, 2019, 12:41 PM), https://www.vox.com/2019/11/12/20961764/trump-ivanka-created-14-million-jobs-whopper (debunking President Trump's claim that his daughter and advisor, Ivanka Trump, personally created 14 million jobs).

165. *Compare* Donald Trump, *Remarks at the 2019 Conservative Political Action Conference*, WHITE HOUSE (Mar. 3, 2019, 12:17 PM), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-2019-conservative-political-action-conference/ (in which President Trump made false representations about the setting in which, and demeanor with which, he requested Russian assistance in locating Hillary Clinton's emails during the 2016 campaign), *with* Ashley Parker & David E. Sanger, *Donald Trump Calls on Russia to Find Hillary Clinton's Missing Emails*, N.Y. TIMES (July 27, 2016), https://www.nytimes.com/2016/07/28/us/politics/donald-trump-russia-clinton-emails.html?auth=login-email&login=email (showing the setting and President Trump's actual demeanor).

166. *See* Daniel Dale (@ddale8), TWITTER (Feb. 23, 2020, 11:53 AM), https://twitter.com/ddale8/status/1231624222763556866?s=20 (juxtaposing a transcript of President Trump claiming that people standing behind him at a particular event were crying with gratitude with a photograph of the event

and even the weather.[167] A particularly important subject on which President Trump has made dishonest statements is COVID-19.[168] In fact, according to the Washington Post's Fact Checker, President Trump made, on average, nearly 16

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showing no such thing).

167. *See* Veronica Stracqualursi, *Washington Post: Trump was the One who Altered Dorian Trajectory Map with Sharpie*, CNN (Sept. 6, 2019), https://www.cnn.com/2019/09/06/politics/trump-sharpie-hurricane-dorian-alabama/index.html (reporting that, using a Sharpie marker, Trump personally altered an official National Oceanic and Atmospheric Administration map of the projected path of Hurricane Dorian, rendering the map inaccurate but in conformity with his earlier representations that the State of Alabama was in danger from the storm).

168. *See* Daniel Dale & Tara Subramaniam, *Trump Made 33 False Claims About the Coronavirus Crisis in the First Two Weeks of March*, CNN (Mar. 22, 2020, 6:59 PM), https://amp.cnn.com/cnn/2020/03/22/politics/fact-check-trump-coronavirus-false-claims-march/index.html?__twitter_impression=true (detailing "33 false claims about the coronavirus crisis [made by President Trump] in the first two weeks of March"); Greg Kessler, Meg Kelly & Sarah Cahlan, *Tracking Trump's False or Misleading Coronavirus Claims*, WASH. POST (Mar. 14, 2020, 4:16 PM), https://www.washingtonpost.com/politics/2020/03/14/tracking-trumps-false-or-misleading-coronavirus-claims/#click=https://t.co/F8UM6AknIi (collecting COVID-19-related Washington Post fact-checks of President Trump on a single page); Linda Qiu, *Analyzing the Patterns in Trump's Falsehoods About Coronavirus*, N.Y. TIMES (Mar. 27, 2020), https://www.nytimes.com/2020/03/27/us/politics/trump-coronavirus-factcheck.html#click=https://t.co/2mFYVvMoSs ("For months, the president has downplayed the severity of the pandemic, overstated the impact of his policies and potential treatments, blamed others and tried to rewrite the history of his response."); Gino Spocchia, *Video emerges showing Trump talking about cutting pandemic team in 2018, despite saying last week 'I didn't know about it,'* INDEPENDENT, https://www.independent.co.uk/news/world/americas/us-politics/coronavirus-video-trump-pandemic-team-cut-2018-a9405191.html (last visited July 30, 2020) ("A video has emerged of Donald Trump talking about cutting the US pandemic response team in 2018 – days after claiming that he knew nothing about the disbanded White House unit."); *2020 Time Capsule*, ATLANTIC, https://www.theatlantic.com/notes/2020/03/2020-time-capsule-4/608197/ (last updated Mar. 17, 2020) (documenting a number of President Trump's false statements related to COVID-19 under the heading "Trump is Lying, Blatantly"); *see also* Mercica, *supra* note 147 (analyzing President Trump's claims that he was merely being "sarcastic" when, during a COVID-19 briefing, he suggested that a possible treatment for the virus might include injecting oneself with disinfectant). Many of these statements have been amplified by conservative media. *See* Philip Bump, *For Weeks, Conservative Media Joined Trump in Downplaying the Threat of the Coronavirus*, WASH. POST (Mar. 12, 2020, 12:04 PM), https://www.washingtonpost.com/politics/2020/03/12/weeks-conservative-media-joined-trump-downplaying-threat-coronavirus/#click=https://t.co/JxFvQgeGaX.

false or misleading statements *per day* for the first three and a half years of his presidency, accumulating over 20,000 such statements midway through the final year of his (initial) term.[169] The common theme uniting these statements may simply be the perceived self-interest in advancing them, but, whatever the motive, his gaslighting is copious and wide-ranging enough to be considered indiscriminate, even as many of his misstatements can be clustered around particular themes or topics.[170]

