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RECONSIDERING THE NOMOS IN TODAY'S MEDIA ENVIRONMENT

*Kimberlianne Podlas**

ABSTRACT

Today's media landscape is wholly unlike that which existed when Cover first discussed narrative and the nomos; specifically, the status of television as both a cultural messenger and object of scholarly study has changed significantly. Accordingly, this article contemplates narrative in the contemporary media environment, specifically, television as an essential source of narratives. To enhance understandings of the roles television narratives play and which narratives play a role, this article employs an empirical perspective. Surveying Media Theory, it outlines research on television effects, including when and why television's representations of law can impact audience attitudes, behaviors, perceptions, knowledge, and judgements. It then summarizes and explores recent changes in the media environment – digital platforms and streaming content, unprecedented audience selectivity and fragmentation, cable news differentiation, and Twitter – and considers what impacts these have on audiences and the nomos.

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I. INTRODUCTION

Forty years ago, when Cover wrote of what he called “the *nomos*,” he labeled himself an outlier. While this symposium robustly demonstrates why that is no longer the case, the intellectually-dense writing, references to biblical and ancient texts, and new terminology that Cover used to present his ideas may have contributed to that notion. Notwithstanding, reduced to its core, Cover advocated that our common cultural lexicon of narrative was key to conveying, mediating, and reconstructing legal and cultural meaning.

Today’s media landscape is wholly unlike that which existed when Cover first discussed narrative and the *nomos*; and the status of television as both a cultural messenger and object of scholarly study has changed significantly. Accordingly, this article contemplates narrative in the contemporary media environment by primarily focusing on television as an essential source of narratives. To enhance our understanding of the roles these narratives play, this article employs an empirical perspective; it outlines research on television effects, including when and why television’s representations of law and the legal system can affect audiences, and what some of those impacts may be.

II. NARRATIVE, MEDIATION, AND MEANING

Cover said “[w]e inhabit a *nomos*—a normative universe”¹ comprised of not only formal law, i.e., “[t]he rules and principles of justice, the formal [culture and] institutions of the law,”² but also the common or popular culture of law, i.e., what laypeople understand those laws to “mean” as well as whether the law and the legal system has meaning.³

The connective tissue, and key to meaning-making, is narrative.⁴ Our culture’s narratives of law show and tell, explain and translate, reply and rewrite. Through their plots, heroes, victims, and

¹ Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4, 4 (1983).

² *Id.* (These “are, indeed, important . . . but a small part of the normative universe . . .”).

³ Kimberlianne Podlas, *Impact of Television on Cross-Examination and Juror “Truth,”* 14 WIDENER L. REV. 479, 489-90 (2009).

⁴ Cover, *supra* note 1, at 4-5, 18 (narrative is indispensable in the quest for meaning); Podlas, *supra* note 3, at 481; *see also* Gal Hertz, *Narratives of Justice: Cover’s Moral Creativity*, 14 L. & HUMANS. 3, 4-5 (2020).

lessons, narratives provide context and make sense (or nonsense) of the law.⁵ For better or worse, they show how the legal system impacts people's lives and achieves its notion of justice, or fail to live up to its promises. By helping people see the value and understand why the legal system deserves respect,⁶ our stories contribute to the law's normative force it to function.⁷ Indeed, "[n]o set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning."⁸

This narrative mediation of law is not unidirectional, but multi-dimensional. Narratives emerging from, refracted by, and transformed through popular culture also tell institutions of law what people believe.⁹ Stories reveal how people think the law really works (and for whom), how its trustees are perceived to behave,¹⁰ what its priorities and blind spots are, and expectations for what it can achieve.¹¹ As Cover observed, narrative bridges the "'is,' [] the 'ought,' . . . and the

⁵ Cover, *supra* note 1, at 4-5; Kimberlianne Podlas, *Respect My Authority! South Park's Expression of Legal Ideology and Contribution to Legal Culture*, 11 VAND. J. ENT. & TECH. L. 491, 495-96 (2009) (describing law and popular culture, and drawing on Cover's thesis); *see also* Michail Vafeiadis et al., *Narratives in Political Advertising: An Analysis of the Political Advertisements in the 2014 Midterm Elections*, 62 J. BROAD. & ELEC. MEDIA 354, 355 (2018) ("Narratives are essentially stories that people tell.").

⁶ Cover, *supra* note 1, at 4-5.

⁷ Cover, *supra* note 1, at 4-7, 10; Kimberlianne Podlas, *Funny or No Laughing Matter?: How Television Viewers Interpret Satires of Legal Themes*, 21 SETON HALL J. SPORTS & ENT. L. 289, 293 (2011); *see* Julen Etxabe, *The Legal Universe After Robert Cover*, 4 L. & HUMANS. 115, 120 (2010) ("Cover's legal universe contains not only a body of precepts but, fundamentally, a set of narratives and myths that validate the former and give them meaning.").

⁸ Cover, *supra* note 1, at 4, 11; *see also* Etxabe, *supra* note 7, at 120 ("To know the law is therefore to learn its language To be a competent speaker of this language requires more than knowing how a particular concept or precept is *used* and connects with others; significantly, one must know how it is *charged*, that is, the heavy load of symbols, connotations and values it carries with it.").

⁹ Michael Asimow, *Preface: Popular Culture Matters*, in *LAWYERS IN YOUR LIVING ROOM! LAW ON TELEVISION* xx (2009); Etxabe, *supra* note 7, at 120 ("Cover's legal universe contains . . . a set of narratives and myths that . . . give [law] meaning.").

¹⁰ Lief H. Carter & Michael McCann, *Measuring Humanity: Rights in the 24th Century*, in *LAW AND JUSTICE ON THE SMALL SCREEN* 17-18 (2012); Kimberlianne Podlas, *Blame Judge Judy: The Effects of Syndicated Television Courtroom on Jurors*, 25 AM. J. TRIAL ADVOCACY 557 (2002); Podlas, *supra* note 5, at 493, 495-97.

¹¹ Cover, *supra* note 1, at 36-37; *see* Hertz, *supra* note 4, at 23 ("According to Cover, law is always constituted in relation to a present state of affairs . . .").

‘what might be.’”¹² Thus, the narratives emerging from “common culture” are simultaneously a forum to debate issues, a Nielsen poll of what people think works or needs to change, and a script – written in a universal language – for transforming it.¹³

Accordingly, while law and narratives of it are separate, they also concurrently impact one another.¹⁴ Although Cover described this with a new lexicon and examples from “high culture” juridical and ancient texts, fundamentally he articulated a central tenet of the study of popular culture:¹⁵ stories in popular culture both reflect and contribute to what people believe, operating symbiotically with and within the cultural environment.¹⁶

III. NARRATIVES OF LAW IN POPULAR CULTURE

Presumably, most participants in this symposium believe in the concept of the *nomos* and in Cover’s thesis that stories are the key to meaning-making or a decryption key to the *nomos*. Acknowledging that the narratives matter is only a starting point. In advancing Cover’s work and applying it within the present media environment, we need to consider on which narratives to focus and what their contribution is. What evidence exists that the stories we reference are salient and impact, or are understood by, the audience in the way we believe?¹⁷

¹² Cover, *supra* note 1, at 10; Hertz, *supra* note 4, at 22-23 (explaining that, to Cover, narratives were a subversive means for reimagining the normative world).

¹³ Cover, *supra* note 1, at 10 (“Narratives are models through which we study and experience transformations. . . .”); see Hertz, *supra* note 4, at 6 (arguing that Cover believed narrative is “where legality, and more broadly, normativity itself is created, suspended, broadened and debated.”).

¹⁴ Cover, *supra* note 1, at 5 (explaining that law and narrative are interdependent).

¹⁵ Kimberlianne Podlas, *The Tales Television Tells: Understanding the Nomos Through Television*, 13 TEX. WESLEYAN L. REV 31, 37-38 (2006).

¹⁶ Asimow, *supra* note 9, at xx-xxi; Podlas, *supra* note 15, at 32; Podlas, *supra* note 5, at 493, 495-97; Peter Robson & Jessica Silbey, *Introduction*, in LAW AND JUSTICE ON THE SMALL SCREEN 1-2 (2012).

¹⁷ Cassandra Sharp, *Let’s See How Far We’ve Come: The Role of Empirical Methodology in Exploring Television Audiences*, in LAW AND JUSTICE ON THE SMALL SCREEN, 112-15 (2012) (stating there is a “void” in research about connection between television representations of law and audience meaning-making, and arguing that legal research must consider this using a “more sophisticated approach.”).

Cover wrote of the nomos in 1982, coinciding with the emergence of the Law and Literature movement.¹⁸ Not surprisingly, he and others engaged in law-to-law discourse spoke of narratives in legal opinions, canonical writings, ancient texts, and literature.¹⁹ Nonetheless, we – people trained in law – operate in the gravitational force of law, so are predisposed to seeing the world through that lens. This can cause us to pay disproportionate attention to “high culture” narratives²⁰ (most laypeople do not read or contribute to and assign meanings to these sources that are neither supported by lay opinion nor empirical research does not support). Therefore, restricting our focus to texts that legal experts and scholars find emblematic risks misconstruing the nomos.²¹ Indeed, Cover cautioned that he was not implying that there was some “official, privileged canon of narrative.”²² Consequently, it is critical to survey stories of law circulating in and refracted by popular culture, specifically the ones most commonly consumed by the public.

In addition to looking at salient narrative artifacts, we need to determine if we are interpreting them accurately. Whether considering stories of law or media content, a narrative can have multiple “readings.”²³ What law professors and lawyers think narratives mean can be quite different from how audiences perceive or creators intend

¹⁸ Robson & Silbey, *supra* note 16, at 2 (noting that scholarship on law and film and law and literature began in earnest in the mid-1980s, and soon flourished).

¹⁹ Hertz, *supra* note 4, at 5-6 (noting research examining narrational dimensions of law and law vis-a-vis literature), and at 6 (introduction of storytelling into the study of jurisprudence).

²⁰ Examples of high culture narratives include appellate opinions, law journal articles, and treatises.

²¹ To put it bluntly, we may not be the best people to select the narratives, let alone determine what they mean to or were meant by the masses. See Etxabe, *supra* note 7, at 115 (“The idea that law consists of a set of rules emanating from a sovereign authority is so ingrained in our ways of thinking about the law—from professionals to ordinary citizens, from legal academics to those who touch upon law in other fields—that trying to shift that habit of perception may appear ... daunting[.]”).

²² Cover, *supra* note 1, at 4 n.3.

²³ Podlas, *supra* note 7, at 291-92; see also Paul W. Kahn, *Community in Contemporary Constitutional Theory*, 99 *YALE L.J.* 1, 54, 58-59 (1989) (recognizing that narratives are sometimes understood differently than intended, or are perceived differently by different audiences and analyzing the separation of authority and interpretation).

them²⁴ Therefore, it is valuable to determine whether and how narratives impact people *in reality*, rather than merely opining that they do.²⁵

IV. TELEVISION: A COMPENDIUM OF NARRATIVES

Although we find narratives in various mediums, television is American culture's greatest compendiums of stories.²⁶ Sometimes television supplements information gleaned from personal experience (e.g., peer-group, family, work, school); other times, it substitutes for direct experience by providing windows into worlds and introductions to people with whom viewers otherwise have no contact.²⁷ Television also acts symbiotically with other aspects of pop culture contributing to and reflecting what people believe.²⁸

Research shows that television's impact on audiences is typically greater than that of other mass media.²⁹ This is largely due to its scope.³⁰ Television delivers a massive amount of content to the public, every hour of every day,³¹ and has become America's primary source

²⁴ This is not an instance where the better scholarly argument prevails.

²⁵ Sharp, *supra* note 17, at 111-12.

²⁶ Laurena Bernabo, *Expanding Television's Cultural Forums in the Digital Era: Prime Time Television, Twitter, and Black Lives Matter*, 63 J. BROAD. & ELEC. MEDIA 77 (2019); *see also* Podlas, *supra* note 5, at 491, 493, 499; Julius Riles et al., *Representations of Interpersonal Interaction and Race / Ethnicity*, 62 J. BROAD. & ELEC. MEDIA 302 (2018).

²⁷ Kimberlianne Podlas, *Guilty on All Accounts: Law & Order's Impact on Public Perceptions of Law and Order*, 18 SETON HALL J. SPORTS & ENT. L. 1, 11-14 (2008); Riles et al., *supra* note 25, at 302.

²⁸ Asimow, *supra* note 9, at xx-xxi; Xioa Wang, *Entertainment, Education, or Propaganda*, 54 J. BROAD. & ELEC. MEDIA 391, 391 (2010) (describing TV as the primary cultural storyteller).

²⁹ Podlas, *supra* note 5, at 496-98; Riles et al., *supra* note 26, at 303; Vafeiadis et al., *supra* note 5, at 357, 364; Wang, *supra* note 28, at 391.

³⁰ Mark D. Harmon et al., *Affluenza Revisited: Casting Doubt on Cultivation Effects*, 63 J. BROAD. & ELEC. MEDIA 268, 270-71 (2019).

³¹ Riles et al., *supra* note 26, at 303-04 (repeating stories, information, depictions, and content); Wang, *supra* note 28, at 391 (repeating content); *see also* Carter & McCann, *supra* note 10, at 17-18 (stating how TV stories saturate pop culture). This was also furthered by deregulation, which led to more cable networks. Bethany Anne Conway & Robin Stryker, *Does a Speaker's (In)formal Role in News Media Shape Perceptions of Political Incivility?* 65 J. BROAD. & ELEC. MEDIA 24 (2021).

of shared entertainment and information.³² According to Nielsen Media Research, the average viewer watched more than twenty-eight hours of live or time-shifted network television content per week last year.³³ In fact, once streaming and app or web-viewing is included, television consumption has increased over the past three years.³⁴

Not only is television content highly available, but also the medium's characteristics make it intellectually accessible. Generally, television content is presented in standard narrative format, organized to flow from a beginning to an end or from an issue to conclusion.³⁵ Furthermore, programs use established conventions, such as "Previously on . . ." recaps, establishing shots, split-screens, timed "act breaks," and on-screen graphics, to help communicate meaning. Together, these tools make content easier to follow by facilitating cognitive processing and comprehension.³⁶

Television also utilizes visual, aural, and textual mechanisms to underscore important information and orient viewers,³⁷ such as camera-work, lighting/color pallets, graphics, editing conventions (e.g., reaction shots, montages, dissolves, cross-cuts), B-roll, music cues and scores.³⁸ These enable television to convey more information to

³² Robson & Silbey, *supra* note 10, at 2-3 (asserting that, while literature and film are important, the average person is exposed to far more TV than other forms of information).

