

Flawed Arguments in Social Media

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Disclaimer

I am not an attorney. I have done basic study of political science (which much of Congress cannot claim) and logical argument flaws. I cite authoritative sources to support my claims.

Constitutional Issues

Free Speech

The right to free speech is based on the Constitution's First Amendment, which reads in its entirety:¹

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

There are two major flaws in applying the right to free speech. The first is that the Amendment starts with "Congress shall." The right to free speech applies to the government, not to private individuals or businesses. This flaw has been widely used to claim that social media companies (Twitter, Facebook, etc.) can not censor users or individual tweets or posts.

The second flaw is forgetting that free speech has limits.²³ The classic poor example⁴ is that you can not use free speech to scream "Fire!" in a crowded theater unless there actually is a fire. Actual limits on free speech include "incitement, defamation, fraud, obscenity, child pornography, fighting words, and threats."⁵

The Second Amendment

The Second Amendment to the US Constitution reads in its entirety:⁶

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Many people try to interpret this as the right for anyone to carry loaded weapons anywhere, any time. Let's look at the neglected part, the Militia. Amazingly the House of Representatives has defined a Militia in 10 USC 12§246.⁷

§246. Militia: composition and classes

(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard.

(b) The classes of the militia are—

(1) the organized militia, which consists of the National Guard and the Naval Militia; and

(2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.

¹ <https://constitutioncenter.org/media/files/constitution.pdf>

² <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does>

³ https://www.law.cornell.edu/constitution/first_amendment

⁴ <https://www.whalenlawoffice.com/blog/legal-mythbusting-series-yelling-fire-in-a-crowded-theater/>

⁵ <https://www.thefire.org/research-learn/limits-free-speech>

⁶ <https://constitutioncenter.org/media/files/constitution.pdf>

⁷ <https://uscode.house.gov/view.xhtml?path=/prelim@title10/subtitleA/part1/chapter12&edition=prelim>

As the Constitution Center cited, "[When the Constitution was drafted], the militia was a state-based institution," says Rakove. "States were responsible for organizing this." "Well-regulated in the 18th century tended to be something like well-organized, well-armed, well-disciplined," says Rakove.⁸

Therefore, if you want to follow the true intent of the Second Amendment, you need to be an active member of the National Guard or in a state-managed trained and disciplined militia. The House definition in 10 USC 12§247 defines a few exempt people, but that's the idea.

Nobody notices it, but Article 1, Section 8 of the Constitution adds this for the responsibilities of Congress:⁹

[The Congress shall have Power] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

This states that Congress funds the National Guard and assigns responsibility for the States to fund and oversee militias based on guidance from Congress. Has any state done this?

Freedom of Religion

We saw the First Amendment started with "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof*" as the very first element in the Bill of Rights. In the 17th and 18th centuries, many religious sects were persecuted in Europe and fled to the Colonies for safety. The groups persecuted included: Mennonites, Jesuits, Catholics, various Protestants, and Puritans.¹⁰ And by "persecuted" we mean executed.

The head of state for England was also the head of the Church of England starting in 1701 and had to be Protestant (now specifically Anglican).¹¹ The Founding Fathers saw how dangerous it was to have the head of government force policies that supported a particular religion, and carefully crafted the start of the First Amendment to prevent that.

References to God in currency ("In God We Trust") and in the Pledge of Allegiance ("One Nation, Under God") were added in 1954 during the Red (Communist) Scare.¹² They are not part of the country's founding and would be abhorrent to the Founding Fathers.

Many Christian and pseudo-Christian organizations try to force labeling the country as being a Christian Nation, but that simply isn't true and should not be. Separation of church and state is supported by general rights organizations (e.g. the ACLU¹³) and specific ones like Americans United for the Separation of Church and State¹⁴ and the Freedom From Religion Foundation (FFRF).¹⁵ Consider also that many religious paths are not faith-based,

⁸ https://constitutioncenter.org/images/uploads/news/CNN_Aug_11.pdf

⁹ <https://constitutioncenter.org/media/files/constitution.pdf>

¹⁰ <https://www.loc.gov/exhibits/religion/rel01.html>

¹¹ <https://www.parliament.uk/about/living-heritage/evolutionofparliament/parliamentaryauthority/revolution/collections1/parliamentary-collections/act-of-settlement/>

¹² <https://www.ushistory.org/documents/pledge.htm>

¹³ <https://www.aclu.org/>

¹⁴ <https://www.au.org/#>

¹⁵ <https://ffrf.org/>

such as pagan, Wiccan, native, and tribal religions, and increasingly many people are atheist or agnostic. Under separation of church and state, the government cannot discriminate against any of these paths.

