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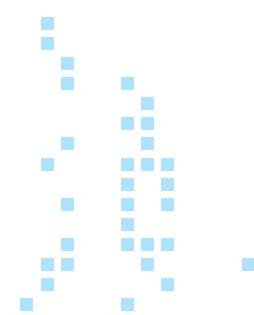
# RIGHT TO TRUTH, RIGHT TO PRIVACY AND RIGHT TO KNOW. ABUSES AND THE WAY OUT.

— MARCIN KILANOWSKI

*International law refers to the right to truth. A similar right exists on the national level, namely the right to information. The right to information, however, may come into conflict with the right to privacy. While legislators and courts tried to find a proper balance between the two and scholars started to think about developing the right to truth on the level of national jurisdictions, the notions of truth, information, and privacy were strongly challenged by the intensive development of new technologies. The information and data obtained by tech companies, political parties, and governments became means for the development of disinformation and “fake news” in aid of the economic or political interests of these entities on the national or international ground. There is much disturbing evidence of such activities undertaken in various political campaigns dating from around 2010, including the use of hacking, of disinformation, and of voter suppression through alleged violence and intimidation. We should ask whether it is still possible to defend the idea of reaching for the truth and gaining information and knowledge while respecting the right to privacy and right to freedom in democratic societies. The positive answer includes a set of recommendations.*

## INTRODUCTION

We are facing a crisis in our democracy—the crisis of not only the notion of truth and knowledge, but also of difficulties in getting access to information and the protection of privacy—due to the systematic manipulation of data that supports the relentless targeting of citizens, without their consent by campaigns of fake news, disinformation, and messages of hate. The prevalence of the fake news phenomenon can be mainly ascribed to the popularity of social media as channels of communication between people. Drawing knowledge from a small number of sources and isolating oneself in information bubbles favors the spread of false content. Some researchers emphasize that despite projects aiming to counter disinformation implemented both at the national and international level, the chance of controlling this phenomenon is small.<sup>1</sup> Social media, where the content is based on private opinions of users, will always be subjective. Since Internet users have the right to express their own opinion, based on personal knowledge and experience, it is mostly up to the readers and viewers themselves to assess the credibility of the information they encounter. The awareness of citizens is the greatest potential weapon in the fight against fake news; thus, we need to educate our societies in critical thinking, disclose the sources of information, and provide Internet users with more control over search results. We also need new legal and institutional arrangements.



In this article, I first focus on the clash between the right to information and the right to privacy and how the development of new technologies butts them at risk. In light of that risk, it is also a crucial to ask whether it is still possible to obtain unbiased knowledge about the world, whether the truth can be protected from falsification, and whether it is possible to speak about the “right to truth”.

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**This article aims to answer two questions: How can we search for the truth and to protect the truth in our times of new technologies? What actions may help us deal with new technologies when we consider not only the opportunities, but also the threats they pose?**

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In conclusion, the article presents a set of recommendations that can help overcome the difficulties and dangers that our societies and democratic systems now face due to the development of new technologies. These recommendations can be a basis for legal regulations concerning education, freedom of speech, journalism, corporate governance, and state responsibility that will help utilize new technologies for the common good instead of the benefit of the few.

## FROM INTERNATIONAL LAW TO NATIONAL LAW

On March 24, 1980, human rights defender Archbishop Óscar Arnulfo Romero was assassinated. Each year, the international community pays tribute on the anniversary of this event to his legacy by celebrating the Day of the Right to the Truth Concerning Serious Violations of Human Rights and the Dignity of Victims. In the doctrine of public international law, the right to the truth about gross violations of human rights is an inalienable and autonomous subjective right. The right to the truth is linked with the right to justice and redress, and the guarantee that abuse will not happen again.

