

# Chapter 6

## US Digital Nationalism: A Habermasian Critical Discourse Analysis of Trump’s ‘Fake News’ Approach to the First Amendment



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### Us Protests as Foundational to American Democracy

Civil protest, as enshrined in both the US Constitution and the dogmatic myths of the US’ revolutionary origin story, represents the bedrock of the US democratic system. Graham (2019) adds that the Boston Tea Party represents a foundational act of patriotic civil disobedience, embodying a core narrative of freedom based on dissent-through-protest as a central tenant of US democracy. As a means of seeking redress for grievances or overall structural change, the First Amendment of the US Constitution guarantees citizens the right to peaceably assemble and petition the government (Egemenoglu 2020). Specifically, the First Amendment guarantees a negative freedom of expression from both federal and state (as outlined by the 14th Amendment) restrictions (Bechtold 2020). However, these freedoms are not absolute. The US Supreme Court has long allowed for restrictions that fall within constitutional limits (Winston 2014). Moreover, the First Amendment does not provide rights for protests in which ‘there is a clear and present danger of riot, disorder or interference with traffic on public streets, or other immediate threat to public safety or order’ allowing for statutes to be enacted which ‘prohibit people from assembling and using force or violence to accomplish unlawful purposes’ (Winston 2014). Notwithstanding, the American Civil Liberties Union (ACLU: 2020) has outlined that the First Amendment ‘prohibits such advanced notice requirements from being used to prevent rallies or demonstrations that are rapid responses to unforeseeable and recent events’.

Black Lives Matter (BLM) protests, sparked by the murder of George Floyd by Minnesota police officers on 25 May 2020, the Trump administration has sought to restrict the First Amendment freedoms of BLM protesters – through both claims to

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‘clear and present danger of riot’ and/or ‘threat to public safety and order’. Specifically, Trump has continued to paint BLM protesters as ‘rioters’ and ‘angry mobs’ who are ‘trying to unleash a wave of violent crime in our cities’ (The White House 2020a, b), a narrative which allows Trump to base the suppression of free speech on a constitutionally provisioned authority to restore law and order (Petersen 2020). Despite a recent study outlining the overwhelmingly peaceful nature (93%) of (Summer 2020) BLM protests (Kishi and Jones 2020: 3), partisan media outlets continue to drive a divisive ‘fake news’ narrative which casts protesters as anarchists, while framing Trump’s attempts at First Amendment suppression as a positive facet of his ‘law and order’ presidency.

Egelhofer and Lecheler (2019) describe the crisis of ‘fake news’ as a two-dimensional form of media communication which creates and propagates pseudo journalistic disinformation while politicizing and instrumentalizing the term ‘fake news’ to delegitimize other sources of media information. Moreover, easily published pseudo journalism has allowed parallel media ecosystems to coalesce around Trumpian ideological positions which disregard reason or argument (Legg 2018). Benkler et al. (2017) highlight the existence of a hyper-partisan, insulated right-wing knowledge community in the US – a ‘fake news’ media ecosystem that reinforces shared ideologies, shields its members from outside journalistic challenges, and presents ‘wholly fabricated falsities’ which instil in its viewers a ‘fundamentally misleading view of the world’. Kellner (2018: 92) adds that within this rightist fake news media bubble of deceit, Trump’s pathologically deceitful practices are based in a ‘politics of lying’ which perfectly suit Frohm’s diagnosis of an authoritarian personality. Echoing Kellner, Fuchs (2018: 197) has outlined ‘Trumpology’ as a mediated political spectacle of authoritarian-capitalism based in direct rule of the billionaire class, nationalism, scapegoating, the friend/enemy scheme, and law and order politics.

Given this state-sponsored authoritarian media discourse, Schneider’s (2018) work on digital nationalism in China serves as a foundational reference for understanding the US’ Trump-dominated authoritarian ‘fake news’ media ecosystem. Specifically, US digital nationalism is defined herein as state-sponsored nationalism shared through a complex ecology of information, an authoritarian technic governed by political institutions which promote partisan misinformation through political actors, commercial enterprises, NGOs, and Internet users, as a politically expedient means to indoctrinate the masses. Within the context of the continued BLM anti-racism protests as an exercise of First Amendment freedoms seeking to redress the government, and a state-sponsored media-driven attempt to undermine the public’s understanding of these freedoms, the objectives of this study aim to highlight that rightist media outlets represent a bulwark of digital nationalism which facilitates Trump’s authoritarian ‘fake news’ approach to the First Amendment.

## Trump's 'Fake News' Approach to the First Amendment

Constitutional scholars argue that an environment of hyper partisanship, combined with President Trump's continued attacks against protesters and journalistic critics, is steadily eroding the good governance norms and constitutional understanding of a First Amendment which has provided the American people with a previously unparalleled freedom of expression (Price 2018; Grambo 2019). Specifically, Price (2018: 821) highlights that the problem of 'fake news' (deliberate propagation of demonstrably untrue statements that shape public opinion) could weaken First Amendment protections by allowing partisan officials to 'cherry-pick evidence' of offensive expression or incitement of violence as a rationale for the 'selective and discriminatory' enforcement-cum-repression of free speech. Such easily verifiable instances of free speech oppression/protection abound within the Trump Presidency (see Executive Order on Campus Free Speech, Executive Order on Preventing Online Censorship, Trump's labelling of BLM as 'terrorists', deployment of federal troops to quell protests in Oregon) (Camera 2019; Svrluga 2019; Allyn 2020; The White House 2020a; Choi 2020; Dewan 2020; Baker et al. 2020).