It is important to remember that allowing government support of religious exemptions, such as allowing a bakery to discriminate against a customer because of their beliefs, or banning abortion because they think it's murder, opens the door for minority religious groups to use those same exemptions to practice their beliefs. The Satanic Temple (TST) has used religious exemptions to maintain that access to abortion care is a religious right, and therefore cannot be blocked.¹⁶

Similarly, if government financial support of religious educational institutions is allowed, such as in the name of parental choice of schools, then that same support is required for schools run by the FFRF or TST. Either the government supports every religion or none of them.

Separation of Powers

The body of the Constitution defines the roles and responsibilities of the federal government. Article 1, Section 1 assigns Legislative power to Congress:

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article 2, Section 1 gives Executive power to the President:

The executive Power shall be vested in a President of the United States of America.

Article 3, Section 1 gives judicial power to the Supreme Court and lower courts.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

These sections implement the basic principle of Separation of Powers. "Separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances."¹⁷

Recent attempts by some members of Congress to interfere in the judicial actions of the New York County District Attorney for Manhattan are in direct violation of this key constitutional principle. This also includes attempts by the Legislature to conduct their own judicial activities against individual citizens (e.g. Hunter Biden).

Ethics and Rules of Conduct

The House¹⁸ and Senate¹⁹ have very clearly defined rules of conduct. They include prohibiting receiving gifts from foreign countries, payment for speeches and publications, and many other areas which have been largely ignored or unenforced for many years. Many members of Congress have published books and advertised them on official channels. The 45th President openly endorsed a pillow company and many other businesses while in office.

¹⁶ <https://thesatanictemple.com/pages/rrr-campaigns>

¹⁷ <https://www.ncsl.org/about-state-legislatures/separation-of-powers-an-overview>

¹⁸ <https://ethics.house.gov/outside-employment-income/laws-rules-and-standards-conduct>

¹⁹ https://www.ethics.senate.gov/public/_cache/files/3507e6ae-2525-40ac-9ec8-7c6dbfe35933/2021---red-book---the-senate-code-of-official-conduct.pdf

The President and the Executive Branch high level employees are guided by Ethics Commitments.²⁰ This includes gifts from lobbyists, several forms of revolving door bans, and bans on golden parachutes. Enforcement is by the Attorney General.

Federal judges and lower court judges have defined rules of conduct.²¹ As noted often in 2023, the Supreme Court has no defined rules of conduct. I would guess the founding fathers assumed anyone approved for a lifetime position on the Supreme Court would be of sufficient integrity not to need a code of conduct.

Political Terms

Many economic models are also political structures. This produces more confusion.

DEMOCRACY. A democracy is “a government in which the supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodically held free elections.”²²

REPUBLIC. A republic is a “form of government in which a state is ruled by representatives of the citizen body.”²³ Any form of government can also be a republic, except a monarchy.

Therefore, the United States is a democratic republic. Supreme power belongs to the people, who elect representatives in the form of Congress and the President & Vice President. Other descriptions of government thrown around frequently include:²⁴

TYRANNY is rule for the benefit of a single person. One person treating the legislature, military, and courts as their personal servants is an example of tyranny.

TOTALITARIAN is an adjective, meaning “a political system in which those in power have complete control and do not allow people freedom to oppose them.”²⁵ This is often misinterpreted to mean “you can’t disagree with me, or I’ll call you a totalitarian regime.” It really means more like “if you disagree with the president you will disappear in the night and never be heard from again.”