The UN and other international organizations support many activities aimed at disclosing the facts of serious violations of human rights and international humanitarian law. These activities are designed to promote justice and equity, encourage redress, and recommend reforms of abusive institutions. The UN created the Commissions of Inquiry in the Central African Republic, Syria, and the Democratic People’s Republic of Korea, and it established the Tunisia Truth and Dignity Commission and other similar initiatives. In 2012, the Human Rights Council also appointed the Special Rapporteur to achieve these goals, who since then has analyzed some of the challenges facing the truth committees in transition and presents proposals for actions to improve the effectiveness of these mechanisms.<sup>2</sup>



On a national level, legal acts refer so far not to the right to truth, but to the right to information. The right to information is linked with the access to public information, i.e., transparency. Many countries emphasize the importance of transparency for the effective functioning of democratic mechanisms, social control over the exercise of power, and the protection of citizens' health. Access to information on public affairs determines the ability to control whether the state really serves the interests of its citizens. Such information is valuable only if it is consistent with reality, i.e., verifiable and objective. Access to information should be exercised in consideration of the basic principles of a democratic state, i.e., openness, transparency and the pursuit of finding out the truth, as well as some few, case-based exceptions provided for by law, i.e., confidentiality, secrecy and the prohibition of disseminating knowledge on a specific topic.<sup>3</sup>

The right to information is also connected with the right to obtain information about persons discharging public functions. A democratic state ruled by law acknowledges that people need to know more about public officials than about other people. In consequence, public officials must take into account how the function they perform limits their privacy. The resulting conflict between the right to public information and the protection of the right to privacy in relation to persons performing public functions is inevitable. In other words, in the case of persons performing public functions, the right to information clashes with the right to privacy, which includes in particular (based on acts of national and international law and the jurisprudence of international tribunals): the right to personal inviolability, the right to protect family life, the right to the inviolability of the home, the right to freedom and protection of confidentiality of communication, and the right to information autonomy. This list should be reflected in every branch of law in which privacy should be understood as a sphere of life that every person wants to keep only for themselves.<sup>4</sup> It is understood that each person has a certain intimate sphere of feelings, thoughts, and beliefs that they want to keep secret from others, even from the closest people. The undisturbed existence of this sphere guarantees proper human development and provides psychological comfort. It is where an individual wants to be free from the interference of other people, where they can independently decide about their own life and make



personal choices. Using it, a person has not only the opportunity to freely establish contacts with other people according to their own choice, but also the ability to decide on the scope of disclosure of information concerning themselves and to freely develop their life and fulfil their own personality.

The right to privacy is limited in the case not only of persons performing public functions, but also of citizens when state interest is at stake. In such circumstances, the right of the state—the public interest—clashes with the private right. This is the right to information about the activities of ordinary citizens to protect and ensure security, public order or morality, and the rights and freedoms of other people, and to prevent crimes and to punish perpetrators while providing the public with information about the course and results of pending criminal proceedings.

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In this way, the state and the law in a democratic system protects against individuals, groups, and movements that, from the point of view of the axiology of the system, are of an extreme nature by prohibiting certain behaviors as well as the dissemination of certain ideas that threaten the existence of democracy, freedom, and the search for truth.

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This is why several kinds of activities have been excluded from social life or limited. Limitations were also imposed on the concept of a “free market of ideas”, and legal limitations were introduced to the right to freedom of speech.<sup>5</sup>

## RIGHT TO TRUTH?

A democratic state, whether social or liberal, differs from a totalitarian or authoritarian state that limits an individual's autonomy not only by interfering with their privacy, but also by limiting the freedoms of expression, movement, or association by claiming the right to dissemination of the “truth” and the monopoly to impose what this truth is.<sup>6</sup> In a democratic state, the space for the search for the truth is much wider also with regard to the truth about the state's actions. In a complex world, people should be able to search for the truth and to protect what they know, especially about the actions of the state. The basic, general principle on which a democratic state operates is and must be openness, transparency, and access to the truth. Confidentiality or secrecy are admissible in truly exceptional situations, wherein we are dealing with strategic areas related to state security or the sphere of the already mentioned privacy.

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**Openness and transparency allow citizens to check whether the state really acts in their interest. Openness, therefore, should be the norm, not the exception, if state or local government officials are to act in the interest of society.**

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This applies to not only recent and current actions but also to the past. Thus, it is understood that citizens have the right to know the historical truth about actions and events—also from the point of view of criminal, civil, or political responsibility of those who made certain decisions. The established historical truth is often understood as what should be protected. To do that, certain views are excluded from the public discourse as “public untruths” or “historical lies”, for which states introduce criminal sanctions, e.g., for denying the historical facts. Over the past several decades, regulations have been adopted to address the various forms of historical lies through “the right to memory.”<sup>7</sup> Most often, such legal regulations are related to the crimes of the twentieth century and the functioning of totalitarian regimes and prohibit denying, minimizing, trivializing, justifying, or condoning genocide or crimes against humanity.<sup>8</sup>