Trump's fake news approach to the First Amendment has allowed him to simultaneously shape institutional norms to provide protection for actors who reside on his side of the political spectrum, while impinging upon the freedoms of those institutions, groups, and individuals who present a challenge to his increasingly autocratic central authority. This 'fake news' approach to the First Amendment was especially clear during Trump's 'constitutionally murky' deployment of unidentified federal officers to suppress BLM protesters, under the guise of 'protecting government property' in Portland, Oregon, in July 2020 (Vladeck 2020). Thus, the problem of 'fake news' highlights an unsettling flaw of contemporary US democracy, one which continues to allow the president to cherry-pick rationales and procedural norms towards the selective suppression/protection of First Amendment freedoms.

Specifically, this chapter argues that Trump's bulwark of US digital nationalism deliberately propagates a deceitful image of 'criminality' (Grambo 2019) upon individuals and groups of BLM protesters as a means of promoting Trump's brand of 'fake news', First Amendment suppression/protection – undermining normative and legal boundaries of the First Amendment while legitimizing a tenuous law and order claim to political sovereignty. This underscores MacKenzie and Bhatt's (2019) argument that the destructive nature of fake news lies in its intentionally deceitful obfuscation of facts and its manipulative coercion of public gaslighting as a means to secure expedient political gains. Therefore, it is imperative that we understand how the hyper-partisan rightist media supports the legitimacy of the Trump regime's increasing authoritarianism through the propagation of state-sponsored disinformation – weakening First Amendment protections while eliciting an antithetically authoritarian brand of obsequious 'political correctness' within a large proportion of the US voting populace.

## Theoretical Framework

Habermas' *discourse theory of law and democracy* argues that the increasing pluralism of modern western constitutional democracies creates a tension between 'facts and norms' that place 'aged constitutional frameworks under tremendous stress' (Rehg and Habermas 1996). Specifically, Habermas outlines 'validity' as the ideal legitimacy and rational legitimacy of the law as opposed to 'facticity' as the inherent certainty of the law's institutionalized coercive power (Baxter 2011). Moreover, Habermas (1996) notes the inherent conflict between the validity based Kantian 'liberal' understanding of law and legitimate government – framed by human rights and societally bound civil liberties and the factitious Rousseauian 'civic republican' view towards the legitimacy of laws and government as based in popular sovereignty.

Kant and Rousseau argue, therefore, for markedly different conceptions of political legitimacy. Kant frames the normative prescribed boundaries of society as an *autonomy of the will*, wherein the legitimacy of laws and institutions is derived from the rational will of the polity – often reflected through 'maxims to action' as a form of contrarian law that is not procedurally defined (Kaufman 1997). Rousseau critiques modern republics as suffering from a lack of 'civic republican virtues' which cause 'excessive attachment to institutions', rather than sovereign authority as the power from which these institutions gain legitimacy (Ward 2016). Therefore, within the USA we are witnessing Habermas's critique of modern democracy, with the Left seeking to uphold the autonomous will of the people by protecting long-standing yet normatively inscribed liberal Kantian democratic institutions and the Right's use of procedurally defined legal frameworks to support Trump's Rousseauian civic republican desire to reshape the boundaries of sovereign legitimacy.

Within a hyper-partisan bifurcated media discourse, a Habermasian understanding of Kantian liberal autonomy and Rousseauian republican sovereignty provides an important view of modern democracy from which to assess the current US crisis of institutional (il)legitimacy. Habermas argues that legal institutions within modern democratic systems exhibit 'adaptive programming' which allows powerful interests to effect 'macro-level legal change without the direct participation of the citizenry (Rehg and Habermas 1996). Habermas (1996) further describes 'public spheres' as structures or *social spaces* of communicative action which function as democratic sluices, feeding back into socially constructed, and therefore legitimate legal frameworks at the administrative level. Thus, the 'institutional core' of Habermasian political public spheres consists of 'communicative networks amplified by mass media', representing a necessary space for generating, acquiring, and maintaining administrative legitimacy (Baxter 2011).

However, the political public sphere 'in standard operation' is influenced by political economies (markets and governmental bodies) of money and power which operate as 'steering media', de-anchoring, and therefore delegitimizing the production and administration of law from the communicative power of its citizens (Baxter

2011). Thus, through the use of filtered, synthesized streams of communication – which highlight specific public opinions while promoting the moral leadership, competency, and authority of a given administration – ‘success-oriented’ steering media circumvent civic consensus as a legitimizing foundation of democratic institutional frameworks of authority (Habermas 1996; Baxter 2011).

## US Digital Nationalism: Reconceptualizing the Hyper-Partisan Right

While there was once a belief that innovations to systems of information and communication technology (ICT) would catalyse a shift towards more open, democratic societies (Jandrić 2017), authoritarian governments are utilizing technology to tighten their grips on power through the spreading of propaganda and illiberal practices which undermine human rights (Barma et al. 2020). Benkler (2006) engages with a Habermasian critique of public spheres within the postdigital age by introducing the notion of online networked public spheres, arguing that any improvement to political public sphere must be weighed against the many failures of the networked information economy. Benkler et al. (2018) describe one such critical failure in their description of the US’ far-right ‘propaganda feedback loop’, wherein political elites, media outlets, and the public inhabit a self-reinforcing media ecosystem which packages and delivers biased/identity confirming partisan narratives while labelling oppositional narratives as biased and untrustworthy ‘fake news’. Moreover, Gambo (2019) highlights that Trump’s campaign to erode faith in mainstream media, through the continued propagation of ‘fake news’ in all broad-range journalistic forms, is characteristic of authoritarians’ desire to undermine all institutions and forms of media which contradict them.