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169. *See* Glenn Kessler, Salvador Rizzo & Meg Kelly, *President Trump Has Made More Than 20,000 False or Misleading Claims*, WASH. POST (July 13, 2020, 3:00 AM), https://www.washingtonpost.com/politics/2020/07/13/president-trump-has-made-more-than-20000-false-or-misleading-claims/#click=https://t.co/RG37j739bh (documenting 20,055 false statements by President Trump in his first 1,267 days in office). The Washington Post fact-checking staff has even assembled a book dedicated to cataloging and debunking many of the statements that they have identified as false. *See* GLENN KESSLER, SALVADOR RIZZO & MEG KELLY, DONALD TRUMP AND HIS ASSAULT ON TRUTH (2020)*; see also* Michael Gerson, *Trump is the King of Lies*, WASH. POST (July 23, 2020,4:40 PM), https://www.washingtonpost.com/opinions/trump-is-the-king-of-lies/2020/07/23/b9a52fb0-cd02-11ea-91f1-28aca4d833a0_story.html#click=https://t.co/XXoAr6NqRR (in which a former speechwriter for President George W. Bush describes President Trump as "a bold, intentional liar, by any moral definition. A habitual liar. A blatant liar. An instinctual liar. A reckless liar. An ignorant liar. A pathological liar. A hopeless liar. A gratuitous liar. A malevolent liar."); Peter Wehner, *Trump Has Made Alternative Facts a Way of Life*, N.Y. TIMES (June 13, 2020), https://www.nytimes.com/2020/06/13/opinion/trump-has-made-alternative-facts-a-way-of-life.html#click=https://t.co/BZZfm5fC40 (featuring another former speechwriter for President George W. Bush claiming that President Trump's "goal [in making so many untrue statements is] to annihilate the distinction between truth and falsity").

170. Many of President Trump's false statements appear on Twitter, which generated controversy by beginning to apply tags to some of the president's tweets (approximately three years after he took office) to indicate that they are false. *See* Kate Conger & Davery Alba, *Twitter Refutes Inaccuracies in Trump's Tweets About Mail-In Voting*, N.Y. TIMES, https://www.nytimes.com/2020/05/26/technology/twitter-trump-mail-in-ballots.html (last updated May 28, 2020). Twitter has also designated one of President Trump's tweets as glorifying violence and tagged videos circulated by the president as constituting "manipulated media." S*ee* Devey Alba, Kate Conger & Raymond Zhong, *Twitter Adds Warnings to Trump and White House Tweets, Fueling Tensions*, N.Y. TIMES, https://www.nytimes.com/2020/05/29/technology/trump-twitter-minneapolis-george-floyd.html (last updated June 3, 2020); *infra* note 203. Twitter's application of those labels has not been entirely consistent, however. *See* Linda Qiu, *Hey @jack, Here Are More Questionable Tweets From @realdonaldtrump*,

We should acknowledge that fact-checking may at times involve subjective or contested judgments, and we need not assume that the Washington Post's tally is perfect. In fact, we can presume that it is generally wrong and still arrive at the same effective result. Let us suppose for the sake of argument that the fact-checker's analysis is unduly harsh. Let us suppose instead that President Trump has recklessly or knowingly made, on average, one seriously misleading or outright false public statement per day over the course of his presidency, ranging across the sorts of categories identified above.[171] This assumption discounts the Washington Post tally by over 90%. Even with such drastically reduced numbers, President Trump would unequivocally qualify as an indiscriminate political gaslighter on my definition. If the public could expect one material misrepresentation per day from the leader of its government, ranging across numerous subjects, that would be more than sufficient reasonably to rattle public trust and create a surreal environment in which false claims issued from the most authoritative office in the land routinely intermingle with the truth.

Overt political gaslighting is dangerous for several reasons. It undermines the credibility of a government official or agency, or even the government as a whole. It is also inconsistent with public officials' duties to the public to execute their responsibilities in good faith. But most

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N.Y. TIMES, https://www.nytimes.com/2020/06/03/us/politics/trump-twitter-fact-check.html (last updated June 10, 2020). In one particularly dramatic example, President Trump shared a video "showing a group of doctors making misleading and false claims about the coronavirus pandemic." Rachel Lerman, Katie Shepherd & Taylor Telford, *Twitter Penalizes Donald Trump Jr. for Posting Hydroxychloroquine Misinformation Amid Coronavirus Pandemic*, WASH. POST (July 28, 2020, 6:18 PM), https://www.washingtonpost.com/nation/2020/07/28/trump-coronavirus-misinformation-twitter/?hpid=hp_morning-mix-8-12-rr1_mm-trump%3Ahomepage%2Fstory-ans. Twitter then deleted the video (following Facebook and Youtube, which had done the same), including by removing several of the president's tweets. *Id.* The video contains claims that violated Twitter's "covid-19 misinformation policy," and contradicted claims from the CDC, the WHO, and the FDA. *See id.* The video received millions of views before its removal, however. *Id.*

171. *See supra* notes 158–67 and accompanying text.

obviously, it requires the spread of misinformation, which raises questions about whether and when it constitutes propaganda (in the negative, objective sense discussed in this Article). Without the comprehensive account developed above, it might seem that indiscriminate political gaslighting is not the sort of phenomenon that rises to the level of propaganda. It may appear too unorganized, for example—either because it lacks a unifying topical theme or because it could reflect a lack of specific intention or coordinated planning by the speaker.

The comprehensive account illustrates why that conclusion would be mistaken. Overt, indiscriminate political gaslighting generally should be regarded as propaganda, and there is value in categorizing it as such to help identify why it is so intuitively troubling. It reflects a core case of manipulation as to content, inserting false propositions (or casting doubt on true ones) with at least the significant propensity to interfere with the audience's ability to process true information rationally. Political gaslighting may also manipulate an audience as to confidence as well, especially when the false information advanced inaccurately conveys information about a source of yet further information (such as the appropriate level of confidence one should take in objective news reporting).