The problem of “public untruth” is a very current issue. It is especially challenging to protect the “truth” because of how mass disinformation takes the form of fake news. In such circumstances, it seems reasonable to claim that people should have the right to know because “the desire for truth is deeply rooted in the nature of every human being, whose conduct, if he acts in accordance with that nature, is subordinated to the demands of truth.”<sup>9</sup> Such words show how even in a democratic state, one can be tempted to think that our actions are to be “subordinated to the demands of truth” and ignore the need to protect the sphere of freedom and privacy of citizens. Such thinking can quickly devolve toward authoritarianism.

Thinking about the truth as a category separate from freedom—especially freedom of speech—is very common nowadays. The term “truth” is used often and in many various circumstances. Citizens of many democratic countries, including Poland, Hungary, and the U.S. are often faced with the “obvious truth”, the acceptance of which is a condition of being classified as a wise person or a true patriot. Satisfying such “truth” is a pretext for constantly calling press conferences at which the “truth” is announced and loaded onto media vehicles for transport to the recipients. Too often, however, those who speak in the name of the truth believe that although they have the monopoly to satisfy it, they do not need to prove the truthfulness of what is said. They want everyone to accept it, and anyone who is against it is an enemy.<sup>10</sup> What counts is their version of truth and not that of others. It bears mentioning as a noteworthy example the events that led to the development of the social platform Truth Social by former President Donald Trump that was advertised as the medium to present the truth, unlike Twitter or Facebook. Not long after the development of the platform, it has been widely accused of censorship.<sup>11</sup> An August 2022 report from consumer rights advocacy group Public Citizen found that Truth Social was censoring liberal and progressive users who disagreed with the site's narrative. In June 2022, several accounts were reportedly banned by Truth Social after posting about investigations into the 2021 United States Capitol attack and the January 6 hearings that detailed events leading up to the mob violence on that day, when Trump supporters, seeking to overturn the 2020

presidential election, breached the U.S. Congress, Public Citizen concluded that Truth Social’s content moderation was more limiting than Twitter’s and that Truth Social’s policies were “creating an echo chamber of violent views.”<sup>12</sup>

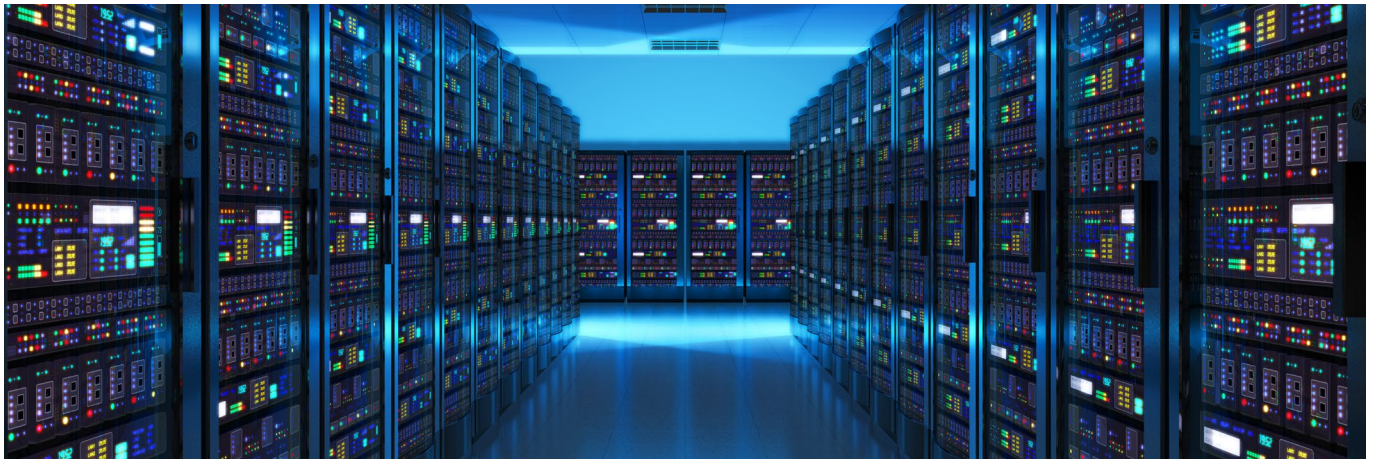
Having truth as a reference point was supposed to help prevent the development of authoritarian tendencies; nowadays, it is often used by those who commit atrocities in the name of the “truth” or “right to truth”. They use language that claims to be and value “truth”, but, in fact, they limit freedom of speech and are involved in dissemination of untrue, inaccurate, or misleading information that reaches much further and wider due to the use of today’s new technologies.<sup>13</sup> Therefore, it should be ensured that in a democratic state the desire to know the truth does not undermine such basic civil rights as the right to privacy, the right to defend one’s good name, and the right to freedom of expression. Desiring to know the truth should not let us forget that the superior good is another person.