Given this context, Schneider’s (2018) concept of digital nationalism – as a sustained, mediated, and filtered nationalistic ecology of knowledge that precludes the materialization of Habermasian critical public forums of opposition and dissent – provides an accurate description of a right-wing hyper partisan media ecosystem dominated by Fox News and Breitbart within the USA (Benkler et al. 2018). This understanding of the US’ current hyper-partisan *public sphere* belies the discursive nature of modern democratic institutions, underscoring a critical need to investigate how legal and democratic legitimacy is either conferred or questioned within public forums mediated by powerful economic and ideological interests.

Previous scholars have provided insights into this question. Highlighting the joint negotiation between political elites and respective rightist media outlets, the authors note that politicians who thrive in this ecosystem will have done so through a symbiotic relationship with supportive media outlets who gain broader public viewership in return for favourable coverage of identity-confirming politicians within the network (Benkler et al. 2018). Kaiser et al. (2019) expand upon networked media relationships by highlighting common ‘identity forming linkages’

between political elites, audiences who view mainstream media like Fox News, and consumers of fringe partisan sites like Breitbart. Ogan et al. (2018) outline this phenomenon throughout their study of the 2016 election cycle, wherein Trump's negative accounting of immigration led to a corresponding ideological shift in negative media coverage. Thus, conservative (GOP: Republican) political elites, right-wing media outlets, and their consumers constitute a rightist US media ecology which functions symbiotically to promote and reify a closed 'fake news' discourse based on expedient political gains, increased viewership (clicks, likes, retweets, shares and likes), and self-affirmed ideologies and values. It is important to note that our understanding of leftist media within this conceptual approach aligns with the position of Benkler et al. (2018) who state that, while hyper-partisanship exists within leftist media environments, 'there is no distinct left-wing ecosystem that parallels the right in its internal coherence or insularity'.

In light of this understanding, this chapter builds upon Mumford's (1964) notion of 'authoritarian technics', highlighting US digital nationalism as a technology of manufactured and sterilized intelligence based in an authoritarian ideology of uniform conformity. This notion supports the understanding that the Trump regime, in its continued galvanization of a political base mired in enmity and fear of the left, drives a 'politically correct' (Li 2017) 'Trumpology' of civic republican support for authoritarianism which allows for expedient political benefit at the cost of an overall weakening the First Amendment. Thus, hyper-partisan rightist 'fake news' media outlets represent a bulwark of US digital nationalism, which manufactures coercive content aimed at securing a political base of power founded in citizens who are manipulated into conforming to Trump's 'fake news' approach to the First Amendment. This chapter will show that a distinct rightist US media ecosystem is undercutting the democratic potential of online public spheres – propagandizing a 'fake news' form of political sovereignty which supports illegitimate authoritarian legal changes by alienating citizens from the productive role of critical civic discourse. The following method has been adopted to outline specific instances wherein the rightist media ecology (State, media), as an authoritarian technic of US digital nationalism, has evinced a clear effort to undermine the First Amendment.

## **Critical Incidents of Authoritarian Technic Within US Digital Nationalism**

First, this analysis utilizes Critical Incident Technique (CIT) (Butterfield et al. 2005; Flanagan 1954; Bott and Tourish 2016) to outline 'critical incidents' wherein the Trump-led hyper-partisan Right has utilized a 'fake news' approach to undermine First Amendment Freedoms. Second, an Internet-based corpus review (Mautner 2005; Jensen 2011; Boellstorff et al. 2012; Marshall 2011; van Dijk 2014) of state media as authoritative text (via tweets, interviews, speeches, official press releases, executive actions) and leftist and rightist domestic media sources (news reports,

editorials, commentaries) are used to construct a discursive *glonacal* media heuristic (State, Left, Right) (Marginson and Rhoades 2002) surrounding the issue of protest – as an embattled First Amendment freedom in the USA.

Specifically, based on their overall viewership and ‘hyperpartisan’ rightist or leftist ‘skewing’ media bias, Otero’s Media Bias Chart (Ad Fontes Media 2019; Otero 2019) allows for the outlining of rightist and leftist media outlets within a subsequent *glonacal* analysis. Specifically, Otero’s Media Bias Chart is utilized herein to outline a hyper-partisan rightist/leftist media discourse (see Table 6.1). This heuristic will also serve to foreground a damaging hyper-partisanship between competing Kantian liberal (leftist) and Rousseau civic republican (rightist) claims to political legitimacy. Furthermore, an authoritative ‘state media’ heuristic of official tweets, press releases, executive orders, and speeches made by the president and his staffers will fill-out my *glonacal* (Left, State, Right) discursive media heuristic as a framework for assessing BLM protests as a critical incident relating to the current/future outlook of First Amendment freedoms. Finally, a critical discourse analysis (CDA) (Fairclough 1995; O’Keeffe 2006; Hassan 2018) of this *glonacal* media heuristic provides support for the understanding that the US’ bulwark of digital nationalism propagates and promotes an intentionally deceitful discourse surrounding Trump’s selective ‘fake news’ approach to the First Amendment. Thusly, this analysis outlines a discrete rightist US media discourse, which, in its support of Trump’s attacks on First Amendment freedoms, represents the *authoritarian technic* (Mumford 1964) of US *digital nationalism* (Schneider 2018).

**Critical Incident: BLM Protests**

Trump’s dehumanizing attacks against BLM protesters have been witnessed throughout his entire tenure as a politician. This is true of his 2016 attacks on former NFL Quarterback and BLM-supporter Colin Kaepernick (who took a knee during the national anthem in protest of continued police brutality towards African Americans). Trump proclaimed that team owners should ‘get that son of a bitch off the field’ and that Kaepernick should ‘find another country’ (Bixby 2016; Graham 2017; Jacobs 2017). Trump’s dehumanizing rhetoric has been continuously lauded by his base, further emboldening his dehumanizing stance against BLM-affiliated First Amendment protesters throughout his presidency (Cancian 2020).