It is true that deliberately making demonstrably false statements amounts to trafficking in the simplest sorts of lies. Refuting such statements may require nothing more than pointing to other sources—perhaps widely-available and well-known sources, or even a single source. That is why, on the chart above, it receives a lower score for persuasive power than a more nuanced governmental messaging campaign.[172]

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172. Perhaps this is also why Jason Stanley categorizes certain forms of lying as different from propaganda. According to Stanley:

> Lying too is a betrayal of the rational will. But it is a different kind of betrayal of the rational will than propaganda. At least with lying, one purports to provide evidence. Propaganda is worse than that. It attempts

But other factors countervail against this apparent lack of sophistication, ensuring that its persuasive power remains significant. Most notably, the communicating party is by definition quite sophisticated—and potentially extremely so, as in the case of the U.S. federal government. President Trump has an audience of tens of millions on Twitter,[173] and millions more who see him routinely on television. In part because of his office, and because of the effects of partisanship on reasoning and belief-formation,[174] he also has credibility by default with a significant segment of that large group. Further, when political gaslighting is as indiscriminate and pervasive as it has been under the current administration, the sheer extent of the misinformation injected into the public sphere can overwhelm even an engaged observer such that even some of the most easily falsifiable statements may not be recognized as such. Thus, the inherent lack of nuance that characterizes pervasive, indiscriminate political gaslighting may not limit its persuasive power as much as it would in the case of more isolated, thematic political gaslighting.

Significant persuasive effect is also baked into our definition of "political gaslighting" above: by limiting ourselves to misstatements of social significance by political figures or apparatuses, we narrow the phenomenon to

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> to unify opinion without attempting to appeal to our rational will at all. It bypasses any sense of autonomous decision.

STANLEY, PROPAGANDA, *supra* note 11, at 48–49. Not all lying, of course, involves providing evidence, though in many cases the lie itself may simply operate as a false premise in one's internal deliberative process. To the extent that lying functions to manipulate an audience in the sense defined above, however, I maintain that it can anchor propaganda.

173. *See* Donald J. Trump (@realDonaldTrump), TWITTER, https://twitter.com/realDonaldTrump (last visited July 30, 2020) (noting 84.3 million followers).

174. *See* Jay J. Van Bavel & Andrea Pereira, *The Partisan Brain: An Identity-Based Model of Political Belief*, 22 TRENDS COGNITIVE SCIENCE 213, 213 (2018), http://www.psych.nyu.edu/vanbavel/lab/documents/VanBavel.etal.2018.TiCS.pdf (noting that "there is extensive evidence that people engage in motivated political reasoning" and that "recent research suggests that partisanship can [also] alter memory, implicit evaluation, and even perceptual judgments").

matters that score high on the y-axis of the chart above. The persuasive effect of political gaslighting will depend on the specific statement in question, but one consequence of overt, indiscriminate political gaslighting is to shake the confidence of the public in the government itself, which is also a matter of massive public concern.

Finally, one might wonder if a sufficiently dishonest politician might erode his own persuasive power to the point where his gaslighting falls short of propaganda, or, similarly, whether his extreme pattern of dishonesty might simply set the context for his statements such that his audience expects dishonesty and his statements cease to be manipulative in a qualifying sense. The former is unlikely; a dishonest government official will typically retain persuasive power simply in virtue of the myriad communications resources he has at his disposal. That is particularly true when abundant sympathetic media magnify his claims.[175] The latter is at least theoretically possible, but it has not occurred yet (for example) with President Trump, whose statements continue to carry weight with millions of Americans, including a significant minority of whom regard him as generally trustworthy.[176]

2. Covert political gaslighting

As noted above, the defining feature of covert political gaslighting is not that it goes undetected, but rather that it cannot be proven conclusively, giving the speaker access to

175. *See* Lerman, Shepherd & Telford, *supra* note 170 (reporting on Twitter's deletion of a viral video containing falsehoods about COVID-19, which had been tweeted out by President Trump and circulated widely by other groups, including Breitbart News, the Tea Party Patriots, and America's Frontline Doctors).

176. *See, e.g.*, Susan Milligan, *Trump Trails Biden by Widest National Polling Gap in Decades*, U.S. NEWS (July 15, 2020, 5:42 PM), https://www.usnews.com/news/elections/articles/2020-07-15/trump-trails-biden-by-widest-national-polling-gap-in-decades (reporting on a poll of the 2020 presidential race that the pollster described as having "no upside, no silver lining, no encouraging trend hidden somewhere . . . for the president" but nevertheless showing that 31% of respondents regard President Trump as "honest").

some measure of deniability. Covert political gaslighting typically occurs when a speaker makes claims about a matter that few if any others have the requisite access to falsify, such as the speaker's own attitudes and beliefs, or some sort of proprietary or classified information. If contradictory information becomes public, for whatever reason, then we can describe it as a proven case of covert political gaslighting rather than a purported or suspected case.

Covert political gaslighting can manipulate audiences both as to content and as to confidence. For example, imagine a politician misrepresenting his basis for supporting a decision to channel taxpayer funds to bail out the automobile industry. He states that he supports doing so because he believes it is essential to the economy as a whole, but he in fact supports the move primarily because he receives substantial financial support from automakers. In some instances, it will be relatively easy to discern the facts that would ground an ulterior motive, but that is not always the case. The self-serving reason for which he favors the policy in question is relevant to the public's understanding of the importance of his position. In this case, he seeks to manipulate his audience as to the contents of their beliefs about his motivation, as a result of which they stand to be manipulated as to the confidence they should take in the proposition that propping up the auto industry is good for the economy as a whole. Even if the politician would support the auto industry absent its reciprocal support for him, that counterfactual is not reasonably accessible to the public; the actual fact of the industry's support for the politician (assumed for this example) provides a basis for discounting his views to some extent.