AUTHORITARIAN is also an adjective, the “principle of blind submission to authority, as opposed to individual freedom of thought and action. In government, authoritarianism denotes any political system that concentrates power in the hands of a leader or a small elite that is not constitutionally responsible to the body of the people.”²⁶

ARISTOCRACY is rule by the elite, “government by a relatively small privileged class or by a minority consisting of those presumed to be best qualified to rule.” Usually, it means rule by the highest social class, often hereditary. In theory it could refer to rule by the best qualified, but I’ve never heard of that

²⁰ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-ethics-commitments-by-executive-branch-personnel/>

²¹ <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>

²² <https://www.merriam-webster.com/dictionary/democracy>

²³ <https://www.britannica.com/topic/republic-government>

²⁴ <https://www.britannica.com/topic/republic-government>

²⁵ <https://dictionary.cambridge.org/us/dictionary/english/totalitarian>

²⁶ <https://www.britannica.com/topic/authoritarianism>

happening.²⁷ Some argue that American political families such as Rockefeller, Bush, Kennedy, and Clinton are modern aristocracies.

PLUTOCRACY is rule by the rich. Many would argue that the influx of dark money into election funding through PACs and SuperPACs is pushing the US in this direction.²⁸ Business empires such as the “Cox, Brown, Walton, Marriott, and Simplot families” donate massive amounts of money through these.²⁹

MONARCHY is rule by a single person, generally a king or queen who follows a hereditary line of succession.

An **OLIGARCHY** is rule by a small group. This is very rare. We have enough trouble electing one president! Rich Russians are often called oligarchs, but plutarchs might be more correct.

A **DIRECT DEMOCRACY** would be a democracy without elected representatives. Imagine if everyone in the country had to vote on every bill before Congress! Direct democracy is impractical on a large scale.

False Flags

The term False Flag came from 16th century ships, where flying a literal flag from a different country than you belong to could give the impression someone else was attacking your enemy.³⁰ So if I’m an Italian warship, I could fly a French flag while attacking Spain to make Spain think they were being attacked by France. Not an effective strategy in the 21st century.

Now the term is used more often to mean “a deliberate misrepresentation of motives or identity.”³¹ In politics it is used to claim there is a horrible problem that needs to be immediately addressed when in reality the problem does not exist or is nowhere as severe as depicted. Instead, the true goal is to gather support for a politician for successfully solving the faux problem. A key sign of a false flag is the use of a single or very few examples to justify the problem exists (e.g. citing one person who was released from prison and committed another crime), instead of using larger scale data such as crime rates for a city or county.

American Global Ignorance

A common complaint about Americans is ignorance of the rest of the world.³² This often manifests in Americans assuming other countries have the same laws as we do. Hate to burst the bubble, but it isn’t so. Freedom of Speech means nothing in China. Our Congress can’t pass laws for Venezuela or set immigration policy for Mexico.

In the USA we assume people are innocent until proven guilty,³³ but the reverse is true in several countries which are based on Roman law instead of English Common Law, such as Brazil, China, France, Italy, Philippines, Poland, Romania, and Spain.³⁴

²⁷ <https://www.merriam-webster.com/dictionary/aristocracy>

²⁸ <https://www.opensecrets.org/political-action-committees-pacs/super-pacs/2022>

²⁹ <https://www.motherjones.com/politics/2021/06/america-dynasties-thriving-billionaires-taxation-family-offices-institute-policy-studies/>

³⁰ <https://dictionary.cambridge.org/us/dictionary/english/false-flag>

³¹ <https://www.merriam-webster.com/dictionary/false%20flag>

³² <https://medium.com/politically-speaking/our-ignorance-of-the-world-is-killing-us-aa17d1493d08>

³³ <https://www.mad.uscourts.gov/resources/pattern2003/html/patt4cfo.htm>

³⁴ https://en.wikipedia.org/wiki/Presumption_of_innocence

Nationalism

The rise of nationalism has been an issue since the 1990s. Nationalism is an “ideology based on the premise that the individual’s loyalty and devotion to the nation-state surpass other individual or group interests.”³⁵ On the surface, nationalism can be a simple form of pride in your nation, like “I’m proud to be an American” or “I’m proud to be Brazilian.”