**Table 6.1** Hyper-partisan US media outlets (Ad Fontes Media 2019)

Hyper-partisan leftist media	Hyper-partisan rightist media
CNN (40.8 million)	Fox news (133.15 million)
MSNBC TV (30.8 million)	Breitbart (23 million)
The Atlantic (16 million)	The daily caller (11.6 million)
Vanity fair (11.24 million)	The blaze (5.98 million)
Slate (10.53 million)	Infowars (4.8 million)



Black Lives Matter (BLM) is an ideological and political movement which emerged after the acquittal of Travon Martin's Killer, George Zimmerman, with the keyword #Blacklivesmatter framing conversation and debates surrounding legal murders, mass imprisonment, and a 'system of US values' wherein black bodies are deemed inherently criminal and therefore targeted for demise (Maraj et al. 2018; Szetela 2019). Founded by Alicia Garza, Partrice Cullars, and Opal Tometi in 2013 as an online campaign to raise awareness for the injustice of Trevon Martin's brutal murder (and the incredulity of George Zimmerman's subsequent acquittal), the movement quickly transitioned to real-world civic protests (both peaceful protest and riots) by activists fed-up with the seemingly endless killings of black citizens by members of various US police forces (Anderson 2019). Given the recent rise in BLM-affiliated protests across the nation and the government's attempts to crack-down on these protests, the subsequent media discourse surrounding BLM highlights a constitutional crisis between First Amendment freedoms and the government's authority to quell violence in the name of public health, safety, and welfare (Ferreri 2020). Thus, within the continued framework of the Habermasian (validity/facticity) crisis of democracy, the media discourse surrounding continuing BLM protests as either an unlawful movement for systemic change or unlawful civic unrest represents a critical incident for this study.

## **Glonacal Critical Discourse Analysis: State, Rightist, and Leftist**

### *The State*

On 25 May 2020, a startling video emerged on social media outlets across the globe. For 8 minutes and 46 seconds, this video laid bare the brutal murder (in graphic gut-wrenching detail) of George Floyd, a black US citizen, at the hands of a white US Minnesota police officer named Derek Chauvin (Hill et al. 2020). Following the public outcry, which spilled over into BLM protests and riots around the globe, on 1 June 2020, the president released this statement:

I am your President of law and order, and an ally of all peaceful protesters ... But in recent days, our nation has been gripped by professional anarchists, violent mobs, arsonists, looters, criminals, rioters, Antifa, and others ... These are not acts of peaceful protest. These are acts of domestic terror. The destruction of innocent life and the spilling of innocent blood is an offense to humanity and a crime against God ... That is why I am taking immediate presidential action to stop the violence and restore security and safety in America. I am mobilizing all available federal resources — civilian and military — to stop the rioting and looting, to end the destruction and arson, and to protect the rights of law-abiding Americans, including your Second Amendment rights ... If a city or a state refuses to take the actions that are necessary to defend the life and property of their residents, then I will deploy the United States military and quickly solve the problem for them. (The White House 2020b)



Trump initially addresses the nation in whole before transitioning back towards his base through a show of concern for Rightist ideological talking points (God, Antifa, Second Amendment). Within his remarks, we witness his selective notions of equal justice, law and order, and how they fall within an ethnonationalist framework of civic republicanism. Specifically, Trump's ethnonationalist appeal to law and order highlights a critique of US civic republican constitutionalism as 'too culturally specific, too orthodox and too exclusionary' (Williams 1994).

This ethnonationalist framework of civic republican law and order requires that the protest of injustice exist within a 'constitutionally bound' moral and legal framework of coercive sovereign political authority/legitimacy which does not seek to overthrow the sovereign (Pettit 2012).

This understanding of civic republicanism helps explain why Trump can easily condemn BLM protests as 'terrorists' while defending armed (primarily white) militias who stormed the Lansing, Michigan, capitol building as 'very good people' (Panetta 2020). Nevertheless, as protests continued, Trump's rhetoric towards BLM anti-racist protests began to take an even more pugilistic stance. On 3 July 2020, in the midst of a devastating pandemic, during one of the most divisive points in US history, President Trump had this to say about the ongoing BLM protests:

Our nation is witnessing a merciless campaign to wipe out our history, defame our heroes, erase our values, and indoctrinate our children. Angry mobs are trying to tear down statues of our Founders, deface our most sacred memorials, and unleash a wave of violent crime in our cities. This attack on our liberty, our magnificent liberty, must be stopped, and it will be stopped very quickly. We will expose this dangerous movement, protect our nation's children, end this radical assault, and preserve our beloved American way of life. The violent mayhem we have seen in the streets of cities that are run by liberal Democrats, in every case, is the predictable result of years of extreme indoctrination and bias in education, journalism, and other cultural institutions. (The White House 2020b)

Trump's 4 July speech (based in a political discourse of ethnographic fear) highlights what Orellana and Michelsen (2019) label as a benchmark of contemporary rightist US discourse, a return to American exceptionalism (manifest destiny) based on claims of God-given cultural superiority, representing the right's desire to 'unshackle the innate potential of birth-culture' through the abandonment and disestablishment of liberal normative frameworks (Peters et al. 2020). This desire to usurp liberal norms in favour of ethnonationalist civic republicanism highlights the dangers inherent to Price's (2018) notion of partisan suppression/enforcement/protection of First Amendment rights – opening the door to the authoritarian usurpation of State's Rights as well.