More colorful examples exist in reality. For example, in January of 1998, nearly a year before his impeachment for perjury and obstruction of justice,[177] President Bill Clinton

177. *See* Louis Jacobson, *How the Impeachment Articles Against Trump are Similar to, and Different From, Clinton and Nixon*, POLITIFACT (Dec. 10, 2019),

infamously denied that he had engaged in a sexual relationship with Monica Lewinsky, a former White House intern: "I did not have sexual relations with that woman, Miss Lewinsky."[178] Within months, he backed away from that firm denial. When pressed in August of 1998 on whether he had been truthful in affirming some version of that statement—to the effect that "there is absolutely no sex of any kind" with Lewinsky—President Clinton notoriously replied, "It depends on what the meaning of the word 'is' is."[179] He then formally acknowledged that he *had* engaged in a sexual relationship with Lewinsky.[180] Assuming there was reasonable basis for doubting President Clinton's initial denial at the time he made it, his statement represented a case of covert, thematic political gaslighting: he knowingly misled the public about a specific and narrow matter, and his audience was not in a position conclusively to falsify his statement even as it had some evidence that he was being untruthful. An ongoing investigation eventually brought contradictory information to light that ultimately settled the matter of his truthfulness.

In other purported cases of covert political gaslighting, the speaker may continue to deny having misled his audience, despite a manifest basis for skepticism about his

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https://www.politifact.com/truth-o-meter/article/2019/dec/10/how-articles-impeachment-against-trump-are-similar/ (describing both of the articles of impeachment against President Clinton that the House of Representatives approved in 1998).

178. *See Bill Clinton: 'I Did Not Have Sexual Relations with that Woman.,'* WASH. POST (Jan. 25, 2018, 5:39 PM), https://www.washingtonpost.com/video/politics/bill-clinton-i-did-not-have-sexual-relations-with-that-woman/2018/01/25/4a953c22-0221-11e8-86b9-8908743c79dd_video.html (providing the video and date of President Clinton's statement).

179. David A. Graham & Cullen Murphy, *The Clinton Impeachment, as Told by the People Who Lived It*, ATLANTIC (Dec. 2018), https://www.theatlantic.com/magazine/archive/2018/12/clinton-impeachment/573940/.

180. *Aug. 17, 1998: President Clinton Admits 'Improper Relationship' with Monica Lewinsky*, ABC NEWS (Aug. 17, 1998), https://abcnews.go.com/Politics/video/aug-17-1998-president-clinton-admits-improper-relationship-57137291 (at 35 seconds).

denials. For example, in 2016, Republican Senate Majority Leader Mitch McConnell refused to hold a confirmation vote on Merrick Garland, President Obama's nominee to fill the late Justice Antonin Scalia's seat on the Supreme Court.[181] McConnell's stated rationale was that *the next* president should get to nominate a new justice; 2016 was an election year and "the American people should have a say in the court's direction."[182] In 2019, however, McConnell addressed how he would approach an open seat on the Court in 2020, and, under a Republican president, he gave a different answer: "Oh, we'd fill it." Although McConnell has tried to distinguish 2016 from 2020, noting in the latter year that the Senate and the White House are controlled by the same party,[183] many believe the rationale he advanced in 2016 was mere pretext.[184] If it was, this would be a classic case of covert political gaslighting.[185]

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181. *See* Ron Elving, *What Happened with Merrick Garland in 2016 and Why it Matters Now*, NPR (June 29, 2018, 5:00 AM), https://www.npr.org/2018/06/29/624467256/what-happened-with-merrick-garland-in-2016-and-why-it-matters-now.

182. *Id.*

183. *See* Ledyard King, *'We'd Fill it:' Mitch McConnell Blocked Obama Supreme Court Pick but Says he'd Help Trump Fill a Vacancy*, USA TODAY (May 29, 2019, 11:01 AM), https://www.usatoday.com/story/news/politics/2019/05/29/mcconnell-blocked-obama-supreme-court-choice-wouldnt-stop-trump/1268883001/ (attributing a statement of that view to McConnell).

184. *See* Hillary Leung, *'Oh, We'd Fill It.' Mitch McConnell Says He'd Fill a Supreme Court Vacancy in 2020*, TIME (May 29, 2019), https://time.com/5597395/mitch-mcconnell-supreme-court-2020/ (quoting Senate Minority Leader Chuck Schumer as calling McConnell a "hypocrite" for adopting this stance); *see also, e.g.*, Aaron Rupar, *McConnell Now Says He'd Hold SCOTUS Hearings in an Election Year – In a Reversal of 2016*, VOX (May 29, 2019, 10:40 AM), https://www.vox.com/2019/5/29/18644061/mitch-mcconnell-supreme-court-hearings-2020-merrick-garland (articulating the view that McConnell misrepresented his basis for opposing a vote for Merrick Garland).