The problem can arise that “the issue of nationalism points to a wider domain of problems related to the treatment of ethnic and cultural differences within democratic polity.”³⁶ People in the USA can oppress people from other cultures and/or races because they view their (generally white European) culture as being the only “true” American nationality, despite themselves being immigrants from Europe relatively recently. The first Native Americans came here from Asia on the order of 20,000 years ago, so don’t whine that your 17th century relatives give you the right to kick out other immigrants.³⁷

American Exceptionalism

Sometimes nationalism is hidden behind a sense of American Exceptionalism.³⁸ That is the belief that we are the best at everything – we are the smartest, most productive, etc. country. A role model for the rest of the world. Several decades ago, America was a world leader in technology, manufacturing, and other areas. However, the outsourcing of manufacturing to countries with lower labor rates, fewer environmental controls, and other advantages led to the collapse of manufacturing for most industries. Even white-collar jobs such as software engineering were outsourced to Russia and India, despite the time zone and language barriers.

The COVID-19 pandemic highlighted how vulnerable the US is to imports of computer components and other high technology components. Recent right-wing politicians have pushed for isolationism, and hence the need to rebuild manufacturing capabilities domestically. This cannot be done overnight, however, and the cost is steep. A single manufacturing facility for computer chips costs billions of dollars. Iron smelting plants have rusted away and need massive investment to rebuild. No one suggests how to fund this.

Psychology Issues

Projection

Social media is full of examples of people using the defense mechanism of projection. Projection is defined as:³⁹

The process by which one attributes one’s own individual positive or negative characteristics, affects, and impulses to another person or group. This is often a defense mechanism in which unpleasant or unacceptable impulses, stressors, ideas, affects, or responsibilities are attributed to others. For example, the defense mechanism of projection enables a person conflicted over expressing anger to change “I hate him” to “He hates me.” Such defensive patterns are often used to justify prejudice or evade responsibility.

People who are accused of being racist, sexist, homophobic, transphobic, child molesters, fascists, etc. often use this to attack their opponents with the same accusations.

³⁵ <https://www.britannica.com/topic/nationalism>

³⁶ <https://plato.stanford.edu/entries/nationalism/>

³⁷ <https://www.scientificamerican.com/article/the-first-americans/>

³⁸ <https://www.pewresearch.org/2006/05/09/the-problem-of-american-exceptionalism/>

³⁹ <https://dictionary.apa.org/projection>

Homeless with Mental Illness

Mental illness is a taboo and confusing subject for many people. It's easy to understand if someone breaks a bone they will be disabled for a couple months then pretty much back to normal. But mental illness is hidden. We can't see a person's brain (imaging notwithstanding) and fix something broken. Mental illness is generally chronic, incurable, sometimes treatable. We want simple solutions, but they rarely exist. You can't cure depression by saying "just be happy."

Before the 1950's people with severe mental illnesses (SMI) were often locked up in institutions. Insane asylums. Abuse and neglect were rampant. Then-Governor Reagan signed the Lanterman-Petris-Short Act in 1967, all but eliminating institutionalization without consent.⁴⁰ The catch was, that Act assumed that facilities would provide for housing. That never happened, leaving many people with SMI on the streets, getting arrested for minor crimes, released, and repeat *ad nauseum*. This resulted in a large percentage of inmates with SMI, about 30%.

California has tried to get the mentally ill out of prisons, but the result has been a large jump in homelessness. California has about 11.6% of the country's population, but 25% of the homeless.⁴¹

"He's a psychopath"

The term psychopath is often thrown around loosely. "Callousness, detachment, and a lack of empathy enable psychopaths to be highly manipulative."⁴² Even though the condition is widely recognized, it does not appear in the diagnostic manual DSM-5 except as a youth condition marked by callous unemotional behavior⁴³

Keep in mind that psychopathy does not excuse criminal activity.⁴⁴ There are mental illnesses that can be used to justify a criminal insanity defense, but being a psychopath is not one of them. An insanity defense "must prove beyond a reasonable doubt that their client has a severe mental illness that makes them incapable of acting reasonably."⁴⁵ An insanity defense is rarely used, 0.5% of felonies or less, and is successful only about 25% of the time.⁴⁶