While he has not yet invoked the Insurrection Law, he has already utilized his 'fake news' approach to the First Amendment to hold a partisan 'peaceful protest for law and order' on 10 October 2020 at The White House – despite a D.C.-wide ban on mass gatherings due to Covid-19 (Murdock 2020). Finally, as part of his central 'law and order' campaign promise, Trump has continuously stated that he will do everything in his power to 'protect the suburbs', i.e., his base of support and legitimacy, falsely tweeting on 26 August that: 'TODAY, I will be sending federal law enforcement and the National Guard' to Kenosha, Wisconsin 'to restore LAW

and ORDER' (Thomas and Phelps 2020). The president followed up these false claims on 1 September, stating that: 'My administration coordinated with the state and local authorities to very, very swiftly deploy the National Guard surge federal law enforcement to Kenosha and stop the violence' (Horton 2020).

The issue with these claims is not just that they are false but that they attempt to reframe the current boundaries of sovereign power held within the executive office. To be clear, Trump does not have the constitutional authority to 'send in the national guard', that is a decision which has to be made by the state in question, in this case, Wisconsin (Thomas and Phelps 2020). However, while it is important to note that Trumps' claims were false, the 1807 Insurrection Law does allow the federal government to direct federal troops into states as a means of protecting 'citizens rights' (Horton 2020).

While this act has not been invoked since 1992, Trump's continued pursuit of sovereign authority within a coercive procedural understanding of law and order (facticity) (rather than validity) is a critical blow to long-standing liberal US democratic norms which hold that political legitimacy is derived from the overriding will of the people. As a case in point, on 26 June 2020 Trump issued an executive order titled 'Executive Order on Protecting American Monuments, Memorials and Statues and Combating Recent Criminal Violence' (The White House 2020c). Under the guise of 'protecting monuments and federal buildings', this executive order provided procedural legitimacy for the creation and subsequent deployment of masked, unidentifiable 'paramilitary' troops by the Department of Homeland Security – called Protecting American Communities Task Force (PACT), to quell protesters in 'out of control liberal Democrat' run cities (Fox 2020).

These constitutionally precarious, yet politically expedient actions allowed Trump to bolster his claim of being a 'law and order president'. The realization of this authoritarian coercive notion of legitimacy, which views Trump's sovereign power within an autocratic civic republican framework, would also allow Trump to 'legitimately' supersede constitutionally mandated state and individual rights on the path towards the selective and politically beneficial administration of law and order. Providing a final glimpse into Trump's official position on the anti-racist campaign of BLM as a movement, Trump had this to say at campaign rally in Atlanta, Georgia, on 25 September 2020:

As you know... many of those who are spreading violence in our cities are supporters of an organization called the Black Lives Matter or BLM. It's really hurting the black community. It's hurting the black community... The stated goal of BLM organization people is to achieve the destruction of the nuclear family, abolish the police, abolish prisons, abolish border security, abolish capitalism, and abolish school choice. That's what their stated goals are. (Trump 2020)

Historically, fears surrounding the censorial power of the government led to significant refinements of the First Amendment regarding interference, prosecution, or defamation on the part of the government towards its critics (Grambo 2019). Displaying Price's (2018: 821) 'highly selective and discriminatory enforcement of the First Amendment,' Trump has portrayed himself as 'a defender of free speech and foe of political correctness' (Graham 2018), while enacting a sustained and

targeted defamation of BLM members seeking government redress. Lastly, leaving little doubt as to exactly who's rights matter most and why, Trump had this to say at a recent campaign rally on 13 October 2020:

I'm about law and order. I'm about having you safe. I'm about having (sic) your suburban communities. I don't want to build low-income housing next to your house ... Suburban women, they should like me more than anybody here tonight because I ended the regulation that destroyed your neighborhood. I ended the regulation that brought crime to the suburbs, and you're going to live the American dream ... So can I ask you to do me a favor? Suburban women, will you please like me? I saved your damn neighborhood, OK? (Axelrod 2020)

Thusly, the state discourse surrounding the BLM protest movement entails a politically self-serving partisan, ethnonationalist civic republican, selective understanding of law, and order which frames BLM-affiliated protesters as terrorists, while drawing legitimacy via the protection of the rights, freedoms, and dreams of his singularly virtuous conservative white suburban base of support.

### *Hyper-partisan Right*

The aforementioned 'State' definition of BLM as a terrorist organization hell-bent on destroying the fabric of American society allows for a more directed analysis of the hyper-partisan right as an echo-chamber for Trump's law and order rhetoric. On 20 July 2020, Breitbart posts an article titled 'Black Lives Matter Protesters Loot Businesses, Set Fires in Seattle' which uses the looting of an Amazon store in Seattle, Washington, as rationale for labelling BLM protesters as 'Antifa Militants' through a highlighted quote by police which stated: 'These are criminal acts, not peaceful protests' (Starr 2020). On 10 August 2020, a BLM-affiliated protest in Chicago in support of arrested protesters descended into looting and rioting. Fox News subsequently reports on this event by highlighting a quote (from an NBC affiliate in Chicago) which has BLM Chicago founder Aislinn Pulley stating:

I don't care if someone decides to loot a Gucci or a Macy's or a Nike store, because that makes sure that person eats ... That makes sure that person has clothes ... That is (sic) reparations ... Anything they wanted to take, they can take it because these businesses have insurance. (Aaro 2020)

The Fox News article further underscores the criminality of the BLM-affiliated protest turned riotous looting by highlighting an unnamed quote by Chicago PD which states:

The shooting prompted hundreds of people to descend on downtown Chicago early Monday with vandals smashing the windows of dozens of businesses and making off with merchandise, cash machines and anything else they could carry. (Aaro 2020)