185. In the closest of cases, the difference between a later-proven or admitted case of covert political gaslighting (such as in the Clinton example) and a highly suspicious case of covert political gaslighting (such as in the McConnell example) may be a matter of degree—a gradation in our level of confidence that the speaker should know the propositions advanced to be false. Some might also think the McConnell case has essentially been proven notwithstanding his public denials. Regardless of precisely where we draw the line, there is a meaningful distinction

Another common example of covert political gaslighting can arise when a speaker sheds crocodile tears. Assuming the matter in question is of sufficient public concern, and there is good reason to doubt its sincerity, politicians engage in covert political gaslighting when they express faux outrage—for example, at an ostensible slight from their political opponents. Feigned offense misrepresents their commitment to the norms that their opponents ostensibly violated, or at minimum their belief that their opponents have violated such norms in the first place. In expressing it, a speaker obscures from her audience the true explanation for her outraged response (which may actually serve some purely strategic function such as distraction) and knowingly instills in some members of the public a false sense that a genuine dispute of consequence exists when in fact it does not. At the same time, the fake outrage contradicts a truth other members of the public have reasonably ascertained and forces them to reconcile the denials with the other evidence at hand.[186]

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in principle between admitted or functionally proven cases of covert political gaslighting and those where some effective level of deniability remains in place. *See* Graham & Murphy, *supra* note 179; King, *supra* note 183.

186. One recent purported case arose during the impeachment trial of President Trump. *See* Li Zhou, *Senate Republicans' Disingenuous Outrage Over Schiff's "Head on a Pike" Comment, Briefly Explained*, VOX (Jan. 25, 2020, 11:00 AM), https://www.vox.com/policy-and-politics/2020/1/25/21071035/senate-republicans-adam-schiff-head-on-a-pike-comment-outrage (describing the outrage expressed by Senate Republicans in response to a statement from House Representative Adam Schiff that, "CBS News reported last night that a Trump confidant said that key senators were warned, 'Vote against the president and your head will be on a pike . . . . I don't know if that's true. . . . I hope it's not true."). For reasons unclear, some Republican Senators treated the comment as an insult. *See id.* Others have analyzed White House Press Secretary Kayleigh McEnany's "scripted walk-offs"—her prepared replies and abrupt departures from the press room following a question she does not like—in similar terms, describing it as "political theater" that makes for a "pointed" or "dramatic exit[]" and demonstrates her "disrespect" for the press. Paul Farhi, *The Political Theater of Kayleigh McEnany's Scripted Walk-Offs*, WASH. POST (July 3, 2020, 7:00 AM), https://www.washingtonpost.com/lifestyle/media/the-political-theater-of-kayleigh-mcenanys-scripted-walk-offs/2020/07/02/a9b7d09a-ba41-11ea-bdaf-a129f921026f_story.html#click=https://t.co/eYv4pGtxaT. It is impossible to know McEnany's actual views of the matter, but the quoted analysis amounts, in

Covert political gaslighting amounts to propaganda of a particularly insidious sort because it cannot be falsified at the time it is communicated, and might never be falsified at all. Although its persuasive effect will depend on its contents in any given case, its covert nature automatically increases its persuasive power—in varying degrees, depending on the surrounding circumstances—because it is immune to direct falsification and subject at best to various forms of suspicion. It may also be more likely to persuade some members of the public as a result. In other words, because it is covert in the relevant sense, it possesses greater potential to manipulate.

B. *Other Contemporary Forms of Propaganda*

Political gaslighting is a particularly salient problem but it is only one form of propaganda. The model articulated above has the power to identify and plot a variety of other forms, many of which are tailored around the Internet—and, in particular, social media use. One example is astroturfing, the practice of attempting to "mislead the public, giving a false impression that there is genuine grass-roots support or opposition for a particular group or policy."[187] Whether organized by governments, corporations, or private individuals, astroturfing is manipulative in precisely the way defined above. It obscures the true source of advocacy and misrepresents the level of support for particular propositions with the aim of inducing an audience to give the campaign's communications unwarranted weight.

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essence, to an accusation that she is engaging in covert political gaslighting.

187. Franziska Keller, David Schoch, Sebastian Stier & JungHwan Yang, *It's Not Easy to Spot Disinformation on Twitter. Here's what we Learned from 8 Political 'Astroturfing' Campaigns.*, WASH. POST (Oct. 28, 2019, 6:00 AM), https://www.washingtonpost.com/politics/2019/10/28/its-not-easy-spot-disinformation-twitter-heres-what-we-learned-political-astroturfing-campaigns/. Notably, Twitter policies reflect concerns about some forms of astroturfing; they prohibit "platform manipulation," which includes "inauthentic engagements, that attempt to make accounts or content appear more popular or active than they are." *Platform manipulation and spam policy*, TWITTER (September 2019), https://help.twitter.com/en/rules-and-policies/platform-manipulation (last visited Feb. 1, 2020).

Astroturfing is an international phenomenon. Campaigns originating in countries such as Russia, Egypt, and the United Arab Emirates have utilized various social media platforms to divide citizens abroad or cultivate support for authoritarian governments.[188] For example, Russian trolls infamously posed both as conservative Americans and as Black Lives Matter activists during the 2016 election to heighten conflict among actual American voters.[189] Domestic politicians and groups also undertake astroturfing campaigns.[190] Moreover, when others uncritically endorse or disseminate messaging that originates with such campaigns, they spread communications that will likely function as propaganda—even if they do not realize the information is false.

Another common phenomenon that may rise to the level of propaganda is the failure of purportedly neutral media platforms to disclose germane information about their contributors, whether those contributors serve as authors of written pieces or guests on televised programs. For example,

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188. *See* Keller, *supra* note 187.

189. *Id.* (briefly describing the role of Russian trolls in the 2016 election, as documented in the Mueller Report).