Wealth Disparity

The median family income in the USA is about \$71,000/year.⁴⁷ The median family net worth is about \$120,000,⁴⁸ but the top 1% of families have a mean net worth of over \$11 million. This massive disparity in wealth has resulted in huge corporate and individual donations to elections by the Citizen's United 2010 Supreme Court decision throwing out many campaign finance restrictions.⁴⁹

While many blamed Citizen's United for the association of corporations as people, Supreme Court decisions from the 19th century established the precedent, in connection with railroad barons of that era. With respect to 14th Amendment protection, a corporation is a person, said Santa Clara County v. Southern Pacific Railroad Co. in

⁴⁰ <https://calmatters.org/commentary/2019/03/hard-truths-about-deinstitutionalization-then-and-now/>

⁴¹ <https://calmatters.org/commentary/2019/03/hard-truths-about-deinstitutionalization-then-and-now/>

⁴² <https://www.psychologytoday.com/us/basics/psychopathy>

⁴³ <https://www.apa.org/monitor/2022/03/ce-corner-psychopathy>

⁴⁴ <https://law.jrank.org/pages/1885/Psychopathy-Psychopathy-criminal-law.html>

⁴⁵ <https://www.hesterlawgroup.com/blog/2022/january/what-is-an-insanity-plea/>

⁴⁶ <https://www.sciencedirect.com/topics/medicine-and-dentistry/insanity-defense>

⁴⁷ <https://www.census.gov/library/publications/2022/demo/p60-276.html>

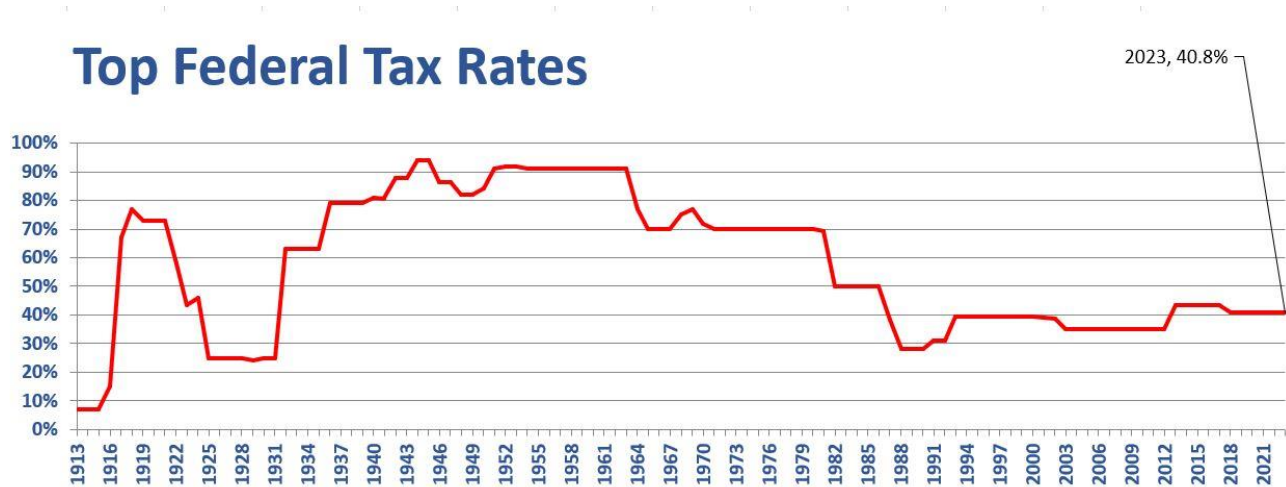
⁴⁸ <https://www.sofi.com/learn/content/average-american-net-worth-by-age/>

⁴⁹ <https://www.brennancenter.org/our-work/research-reports/citizens-united-explained>

1886.⁵⁰ That Amendment has the Equal Protections clause, which is also the basis for many reproductive, racial, and gender discrimination decisions which could be thrown out by the current Supreme Court.⁵¹

Tax Rates for Wealthy

Another legacy from the Reagan administration is a dive in the highest income tax rates for wealthy individuals. Notice the large drop in tax rate during the 1980's.⁵²



Tax on Social Security Benefits

Another Reagan gem was the introduction of taxes on Social Security benefits. This took effect in 1984, and was increased from 50% to 85% of benefits by President Clinton in 1993.⁵³

A related issue is the cap on Social Security tax withholding per year. At present, there is no more SS withholding (FICA) above income of \$147,000.⁵⁴ So if you earn \$100,000,000 per year or \$150,000 per year, both pay the same into the SS system.