³³ *The Nielsen Total Audience Report: August 2020*, NIELSEN (Sept. 18, 2021, 11:03 AM) <https://www.nielsen.com/us/en/insights/report/2020/the-nielsen-total-audience-report-august-2020>; see also Felix Richter, *The Generation Gap in TV Consumption*, STATISTA (Nov. 20, 2020), <https://www.statista.com/chart/15224/daily-tv-consumption-by-us-adults>.

³⁴ *The Nielsen Total Audience Report: August 2020* (Aug. 13, 2020), <https://www.nielsen.com/us/en/insights/report/2020/the-nielsen-total-audience-report-august-2020> (25% of television consumption was via a streaming service).

³⁵ Hyang-Sook Kim & Kyongseok Kim, *Open Captioning as a Means of Communicating Health Information: The Role of Cognitive Load in Processing Entertainment-Education Content*, 64 J. BROAD. & ELEC. MEDIA 519, 519-21 (2020) (defining "narrative" as a cohesive, coherent story with a beginning, middle, and end that provides information or that raises issues and provides a resolution); Vafeiadis et al., *supra* note 5, at 357; see Podlas, *supra* note 3, at 481 ("narrative is a natural way of thinking").

³⁶ Kim & Kim, *supra* note 35, at 519-21; Vafeiadis et al., *supra* note 5, at 355-57. For an overview of the cognitive processing of information in narrative form, see Kim & Kim, *supra* note 35, at 521-23.

³⁷ Kim & Kim, *supra* note 35, at 532.

³⁸ Bernabo, *supra* note 26, at 79; Wang, *supra* note 28, at 391.

viewers on multiple, simultaneous “frequencies” without over-taxing cognitive resources.³⁹ This can improve viewer engagements compared with the same information in unimodal form or communicated through another medium, which makes television easier to process⁴⁰ and remember.⁴¹ Moreover, television is an equal opportunity medium, as large swaths of identical content are delivered to everyone free, and its impacts are not limited to “high culture” eighteen-hour PBS documentaries and Pulitzer-winning news reporting. In fact, research has found that entertainment programming such as police procedurals and doctor/hospital shows, often impact viewers more than news programming.⁴²

V. NARRATIVES AND MEDIA THEORY

Several disciplines that study narrative, including film theory, cultural studies, and literary theory, favor humanistic and interpretive approaches. Using a disciplinary lens or means of analysis, they explore what an exemplar (or representations in it) reflects or says about society, politics, law, history, etc.; how it does so; what tools it uses; and its broader cultural meanings.⁴³ This article does not subscribe to such a humanistic approach to analyzing television narrative.⁴⁴ Instead, this article considers narratives in and of pop culture through the lens of media theory.

A core concern of media theory is whether and how mass media content, such as television programs, news and political discourse, social media posts, impacts people (if at all). In particular, media effects research posits a relationship between exposure to media content

³⁹ Kim & Kim, *supra* note 35, at 532 (discussing the ease in processing visual TV narrative).

⁴⁰ Kim & Kim, *supra* note 35, at 532.

⁴¹ Jennifer Hoewe & Lindsey A. Sherrill, *The Influence of Female Lead Characters on Political TV Shows*, 63 J. BROAD. & ELEC. MEDIA 59, 61-64 (2019).

⁴² *Id.* at 60-65; Michael Stefanone et al., *The Relationship Between Traditional Mass Media and “Social Media”*: *Reality Television as a Model for Social Network Site Behavior*, 54 J. BROAD. & ELEC. MEDIA 508, 510 (2010).

⁴³ CARTER & McCANN, *supra* note 10, at 4-6; Sharp, *supra* note 17, at 111-15. Although scholars may propose alternative readings, they typically presume that whatever narrative artifact the scholar chose to examine is relevant and that the analysis is sound.

⁴⁴ Furthermore, there is no need to, as these approaches are already well-represented by scores of brilliant scholars.

and viewer response or reactions.⁴⁵ The types of effects vary depending on a number of intervening and mediating factors.⁴⁶ Hence, scholars analyze “media texts,” such as news and television shows, but the character and nature of this inquiry (be it quantitative or qualitative) is, to some degree, empirical.⁴⁷ It is grounded in testing a theory or obtaining something resembling evidence. Accordingly, inasmuch Media Theory focuses on the message as understood by and impacting the audience, it is a valuable tool for considering narrative, and can enhance interpretive approaches.

VI. AN INTRODUCTION TO TELEVISION EFFECTS

From a media theory perspective, it is important to understand which stories (or messages and depictions within those stories) under what circumstances have effects, what those are, why they may occur, and how they translate to the “real world.” After all, not every narrative has an effect, let alone the one a scholar imagines; indeed, effects are limited by the way viewers interpret the dominant message.⁴⁸

Many people accept that television has effects, but some of the conventionally-accepted wisdom about them is misunderstood or not substantiated by empirical evidence. Typically, television does not impact viewers in a direct or immediate way,⁴⁹ and there is little evidence

⁴⁵ Jae Kook Lee, *Knowledge as a Measure of News Receptions in the Agenda-setting Process*, 59 J. BROAD. & ELEC. MEDIA 22, 32 (2015); Stephan Winter et al., *Shared Entertainment Shared Opinions*, 62 J. BROAD. & ELEC. MEDIA 21, 25 (2018).

⁴⁶ These include the amount of content consumed; clarity, consistency, and repetition of messages; message features; audience characteristics; and the receiver’s pre-existing beliefs. See *infra* notes 59-139 and accompanying text.

⁴⁷ Kimberlianne Podlas, *Testing Television: Studying and Understanding the Impact of Television’s Depictions of Law and Justice*, in LAW AND JUSTICE ON THE SMALL SCREEN 87-96, 106 (Peter Robson & Jessica Silbey eds., 2012).

⁴⁸ Kimberlianne Podlas, *The “CSI Effect” and Other Forensic Fictions*, 27 LOY. L.A. ENT. L. REV. 87, 87 (2006-07); George Gerbner, *Growing Up With Television: The Cultivation Perspective*, in MEDIA EFFECTS: ADVANCES IN THEORY AND RESEARCH 17, 23-25 (Jennings Bryant & Dolf Zillman eds., 1994).

⁴⁹ Steven Eggermont, *Television Viewing, Perceived Similarity, and Adolescents’ Expectations of a Romantic Partner*, 47 J. BROAD. & ELEC. MEDIA 244, 248 (2004); Podlas, *supra* note 7, at 296; Podlas, *supra* note 5, at 499. For example, violence on television does not directly cause violence, but may desensitize viewers to violence. Even then, it depends on type of violence expressed in the narrative: is it trivialized, unpleasant, presented with a moral justification, consequences for victims. T. Franklin Waddell et al., *When Media Violence Awakens our Better Nature: The Effect of*

that people learn concrete rules from TV content.⁵⁰ Instead, television affects people in more subtle, long-term or indirect ways.⁵¹

Television is a cultural forum.⁵² Its repetition of stories within and across programs conveys norms, ideologies,⁵³ and values and cultivate beliefs about society.⁵⁴ The issues featured signal what is important or deserves attention,⁵⁵ the accompanying frames guide how viewers conceptualize those issues,⁵⁶ and the cumulative repetition of the narratives and events shown shape perceptions of reality (including how common something is⁵⁷ or how to behave).⁵⁸

Unpleasant Violence on Reactivity Toward Enjoyment of Media Violence, 63 J. BROAD. & ELEC. MEDIA 698, 698-701 (2019).

⁵⁰ Podlas, *supra* note 3, at 500. Content may, however, increase recognition recall, issue awareness, or prime audiences. Lei Guo & Chris J. Vargo, *Predictors of International News Flow: Exploring a Networked Global Media System*, 64 J. BROAD. & ELEC. MEDIA 418, 420 (2020).

⁵¹ Podlas, *supra* note 7, at 296-99; see Michael Morgan & James Shanahan, *The State of Cultivation*, 54 J. BROAD. & ELEC. MEDIA 337 (2010).

⁵² Bernabo, *supra* note 26, at 77-80, 85; Wang, *Entertainment*, *supra* note 28, at 391. This is particularly true of entertainment television.). Bernabo, *supra* note 26, at 77-80.

⁵³ Dana Mastro & Andrea Figueroa-Caballero, *Measuring Extremes: A Quantitative Content Analysis of Prime Time TV Depictions of Body Type*, 62 J. BROAD. & ELEC. MEDIA 320, 322 (2018); L.J. Shrum, *Effects of Television Portrayals of Crime and Violence on Viewers' Perceptions of Reality: A Psychological Process Perspective*, 22 L. STUD. F. 257, 260-62 (1998).

⁵⁴ Riles et al., *supra* note 26, at 303; Stefanone et al., *supra* note 42, at 510; Wang, *supra* note 28, at 391.

⁵⁵ Daniel Bergan & Heysung Lee, *Media Credibility and the Base Rate Fallacy*, 63 J. BROAD. & ELEC. MEDIA 195, 197-98 (2019); Lee, *supra* note 44, at 22-24; Mastro & Figueroa-Caballero, *supra* note 53, at 322-23; Podlas, *supra* note 5, at 499-500.

⁵⁶ Erin Klawitter & Eszter Hargittai, *Shortcuts to Well Being? Evaluating the Credibility of Online Health Information Through Multiple Complementary Heuristics*, 62 J. BROAD. & ELEC. MEDIA 251, 253 (2018); Mastro & Figueroa-Caballero, *supra* note 53, at 316; Scott Parrott et al., *Portrayals of Immigrants and Refugees in U.S. News Media: Visual Framing and Its Effect on Emotions and Attitudes*, 63 J. BROAD. & ELEC. MEDIA 677, 680-81 (2019); Thomas Powell et al., *Video Killed the News Article? Comparing Multimodal Framing Effects in News Videos and Articles*, 62 J. BROAD. & ELEC. MEDIA 578, 579 (2018).

⁵⁷ Bergan & Lee, *supra* note 55, at 197 (noting the base rates and proportions); Harmon et al., *supra* note 30, at 270-71.

⁵⁸ Mastro & Figueroa-Caballero, *supra* note 53, at 320-23, 332-33; Riles et al., *supra* note 26, at 302-05, 314; Stefanone et al., *supra* note 42, at 510, 512-13.

This also applies to the law.⁵⁹ Much of what the public knows, or thinks it knows, about law and the legal system comes from television.⁶⁰ Police and forensic procedurals, judge/reality courtroom shows, and the news tell stories about litigation, crime and criminals, the integrity of the bench and bar, and how law works. Consistent with scholarship on television in general, research shows that law as depicted on TV can nurture assumptions about the justice system,⁶¹ the behavior of judges,⁶² and opinions about legal issues.⁶³

The primary paradigms for understanding these impacts are outlined below. This overview does not endeavor to be a research methods primer, but seek to provide a foundation for understanding how television may exert impacts,⁶⁴ and thus, how it contributes to the nomos.

A. Heuristics

Television's narratives provide countless examples of behavior and causation. Research shows that people integrate them cognitively as decision-making heuristics or schema.⁶⁵ Heuristics are exemplars

⁵⁹ Podlas, *supra* note 7, at 295-96; Podlas, *supra* note 5, at 497, 499.

⁶⁰ Asimow, *supra* note 9, at xx-xxi; Podlas, *supra* note 7, at 295-96; Kimberlianne Podlas, "The CSI Effect": Exposing the Media Myth, 16 FORDHAM INTELL. PROP. MEDIA & ENT. L. J. 430, 443-44 (2006); Podlas, *supra* note 5, at 493-96.

⁶¹ Asimow, *supra* note 9, at xxi-xiii; Podlas, *supra* note 7, at 290-292; Kimberlianne Podlas, *Broadcast Litigiousness: Syndi-Court's Construction of Legal Consciousness*, 23 CARDOZO ARTS & ENT. L. J. 465 (2005); Sharp, *supra* note 17, at 113-120.

⁶² Asimow, *supra* note 9, at xxi-xxii; *Syndicated Courtroom*, *supra* note 10, at 558; Podlas, *supra* note 61, at 483; Nancy S. Marder, *Judging Reality Television Judges in*, LAW AND JUSTICE ON THE SMALL SCREEN, 229-49, 243-46 (Peter Robson & Jessica Silbey eds., 2012); Podlas, *supra* note 3, at 495.

⁶³ Podlas, *supra* note 7, at 290, 299; Steven Keslowitz, *The Simpsons, 24, and the Law: How Homer Simpson and Jack Bauer Influence Congressional Lawmaking and Judicial Reasoning*, 29 CARDOZO L. REV. 2787, 2789 (2008); Kimberlianne Podlas, *As Seen on TV: The Normative Influence of Syndi-court on Contemporary Litigiousness*, 11 VILL. SPORTS & ENT. L. REV. 1, 10-11, 16-17 (2009).

⁶⁴ Mike Schmierbach et al., *Exploring Third-Person Differences Between Gamers and Nongamers*, 61 J. COMMUN 307, 307-08 (2011) (Readers may think, "these effects apply to others, but they do not apply to me." This exemplifies the well-documented "third person effect," the tendency to believe that media affects others – third parties – but not oneself.)