190. *See* Maryl Kornfield, *Twitter Suspends 70 Pro-Bloomberg Accounts for Campaign's Copy-and-Paste Strategy*, WASH. POST (Feb. 22, 2020, 10:49 AM), https://www.washingtonpost.com/politics/2020/02/22/bloomberg-twitter-suspensions/#click=https://t.co/mJuWRp05M6 (reporting that, during his campaign for the presidency, 70 Twitter accounts coordinated by Mike Bloomberg were suspended from Twitter for violating policies banning platform manipulation. Those policies include a prohibition on "'artificially amplify[ing] or disrupt[ing] conversations through the use of multiple accounts' or compensat[ing] 'others to engage in artificial engagement or amplification, even if the people involved use only one account.'"); Isaac Stanley-Becker & Tony Romm, *Pro-Gun Activists Using Facebook Groups to Push Anti-Quarantine Protests*, WASH. POST (Apr. 19, 2020, 8:45 PM), https://www.washingtonpost.com/technology/2020/04/19/pro-gun-activists-using-facebook-groups-push-anti-quarantine-protests/?wpmk=1&wpisrc=al_news__alert-economy—alert-national&utm_source=alert&utm_medium=email&utm_campaign=wp_news_alert_revere (reporting that a "trio of far-right, pro-gun provocateurs is behind some of the largest Facebook groups calling for anti-quarantine protests around the country, offering the latest illustration that some seemingly organic demonstrations are being engineered by a network of conservative activists").

the failure to identify contributors who stand to benefit in direct and significant ways from some important policy lays the groundwork for covert gaslighting about the speaker's motives for supporting that policy.[191] Perhaps worse would be the failure to note when contributors who express support for government action are in fact paid by the government to do so.[192] Government agencies may run into this problem as well, though in a slightly different form.[193]

Yet another prominent example of propaganda is the use of euphemisms in contexts of public significance, such as "enhanced interrogation" instead of "torture,"[194] or "fireside

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191. *See* Lee Fang, *TV Pundits Praising Suleimani Assassination Neglect to Disclose Ties to Arms Industry*, INTERCEPT (Jan. 6, 2020, 6:25 PM), https://theintercept.com/2020/01/06/iran-suleimani-tv-pundits-weapons-industry/ ("Many of the pundits who appeared on national television or were quoted in major publications to praise [the strike that killed Iranian Major General Qassim Suleimani] have undisclosed ties to the defense industry[, which] stands to gain from increased violence.").

192. *See* Eli Clifton, *U.S. Media Outlets Fail to Disclose U.S. Government Ties of 'Iranian Journalist' Echoing Trump Talking Points*, RESPONSIBLE STATECRAFT (Jan. 6, 2020), https://responsiblestatecraft.org/2020/01/06/u-s-media-outlets-fail-to-disclose-u-s-government-ties-of-iranian-journalist-echoing-trump-talking-points/ (reporting that multiple news outlets described a particular contributor brought on to discuss the Suleimani strike as an "Iranian journalist," but neglecting to mention that she is paid as an "anchor, writer, [and] reporter for [Voice of America] Persian Service"—the U.S. government's own foreign messaging arm for shaping public opinion abroad).

193. The Government Accountability Office (GAO) has found that federal agencies may violate prohibitions on using public funds for propaganda purposes when they create "unattributed prepackaged news stories" (also referred to as "video news releases" or "VNRs") that resemble independent news coverage. *See Video News Releases: Unattributed Prepackaged News Stories Violate Publicity or Propaganda Prohibition*, U.S. GOV'T ACCOUNTABILITY OFF. (May 12, 2005), https://www.gao.gov/products/GAO-05-643T. According to the GAO, "[w]hile agencies generally have the right to disseminate information about their policies and activities," they "may not use appropriated funds to produce or distribute prepackaged news stories intended to be viewed by television audiences that conceal or do not clearly identify for the television viewing audience that the agency was the source of those materials." *Id.*

194. *See* Margot Williams, *At Guantánamo Bay, Torture Apologists Take Refuge in Empty Code Words and Euphemisms*, INTERCEPT (Jan. 29, 2020, 6:00 AM), https://theintercept.com/2020/01/29/guantanamo-9-11-forever-trials/ (describing testimony given by James Mitchell, the contractor who designed the

chats" instead of "interrogations."[195] Euphemisms such as these can manipulate audiences into being more or less accepting of a practice or policy than warranted through misidentification and misleading connotation. Other practices include the creation or use of school textbooks that betray a bias either for the information they include or the information they omit;[196] the use of newspaper headlines that reproduce false information or imply false or misleading conclusions when considered alone;[197] the sharing or endorsement of conspiracy theories;[198] attributing incorrect

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CIA's torture program, and specifically focusing on the use of euphemisms to sanitize the interrogators' abusive conduct).

195. *See* Gitmo Watch (@GitmoWatch), TWITTER (Jan. 27, 2020, 10:07 AM), https://twitter.com/gitmowatch/status/1221811918152904704?s=21 (live-tweeting the testimony of James Mitchell and quoting Mitchell as describing interrogation sessions with 9/11 defendant Khalid Shaikh Mohammad—undertaken at a CIA black site and while Mohammad was naked—as "fireside chats").

196. *See* Dana Goldstein, *Two States. Eight Textbooks Two American Stories.*, N.Y. TIMES (Jan. 12, 2020), https://www.nytimes.com/interactive/2020/01/12/us/texas-vs-california-history-textbooks.html?smid=nytcore-ios-share (documenting how textbooks are "customized for students in different states" in a manner that "reflect[s] the nation's deepest partisan divides" even when the books "have the same publisher [and] credit the same authors"). There may well be a defensible range of inclusions or omissions on any particular subject in a textbook, but there will also be cases that fall outside of that range and leave readers to draw unsupported or false conclusions about matters of fact.