Economic Terms

Another major point of confusion is the accusation of a person or group being socialist, Marxist, communist, or fascist, in contrast with capitalist.

- **SOCIALIST.** Socialism is a populist economic and political system based on collective, common, or public ownership of the means of production. Those means of production include the machinery, tools, and factories used to produce goods.⁵⁵

⁵⁰ <https://supreme.justia.com/cases/federal/us/118/394/>

⁵¹ <https://www.law.cornell.edu/constitution/amendmentxiv>

⁵² https://bradfordtaxinstitute.com/free_resources/federal-income-tax-rates.aspx

⁵³ <https://www.ssa.gov/history/InternetMyths2.html>

⁵⁴ <https://www.forbes.com/advisor/business/payroll-tax-rates/>

⁵⁵ <https://www.investopedia.com/terms/s/socialism.asp>

- **MARXIST.** Marxism is based on British economists Adam Smith and David Ricardo. Karl Marx built on this by realizing that “capitalists’ profits are obtained from the unpaid labour of the workers.”⁵⁶ Marxism focuses a lot on the workers rising up to get much more of the value of their work.
- **COMMUNIST.** Communist economy is based on “common ownership of the means of production and the absence of social classes, money and the state.” The economy is centrally planned by the government and there is no private ownership of businesses or property. In order to fit in with the central economy, people are assigned jobs and training.
- **FASCIST.** Fascism is socialism with a capitalist veneer. It controls the means of production indirectly through domination of nominally private owners.⁵⁷ Hitler put it this way in 1933; “The state should retain supervision and each property owner should consider himself appointed by the state. It is his duty not to use his property against the interests of others among his own people. This is the crucial matter.”
- **CAPITALIST.** Capitalism is “an economic system in which private actors own and control property in accord with their interests, and demand and supply freely set prices in markets in a way that can serve the best interests of society.”⁵⁸ All businesses are privately owned. Among the problems with this system are that a monopoly defies the concept of supply and demand, and there is no assurance that anyone acts in the best interests of society. **Capitalism has no moral center; profit is the only goal.**

The United States is a combination of socialism for common services (national defense, transportation systems, foreign relations, police and fire services, currency, etc.), and capitalist for most other things.

It wasn’t always this way. In Philadelphia in the 17th century, the fire department was a private service. You could prepay for their services and get a metal tag on the front of your home. If you had a house fire, the fire department would see your tag and start putting out the fire right away. If you didn’t have a tag, they would negotiate on the spot with the homeowner to pay for their services.

The business foundation of the United States is capitalism, yet few if any of the leaders are acting in the best interests of society. Capitalist greed has replaced all other goals.

Fairness Doctrine

Many people complain about partisan bias in news sources. This bias is allowed because President Reagan cancelled the Fairness Doctrine.⁵⁹ That Doctrine started in 1949 out of fear the three networks would show bias. It was upheld in a 1969 Supreme Court ruling. The FCC repealed the Doctrine in 1987, citing free speech.

As a result, the myriad news organizations can show a wide range of bias or neutrality, tracked by several media bias charts. Here is one which is updated twice a year.⁶⁰