⁶⁵ Klawitter & Hargittai, *supra* note 56, at 253; Riles, *supra* note 26, at 302-04; Shrum, *supra* note 53, at 257; see also Podlas, *supra* note 7, at 297 (discussing television's contribution to heuristics of law).

or mental rules of thumb that help people process information quickly, make sense of behavior, and draw inferences about events,⁶⁶ such as guilty people run or forensic evidence is absolute.⁶⁷ The easier something is to recall – be it due to repeated exposure, personal impact, or message attributes – the more powerful it is as a heuristic device.⁶⁸ Hence, the more one watches television, the more one will be exposed to television’s examples, making them easy-to-recall and apply heuristics.⁶⁹

Furthermore, television’s depictions have been found to shape judgements, and perceptions of how common or likely something is.⁷⁰ When making judgements about a population or event, people draw on these television exemplars and anecdotal “evidence;” furthermore, viewers rely on these sources of information more heavily than statistics and numerical evidence.⁷¹

Television also supplies heuristics about the legal system,⁷² such as how innocent or trustworthy people (in contrast to guilty and dishonest people) act and how judges behave.⁷³ These television-sourced heuristics are so meaningful that some research shows that when trial evidence or testimony is ambiguous or conflicts with

⁶⁶ Porismita Borah, *Conceptual Issues in Framing Theory: A Systematic Examination of a Decade’s Literature*, 61 J. COMM’N 246, 248 (2011); R. Kelly Garrett et al., *Undermining the Corrective Effects of Media-Based Political Fact Checking? The Role of Contextual Cues and Naïve Theory*, 63 J. COMM’N 1, 2 (2013); Richard K. Sherwin, *Symposium: Introduction: Picturing Justice: Images of Law & (and) Lawyers in the Visual Media* 30 U.S.F. L. REV. 891, 892 (1995).

⁶⁷ Podlas, *supra* note 47, at 90-91; *see* Asimow, *supra* note 9, at xxv n.5-8 (demonstrating that viewers who watch *CSI* overestimate the probative value of “scientific” evidence presented by the prosecution, apparently applying a heuristic derived from television).

⁶⁸ Garrett et al., *supra* note 66, at 2. Additionally, the easier something is to recall, the more common we think it is, which self-validates the heuristic.

⁶⁹ Podlas, *supra* note 7, at 297; Kim & Kim, *supra* note 35, at 519-21, 531; Sarah Sun Beale, *The News Media’s Influence on Criminal Justice Policy: How Market-Driven News Promotes Punitiveness*, 48 WM. & MARY L. REV. 397 (2006).

⁷⁰ Bergan & Lee, *supra* note 55, at 195, 197 (discussing base rates and proportions); Harmon et al., *supra* note 30, at 270-71.

⁷¹ Bergan & Lee, *supra* note 55, at 195-97 (explaining exemplar theory); Mastro & Figueroa-Caballero, *supra* note 53, at 320-21.

⁷² Podlas, *supra* note 47, at 88-90; Shrum, *supra* note 53, at 262-63.

⁷³ Podlas, *supra* note 10, at 558; Nancy S. Marder, *Judging Reality Television Judges in*, LAW AND JUSTICE ON THE SMALL SCREEN, 243-45 (Peter Robson & Jessica Silbey eds., 2012); Richard K. Sherwin, *Celebrity Lawyers and the Cult of Personality*, 22 N.Y.L. SCH. L. REV. 517, 519, 521 (2003).

common narratives, jurors favor the account that most closely resembles a popular or commonly known story.⁷⁴ Additionally, heuristics can impact the public's perception of litigants and litigation. For example, the frequency or number of media reports of civil litigation and personal injury awards has been shown to contribute to juror and public perception that both are frequent.⁷⁵ To illustrate, twenty-five years ago, reports of an explosion of litigation began flooding media.⁷⁶ Despite data to the contrary,⁷⁷ the public came to believe there was a litigation crisis.⁷⁸

B. Framing

Another way television impacts viewers is through framing.⁷⁹ Studies show that when television frames an issue or group of people⁸⁰ in a particular way,⁸¹ the audience tends to adopt that framework in

⁷⁴ NEAL FEIGENSON & CHRISTINA SPIESEL, *LAW ON DISPLAY* 148-50 (N.Y. Univ. Press eds. 2009); Podlas, *supra* note 3, at 484-85.

⁷⁵ Podlas, *supra* note 60, at 12-13; VALERIA P. HANS, *BUSINESS ON TRIAL: THE CIVIL JURY AND CORPORATE RESPONSIBILITY* 70 (Yale Univ. Press / New Haven & London eds. 2000); Jennifer K. Robbennolt, *Determining Punitive Damages: Empirical Insights and Implications for Reform*, 50 *BUFF. L. REV.* 104, 118, 126 (2002).

⁷⁶ Podlas, *supra* note 60, at 3-8 nn.7-15; Marc S. Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society*, 31 *UCLA L. REV.* 4, 6-8 (1983); HANS, *supra* note 75, at 70-71.

⁷⁷ HANS, *supra* note 75, at 216-17; *see also* Podlas, *supra* note 60, at 8-10, 13-15 (citing studies disputing litigation crisis and showing correlation between heightened publicity and public perceptions).

⁷⁸ Podlas, *supra* note 63, at 3-8 and nn.7-15 (citations therein); Marc S. Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About our Allegedly Contentious and Litigious Society*, 31 *UCLA L. REV.* 4, 6-8 (1983); HANS, *supra* note 75, at 70-71.

⁷⁹ Parrott et al., *supra* note 56, at 680.

⁸⁰ For example, framing immigrants in pursuit of the American dream versus illegal aliens stealing jobs from Americans, or Black Lives Matter protests against police use-of-force as opposed to criminal riots and legitimate policing. Danielle K. Kilgo, *Police Violence and Protests: Digital Media Maintenance of Racism, Protest Repression, and the Status Quo*, 65 *J. BROAD. & ELEC. MEDIA* 157, 157-61 (2021).

⁸¹ *Id.* at 157-60 (analyzing the negative framing of Black people and framing protest activity as criminal).

thinking about the issue.⁸² Although the frame does not tell viewers which opinion to hold (i.e., that immigration is bad or good), by providing a lens through which to analyze the issue or event, it prompts specific trains of thought that lead the viewer to form particular conclusions.⁸³ In this way, the frame impacts perception.⁸⁴ Once established, frames are unusually resilient to change.⁸⁵ They are so resilient that when people confront information contrary to the frame, they maintain and even strengthen the frame.⁸⁶ In fact, people tend to *dis-trust* sources that present information that conflicts with an established frame.⁸⁷

Inasmuch as a television frame becomes a template for assessing actions and understanding issues, it impacts the public's acceptance of legal principles and support for legislation.⁸⁸ For instance, framing an incident as another police murder of a black man as opposed to an unfortunate death due to a suspect's refusing to comply with a lawful police order, influences whether the public thinks the

⁸² James Druckman & Toby Bolsen, *Framing, Motivated Reasoning, and Opinions About Emerging Technologies*, 61 J. COMM'C'N 659, 663 (2011); Parrott et al., *supra* note 56, at 680-81; Powell et al., *supra* note 56, at 579.

⁸³ Borah, *supra* note 66, at 247-28; Druckman & Bolsen, *supra* note 82, at 663; Erik C. Nisbet et al., *Attitude Change in Competitive Framing Environments? Open-/Closed-Mindedness, Framing Effects, and Climate Change*, 63 J. COMM'C'N 766, 767 (2013); Young Mie Kim & John Vishak, *Just Laugh! You Don't Need to Remember: The Effects of Entertainment Media on Political Information Acquisition and Information Processing in Political Judgment*, 58 J. COMM'C'N 338, 357 (2008); Parrott et al., *supra* note 56, at 680-81; Powell et al., *supra* note 56, at 579.

⁸⁴ Druckman & Bolsen, *supra* note 82, at 661-62; Nisbet et al., *supra* note 83, at 766-67; Powell et al., *supra* note 56, at 579. In some instances, news frames can evoke emotional responses. Theresa M. de los Santos & Robin Nabi, *Emotionally Charged: Exploring the Role of Emotion in Online News Information Seeking and Processing*, 63 J. BROAD. & ELEC. MEDIA 38, 39-42 (2019).

⁸⁵ Additionally, exposure to television frames renders the concepts as framed more accessible, thereby activating schema, and increasing its strength as a heuristic device Kyung Lee, *When Big Brother Uses Twitter, Too: Productive Forms of Policing and the Role of Media in the Seoul G20 Protests in South Korea*, 8 COMM'C'N CULTURE & CRITIQUE 376, 378 (2015); Parrott et al., *supra* note 56, at 680; Powell et al., *supra* note 56, at 579.

⁸⁶ Druckman & Bolsen, *supra* note 82, at 663, 673; Garrett et al., *supra* note 66, at 617-19.

⁸⁷ Garrett et al., *supra* note 66, at 617-18.

⁸⁸ Margaret B. Kovera, *The Effects of General Pretrial Publicity on Juror Decisions: An Examination of Moderators and Mediating Mechanisms*, 26 L. & HUM. BEHAV. 43, 62-65 (2002).

action is legal or illegal, problematic,⁸⁹ and whether the law needs to be reformed and how.⁹⁰ Similarly, the way television frames types of evidence (e.g., anything labeled “forensic” is infallible), crime plots (e.g., the jilted woman seeking revenge), and witnesses (e.g., scientific experts as neutral scientists), guides jurors as they assess evidence and construct a story of what occurred.⁹¹ In fact, information consistent with an existing frame is deemed more believable, and “[i]f the facts do not fit a frame, the frame stays and the facts bounce off.”⁹²

The way television portrays members of the justice system can also impact viewers’ opinion about them.⁹³ One study showed that habitual or heavy viewing⁹⁴ of *Law & Order* (and its depiction of honorable prosecutors on the side of law and victims) was associated with distinctly positive opinions of prosecutors and a belief that they were “very moral.”⁹⁵ Several studies have found that, consistent with *CSI*’s portrayal of members of the forensics team as brilliant individuals whose sole interest is using science to solve crime, viewers and jurors think of witnesses testifying about forensic matters in a similar way.⁹⁶ Indeed, to the extent that forensic drama viewing impacts jurors or the public, it engenders positive opinions about forensics professionals⁹⁷ and strengthens beliefs in the infallibility of their conclusions and forensic evidence.⁹⁸

⁸⁹ Kilgo, *supra* note 80, at 158-61, 170-72 (discussing the BLM protests); Brendan R. Watson, *Normalizing Community Structure’s Restraint on Critical Tweets About a Polluting Industry*, 58 J. BROAD. ELEC. MEDIA 581, 584-85 (analyzing media framing of the BP oil spill).

⁹⁰ Podlas, *supra* note 3, at 479-82.

⁹¹ *Id.* at 481-82, 488-97.

⁹² Druckman & Bolsen, *supra* note 82, at 662.

⁹³ Podlas, *supra* note 3, at 495-96; Podlas, *supra* note 27, at 11-14.

⁹⁴ This was by viewers with no pre-existing bias for or against police and prosecutors.

⁹⁵ Podlas, *supra* note 27, at 1; Podlas, *supra* note 3, at 497-500.

⁹⁶ Simon A. Cole, *A Surfeit of Science: The “CSI Effect” and the Media Appropriation of the Public Understanding of Science*, 24 PUB. UNDERSTANDING SCI. 130, 131 (2015); Simon A. Cole, *Forensic Science and Wrongful Convictions: From Exposer to Contributor to Corrector*, 46 NEW ENG. L. REV. 711, 718-19 (2012); Cole & Di-oso-Villa, *Investigating the ‘CSI Effect’ Effect: Media and Litigation Crisis in Criminal Law*, 61 STAN. L. REV. 1335, 1348 (2009); Podlas, *supra* note 47, at 90-91.

⁹⁷ Kar-Weng Chan, *An Investigation Into the CSI Effect on the Malaysian Population*, 45 AUST L.J. FORENSIC SCI. 417, 426 (2013).

⁹⁸ Asimow, *supra* note 9, at xxiii, xxv.

C. Agenda-Setting

Television also plays a role in agenda-setting.⁹⁹ The core hypothesis of agenda-setting is that issue salience transfers from media to audience; in other words, if media highlights an issue or frequently show stories about it, the audience will perceive it important or deserving of attention.¹⁰⁰ For example, research has found that the public places the highest degree of importance on the issues most frequently covered by television news programs.¹⁰¹

Once an issue has made it onto the public agenda, it may inspire legislation, protest, or actions to address it.¹⁰² For example, once beliefs in the litigation crisis became part of the public agenda, people proposed and supported legislation to limit damage awards and liability. Fifteen years ago, when media reports stated that a “CSI Effect” was causing jurors to wrongly acquit, prosecutors began adjusting voir dire and requesting special jury instructions,¹⁰³ despite the fact that scholars found no such anti-prosecution effect.¹⁰⁴ Nonetheless, the myth of the “CSI Effect” continued circulating in media and amongst members of the bar. More recently, news media devoted significant time and attention to teen sexting. Soon after, parents and politicians advocated for legislation to combat the teen-sexting epidemic and, within months, several states were debating sexting legislation.¹⁰⁵ A few months later, the issue garnered little to no news coverage, and most of those proposed bills never matured into laws.¹⁰⁶

⁹⁹ Lee, *supra* note 45, at 22-24.

¹⁰⁰ Bergan & Lee, *supra* note 55, at 198; Lee, *supra* note 45, at 22-24; Mastro & Figueroa-Caballero, *supra* note 53, at 322.

¹⁰¹ Lee, *supra* note 45, at 22-24.

¹⁰² Podlas, *supra* note 47, at 91-92.

¹⁰³ CHRISTINE A. CORCOS, PROSECUTORS AND PSYCHICS ON THE AIR: DOES A ‘PSYCHIC DETECTIVE EFFECT’ EXIST? 174 (Peter Robson & Jessica Silbey eds., 2012); Podlas, *supra* note 60, at 463; Podlas, *supra* note 3, at 500-01.

¹⁰⁴ Asimow, *supra* note 9, at xxiii, xxv.