197. *See* U.K.H. Ecker, S. Lewandowsky, E.P. Chang & R. Pillai, *The Effects of Subtle Misinformation in News Headlines*, 20 J. EXPERIMENTAL PSYCHOL. 323 (2014) (arguing that subtly misleading headlines can lead to false beliefs in readers because "headlines constrain further information processing, biasing readers toward a specific interpretation [and] readers struggle to update their memory in order to correct initial misconceptions").

198. *See, e.g.*, Brandy Zadrozny and Ben Collins, *Coronavirus Deniers Take Aim at Hospitals as Pandemic Grows*, NBC NEWS, https://www.nbcnews.com/news/amp/ncna1172336?__twitter_impression=true (last updated Mar. 31, 2020, 3:19 PM) (reporting on "coronavirus deniers" circulating videos that purported to show relative calm conditions at various hospitals, ostensibly to suggest that common, corroborated reports of shortages of medical resources for treating cases of COVID-19 were in fact exaggerated); Brandon Zadrozny, *Fire at 'Pizzagate' Shop Reignites Conspiracy Theorists who Find a Home on Facebook*, NBC NEWS (Feb. 1, 2019, 5:55 PM), https://www.nbcnews.com/tech/social-media/fire-pizzagate-shop-reignites-conspiracy-theorists-who-find-home-facebook-n965956 (describing the "pizzagate" conspiracy theory, which led a man to fire his assault rifle inside a D.C. restaurant that he falsely believed to be used for child

or misleadingly selected quotes to a source;[199] disseminating or reporting on selective leaks of stolen or hacked information—or leaking accurate information laced with false information;[200] and the circulation of doctored photos and videos, whether as memes or otherwise.[201]

The last of these raises especially difficult challenges. Photographs and videos have particular persuasive power because they are often regarded as *prima facie* veridical; they may not show much, depending on their angle and focus, but what they show would typically be presumed to be a snapshot of reality.[202] By contrast, at least typically, written

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trafficking).

199. *See, e.g.*, Daniel Dale (@ddale8), TWITTER (Mar. 29, 2020, 2:45 PM), https://twitter.com/ddale8/status/1244334820760707073?s=20 (comparing a tweet from President Trump about the "ratings" for his COVID-19 briefings (purportedly quoting the New York Times) with the actual language in the Times, showing that President Trump's tweet omits key qualifiers from the Times's report and lacks grammatical designations revealing that language is missing from the quotation).

200. *See, e.g.*, Thomas Brewster, *Russian 'Fancy Bear' Hackers Tainted Their Huge Data Leaks With Fake Data,* FORBES (May 16, 2017, 9:28 AM), https://www.forbes.com/sites/thomasbrewster/2017/05/26/russian-dnc-hackers-planted-leaks-with-fake-data/#16ee550a52ff.

201. *See* Drew Harwell, *Doctored Images have Become a Fact of Life for Political Campaigns. When They're Disproved, Believers 'Just don't Care.,'* WASH. POST (Jan. 14, 2020, 7:00 AM), https://www.washingtonpost.com/technology/2020/01/14/doctored-political-images/?utm_campaign=wp_main&utm_medium=social&utm_source=twitter (reporting that doctored images and videos of political significance are becoming more common).

202. For this reason, manipulated photographs or videos are especially powerful propaganda tools. *See, e.g.*, Jim Brunner, *Fox News Runs Digitally Altered Images in Coverage of Seattle's Protests, Capitol Hill Autonomous Zone*, SEATTLE TIMES, https://www.seattletimes.com/seattle-news/politics/fox-news-runs-digitally-altered-images-in-coverage-of-seattles-protests-capitol-hill-autonomous-zone/?amp=1&utm_source=twitter&utm_medium=social&utm_campaign=article_inset_1.1&__twitter_impression=true (last updated June 14, 2020, 9:06 PM) (reporting that "Fox News published digitally altered and misleading photos on stories about Seattle's Capitol Hill Autonomous Zone"—"a mashup of photos from different days" run without a disclaimer identifying it as such—before apologizing.) The notion that Fox's conduct in this instance amounted to "a clear violation of ethical standards for news organizations" reflects our preconceptions about photographs as veridical. *Id.* The effect of the mashup in this instance was to make "the scenes look much more violent and destructive than they are." Kate

words or even images of other sorts (such as drawings or paintings) by default reflect the subjective point of view of their author or creator, even if it is a point of view that purports to be neutral. Doctored photos or videos thus have a special propensity to manipulate an audience because of the background presumptions we tend to make specifically about those forms of media.[203]

Riga, *Fox News Manipulates Pictures Of Seattle Protests Then Lies About It*, TPM (June 13, 2020, 12:41 PM), https://talkingpointsmemo.com/news/fox-news-seattle-protests-chaz; *see also* Aiden Pink, *Republican Senator Deletes Ad That Made Jewish Opponent's Nose Bigger*, FORWARD (July 27, 2020), https://forward.com/news/national/451581/jon-ossoff-jewish-nose-david-perdue-antisemitic/?gamp&__twitter_impression=true (reporting that Georgia Senator David Perdue "deleted a Facebook ad targeting his Jewish election opponent, Jon Ossoff, that appeared to have been altered to make Ossoff's nose bigger" and which also featured an image of another Jewish senator and the phrase "Democrats are Trying to Buy Georgia!"). The manipulated photo, combined with other features of the ad, are strongly suggestive of an intention to invoke "antisemitic trope[s]." *Id.*