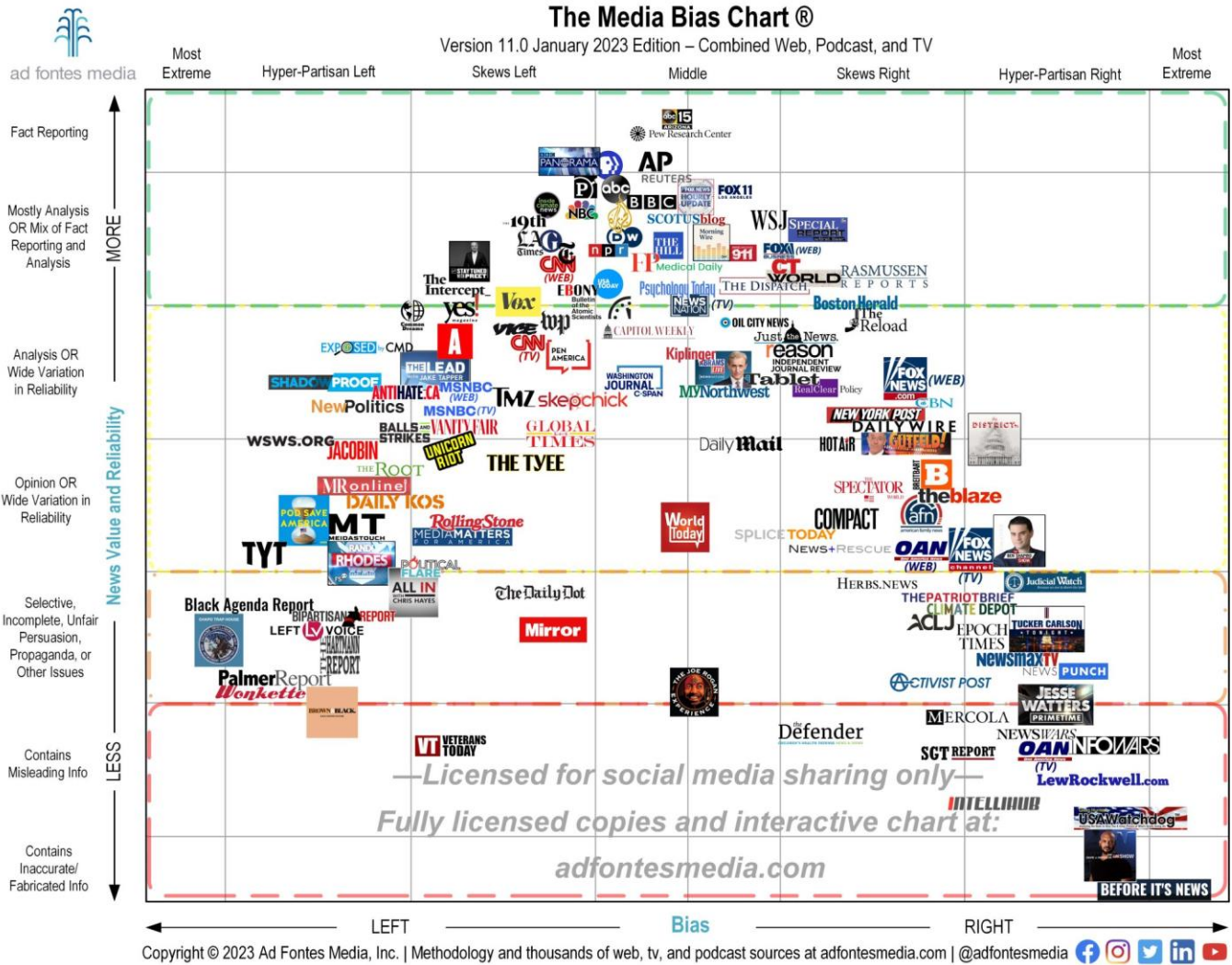
⁵⁶ <https://www.marxist.com/economic-theory.htm>

⁵⁷ <https://www.econlib.org/library/Enc/Fascism.html>

⁵⁸ <https://www.imf.org/external/pubs/ft/fandd/2015/06/basics.htm>

⁵⁹ <https://www.reaganlibrary.gov/archives/topic-guide/fairness-doctrine>

⁶⁰ <https://adfontesmedia.com/gallery/>



Conclusion

This guide was written after realizing that the same issues kept coming up on social media. A severe lack of understanding of basic constitutional principles, economic and political concepts, sometimes by people who claim to be lawyers, creates increased fear of government and distrust of our most basic democratic principles. Those may be the intended unspoken goals, at the price of throwing away your credibility and violating your oaths of office.

If you must insult people on social media, please use the correct and appropriate terms so you don't look like a fool or a hypocrite!