¹⁰⁵ Kimberlianne Podlas, *The “Legal Epidemiology” of the Teen Sexting Epidemic: How the Media Influenced a Legislative Outbreak*, 12 PHG. TECH. L. POL’Y 1, 4-7, 10-12 (2011).

¹⁰⁶ *Id.* at 34-35.

D. Social Modeling

Television can impact social behaviors by showing people how to behave.¹⁰⁷ According to social cognitive theory (formerly known as social learning theory), people learn how to behave by watching, and then modeling, behaviors.¹⁰⁸ In order to learn a behavior, people must see it repeatedly, reference it, and then reproduce it.¹⁰⁹ Television supplies a plethora of behavioral models displayed by countless people and characters in various situations. Furthermore, because these are concrete and often situated within scenarios tracking real-life, they are easy to follow.¹¹⁰

These behavioral models also apply to the legal system and how to act in a courtroom.¹¹¹ As a testament to the impact of TV narratives on modeling behaviors within the legal system, after the influx of American courtroom shows into France, litigants began calling judges “Your Honor” and people started expecting *Miranda* warnings.¹¹² The French system, however, is inquisitorial where the title “Your Honor” is inappropriate, and *Miranda* warnings are specific to the U.S. Constitution.¹¹³

E. Cultivation

According to cultivation theory, the heavy, long-term exposure to television’s depictions and themes cultivates in viewers perceptions

¹⁰⁷ Wang, *supra* note 28, at 392; ALBERT BANDURA, SOCIAL LEARNING THEORY 64-68 (1977) (model of social learning through television). The behavior socialized depends on the narrative, to wit: the behaviors and interactions shown, which characters do or do not interact with which genders, races, and ethnicities, and the roles and attributes of the characters/people. Riles et al., *supra* note 26, at 302-05, 314.

¹⁰⁸ Stefanone et al., *supra* note 42, at 512-13; Mastro & Figueroa-Caballero, *supra* note 53, at 323, 327.

¹⁰⁹ Mastro & Figueroa-Caballero, *supra* note 53, at 323; Riles et al., *supra* note 26, at 304.

¹¹⁰ Riles et al., *supra* note 26, at 302-05, 314, 320-21; Stefanone et al., *supra* note 42, at 512-13; Wang, *supra* note 28, at 391; *see also* Harmon et al., *supra* note 30, at 270-71 (cognitive processing model); Mastro & Figueroa-Caballero, *supra* note 53, at 322-23, 334 (social cognitive theory).

¹¹¹ Podlas, *supra* note 5, at 500-03.

¹¹² Barbara Villez, *French Television Lawyers in “Avocats et Associes,”* in MICHAEL ASIMOW, LAWYERS IN YOUR LIVING ROOM! LAW ON TELEVISION 275, 275-77 (2009).

¹¹³ *Id.*; Asimow, *supra* note 9, at xxiii.

of reality that are consistent with those shown on TV.¹¹⁴ This is not an immediate, direct effect but a cumulative, subtle one observed in “heavy” viewers, i.e., people who watch a significant amount of TV (so are constantly inundated by television’s reality).¹¹⁵

Cultivation theory was developed in the 1970s, when there were three commercial broadcast networks¹¹⁶ and a finite universe of content.¹¹⁷ Therefore, it theorized that any “heavy” viewer who watched a significant amount of television would be exposed to most of the same depictions as any other “heavy” viewer.¹¹⁸ This reasoning was sound, until cable and the proliferation of channels in the 1990s gave viewers more content and more control over what they watched.¹¹⁹ Because it can no longer be presumed that heavy viewers of TV overall consume the same media diet,¹²⁰ cultivation has been refined to account for genre-viewing and “pockets of exposure.”¹²¹

¹¹⁴ Mastro & Figueroa-Caballero, *supra* note 53, at 322-23, 332; Podlas, *supra* note 47, at 89-90.

¹¹⁵ Asimow, *supra* note 9, at xxi-xxii; Podlas, *supra* note 47, at 89-90. Cultivation does not hypothesize a 1:1 correlation between television viewing and a belief in TV’s version of the world, or where moderate viewing leads to moderate impacts and significant viewing leads to significant impacts.

¹¹⁶ Robert J. Thompson, *Television in the United States*, in *ENCYCLOPEDIA BRITANNICA*, (2019), <https://www.britannica.com/art/television-in-the-United-States/The-late-1960s-and-early-70s-the-relevance-movement> (recounting the history of and changes in the ABC, CBS, and NBC in the 1970s).

¹¹⁷ Jonathan Cohen & Gabriel Weimann, *Cultivation Revisited: Some Genres Have Some Effects on Some Viewers*, 13 *COMMUN REPS.* 99, 101-02, 108 (2000); Morgan and Shanahan, *supra* note 51, at 337-40.

¹¹⁸ Because cultivation is built on the idea that if viewers see something all the time, they will come to think it is common, cultivation does not work the other way – the absence or infrequency of depictions on television does not cultivate a perception among frequent viewers that the unseen thing or unwitnessed behavior is uncommon. The absence may impact the lack of role-modeling or explain why an issue failed to reach the public agenda, but absence does not cultivate a perception of absence: In mathematical terms, 0 depictions x 0 = 0.

¹¹⁹ *See infra* Section VII.

¹²⁰ *See* Harmon et al., *supra* note 30, at 269-71; Riles et al., *supra* note 26, at 306, 316 (noting differences viewing among different groups of viewers); Rune Karlsen et al., *Do High-Choice Media Environments Facilitate News Avoidance?*, 64 *J. BROAD. & ELEC. MEDIA* 794, 794-96 (2020).

¹²¹ Chan, *supra* note 97, at 417-18 (genre-specific cultivation effect); David E. Mancini, *The “CSI Effect” in an Actual Juror Sample: Why Crime Show Genre May Matter*, 15 *N. AM. J. PSYCHOL.* 543, 545-48 (2013); David Tewksbury, *The Seeds of Audience Fragmentation: Specialization in the Use of Online News Sites*, 49 *J. BROAD. & ELEC. MEDIA* 332, 333 (2005).

By disambiguating program types and using a *direct* (and more precise) measure of content-type viewing researchers have found genre-specific cultivation effects in heavy/frequent viewers of programs sharing narratives and depictions.¹²² In other words, heavy viewers of a specific program genre have been found to hold beliefs consistent with the repeated depictions endemic of that type of program.¹²³

Cultivation is one of the primary theories used to explain law-related television's impact on viewers.¹²⁴ Research has shown that when a heavy/frequent television viewer of a particular type of law program repeatedly sees factual (i.e., news, documentaries) and fictional stories of crime and violence, over time, the viewer may come to believe that crime and violence are common in the real world, typically perpetrated by certain races, or on certain genders.¹²⁵ These stories can also cultivate viewer beliefs about judge behavior,¹²⁶ and the infallibility (and absolute objectivity) of forensic evidence presented at trial.¹²⁷

F. Counterintuitive Impacts

It is important to recognize that effects can sometimes be counter-intuitive or factors such as message features,¹²⁸ preceding

¹²² Tewksbury, *supra* note 120, at 343-44; Riles et al., *supra* note 26, at 306, 317; Patrick Rossler & Hans-Bernd Brosius, *Do Talk Shows Cultivate Adolescents' Views of the World? A Prolonged-Exposure Experiment*, 51 J. COMMUN 142, 160 (2001).

¹²³ Chan, *supra* note 97, at 417-18; Mancini, *supra* note 120, at 545-48.

¹²⁴ Asimow, *supra* note 9, at xxi-xxii; Podlas, *supra* note 10, at 89-90.

¹²⁵ Jonathan Cohen & Gabriel Weimann, *Cultivation Revisited: Some Genres Have Some Effects on Some Viewers*, 13 COMMUN REPS. 99, 112 (2000); Robert Goidel, et al., *The Impact of Television Viewing on Perceptions of Juvenile Crime*, 50 J. BROAD. & ELEC. MEDIA 119, 121 (2006); Morgan & Shanahan, *supra* note 51, at 339; Scott Parrott & Caroline T. Parrott, *U.S. Television's "Mean World" for White Women: The Portrayal of Gender and Race on Fictional Crime Dramas*, 73 SEX ROLES 70, 70 (2015).

¹²⁶ Kimberlianne Podlas, *Should We Blame Judge Judy?: The Messages TV Courtrooms Send Viewers*, 86 JUDICATURE 38, 38 (2002); Kimberlianne Podlas, *Please Adjust Your Signal: How Television's Syndicated Courtrooms Bias Our Juror Citizenry*, 39 AM. BUS. L. J. 1, 2 (2001).

¹²⁷ Cole & Dioso-Villa, *supra* note 96, at 137; Podlas, *supra* note 47, at 91-93; Podlas, *supra* note 60, at 432-36.

¹²⁸ Fear appeals and disgust appeals can interfere with message processing and have different impacts on different audiences. Glenn Leshner et al., *When a Fear Appeal*

information,¹²⁹ group identification,¹³⁰ one's ideological beliefs,¹³¹ and whether people think the message is intended to persuade them.¹³² For instance, the impact of *persuasive* messages, such as advertisements and public service announcements, depends on the listener's existing attitudes.¹³³ If the message is too far beyond the listener's latitude of acceptance, they will reject it.¹³⁴ Additionally, some persuasive media messages have *the exact opposite impact* the messenger intends: If the listener perceives the message to threaten choice, reduce personal freedom, or take something away,¹³⁵ it galvanizes the listener to react against the message (i.e., defensive reactance or psychological reactance).¹³⁶

Furthermore, depending on their existing attitudes or political beliefs, people sometimes interpret television narratives or messages differently.¹³⁷ When a message is not overt, or is communicated through humor, viewers tend to interpret its meaning to be consistent with their existing political views.¹³⁸ For example, satire is prone to misinterpretation because it says one thing but means another.¹³⁹ This

Isn't Just a Fear Appeal: The Effects of Graphic Anti-tobacco Messages, 54 J. BROAD. & ELEC. MEDIA 485, 486-487, 490-91 (2010).

¹²⁹ For information on priming theory see Marc Ziegele et al., *Socially Destructive? Effects of Negative and Hateful User Comments on Readers' Donation Behavior Toward Refugees and Homeless Persons*, 62 J. BROAD. & ELEC. MEDIA 636, 638-39, 648 (2018).

¹³⁰ See *infra* Section XI(A).

¹³¹ See *infra* notes 206-07, 215-17, 245-47, 257-62.

¹³² Ziegele et al., *supra* note 129, at 640; see *infra* notes 232-234.

¹³³ Ziegele et al., *supra* note 129, at 640-41.

¹³⁴ *Id.*

¹³⁵ Leshner et al., *supra* note 128, at 491, 501-03; Kira A. Varava & Brian L. Quick, *Adolescents and Movie Ratings: Is Psychological Reactance a Theoretical Explanation for the Forbidden Fruit Effect?*, 59 J. BROAD. & ELEC. MEDIA 149, 152-53 (2015); Wonsun Shin & Hye Kyung Kim, *What Motivates Parents to Mediate Children's Use of Smartphones? An Application of the Theory of Planned Behavior*, 63 J. BROAD. & ELEC. MEDIA 144, 154-55 (2019).

¹³⁶ Varava & Quick, *supra* note 135, at 152-53, 161; Ziegele, *supra* note 129, at 641. Another iteration of defensive reactance is that when a person perceives a message as intended to persuade them, they will reject it. Shin & Kim, *supra* note 134, at 154-55.

¹³⁷ Podlas, *supra* note 7, at 291-92; Ziegele et al., *supra* note 129, at 640.

¹³⁸ Jody C. Baumgartner & Jonathan S. Morris, *One "Nation," Under Stephen? The Effects of 'The Colbert Report' on American Youth*, 52 J. BROAD. & ELEC. MEDIA 622, 624-25 (2008); Podlas, *supra* note 7, at 291-92.

¹³⁹ Podlas, *supra* note 7, at 314.

can confound the underlying message or cause audiences to interpret the message differently than intended.¹⁴⁰

Sometimes, scholars and researchers simply misread the narrative or hypothesize an effect based on a general narrative theme (e.g., forensics) rather than the actual narrative or lesson. Other times, they interpret the underlying message differently than the average viewer. These are not counter-effects or caused by mediating factors but reveal mistakes or differences in interpretation. If a scholar misinterprets the narrative or its lesson, they will end up analyzing the misinterpretation. This underscores the value of empiricism and how it can help inform more interpretive approaches to narrative.

VII. CHANGES IN TV MEDIA ENVIRONMENT

In the last fifteen to twenty years, the media environment has changed significantly.¹⁴¹ Digital, internet, and mobile technologies have expanded the ways that people consume media and transformed the notion of “watching TV.”¹⁴² A plethora of cable services, streaming platforms, and screens enable people to “watch TV” on devices other than televisions, wherever, whenever, and however they wish.¹⁴³

¹⁴⁰ *Id.* at 291 (“[H]umor can increase audience attention, receptiveness, and positive response to a message; on the other hand, satire’s style of saying one thing but meaning another can confound the underlying message”); Kimberlianne Podlas, *Homerus Lex: Investigating American Legal Culture through the Lens of the Simpsons*, 17 SETON HALL J. SPORTS & ENT. L. 93 (2007).

¹⁴¹ Lauren Feldman et al., *Explaining Media Choice*, 62 J. BROAD. & ELEC. MEDIA 109, 110 (2018); Homero Gil de Zúñiga & Hsuan-Ting Chen, *Digital Media and Politics: Effects of the Great Information and Communication Divides*, 63 J. BROAD. & ELEC. MEDIA 365, 368 (2019); Philipp Müller et al., *Of Rules and Role Models: How Perceptions of Parents’ Mediation and Modeling Contribute to Individuals’ Media Innovativeness*, 62 J. BROAD. & ELEC. MEDIA 692, 692 (2018).