## NEW TECHNOLOGIES: THE RIGHT TO INFORMATION AND RIGHT TO PRIVACY AT RISK

One of the needs of humans as individuals is the need to maintain privacy, yet nowadays privacy is one of the rights most at risk and, thus, among the most desired and valued. One risk is of the state trying to know more than necessary about its citizens. This is mainly due to the emergence of modern image- and sound-recording devices. Another risk is posed by the rapid development of new technologies that allow access to private information about the citizens. Such risk is also posed by such other actors as corporations and political parties that may use the obtained information in a way that can threaten the security of citizens as well as the state. The problem in this case is not only surveillance, but also what the acquired information can be used for. Another threat is the restriction of citizens’ access to truthful information or to information that presents different points of view and the dissemination of intentionally misleading information. Through such actions, the private lives of individuals are influenced and controlled and the scope of individual freedom and access to knowledge is limited. Ubiquitous digital surveillance takes away people’s privacy and dignity, often reducing them to recipients of commercials.

It is certain that to some extent these new technologies do offer better access to information and knowledge. The development of modern technologies and the digital environment enables easy acquisition of information, access to many sources of knowledge, and its sharing on an unprecedented scale. At the same time, the digital revolution, which is taking place also through social media, has completely changed how information is shared and people communicate so as to not only facilitate these activities, but also create additional opportunities for surveillance and shaping citizens’ opinions, e.g., by spreading false information. When recipients do not verify knowledge with other, credible sources, they do not have a full picture of reality because information garnered from social media is all that is available to them.





New technologies, including the Internet with its huge global network of interconnected computers that knows no national borders and contains the largest database of all kind of information, can negatively affect the lives of citizens. They may also threaten the security of these citizens as well as the information security of the state, i.e., the functioning and development of both the state and the society free of interference through free access to information, while maintaining the ability to influence information.<sup>14</sup> Such phenomena such as trolling, post-truth, fake news, and deep fake are examples of specific key threats today. What all of these phenomena have in common is a desire for profit. Internet trolls are paid for their actions. Misleading content published on websites affects the growing interest in them and helps earn money from advertising. Catchy pieces of news are used to attract attention and gain publicity for both financial and political gain.

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**Disinformation can involve destruction of the image of politicians or authorities.**

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This also raises concerns for scientists because disinformation can pose a threat to not only the democratic political process, but also any decision-making process based on rational criteria. With the rapid evolution of technologies, the right to privacy, the right to information, the right to education, and the search for truth are being abandoned. This may lead to an increase in radical and populist attitudes, which threatens democracy.<sup>15</sup>

### TRUTH: HOW TO PROTECT IT

It behooves us to recognize that the right to information is linked with the right to education. In many countries, information rights are guaranteed by the basic laws,<sup>16</sup> and so is the right to education. The particular objective of both access to information and education is to gain knowledge and learn the truth. This truth is considered a condition for scientific, cultural, and social development, and as such is one of the highest values of Western civilization. The possibility of knowing it is inscribed in the classical concept of truth, which is based on the assumption that the known facts correspond to reality; however, our ability to understand and describe that reality has always been questioned by philosophers and sociologists of science.<sup>17</sup> In the modern era, the questions have been asked with increasing frequency: what are facts, and what is reality? Among the critics of the classical concept of truth was Michel Foucault, who claimed that the truth “is the most recent illusion,” and so is our knowledge about it. According to Foucault, knowledge is shaped by social practices, and reaching the truth is questionable because the cognitive process and the acquisition of knowledge are entangled in a struggle for power. He claimed that “power produces knowledge [... and] power and knowledge are directly related; that there are no power relations without a correlated field of knowledge, and no knowledge that does not presuppose and does not create power relations.”<sup>18</sup> In other words, there is no knowledge independent from the power relations that shape what is presented to us as “the knowledge” and “the truth.” In fact, this is not the objective knowledge and truth but what serves the interests of some. Appropriate discourse and social practices develop to support the process of pursuing these interests.