This quote was followed by a statement by Chicago Police Superintendent, David Brown: 'This was not an organized protest. Rather, this was an incident of

pure criminality... This was an act of violence against our police officers and against our city.’ (Aaro 2020)

The pointed nature of this article does not adequately frame Fox News’ position on BLM; more importantly, however, the article does not allow for an adequate understanding of the events of that night. Specifically, in a peculiar Janus-faced journalistic positioning, a separate article (published the same day) by Fox News also reports the same events and the same statements made by BLM Chicago founder Aislinn Pulley within an entirely different context. The author of the article provides this quote by Pulley which states:

I think the goal of the preoccupation around property damage and looting specifically, along the Mag Mile and in the heart of the city’s commerce center, works to distract away from the actual cause of the outrage, the important thing is to intervene and remind people what the causal incident was and continues to be. (Craft 2020)

This strategic ‘success-oriented’ reporting by Fox News simultaneously frames Pulley as the unapologetic face of a radical left-wing Antifa-communist crime wave, yet also as thoughtful and mournfully self-aware of how looting hurts the community and undercuts BLM’s core message. To some, this approach may seem to represent a novel form of journalistic integrity which serves the needs of all-comers – ‘if you want veracity, we have you covered, if you want mendacity, we have that too’. Unfortunately, by mixing journalistic integrity with pseudo-journalistic ideological fodder, Fox News is contributing to the Trumpian campaign to undermine freedom of the press (Kharroub 2017).

Moreover, this pseudo-ethical journalistic posturing lends credence to Trump’s continued insistence that the fourth estate (as a liberal institution) now represents nothing more than biased ‘fake news’ partisan politics. Lastly, these two excerpts should underscore the worrisome dissolution of journalistic integrity and pervasive radicalization of once-centrist conservative stalwarts like Fox News, an assertion that core right-wing outlets are failing to act as a ‘truth-telling brake’ on radical fringe sites like Breitbart (Benkler et al. 2018; Chambers 2020).

Thusly, media outlets within the US’ hyper-partisan right-wing media ecology no longer constitute a check on mendacity but rather value it, promote consumerism over empirical evidence, and are driven by a logic of emotionally charged group-think rather than journalistic ethics (Green 2020). As a final demonstration of this doleful notion of the crumbling fourth estate, this article presents a 6 September 2020 Breitbart article which cites the aforementioned ACLED and Princeton University’s Bridging Divides Initiative (BDI) study. Specifically, this analysis underscores that despite the authors of the study clearly stating that their findings support the conclusion that 93% of BLM protests held in the summer of 2020 were overwhelmingly ‘peaceful and nondestructive’, the 6 September 2020 Breitbart article presents the following ‘alternative’ conclusion:

Mainstream media seized on the data last week to argue that the ‘Trump narrative’ of violent demonstrations was false. The study itself speculated that public perceptions of riots were skewed by ‘political orientation and biased media framing’ and ‘disproportionate coverage of violent demonstrations.’ However, public perceptions may simply have reflected the wide geographic distribution of the violence... Thus in the public imagination, the pro-

portion that matters most may not be the 7% of protests that were violent, but the 96% of major urban areas that experienced rioting. (Pollak 2020)

This analysis should highlight a clear symbiosis between the state and the rightist media as working in unison to create a misleading narrative of BLM as a violent criminal organization that threatens the safety and well-being of peaceful, law-abiding Americans. Moreover, while clinging to a semblance of journalistic integrity, what was once classifiable as ‘the mainstream right’ has allowed itself to be steered further afield into the purely success-oriented domain of pseudo-journalistic ‘click-bait’ alternative ‘fake news’. In Habermasian terms, the potential for autonomous civic discourse (theoretically allowed for by an independent free press), in practice, has been coopted by authoritarian institutions of powerful self-interested elites (Staats 2004). Thus, the state and the rightist media together represent an authoritarian technic of US digital nationalism which utilizes ‘fake news’ disinformation to undermine democratic public opinion in favor of a pathological ‘mass deception’ which creates a citizenry incapable of self-conscious public debate.

### *Hyper-partisan Left*

Trump’s decision to send federal troops to Portland, Oregon, to quell BLM protests was met by leftist media articles which attempted to frame these actions as ‘unconstitutional’ and a threat to First Amendment norms and values. A 17 July 2020 article by Vanity Fair, citing both the ACLU and Speaker Nancy Pelosi respectively, states the following:

the ACLU said in a statement Friday. ‘These actions are flat-out unconstitutional and will not go unanswered.’ Democrats have chimed in. After Barr sicced federal law enforcement on protesters in Washington last month, **Nancy Pelosi** demanded they be identified. ‘The practice of officers operating with full anonymity undermines accountability, ignites government distrust and suspicion, and is counter to the principle of procedural justice and legitimacy during this precarious moment in our nation’s history,’ she wrote. (Lutz 2020)

The article may be used to outline the following several characteristics of Leftist media:

Firstly, the presence of political elites as steering media that frame Leftist discourse, in this case Speaker Nancy Pelosi and the ACLU. Here, Speaker Nancy Pelosi and the ACLU attempt to address issues of Rousseauian legitimacy (procedural justice, constitutionality) and Kantian general will (principles, norms, and values) as a means to outline that Trump’s actions fall outside the legitimate bounds of sovereignty.