¹⁴² Cédric Courtois & Sara Nelissen, *Family Television Viewing and its Alternatives: Associations with Closeness within and between Generations*, 62 J. BROAD. & ELEC. MEDIA 673, 675-77 (2018); Debra Muller Price & Kelly Kaufhold, *Bordering on Empathy: The Effect of Selective Exposure and Border Residency on Immigration Attitudes*, 63 J. BROAD. & ELEC. MEDIA 494, 496 (2019); Alec Tefertiller & Kim Sheehan, *TV in the Streaming Age: Motivations, Behaviors, and Satisfaction of Post-Network Television*, 63 J. BROAD. & ELEC. MEDIA 595, 595 (2019).

¹⁴³ Jhih-Syuan Lin et al., *Understanding the Nature, Uses, and Gratifications of Social Television: Implications for Developing Viewers Engagement and Network Loyalty*, 62 J. BROAD. & ELEC. MEDIA 1, 1 (2018); Lauren Reichart Smith et al., *Tweet, Retweet, Favorite: The Impact of Twitter Use on Enjoyment and Sports Viewing*, 63

Additionally, the explosion of content-providers and services¹⁴⁴ has translated to a greater amount and variety of content.¹⁴⁵ Whereas the traditional TV environment was low-choice – the audience chose from a pre-fix menu of relatively homogenous, “norm-core” content¹⁴⁶ – the present “post-network” era is defined by choice.¹⁴⁷ Today’s viewers have myriad options of what to watch and how to watch it,¹⁴⁸ and can craft a television diet tailored to their unique tastes and interests.¹⁴⁹

This combination of unprecedented choice and viewer control manifests as viewer selectivity; not only can viewers choose which content to watch, but they can choose which content to avoid.¹⁵⁰ Counterintuitively, because highly selective viewers can reduce their exposure to non-preferred content, extensive choice in a sea of content can result in viewers consuming a more limited array of television programming.¹⁵¹ In this way, audience selectivity leads to audience segmentation or fragmentation.¹⁵²

J. BROAD. & ELEC. MEDIA 94, 95 (2019). Ten years ago, many in the television industry considered streaming video a novelty that was ancillary to broadcast and cable television. Today it is viable alternative to traditional television. Douglas A. Ferguson, *Book Review: The Audience and Business of YouTube and Online Videos*, 62 J. BROAD. & ELEC. MEDIA 717, 717 (2018).

¹⁴⁴ Harmon et al., *supra* note 30, at 270; Lin et al., *supra* note 143.

¹⁴⁵ Feldman et al., *supra* note 140; Harmon et al., *supra* note 30, at 270; Smith et al., *supra* note 142; Nicholas W. Robinson et al., *The Stubborn Pervasiveness of Television News in the Digital Age and the Field’s Attention to the Medium, 2010-2014*, 62 J. BROAD. & ELEC. MEDIA 287, 287-88 (2018).

¹⁴⁶ A majority of content is intended for the largest proportion of the public possible. Bernabo, *supra* note 26, at 79.

¹⁴⁷ Stephanie Edgerly, *Red Media, Blue Media, and Purple Media: News Repertoires in the Colorful Media Landscape*, 59 J. BROAD. & ELEC. MEDIA 1, 1 (2015); Robinson et al., *supra* note 144, at 288.

¹⁴⁸ Courtois & Nelissen, *supra* note 141, at 673, 675-76; Feldman et al., *supra* note 140; Carolyn A. Lin, *The Challenge of Information and Communication Divides in the Age of Disruptive Technology*, 63 J. BROAD. & ELEC. MEDIA 587, 589 (2019).

¹⁴⁹ Bernabo, *supra* note 26, at 79; Edgerly, *supra* note 147; Feldman et al., *supra* note 140.

¹⁵⁰ Bernabo, *supra* note 26, at 79; Feldman et al., *supra* note 140; Robinson et al., *supra* note 144, at 288.

¹⁵¹ Robinson et al., *supra* note 144, at 288.

¹⁵² Bernabo, *supra* note 26, at 79; Taberez Ahmed Neyazi et al., *Channel Complementarity of Displacement? Theory and Evidence from a Non-Western Election Context*, 63 J. BROAD. & ELEC. MEDIA 656, 659-60 (2019); Price & Kaufhold, *supra* note 141.

VIII. RECONSIDERING TELEVISION IMPACTS

Historically, television's evolution as a medium and mechanism through which to consume content has increased both the use of television media and television's audience.¹⁵³ Consequently, this expanded television's cultural reach and potential impact. For example, coaxial cables, satellite televisions, and digital streaming services provide television technology, and by extension content, to more people; additionally, more networks and content creators led to more programming.¹⁵⁴

The recent changes in television consumption and distribution, particularly those resulting in audience selectivity and fragmentation, require considering whether television's status as a library of narratives or its impact has changed.¹⁵⁵ This investigation presents two main questions. First, and most fundamentally, has television been displaced by new media; or, stated more simply, do people still watch TV? Second, is there evidence that viewer selectivity, audience fragmentation, or mode of viewing either alters television's impacts or undermines the premises upon which those impacts are based? Although

¹⁵³ Harmon et al., *supra* note 30, at 280; Neyazi et al., *supra* note 151, at 657. Overall, changes were additive and complementary rather than subtractive. Harmon et al., *supra* note 30, at 280. Cable, VCR/ DVD players, and DVRs gave viewers more choice by enabling them to time-shift and select a greater range of content, Elia Powers, *Building Buzz and Episodes With Bite-Sized Content: Portlandia's Formula for Turning a Video Project Into a Television Series*, 58 J. BROAD. & ELEC. MEDIA 342, 344-45 (2014); Tefertiller & Sheehan, *supra* note 141, at 597, but did not reduce the overall audience for or access to TV content. See Neyazi et al., *supra* note 151, at 657-60.

¹⁵⁴ Neyazi et al., *supra* note 151, at 657-60.

¹⁵⁵ See Lindita Camaj & Temple Northrup, *Dual-Screening the Candidate Image during Presidential Debates: The Moderating Role of Twitter and Need to Evaluate for the Effects on Candidate Perceptions*, 63 J. BROAD. & ELEC. MEDIA 20, 21, 24 (2019) (stating scholars are questioning how existing theories apply to the present fragmented media environment); Lisa Glebatis Parks et al., *Podcast Uses and Gratifications-Scale Development*, 63 J. BROAD. & ELEC. MEDIA 617, 619 (2019) ("Since the 1970s, new communication media led to questions of how" existing theories of TV use and consumption apply to new media.). A few academics have gone as far as to suggest that the recent decline in the amount of television scholarship signifies the declining relevance of the medium. Robinson et al., *supra* note 144, at 297-99. Of course, less recent *television-specific* research does not mean that television's impact has dissipated. Rather, new PhDs and junior researchers may be contemplating the media forms and devices of their generation or extending television research to these. In any event, most theories of media influence are not media-specific.

these questions are framed in terms of re-examining television effects research, the answers speak to the impact of television narratives and, in turn, to television's contribution to the nomos.

IX. IS TELEVISION RELEVANT: DO PEOPLE STILL “WATCH TV”?

Many of the noted changes in the television environment translate to, and thus impact, television news programming differently than entertainment and other programming. Accordingly, television news is discussed separately.

Research shows that television remains a dominant cultural medium.¹⁵⁶ Although television viewing as traditionally understood – meaning watching television programs on a television set via cable or antenna – has declined,¹⁵⁷ the consumption of television content across modalities and screens has not.¹⁵⁸ In fact, TV is thriving in the digital age,¹⁵⁹ furthermore, with the help of digital and streaming media, overall viewership of television content has risen.¹⁶⁰

While broadcast and cable networks have lost viewers, streaming services have gained them.¹⁶¹ The “cord-cutters,” who networks warned would destroy television,¹⁶² did not stop consuming television content; they simply severed their abusive relationship with cable companies¹⁶³ and took more control over what they watched and how.¹⁶⁴ Some in the industry, citing time-displacement theory – which asserts that use of a new media will reduce the use of old media – forecast that

¹⁵⁶ Bernabo, *supra* note 26, at 85; Riles et al., *supra* note 26, at 304; Robinson et al., *supra* note 144, at 296.

¹⁵⁷ Neyazi et al., *supra* note 151, at 657.

¹⁵⁸ Lin et al., *supra* note 143, at 548-49.

¹⁵⁹ Robinson et al., *supra* note 144, at 287-88.

¹⁶⁰ Courtois & Nelissen, *supra* note 141, at 674-76 (increased TV consumption by teens).

¹⁶¹ Lin et al., *supra* note 143, at 549 (millennials embrace new viewing styles); Neyazi et al., *supra* note 151, at 657 (especially younger viewers).

¹⁶² Brad Adgate, *The Rise and Fall of Cable Television*, FORBES (Nov. 2, 2020, 4:09PM), <https://www.forbes.com/sites/bradadgate/2020/11/02/the-rise-and-fall-of-cable-television/?sh=3fab8c816b31>.

¹⁶³ This was after years of consumers complaining about bloated cable packages and asking for ala carte service. Cable companies responding by raising prices; streaming services deployed technology to meet consumer need.

¹⁶⁴ Neyazi et al., *supra* note 151, at 657.

digital media would lead to the demise of television.¹⁶⁵ This, however, has little empirical support.¹⁶⁶ In fact, it conflates the media mode (the technology) with media content (television programs) and confuses *time*-displacement with *technology replacement*. With TV, it is not that people run out of time, but that the newer *technology replaces the older technology* that delivered the media content.¹⁶⁷ Nonetheless, despite the options offered by streaming services, broadcast (network) television continues to draw millions of viewers daily and be the most common way that people “watch” television programs.¹⁶⁸ People might watch TV differently than in the past, but they still consume a lot of television content.¹⁶⁹

X. DO THEORIES OF TELEVISION IMPACTS REMAIN VIABLE?

Media research must keep pace with of cultural and technological shifts.¹⁷⁰ Accordingly, when used in the context of research, the terms “television” and “watching TV” need to reflect the contemporary medium, technology, and audience viewing behaviors. Provided “watching TV” is understood as *consuming television content* independent of the screen and service used to watch that content, theories of television effects remain relevant.

For many audiences, especially younger ones, “watching TV” now means watching shows independent of the screen, provider, or platform. Previously, because television content came to viewers almost exclusively through a TV set, “watching television” combined consuming television content with doing so by looking directly at a television. There was no need to disambiguate the concepts, as the media viewed, and the mode of viewing were married. Today,

¹⁶⁵ See Robinson et al., *supra* note 144, at 289 (noting common trope that new media will replace old media).

¹⁶⁶ *Id.* at 289 (displacement has been dispute by several media historians); see also R. Stuart Geiger & Airi Lampinen, *Old Against New, or a Coming of Age? Broadcasting in an Era of Electronic Media*, 58 J. BROAD. & ELEC. MEDIA 333, 335-36 (2014).

¹⁶⁷ Technology replacement explains the relationship between the increase in streaming television use and decrease in cable subscriptions.

¹⁶⁸ Mastro & Figueroa-Caballero, *supra* note 53, at 332; Riles et al., *supra* note 26, at 303-04.

¹⁶⁹ Camaj & Northrup, *supra* note 154, at 21; Robinson et al., *supra* note 144, at 288-89.

¹⁷⁰ Robinson et al., *supra* note 144, at 288.

television content can be viewed on devices other than television sets and delivered by entities other than networks. Therefore, logically, the notion of “watching TV” should now be understood as consuming television content, regardless of device or screen.¹⁷¹ If it is meant to refer only watching content broadcast by a television network on a television set, that can be specified by the researcher or survey, but it would not alter the underlying theory of impact.¹⁷²

Although audience selectivity and fragmentation undercut “classic” cultivation’s theory of mainstreaming effects, contemporary cultivation measures viewing of program type, rather than of television hours overall.¹⁷³ Consequently, viewer selectivity and programmatic segmentation are already baked in. Accordingly, cultivation remains a useful model for understanding the connection between frequent or heavy viewing of program types and viewer beliefs consistent with the repeated narratives of that programming type.¹⁷⁴ One clarification is that the hour threshold of frequent/ heavy viewing would apply regardless of screen or content provider, rather than only the time spent in using a television set as the sole viewing mechanism.

In any event, most theories explaining television’s effects are not TV-specific. Television just happens to be the source or delivery mode of the content that constitutes the frame, schema, agenda item, or behavioral model. Therefore, there is no reason that the difference

¹⁷¹ Similarly, instead of hours of viewing of content (overall) broadcast on a television set, researchers would frame the query and measurement in terms of television programs or content – specific to category or type – on any platform.

¹⁷² If a viewer’s television consumption is restricted to streaming services, television content options may be somewhat restricted. A Netflix-only or Disney+-only viewer will receive no daily TV news content, late-night talk, or sports competition programs. By contrast, the programming on a Hulu-only diet more closely resembles that of a broadcast or cable network. Nevertheless, the research detailed herein focuses on the type of content viewed (e.g., reality TV, police procedurals, news). Consequently, the limitations of certain platforms are irrelevant. It doesn’t matter *why* a viewer does not watch certain content, it only matters whether they *do* watch it.

¹⁷³ Chan, *supra* note 97, at 417-18; Mancini, *supra* note 120, at 545-48; Kimberlianne Podlas, *The “CSI Effect,”* OXFORD RSCH. ENCYC. CRIMINOLOGY & CRIM. JUST. (Aug. 22, 2017), <https://oxfordre.com/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-c-40>; Podlas, *supra* note 47; Tewksbury, *supra* note 128, at 332.

¹⁷⁴ Edgerly, *supra* note 147, at 4-5; Goidel et al., *supra* note 124, at 121; Mastro & Figueroa-Caballero, *supra* note 53, at 321-23; Riles et al., *supra* note 26, at 306, 317.

in screen or delivery mechanism would alter the impacts on audiences or the theories explaining them.¹⁷⁵

Finally, although some researchers have suggested that viewing on mobile devices causes greater or lesser effects, there is little evidence that the modality one uses while watching content is a direct factor.¹⁷⁶ Rather, any measurable differences appear to be a function of the characteristics of viewing, such the degree of attention paid to content¹⁷⁷ or message features and their impact on cognitive processing and memory.¹⁷⁸

XI. TELEVISION NEWS: A DIFFERENT STORY

While many of the changes presently impacting entertainment television are either a direct or secondary result of technology, the TV news eco-system evolved separately. Consequently, the drivers of change, impacts on audience choice and selectivity, and the role of digital and streaming media have been different in the news arena.