Leaving aside cases where they are subject to secret manipulation, the persuasive effect of photographs and videos naturally turns in part on their contents. Notably, communications featuring (even non-photographic) images or music may also have a distinctive propensity to manipulate because they may carry emotional appeals or incomplete rational appeals that lead to erroneous conclusions of fact. *See, e.g.*, *Army Urges Young People Lacking Confidence to Join*, BBC (Jan. 2, 2020), https://www.bbc.com/news/uk-50966542 (describing a British military recruitment campaign that uses images to target young people with low confidence). The argument implied by the recruitment posters—that one can earn confidence that "last[s] a lifetime" by serving in the military, and therefore that one should join—cannot possibly be valid in the technical sense (meaning that the conclusion does not follow from the premises). *See id.* (reproducing posters bearing that text). For the image to operate as intended, it will have to persuade via some sort of shortcut, whether a logically questionable suggestion or an emotional appeal. If the image has sufficient persuasive power or effect, it will then qualify as propaganda.

203. *See, e.g.*, David Klepper, *Ethics Panel Warns House Members Not to Share Fake Images*, ASSOCIATED PRESS (Jan. 29, 2020), https://apnews.com/0a4f3c716559775603d92c7340eeada0 ("The House Ethics Committee is warning lawmakers not to share doctored images or videos that could 'erode public trust, effect (sic) public discourse, or sway an election,' guidance that comes during a proliferation of online misinformation in the run-up to the 2020 elections."). In fact, Twitter recently adopted a tag for "synthetic and manipulated media," which it applied "for the first time" to a "deceptively edited video of former vice president Joe Biden" that was shared by President Trump. Cat Zakrzewski, *Twitter Flags Video Retweeted by President Trump as 'Manipulated Media*,*'* WASH. POST (Mar. 9, 2020, 10:26 AM), https://www.washingtonpost.com/technology/2020/03/08/

In all of these scenarios, clarity requires that we maintain the distinctions identified above between the purpose behind the creation or dissemination of a communication and the manner in which it is likely to function. Intentional manipulation, such as astroturfing, aims for propagandistic effect; whether it functions as propaganda in fact will depend simply on how successful it is. Other phenomena, like the development and circulation of unfounded conspiracy theories, may reflect the sincerely-held views of the speaker. Such speech would not be intended to manipulate at all; rather, it would aim to reveal a hidden truth. But unfounded conspiracy theories threaten to function inherently as propaganda—at least when they have sufficient persuasive power or persuasive effect—because by definition they misuse evidence or draw unwarranted conclusions. Notably, regardless of the intentions behind the creation or dissemination of particular communications, platforms that circulate material with manipulative propensity will often function as propaganda outlets.[204]

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twitter-flags-video-retweeted-by-president-trump-manipulated-media/#click=https://t.co/OQKEOJn1P1. The video truncates Biden's remarks mid-sentence, making it appear that Biden says, "We can only reelect Donald Trump." *Id.* A full clip of Biden's remarks shows him stating, "We can only reelect Donald Trump if, in fact, we get engaged in this circular firing squad. It's got to be a positive campaign, so join us." *Id.* For more on the Twitter policy, see *Synthetic and Manipulated Media Policy*, TWITTER, https://help.twitter.com/en/rules-and-policies/manipulated-media (last visited July 30, 2020). Twitter subsequently applied the label to other tweets by President Trump. *See* Cat Zakrzewski, *Twitter Labels Trump Video Tweet as Manipulated Media as it Cracks Down on Misinformation*, WASH. POST (June 19, 2020, 6:35 PM), https://www.washingtonpost.com/technology/2020/06/18/trump-tweet-label-video/.

204. Facebook has faced this issue repeatedly. *See* Kevin Roose, Sheera Frenkel & Mike Isaac, *Don't Tilt Scales Against Trump, Facebook Executive Warns*, N.Y. TIMES (Jan. 7, 2020), https://www.nytimes.com/2020/01/07/technology/facebook-trump-2020.html#click=https://t.co/VG3sGCEp5U (describing an internal debate about relevant policies at Facebook, which presently exempts "[p]osts by politicians" from "many of [its] current rules," and does not fact-check politicians' political ads); *see also* Craig Timberg, *How Conservatives Learned to Wield Power Inside Facebook*, WASH. POST (Feb. 20, 2020, 1:20 PM), https://www.washingtonpost.com/technology/2020/02/20/facebook-republican-shift/#click=https://t.co/JU1teCpwfG (describing opposition within Facebook to removing "dozens of pages that had peddled false news

CONCLUSION

This Article offers both a step forward in our theorizing about propaganda, and a first, systematic attempt at theorizing about political gaslighting. Beyond its theoretical contributions, the Article therefore sets the table for more nuanced and consistent debates about how to regulate propaganda in a variety of contexts. As illustrated above, to the limited extent that the law has approached the subject of regulating propaganda, it has done so erratically and inconsistently. Moreover, some propaganda will be impossible to regulate—and may be worth tolerating—in a society that privileges freedom of expression as heavily as our own does. But it is impossible to regulate propaganda, or even choose whether we should, unless we know what it is. And it is difficult to ascertain what amounts to propaganda without distilling the lessons buried both in scholarly and legal analysis, and without applying those lessons to modern communications practices. This Article aims to make advances on those fronts.

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reports" ahead of the 2016 presidential election). According to the report, "[n]early all of [the pages] were based overseas, had financial motives and displayed a clear rightward bent" but high-level executives resisted removing them all because doing so "will disproportionately affect conservatives," who "don't believe it to be fake news." *Id.* Notably, the project was called "Project P" where the "P" stands for "propaganda." *Id.*