Secondly, however rife with familiar ‘fear-based’ rhetoric (distrust, suspicion, unjust), this article, and many others by the left, fails to counter the Right’s political manoeuvring on two fronts. Firstly, by incorrectly labelling Trump’s actions as unconstitutional, Leftist discourse fails to accurately confront a First Amendment doctrine which ‘leaves the door open’ for government punishment when freedom of

expression manifests in criminal conduct (Price 2018). Secondly, the Left (as a loosely affiliated political program) has continuously failed to grasp the underlying conflict of modern democracy as a battle between Rousseauian sovereign law (facticity) and Kantian notions of ‘spontaneous self-legislation’ (validity).

This understanding belies a more critical error within Leftist discourse, one which fails to understand that the current protections afforded by the First Amendment are primarily imperiled by the diminished intellectual climate which frames these constitutional disputes (Price 2018). Critically, rather than calling for legislative or judicial actions aimed at halting the erosion of the fourth estate as the font of critical civic discourse, as well as procedural protections to normative First Amendment freedoms, media articles on the left continue to argue the case against Trump’s desire to erode erstwhile foundational liberal institutions via normative grounds. On 29 July 2020, Slate releases this article as an appeal to their readers:

The right to assemble, protest, and gather is the neglected younger sister to the free speech clause. As the Supreme Court lavishes attention on commercial speech and money as speech and religious signage and union dues and cake baking as speech, the freedom to gather and protest is often forgotten. But this spring and summer, as protests broke out across the country initially in response to the police killing of George Floyd, a Black man, and increasingly in response to government crackdowns on protest itself, we are left with the grim prospect of protesters without much legal protection, despite the First Amendment. This much was plain to see in two congressional hearings on Tuesday, in which thousands of peaceful demonstrators were dismissed as anarchists and mobs, both by Republicans in Congress and by Attorney General William Barr. (Lithwick 2020)

In essence, the Slate article is arguing that Habermasian ‘steering media’ within the USA have successfully reoriented the First Amendment principle of free speech to protect elite political and economic interests rather than citizens wishing to redress a government grievance. True, but lamentably old news. What this article should highlight is that by ignoring the political climate of ‘fake news’ which has allowed Trump to retain a semblance of ‘law and order’ political legitimacy (to a base of misinformed followers and obsequious political elites), the Left is constantly put on the defensive, scrambling to guard against the next bulldozing of an erstwhile sacrosanct liberal norm or value.

However, this article makes a prescient point regarding the issue of ‘guilt by association’ – an issue at the core of current and future US First Amendment freedoms:

In other words, in Barr’s hands, the freedom of assembly is transformed to mass guilt by association. Neither he nor Monahan could explain when and how one protester hellbent on violence turns an entire peaceful protest into an angry mob... (Lithwick 2020)

The overwhelming selectivity by which mass guilt by association is imputed is clearly observable within the leftist narrative that the right is utilizing procedural law to institute politically partisan and selectively oppressive tactics to undercut the legitimacy of anyone and everyone (thugs, looters, rioters, criminals) seeking to protest injustices under the current administration. On 2 June 2020, The Atlantic had this to say on the matter:

On May 28, Donald Trump demanded the First Amendment right of free speech for himself on privately owned social media, and then, four days later, declared war on the people, gathered on public property, as they sought, in the words of the amendment itself, 'to assemble, and to petition the Government for a redress of grievances.' ... The right of assembly is an important First Amendment right, one treasured by the founding generation and the First Congress, which wrote the amendment, and one re-won two centuries later at great pain by the labor, civil-rights, and anti-war movements ... That right has been under assault since the day Trump took office ... red-state legislatures have been indefatigable in debating and passing laws designed to penalize protesters for disfavored causes. (Epps 2020)

This research finds that Leftist media is driven by steering media (in the form of political elites) and is not above framing public discourse within familiar political 'hit piece' and fear-based tactics of the right. However, a unified pattern of intentional 'fake news' disinformation/misinformation that could potentially mirror the right's programmatic (technological, political, commercial, institutional) (see Benkler et al. 2018: 22) cohesiveness does not exist within leftist media outlets. This analysis of the hyper-partisan left should, however, provide an understanding that, while there exists a diversity of opinions on the left surrounding BLM protests and Trump's draconian efforts to quell them, it is primarily based in a flawed over-reliance on a Kantian liberal narrative (Habermasian validity claims) which aim to cast Trump's authority as illegitimate and therefore warranting of continued protest. However, this research identifies a Leftist media discourse, foregrounded within a Leftist political agenda, that continues to emphasize validity over facticity, failing to promote substantive frameworks (legislative, legal) which would protect either protesters or the right to protest from the Right's continued procedural manoeuvring. Thus, this analysis supports Price's (2018: 830) assertion that the USA will continue to experience 'a downward spiral with respect to First Amendment freedoms protected by norms and conventions rather than just judicial doctrine'.

## **Implications of US Digital Nationalism: A Potential End to the US Democratic Experiment**

Firstly, this descent into 'fake news' pseudo-journalism portends a grave outlook for both democratic civic discussion and the ability of the press to hold US leaders accountable (West 2017). This understanding is highlighted by Ehrenfeld and Barton (2019) who find that the blurring lines between journalism and social media-style pseudo-journalism, the incentivization of 'fake news' over news, and engagement metrics which promote mass persuasion have engendered a society at odds with the principles of democratic deliberation and collective action. Finally, these attempts to steer public opinion away from liberal notions of free speech highlight Habermas' (1996: 5) conclusion that discourses within modern societies are mediated and rationalized by systemic imperatives which 'confer legitimacy on political will-formation, legislation and the administration of justice'. Specifically, the manipulation of public discourse towards a promotion of Trump's 'fake news'



approach to the First Amendment represents an all-out effort by rightist media to further pull at the seams of contemporary US society. Using ‘fake news’ as an expedient political tool which exploits the inherent weakness of modern democracy, the hyper-partisan right, as the authoritarian technic of digital nationalism, has seized upon the US’ inability to transcend plurality, its inability to produce ‘context transcending validity claims’ (Habermas 1996) surrounding First Amendment legal freedoms, and seeks now to reframe this doctrine within a Trumpian ‘fake news’ authoritarian framework.