As with entertainment and non-news programming, today's news consumers enjoy unprecedented choice. There are more news

¹⁷⁵ Additionally, recently published research on other mediums is likely transferrable to television. Robinson et al., *supra* note 144, at 297-98.

¹⁷⁶ See Thomas Powell et al., *Video Killed the News Article? Comparing Multimodal Framing Effects in News Videos and Articles*, 62 J. BROAD. & ELEC. MEDIA 578, 580-81 (2018).

¹⁷⁷ Lin et al., *supra* note 143, at 590 (discussing impacts of skimming content on phone in eye-byte culture).

¹⁷⁸ For example, some have hypothesized that mobile devices improve learning, because people can refer to content easily and repeatedly, or because content tends to be short and textual, so does not over-burden cognitive processing. Linda Dam et al., *Applying an Integrated Technology Adoption Paradigm to Health App Adoption and Use*, 62 J. BROAD. & ELEC. MEDIA 654, 656-59, 668 (2018); see Powell et al., *supra* note 175, at 579-81. Others hypothesize that mobile devices reduce content recognition and impair cognitive encoding, because checking the device involves task-switching, reduces motivation to encode (because user learns there is no reason to, but can recheck), and increases demands on information processing. Stephanie Edgerly et al., *Navigational Structures and Information Selection Goals: A Closer Look at Online Selectivity*, 58 J. BROAD. & ELEC. MEDIA 542, 543-44 (2019); see Powell et al., *supra* note 175, at 580-84, 591.

outlets, content options,¹⁷⁹ and ways to consume news than ever before.¹⁸⁰

Network news viewership has declined,¹⁸¹ but cable news viewership, along with consumption of news on digital platforms, such as online social networking services (“SNS”) and Twitter, exploded.¹⁸² In fact, all platforms are combined, news consumption is higher than ever.¹⁸³ Digital and streaming news media, however, do not substitute or replace television news consumption. Instead, these channels supplement it – at least for now.¹⁸⁴ Hence, the portion of the public that gets news from SNS and other digital sources has not yet abandoned television (and traditional media). Television, specifically cable, remains the primary source for news.¹⁸⁵ In fact, cable news is so popular that Fox News Channel, MSNBC, and CNN, are ranked fifth, sixth,

¹⁷⁹ Saifuddin Ahmed & Jaeho Cho, *The Roles of Different News Media Use and Press Freedom in Education Generated Participation Inequality*, 63 J. BROAD. & ELEC. MEDIA 566, 571 (2019); Price & Kaufhold, *supra* note 141, at 496.

¹⁸⁰ Michael Barthel et. al, *Measuring News Consumption in a Digital Era*, PEW RSCH. CTR. (Dec. 8, 2020), <https://www.journalism.org/2020/12/08/measuring-news-consumption-in-a-digital-era>; Ahmed & Cho, *supra* note 178, at 571; Di Zhu et al., *Platform and Proximity: Audience Responses to Crime News on Desktop Computers and Smartphones*, 64 J. BROAD. & ELEC. MEDIA 438, 438-39 (2020); Gil de Zúñiga & Chen, *supra* note 140, at 365.

¹⁸¹ Leticia Bode et al., *What Viewers Want: Assessing the Impact of Host Bias on Viewer Engagement with Political Talk Shows*, 62 J. BROAD. & ELEC. MEDIA 597, 599 (2018); Kylah J. Hedding et al., *The Sinclair Effect: Comparing Ownership Influences on Bias in Local TV News Content*, 63 J. BROAD. & ELEC. MEDIA 474, 475 (2019).

¹⁸² Bode et al., *supra* note 170; Gil de Zúñiga & Chen, *supra* note 140; Rick Porter, *Cable News Wave Crests in First Quarter as All 3 Networks Claim Victory*, HOLLYWOOD REP (Mar. 31, 2021, 7:10 PM), <https://www.hollywoodreporter.com/tv/tv-news/cable-news-ratings-first-quarter-2021-4158389>.

¹⁸³ Ahmed & Cho, *supra* note 178; Edgerly, *supra* note 147, at 13, 16-17. Surveys show that people use a combination of platforms, enhancing television news with online or SNS feeds, and traditional media. Edgerly, *supra* note 147, at 16-17; Price & Kaufhold, *supra* note 141.

¹⁸⁴ Robinson et al., *supra* note 144, at 288-89.

¹⁸⁵ Geoffrey Baym, *Book Review: This Program is Brought to You By: Distributing Television News Online*, 62 J. BROAD. & ELEC. MEDIA 714, 714 (2018); Hedding et al., *supra* note 180. This is especially true of older Americans. Hedding et al., *supra* note 180. Half of the population ranks television as their primary source for news. Baym, *supra*; Amy Mitchell et al, *The Modern News Consumer*, PEW RSCH. CTR. (July 7, 2016), <https://www.pewresearch.org/journalism/2016/07/07/the-modern-news-consumer>.

and seventh in terms of total viewers of *all types of programming*, just behind CBS, NBC, ABC, and FOX.¹⁸⁶

A. News Differentiation and Audience Fragmentation

Most changes in television news can be traced to the emergence of for-profit cable news.¹⁸⁷ Cable news did not merely provide an alternative to the standard, fungible thirty-minute local and national television news; instead, for-profit cable news transformed the way viewers consumed news and, in doing so, the television news landscape itself.¹⁸⁸

The dawn of cable news expanded news programming exponentially.¹⁸⁹ CNN, Fox News Channel, and MSNBC each provides programming twenty-four hours a day and broadcasts approximately as many hours of news programming per day as most traditional broadcast networks (e.g., ABC, CBS, FOX, NBC) and their local affiliates do in a week. This boon for viewers, however, significantly increased competition for them.¹⁹⁰ As a result, cable networks and programs sought to distinguish themselves and “brand” their news products.¹⁹¹

¹⁸⁶ Michael Schneider, *Year in Review: Most-Watched Television Networks — Ranking 2020’s Winners and Losers*, VARIETY (Dec. 28, 2020, 10:08 AM), <https://variety.com/2020/tv/news/network-ratings-2020-top-channels-fox-news-cnn-msnbc-cbs-1234866801>.

¹⁸⁷ Conway & Stryker, *supra* note 31, at 27-28; Edgerly, *supra* note 147, at 4-5.

¹⁸⁸ Conway & Stryker, *supra* note 31, at 27-29.

¹⁸⁹ Neyazi et al., *supra* note 151, at 657; Robinson et al., *supra* note 144, at 280-81 (noting the history and proliferation of cable networks). CNN, the first 24-hour cable news network debuted in 1980, and was joined by MSNBC and Fox News Channel (FNC) in 1996. *CNN Launches*, HISTORY (Nov. 24, 2009), <https://www.history.com/this-day-in-history/cnn-launches>; Schneider, *supra* note 185.

¹⁹⁰ See Conway & Striker, *supra* note 31, at 27-28; see Edgerly, *supra* note 147, at 2-3; see Eun Hwa Jung & Justin Walden, *Extending the Television Brand: An Examination of Why Consumers Use Broadcast Network News Sites*, 59 J. BROAD. & ELEC. MEDIA 94, 94, 107 (2015); Kristen D. Landreville & Cassie Niles, “*And That’s a Fact!*”: *The Roles of Political Ideology, PSRs, and Perceived Source Credibility in Examining Factual Content in Partisan News*, 63 J. BROAD. & ELEC. MEDIA 177, 179 (2019).

¹⁹¹ Jung & Walden, *supra* note 189, at 94; see also Barthel et al., *supra* note 179 (stating that 24-hour news channels forced news organizations to “drastically reevaluate their business models”).

In the context of cable news, differentiation was stylistic and ideological.¹⁹²

With regard to style, cable news is more opinion-oriented¹⁹³ (evidenced by guests, discussions, and host commentaries) and entertainment-oriented than the facially-objective, balanced network news.¹⁹⁴ For instance, content analysis has found that cable news tends to use conflict-oriented, sensationalistic, and “us versus them” frames.¹⁹⁵ With regard to ideology, cable news networks commonly embrace a political slant or ideological bent.¹⁹⁶ This is manifested both by featuring ideologically-driven and politically-biased content while presenting and analyzing information through a partisan lens.¹⁹⁷ This practice is exemplified by MSNBC and CNN (deemed left-leaning,

¹⁹² Bode et al., *supra* note 180, at 597; *see* Conway & Striker, *supra* note 31, at 28-29; Edgerly, *supra* note 147, at 2-3; Landreville & Niles, *supra* note 189, at 179.

¹⁹³ Edgerly, *supra* note 147 (noting the blurred line between news and commentary); Conway & Stryker, *supra* note 31, at 24-25 (noting the transformation from news into talk and opinion); Landreville & Niles, *supra* note 189, at 177 (showing the opinion-oriented view).

¹⁹⁴ Conway & Striker, *supra* note 31, at 27-28; Hedding et al., *supra* note 180, at 476-78. In traditional network news, media sources are more neutral and objective in tone and approach to journalism. *Cf.* Edgerly, *supra* note 147.

¹⁹⁵ Bode et al., *supra* note 180, at 599; Hyunseo Hwang et al., *Seeing is Believing: Effects of Uncivil Online Debate on Political Polarization and Expectations of De-liberation*, 58 J. BROAD. & ELEC. MEDIA 621, 623 (2014).

¹⁹⁶ Feldman et al., *supra* note 140, at 125-26; Landreville & Niles, *supra* note 189, at 179.

¹⁹⁷ Bode et al., *supra* note 180, at 599; Hedding et al., *supra* note 180, at 476-78, 488-89. One extensive study found that, regardless of media ownership, news stations used Republican/Conservative sources more than Democrat/Liberal sources. Hedding et al., *supra* note 180, at 483. Nevertheless, Sinclair stations were far more likely to use conservative sources. *Id.* at 483, 488-89.

liberal, and Democrat)¹⁹⁸ and Fox News Channel (deemed right-leaning, conservative, and Republican).¹⁹⁹

Viewer selectivity in a world of ideologically-based cable news enables selective exposure.²⁰⁰ Research shows that people prefer information that is congruent with their opinions and beliefs.²⁰¹ Therefore, if given a choice, people opt for or seek media sources they expect to agree with their existing beliefs and ideological dispositions.²⁰² Hence, the selection process increases the likelihood of exposure to pro-attitudinal content. In the context of news, viewers tend to select content congenial or consistent with their viewpoints, rather than contrary or hostile to them.²⁰³ One study found that 54% of viewers studied preferred political news consistent with their existing attitudes and were significantly more inclined toward partisan selectivity.²⁰⁴ Other

¹⁹⁸ According to recent studies conducted by the Pew Research Center, Fox News has right-leaning audiences, MSNBC and CNN have left-leaning audiences, and ABC, CBS, and NBC national network TV have mixed audiences. Mark Jurkowitz et al., *Before Trump Tested Positive for Coronavirus, Republicans' Attention to Pandemic Had Sharply Declined*, PEW RSCH. CTR. (Oct. 7., 2020), <https://www.journalism.org/2020/10/07/following-covid-19-news-appendix-grouping-respondents-by-major-news-sources>. The study defined an outlet to have a left-leaning audience if the proportion of audience members identifying as liberal/Democrat was at least two-thirds higher than the proportion identifying as conservative/Republican, and an outlet to have a right-leaning audience if the proportion of audience members identifying as conservative/Republicans was at least two-thirds higher than the proportion identifying as liberal/Democrats. *Id.* By this metric, 55% and 66% of viewers of FNC and Sean Hannity identified as conservative/Republican, 43% and 36% of viewers of MSNBC and CNN identified liberal/Democrat (respectively). *Id.*

¹⁹⁹ *Id.*; Feldman et al., *supra* note 140, at 125-26 (describing MSNBC and Fox News as ideologically-based); Landreville & Niles, *supra* note 189, at 190.

²⁰⁰ Price & Kaufhold, *supra* note 141, at 496-97. This is rooted in psychology literature: people prefer information they expect to agree with. *Id.* at 496.

²⁰¹ Bode et al., *supra* note 180, at 609; Edgerly et al., *supra* note 178, at 544; Price & Kaufhold, *supra* note 141, at 496-97.

²⁰² Edgerly, *supra* note 147, at 3-4; Price & Kaufhold, *supra* note 141, at 495-96 (stating that some research on Selective Exposure shows that people are exposed to more ideological or partisan content while others show they are exposed to more content).

²⁰³ Feldman et al., *supra* note 140, at 110-11; Neyazi et al., *supra* note 151, at 660-61; Price & Kaufhold, *supra* note 141, at 506-07.

²⁰⁴ Feldman et al., *supra* note 140, at 122-23.

studies have found that viewers of political talk shows selectively expose themselves to content or hosts that mirror their views.²⁰⁵

Selective exposure to news has implications beyond fragmenting audience shares.²⁰⁶ Choosing one news network over another often distills to an ideological choice, whether the viewer realizes it or not.²⁰⁷ Consequently, selective exposure to news is associated with audience polarization.²⁰⁸

When viewers of entertainment programming choose one program over another, their selection is “interest-based,” not ideological.²⁰⁹ Viewers from various political, religious, and cultural groups watch one-hour dramas, sporting events, and syndicated sitcom repeats, might choose an NBC fire-rescue drama instead of an HGTV home renovation show is not a politically partisan act.²¹⁰ Therefore, while expanded choice in entertainment programming produces some audience fragmentation, it does not foster ideological segmentation.

The choice of TV news is different. News viewers exercise interest-based selectivity by choosing news as the type of programming; they also can exercise partisan selectivity, to wit they can select networks (and programming) consistent with their politics and points of view.²¹¹ Therefore, viewers who choose Fox News instead of MSNBC, or vice-versa, receive content and commentary that reinforces their existing beliefs.²¹² Consequently, the consequence of the selection vis-à-vis content is ideological.