Further, this research finds that the most pressing concern for the future protection of First Amendment rights and freedoms lies within the aforementioned ‘mass guilt by association’. This is an issue which remains foundational to the future of US First Amendment freedoms. Case in point, in a striking reversal from the past, when the US constitution was viewed as a model for the rest of the world, the UN has seized upon current US constitutional failings, providing a framework for the right to protest which stands as exceedingly prescient. Specifically, in light of global BLM protests, which have transformed to protests against police brutality in general, such as the ongoing anti-brutality protests in Nigeria (Akinwotu 2020), the UN issued a groundbreaking ‘authoritative interpretation’ (Dickinson 2020) on the right of peaceful assembly. The UN’s General Comment 31 on Article 21 (The Right to Peaceful Assembly) section 17 and 18 states the following:

There is not always a clear dividing line between assemblies that are peaceful and those that are not, but there is a presumption in favour of considering assemblies to be peaceful. Moreover, isolated acts of violence by some participants should not be attributed to others, to the organizers or to the assembly as such.

The question of whether or not an assembly is peaceful must be answered with reference to violence that originates from the participants. Violence against participants in a peaceful assembly by the authorities, or by agents provocateurs acting on their behalf, does not render the assembly non-peaceful. (United Nations 2020)

This recent decision by the UN strikes at the core of recent hyper-pluralist liberal-republican constitutional debates within the USA and further outlines Price’s (2018: 73) assertion that the current social and political climate of ‘partisan polarization and distrust’ represents a critical challenge to the previously sacrosanct ‘civic libertarian’ understanding of the right to peacefully assemble. Thus, this research should highlight that within a contemporary framework of US digital nationalism, the hyper-partisan left must back their appeals to Kantian liberal norms and values with procedural and legal frameworks which ensure that the autonomy of will displayed within individual and group protest – as well as the ideals which support its use – are protected against the oppressive civic republican facticity which undergirds Trump’s ‘fake news’ approach to the First Amendment.

Lastly, it must be noted that Trump’s selective ‘fake news’ approach to the First Amendment has been used to protect himself against being flagged on social media, to defend conservative voices on university campuses, and to pardon right-winged armed militia groups who ‘protested’, i.e., committed arson and led an armed stand-off against federal authorities (Landers 2018), and is now being used to defend an

attempted coup of the office of the President of the United States of America. In his ongoing battle to overturn the democratic US election process, a recent report by the Washington Post provides a transcribed call between Trump and Georgia Secretary of State Brad Raffensperger which outlines Trump's continued use of 'fake news' to legitimize his selective use of 'law and order' as a coercive fulcrum of power:

there's nothing wrong with saying that, you know, that you've recalculated ... you should want to have an accurate election. And you're a Republican ... We wanted Fulton County. And you wouldn't give it to us. the ballots are corrupt ... And you are going to find that they are —totally illegal — it is more illegal for you than it is for them because, you know, what they did and you're not reporting it. That's a criminal, that's a criminal offense. That's a big risk to you ... And that's a big risk ... So look. All I want to do is this. I just want to find 11,780 votes, which is one more than we have because we won the state. (Gardner and Firozi 2021)

Within a Rousseauian civic republican notion of political legitimacy, the legitimacy of the sovereign, at its limit, is based upon the subordination of individual freedoms to a sovereign (individual, state, institution) endorsed by the overriding will (either majority or committee) of the people. Thus, any sovereign who seeks to either rule without or overturn this general will (in a Kantian sense, the social contract as general will) loses the civic republican legitimacy afforded to those states operating within constitutional constraints (Pettit 2012). In other words, having lost the general election, the electoral college, and more importantly the legitimizing will of the people, any further 'fake news' attempts by Trump to retain his 'law and order' sovereignty are illegitimate and should be met by a non-partisan reproach of authoritarian demagoguery.

## Conclusion

Within the context of a hyper-plural liberal-republican US media landscape, this chapter has presented a Habermasian critique of the state as working in conjunction with hyper-partisan rightist media to foment an authoritarian technic of US digital nationalism. Specifically, this research has shown that elite politicians on the right enlist the support of media outlets, who have abandoned democratic precepts of 'truth-seeking journalistic integrity' in favour of 'success-oriented' fake news pseudo-journalism. Further, this joint quest for expedient political and economic gains has undermined Kantian liberal First Amendment norms and values, supporting a Trumpian desire to delegitimize the fourth estate as a means to substitute critical political discourse in favour of a civic polity mired in a state of pathological 'mass deception'.

Thus, I have argued that Trump's use of the authoritarian technic of US digital nationalism to propagandize his 'fake news' approach to the First Amendment has enveloped the hyper-partisan right in a shroud of obsequious – 'politically correct' rhetoric which seeks to legitimize his claim of sovereignty based in a wholly authoritarian civic republican notion of law and order. Finally, this research recommends

that the Left adopt a unified discourse of reform which seeks to undergird longstanding First Amendment principles (validity) within procedurally defined (facticity) frameworks that will not so easily succumb to future instances of ‘fake news’ demagoguery. In other words, if immediate procedural steps are not taken (such as adapting the UN General Comment into current US legal frameworks), the Right will continue to utilize its bulwark of US digital nationalism to blaze a corrosive Rousseauian civic republican path towards the precipitous erosion of both the First Amendment and many other longstanding Kantian liberal norms and values within the US.

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