²⁰⁵ Bode et al., *supra* note 180, at 598; *see also* Conway & Striker, *supra* note 31, at 29 (demonstrating that evidence also shows that viewers tuning in to specific media personalities find them highly credible).

²⁰⁶ Edgerly, *supra* note 147, at 1, 17 (explaining news media and news viewers have become fragmented).

²⁰⁷ Neyazi et al., *supra* note 151, at 660-61.

²⁰⁸ Bode et al., *supra* note 180, at 598; Conway & Striker, *supra* note 31, at 24-25; Neyazi et al., *supra* note 151, at 660-61; Price & Kaufhold, *supra* note 141, at 497.

²⁰⁹ Neyazi et al., *supra* note 151, at 660-61.

²¹⁰ Admittedly, some genre or programs have ideological undertones (such as “firefighters are heroes” or “detectives and police arrest the right person and catch the bad guy”) that contribute to heuristics, base-rate judgements, and the cultivation of values consistent with the portrayals.

²¹¹ Feldman et al., *supra* note 140, at 110; *see, e.g.*, Neyazi et al., *supra* note 151, at 660-61.

²¹² Feldman et al., *supra* note 140, at 122-23; Hedding et al., *supra* note 180, at 478; Price & Kaufhold, *supra* note 141, at 507.

As networks stay “on brand,” they utilize biased or partisan sources and shield viewers from competing information and sources.²¹³ Furthermore, by watching an ideologically-congruent network, viewers are less likely to be exposed to contrary ideologies and information.²¹⁴ The news ecosystem becomes transmogrified into an “echo system” where disparate audiences exist in disparate self-reinforcing bubbles²¹⁵ and ideological content domains.²¹⁶ Notably, viewers do not need to purposely avoid non-congruent opinions; simply by actively focusing on consistent content, viewers do not incidentally encounter it.²¹⁷ Yet, because the viewer did not actively avoid content, they may not realize their news diet is limited.²¹⁸

Additionally, these audiences receive varied and uniquely framed content, their information bases diverge, which causes an information divide. This contributes to polarization.²¹⁹ Once formed, these bubbles are unusually resilient. Segmented audiences can perceive counter-information as inaccurate and untrustworthy, or interpret it to reinforce existing their beliefs.²²⁰ At its most extreme, this is exemplified by the “hostile news bias” (or “hostile media phenomenon”).²²¹ Some audiences who believe mainstream media is biased against their point of view, essentially over-correct for that perceived

²¹³ Hedding et al., *supra* note 180, at 478.

²¹⁴ Edgerly, *supra* note 147, at 1, 3-4; Lin et al., *supra* note 143, at 590, 592; Neyazi et al., *supra* note 151, at 660-61.

²¹⁵ Edgerly, *supra* note 147, at 543; Hedding et al., *supra* note 180, at 478.

²¹⁶ Neyazi et al., *supra* note 151, at 661-62.

²¹⁷ Price & Kaufhold et al., *supra* note 141, at 496-97; *see generally* Lin et al., *supra* note 143, at 590, 592 (explaining segmentation and deepening information divides occur both because viewers choose what to see and then are less likely to “accidentally” see alternative news).

²¹⁸ Price & Kaufhold et al., *supra* note 141, at 496-97; *see generally* Neyazi et al., *supra* note 151, at 661-62 (explaining that viewers do not realize news received is limited).

²¹⁹ Bode et al., *supra* note 180, at 598; Edgerly, *supra* note 147, at 2-3, 16-17; Price & Kaufhold, *supra* note 141, at 497; *see also* Conway & Striker, *supra* note 31, at 24-25 (contribution of partisan television news and talk shows).

²²⁰ Feldman et al., *supra* note 140, at 115; *see also* Landreville & Niles, *supra* note 189, at 179; Marlene Kunst et al., *Spirals of Speaking Out? Effects of the ‘Suppressed Voice Rhetoric’ on Audiences Willingness to Express Their Opinion*, 64 J. BROAD. & ELEC. MEDIA 396, 400 (2020).

²²¹ Kunst et al., *supra* note 218, at 399-401.

bias,²²² and interpret neutral news coverage as negatively-biased.²²³ Therefore, despite the “common sense” inclination to “pop” informational bubbles by presenting contrary or corrective information, studies show this is ineffective and frequently counterproductive. Rather than changing a person’s opinion, opposing information can either cause people to actively reject the counter-information or trigger the existing partisan opinion, reinforcing it.²²⁴

In these ways, abundant audience choice in news enables selective exposure to news which, in turn, leads to audience segmentation and polarization.²²⁵ Therefore, ironically, some people consume more hours of news than in the past, but they see a smaller range of news content. Furthermore, this is becoming more pronounced and divisive. To illustrate, in 2020, the three main cable news networks (Fox News Channel, MSNBC, and CNN) gained significant numbers of viewers, as broadcast networks lost them.²²⁶ This means that viewers are replacing relatively neutral, objective network news with more ideologically-driven coverage.

B. Digital Media and News

When news is supplemented with digital or SNS news, these impacts are exacerbated; thus, already segmented audiences are driven farther apart to thrive in distinct multi-verses with their own beliefs, facts, and stories. Although digital media does not appear to have cannibalized television news viewership, it plays a key role in making audience polarization and informational divides more extreme. Therefore, as we consider narratives, we must begin to contemplate the role of Twitter in producing, distributing, and transforming narratives, and, in turn, the notion of a singular nomos. What follows is not intended as a complete analysis of Twitter and its effects, but rather, an

²²² *Id.* at 401, 411-12.

²²³ Feldman et al., *supra* note 140, at 11; Kunst et al., *supra* note 218, at 399-401 (explaining how cable viewers who self-identify as ideologically right or members of an “outgroup” skew this way).

²²⁴ Landreville & Niles, *supra* note 189, at 177-79; *see* Price & Kaufhold, *supra* note 141, at 497-98, 506-07 (explaining that this causes a “reinforcing spiral” or confirmatory spiral).

²²⁵ Lin et al., *supra* note 143, at 590, 592; Conway & Striker, *supra* note 31, at 24-25; Edgerly, *supra* note 147, at 1, 17; Hedding et al., *supra* note 180, at 478; Neyazi et al., *supra* note 151, at 660-61.

²²⁶ *See* Schneider, *supra* note 185.

overview of how Twitter acts synergistically with and enhances cable news impacts.

C. Twitter

According to the Pew Research Center, almost two-thirds of Americans obtain news from social media, and for many people, Twitter is a key source for that news.²²⁷ As of 2019, Twitter had 330 million monthly active users and 139 million daily active users.²²⁸

It may seem odd to jump from cable news to Twitter, especially when skipping over legacy SNS (like Facebook and LinkedIn); but, while social media tends to get lumped together, it is not interchangeable.²²⁹ Research increasingly shows that Twitter possesses characteristics that not only distinguish it from other social media but also operate synergistically to aggravate and exacerbate the negative ramifications associated with cable news selectivity and consumption.²³⁰

Whereas Facebook communication focuses on people who the user already knows or has existing ties (e.g., family, work, fandom), Twitter communication tends to be with people not personally known to the user.²³¹ Twitter is used differently; its content goes directly and immediately to user groups²³² and contains a higher proportion of

²²⁷ Aaron Smith & Monica Anderson, *Social Media Use in 2018*, PEW RSCH. CTR. (Mar. 1, 2018), <https://pewrsr.ch/2FDfFd>.

²²⁸ Amanda D. Damiano & Jennifer R. Allen Catellier, *Up in Smoke: A Content Analysis of Tweets During the Vaping-Related Illness Epidemic*, 14 J. COMM'C'N HEALTHCARE 41, 46 (2021); Smith & Anderson, *supra* note 226 (citing that 24% of adults use Twitter, there are 68 million monthly active users, and 38% of users are between the ages of 18 and 29 in the United States.).

²²⁹ Chang Wan Woo et al., *Twitter Talk and Twitter Sharing in Times of Crisis: Exploring Rhetorical Motive and Agenda-Setting in the Ray Rice Scandal*, 71 COMM'C'N STUD. 40, 50 (2019).

²³⁰ See Moran Yarchi et al., *Political Polarization on the Digital Sphere: A Cross-Platform, Over-Time Analysis of Interactional, Positional, and Affective Polarization on Social Media*, 38 POL. COMM'C'N 98, 98-99 (2020) (measuring and detailing differences in political polarization and homophily on Twitter compared with other sites).

²³¹ Sebastian Valenzuela et al., *Ties, Likes, and Tweets: Using Strong and Weak Ties to Explain Differences in Protest Participation Across Facebook and Twitter Use*, 35 POL. COMM'C'N 117, 122 (2018); Woo et al., *supra* note 228, at 52-53.

²³² Reichart Smith et al., *supra* note 142, at 96.

political and public affairs information.²³³ Twitter has emerged as a cultural forum, in the model of TV,²³⁴ and as a “public sphere in which to discuss public affairs.”²³⁵

Because groups are chosen by the user, selective exposure to information and ideologies is inherent.²³⁶ Therefore, like cable news, Twitter users receive a narrower range of information,²³⁷ which contributes to the information divide,²³⁸ and cultivates homophily.²³⁹ The extreme “personalization” features of Twitter, however, makes the operation and impacts of these more extreme.²⁴⁰ Furthermore, inasmuch as Twitter facilitates networks among people holding similar beliefs and socio-political views, it is an “echo chamber”²⁴¹ tailor-made for cultivating ideologically “fragmented and hyperpolarized communities.”²⁴² This can exacerbate political and ideological polarization, especially when communication is structured along political lines and users interact within politically homogeneous or like-minded clusters.²⁴³

²³³ Dorothee Arlt et al., *Between Fragmentation and Dialogue. Twitter Communities and Political Debate About the Swiss “Nuclear Withdrawal Initiative,”* 13 ENV'T COMM'N 440, 441-42 (2018); see Weiai Wayne Xu & Miao Feng, *Talking to the Broadcasters on Twitter: Networked Gatekeeping in Twitter Conversations with Journalists*, 58 J. BROAD. & ELEC. MEDIA 420, 421-23 (2014).

²³⁴ Bernabo, *supra* note 26, at 77-85; see Arlt et al., *supra* note 233, at 373-77.

²³⁵ Xu & Feng, *supra* note 232, at 422.

²³⁶ Camaj & Northup, *supra* note 154, at 23; De los Santos & Nabi, *supra* note 84, at 40, 43-44; Edgerly et al., *supra* note 178, at 544-46, 556; Chang Sup Park & Barbara K. Kaye, *Mediating Roles of News Curation and News Elaboration in the Relationship between Social Media Use for News and Political Knowledge*, 63 J. BROAD. & ELEC. MEDIA 455, 456-57 (2019) (explaining how social media leads to selective exposure and encourages exposure to like-minded information).

²³⁷ Tanya Kant, *Giving the ‘Viewer’ a Voice? Situating the Individual in Relation to Personalization, Narrowcasting, and Public Service Broadcasting*, 58 J. BROAD. & ELEC. MEDIA 381, 390-91, 394-95 (2014).

²³⁸ Gil de Zúñiga & Chen, *supra* note 140, at 367-68.

²³⁹ Camaj & Northrup, *supra* note 154, at 23; Edgerly et al., *supra* note 178, at 556.

²⁴⁰ Kant, *supra* note 237, at 384, 389-91.

²⁴¹ Arlt et al., *supra* note 233, at 442-44; Edgerly et al., *supra* note 178, at 543.

²⁴² Arlt et al., *supra* note 233, at 444; Adam Klein, *From Twitter to Charlottesville: Analyzing the Fighting Words Between the Alt-Right and Antifa*, 13 INT'L J. COMM'N 297, 301 (2019).

²⁴³ Arlt et al., *supra* note 233, at 443; Hsuan-Ting Chen & Jhih-Syuan Lin, *Cross-cutting and Like-minded Discussion on Social Media*, 65 J. BROAD. & ELEC. MEDIA 135, 135-16 (2021); Kant, *supra* note 237, at 395.

In fact, although some heralded Twitter for bypassing traditional gatekeepers and leveling the playing field of information-distribution,²⁴⁴ it does not appear to increase the quality of dialog among varied groups.²⁴⁵ Rather than expanding the topics of conversation or probing different viewpoints, Twitter users with different perspectives tend to ignore each other.²⁴⁶ Instead, users tend to interact with like-minded people, making them more entrenched in their views.²⁴⁷ Alternatively, research has found that when such groups do “interact,” they do not engage in constructive intellectual debate; rather, they criticize the other side and heighten the rhetoric.²⁴⁸ This does not improve political discussion, but worsens polarization.²⁴⁹ Additionally, exposure to this type of uncivil political discourse can produce negative emotions and attitudes toward the opposing side and erode individuals’ expectations about reaching consensus through deliberation.²⁵⁰

Moreover, unlike passive news viewers, Twitter users can both circulate and edit information.²⁵¹ By commenting on Tweets and editing news threads, users can reshape media narratives and construct alternative realities.²⁵² This, along with content tweeted and retweeted,

²⁴⁴ Xu & Feng, *supra* note 232, at 421-24.

²⁴⁵ Klein, *supra* note 241, at 299, 314; Benjamin R. Warner, *Segmenting the Electorate: The Effects Of Exposure To Political Extremism Online*, 61 COMM’N STUD. 430, 431 (2010).

²⁴⁶ Marc A. Smith & Lee Rainie, *Mapping Twitter Topic Networks: From Polarized Crowds to Community Clusters*, PEW RSCH. CTR. (Feb. 20, 2014), <http://www.pewinternet.org/2014/02/20/mapping-twitter-topicnetworks-from-polarized-crowds-to-community-clusters>.

²⁴⁷ Arlt et al., *supra* note 233, at 443; Warner, *supra* note 244 (“If individuals are only in contact with people they already agree with, there is a danger that their opinions will polarize and become increasingly radical.”).

²⁴⁸ Hwang et al., *supra* note 194, at 624; Woo et al., *supra* note 228, at 52-53. One study of Twitter messages (preceding Charlottesville) found that a majority of messages emanating from either side were fixated on the opposition. Klein, *supra* note 241, at 299 (“Twitter is host to some of the most contentious factions of the current hyperpartisan climate.”); Klein, *supra* note 241, at 314 (“purist discourse, which attacks a political mind-set as the underlying issue, is indicative of a pattern of thriving debate on Twitter”).

²⁴⁹ Woo et al., *supra* note 228, at 52-53; Klein, *supra* note 241, at 299.

²⁵⁰ Hwang et al., *supra* note 194, at 624-25.

²⁵¹ Xu & Feng, *supra* note 232, at 420.

²⁵² Arlt et al., *supra* note 233, at 441; Park & Kaye, *supra* note 236, at 456-58, 460, 468-69; Xu & Feng, *supra* note 232, at 420-22.

influences how others perceive or frame issues²⁵³ and shapes the public agenda.²⁵⁴

Aside from the content itself, users can instantaneously comment and see others' responses.²⁵⁵ By encouraging user-readers to participate as creator-curators through sharing and commenting, Twitter adds a level of active engagement that generates a greater sense of involvement.²⁵⁶ Indeed, people who post their own thoughts or reply to tweets (as opposed to retweeting or not posting) report higher levels of enjoyment.²⁵⁷

Additionally, studies have shown that user-generated content can empower others to express opinions and trigger a "spiral of empowerment."²⁵⁸ On Twitter, once users see that other people agree with them, they are more likely to speak.²⁵⁹ This can cultivate a sense of belonging to a group²⁶⁰ and enhance self-esteem.²⁶¹ Furthermore, some people increase their sense of belonging by engaging in expressive participation in service of the group.²⁶² When they see that people

²⁵³ Woo et al., *supra* note 228, at 41-42; Xu & Feng, *supra* note 232, at 420-22.

²⁵⁴ Woo et al., *supra* note 228, at 42-43. Twitter's "agenda-setting flow [is] dynamic and two-way." *Id.* at 53.

²⁵⁵ Twitter users tend to follow, mention, post, reply to Twitter users with similar political views. Camaj & Northrup, *supra* note 154, at 23.

²⁵⁶ Some researchers hypothesize that news curation leads to greater information-engagement and requires curators to think about and analyze the information they curate and comment on, and, therefore, increases political knowledge for the curators. Park & Kaye, *supra* note 236, at 455, 468-69.

²⁵⁷ Smith et al., *supra* note 142, at 105.

²⁵⁸ Kunst et al., *supra* note 218, at 400-01. This is the inverse of the "Spiral of Silence": People who believe their views are out of the norm or in the minority tend to remain silent. This silence prompts others to remain silent and reinforces not speaking, thereby creating a spiral of silence. Kunst et al., *supra* note 218, at 400-01; Elisabeth Noelle-Neumann, *The Spiral of Silence: A Theory of Public Opinion*, 24 J. COMMUN. 43 (1974); Jung Won Chun & Moon J. Lee, *When Does Individuals' Willingness to Speak Out Increase on Social Media?*, 74 COMPUT. HUM. BEHAV. 120 (2017); Moon J. Lee & Jung Won Chun, *Reading Others' Comments and Public Opinion Poll Results*, 65 COMPUT. HUM. BEHAV. 479, 479-80 (2016).

²⁵⁹ Kunst et al., *supra* note 218, at 400-01.

²⁶⁰ Smith et al., *supra* note 142, at 97.

²⁶¹ Kenon A. Brown et al., *Rings of Fandom: Overlapping Motivations of Sport, Olympic, Team and Home Nation Fans in the 2018 Winter Olympic Games*, 64 J. BROAD. & ELEC. MEDIA 20, 22 (2020). This has long been explored by social identity theory and is one way to understand fandom. *Id.* at 22-23.

²⁶² Lee & Chun, *supra* note 257; Kunst et al., *supra* note 218, at 401, 411-12; Arlt et al., *supra* note 233, at 443, 446. As the process of self-categorization of a group/

in their reference group share their views, they feel socially supported and continue speaking.²⁶³

Nevertheless, users embracing such an “ecosystem” of their chosen viewpoints, and devoid or hostile or to contrary information,²⁶⁴ become isolated and homogenized.²⁶⁵ This is especially troubling since misinformation is pervasive in the digital world,²⁶⁶ and social media allows individuals to spread and share it quickly.²⁶⁷ This not only deepens the information divide,²⁶⁸ but each time a story is re-tweeted or shared with comments, it adds a patina of consensus, “self-validating” the underlying content. Additionally, the restriction on message length (formerly 140 characters and now 280 characters) often causes people to “oversimplif[y] complex issues” contributing to further misunderstandings.²⁶⁹

D. Algorithms

Not only can users curate the information they receive and alter how Twitter displays content to others,²⁷⁰ but also Twitter

in-group member progresses from attraction and attachment to group allegiance, in-group members alter mechanisms for storytelling. Brown et al., *supra* note 260, at 21.

²⁶³ Lee & Chun, *supra* note 257, at 125-26, 143; Kunst et al., *supra* note 218, at 401, 411-12.

²⁶⁴ Arlt et al., *supra* note 233, at 402-03, 412-13.

²⁶⁵ Camaj & Northrup, *supra* note 154, at 23.

²⁶⁶ Michelle A. Amazeen & Erik P. Bucy, *Conferring Resistance to Digital Disinformation: The Inoculating Influence of Procedural News Knowledge*, 63 J. BROAD. & ELEC. MEDIA 415, 415-16 (2019); Emily K. Vraga et al., *Testing Logic-based and Humor-based Correction for Science, Health, and Political Misinformation on Social Media*, 63 J. BROAD. & ELEC. MEDIA 383, 394 (2019). Although much news on social media originates from professional journalists and news organizations, some is written by self-styled citizen journalists, alternative providers, nonprofit organizations, and PR firms. Park & Kaye, *supra* note 236, at 456-57, 468-69.

²⁶⁷ Park & Kaye, *supra* note 236, at 456; Vraga et al. *supra* note 265, at 394; Woo et al., *supra* note 228. Others believe that the digital world can effectively reduce misinformation, because people can identify mistakes, immediately correct them, and distribute those corrections, or because they are already online, so can easily check and correct information. Vraga et al., *supra* note 265, at 394.

²⁶⁸ Amazeen & Bucy, *supra* note 265, at 415.

²⁶⁹ Woo et al., *supra* note 228, at 44.

²⁷⁰ Paul Hitlin & Lee Rainie, *Facebook Algorithms and Personal Data*, PEW RSCH. CTR. (Jan. 16, 2019), <https://pewrsr.ch/2Hnqr1o>; Park & Kaye, *supra* note 236, at 456; Jieun Shin & Kjerstin Thorson, *Partisan Selective Sharing: The Biased*

automatically and obliquely chooses the news and information users receive.²⁷¹ This “personalization” is done by an algorithm, often without the user realizing it.²⁷²

Twitter, like much digital media,²⁷³ uses algorithms to refine and filter information delivered to users, based on past choices and interests.²⁷⁴ These smart algorithms, embedded in the digital media delivery systems, “remember” what the viewer has previously viewed, clicked, shared, or sought,²⁷⁵ and then displays and suggests content based on this history.²⁷⁶ Therefore, once a person has entered a Twitter community, following or sharing news or informational content, the future information he or she receives is filtered according to their past choices and what the algorithm thinks is of most interest to that user.²⁷⁷

As the algorithm continues to refine the relevance of content shown to the user, the content delivered becomes increasingly narrow.²⁷⁸ Hence, the user may be exposed to more sources or individual voices, but they share the same hymnal or sing in the same key. Consequently, in a digital world with infinite information and choice, the user receives a more restricted diet of information.²⁷⁹ Similarly, when the topic choice is political or ideological, the algorithm provides ideologically-or politically-congenial information, thus giving different segments of the population completely different information about the world.²⁸⁰ Therefore, a person who obtains most of their news from social media sites sees information consistent with their beliefs, but is

Diffusion of Fact-Checking Messages on Social Media, 67 J. COMMUN 232, 234 (2017) (users tend to share attitude-consistent messages).

²⁷¹ Kant, *supra* note 237, at 354; Park & Kaye, *supra* note 236, at 458; Edgerly et al., *supra* note 178, at 541-43; Will Oremus, *Twitter’s New Order*, SLATE (Mar. 5, 2017, 8:00 PM), <https://bit.ly/2lMs0pU>;

²⁷² Park & Kaye, *supra* note 236, at 458; ELI PARISER, *THE FILTER BUBBLE: WHAT THE INTERNET IS HIDING FROM YOU* (2011).

²⁷³ Lin et al., *supra* note 143, at 590, 592.

²⁷⁴ Park & Kaye, *supra* note 236, at 458,

²⁷⁵ Lin et al., *supra* note 143, at 589-92.

²⁷⁶ Gil de Zúñiga & Chen, *supra* note 140, at 367, 369; Lin et al., *supra* note 143, at 588-89; Park & Kaye, *supra* note 236, at 456-58.

²⁷⁷ Carolyn Lin, *A Year Like No Other: A Call to Curb the Infodemic and Depoliticize a Pandemic Crisis*, 64 J. BROAD. & ELEC. MEDIA 661, 664 (2020); Park & Kaye, *supra* note 236, at 458.

²⁷⁸ Edgerly et al., *supra* note 178, at 547.

²⁷⁹ Kant, *supra* note 237, at 389-91; Park & Kaye, *supra* note 236, at 458.

²⁸⁰ Lin et al., *supra* note 143, at 590.

unlikely to come across contrary information.²⁸¹ This contributes to deepening information divides, but to a far more pronounced degree.²⁸²

Furthermore, because users in these biased universes²⁸³ may not realize that the news delivered to them is restricted, they may think they are exposed to a broader – or at least representative – base of information and that they are part of a larger consensus group than they truly are.²⁸⁴ Contributing to this, 5% to 16% of Twitter users are bots and another 36% are bot-assisted.²⁸⁵ Even a small proportion of bots can have a big impact on shaping news discourse.²⁸⁶ Bots can spread misinformation, promote particular viewpoints and issues, and generate trends that elevate some topics and bury others.²⁸⁷

Accordingly, although Twitter has the potential to be a forum for alternative viewpoints, and a means to bypass traditional media gatekeepers,²⁸⁸ it can also spread misinformation and cultivate evermore extreme views and segments of the population. Even at its most beneficial, Twitter tends to silo people into disparate groups, and deliver each group information consistent with their existing beliefs and in furtherance of their cultural narratives. Unlike a 500-channel or streaming television buffet where viewers can fine-tune their diet of television content, Twitter is not so much a world of many, albeit differing, contrary, or debated narratives; instead, it is an array of several separate, disparate worlds.

²⁸¹ Park & Kaye, *supra* note 236, at 458; Shin & Thorson, *supra* note 270 at 234-37.

²⁸² Lin et al., *supra* note 143, at 592; Gil de Zúñiga & Chen, *supra* note 140, at 367-69.

²⁸³ Lin et al., *supra* note 143, at 590.

²⁸⁴ Park & Kaye, *supra* note 236, at 458.

²⁸⁵ Marc Owen Jones, *Propaganda, Fake News, and Fake Trends: The Weaponization of Twitter Bots in the Gulf Crisis*, 13 INT'L J. COMM. 1389, 1393, 1409 (2019).

²⁸⁶ Jones, *supra* note 285, at 1403, 1409. Studies have shown that audiences are unable to distinguish between news written by software (and algorithms) (“automated journalism”) and news written by human journalists. Kun Xu et al., *Using Machine Learning to Learn Machines*, 64 J. BROAD. & ELEC. MEDIA 567, 568-69 (2020).

²⁸⁷ Jones, *supra* note 285, at 1398-1400, 1403.

²⁸⁸ Amanda D. Damiano & Jennifer R. Allen Catellier, *Up in Smoke: A Content Analysis of Tweets During the Vaping-Related Illness Epidemic*, 14 J. COMM. HEALTHCARE 41, 46 (2020).

XII. THE INFLUENCE OF COVER ON TELEVISION & LAW

Cover's theory of the nomos and recognition of the critical role of narratives, wherever they exist and in whatever language they are expressed, not only expanded conceptions of legal culture, but also advanced the scholarship of "popular legal culture." Moreover, it provided the scaffold that helped elevate television (as both cultural messenger and media product) to a legitimate object of scholarly study.²⁸⁹ When Cover published *Nomos and Narrative*, the Law & Pop Culture movement, vis-à-vis the study of film and literature, was gaining intellectual traction, but television was largely ignored or treated like an unsophisticated, intellectually-challenged cousin.²⁹⁰ Indeed, in the U.S., the study of television as Pop Legal Culture, with its own theories, foci, and methods, did not coalesce until approximately ten to fifteen years ago.²⁹¹

Ultimately, Cover's insights and insistence that "[n]o set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning"²⁹² helped provide a foundation for scholars of law and related disciplines to advocate for the importance of paying attention to the cultural media products that a majority of people actually consume, to wit: television, and contemplate what its narratives say about law and the public's perceptions of the law. Particularly in our increasingly polarized(ing) media and cultural environment, where it often seems like people exist in separate worlds, a better understanding of how television's representations of law are interpreted by and affect the public is a valuable tool.

²⁸⁹ In fact, that is how I came to know of Robert Cover. He was the respected legal scholar who provided a theoretical foundation from which I (a "law orphan" teaching in an undergraduate Media Studies/Film program) could argue that television's depictions of law mattered to legal culture and warranted investigation.

²⁹⁰ Steve Greenfield et al., *Matlock – America's Greatest Lawyer? A Transatlantic Perspective*, in MICHAEL ASIMOW, *LAWYERS IN YOUR LIVING ROOM! LAW ON TELEVISION* 106-08 (2009); Robson & Silbey, *supra* note 16, at 1-3.

²⁹¹ Robson & Silbey, *supra* note 16, at 1-6.

²⁹² Cover, *supra* note 1, at 5.