Foucault was one of many pragmatists, critical theorists, and postmodernists who criticized the classical conception of truth and whether we can gain knowledge, at least the objective one. We can all appreciate how hard it is for scientists to establish objective truth, e.g., regarding the healthfulness of GMO foods, or the causes of climate change, or the appropriate retirement age in particular countries.<sup>19</sup> These issues are tightly connected with conflicting economic and political interests. It is equally hard to gain true information and objective knowledge about past and present decision-making processes. This casts doubts as to whether such processes can be truly transparent not only because sometimes they take place without the full knowledge and understanding of persons involved, but also because those who think they knew the reasons for their decisions sometimes claim the necessary secrecy regarding state activities or evoke the business judgment rule.<sup>20</sup>

Following this line of reasoning, we see how knowledge is entangled in power and in political and economic decisions. Such thinking can be dangerous, however, because it can lead to arguing that “everything is political.” The claims of postmodernism can sustain all those practicing the dissemination of subjective opinions as equally valid and denying the possibility of talking about objective facts and, thus, about truth and knowledge. Reaching for the argument that television is “political” or that legislators, prosecutors, judges, or the academy are “political” makes us slowly slide toward authoritarianism as what matters is the subjective opinion of this or that “political” group—a power-holding group that wants to win for itself as much space as possible not by force of argument but by argument of force.<sup>21</sup> Why argue when there is no truth to discover?

When Foucault’s considerations are no longer just a philosophical narrative and have become the reality, we hear the voices that we must defend the truth in the face of a deluge of fake news. Some argue that it is possible but not easy. They argue that defending the truth requires effort, diligence, courage, and determination. It remains hidden, and we must be careful not to miss it. Plato claimed that truth and knowledge are the fruit of effort and the result of a long philosophical search.<sup>22</sup> Relying on the belief that obtaining knowledge is possible is one thing; obtaining it is quite another. Who

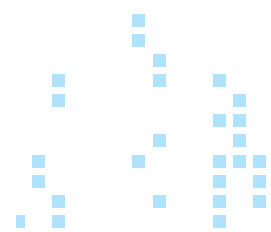
should be nominated as a guardian of the truth? Those who are designated to do it are scientists, even though they are often in disagreement with each other. Another way to gain knowledge and establish the truth is through the work of a group of experts; yet their work may be contested by other groups of experts—even more so when the issue is political or when interests of particular groups in the society are involved, which is most often the case.<sup>23</sup> Thus, it is sometimes more appropriate to establish fact-finding commissions or truth and reconciliation commissions composed of representatives of different stakeholders with different views, but always those who are interested in resolving the issue and finding the truth. In their work, they rely on the good faith of all to engage in dialogue and the common effort to search for the answer.<sup>24</sup> Finding the truth may also happen through litigation. From Nuremberg to The Hague, the truth has been many times established through court proceedings—although there are allegations that the tribunals operating in these cities were established by victors.

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**Undoubtedly, it is important that the courts adjudicate impartially and independently, which is the case only in democratic countries where a court decision is the result of applying the law and not issuing judgments as required, as was the case with the courts that convicted Navalny or Poczobut.<sup>25</sup>**

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Such rulings are highly controversial for some—as are the rulings of the European Court of Justice and European Court of Human Rights pointing out that Poland and Hungary violated the rule of law for others. The governments of these countries claim that they are only defending Christian values and their sovereignty; Poland has not complied with the judgments, calling them political and untrue.<sup>26</sup> A future International Criminal Court ruling in The Hague on charges against Putin for war crimes in Ukraine will also be recognized only by some.<sup>27</sup>



Apart from the work of scientists, experts, and court litigation, which is often based on the work of scientists and expert committees, we unfortunately have no other tools to determine what the truth is or what actions should be taken to achieve the right or true result, expected state, or goal. It is also necessary to acknowledge that regardless of the contested result of the search for truth, it will be always based not on what the facts were or are, but on what claims about facts were considered confirmed, justified, or proven. It will also have to be based on freedom of speech.

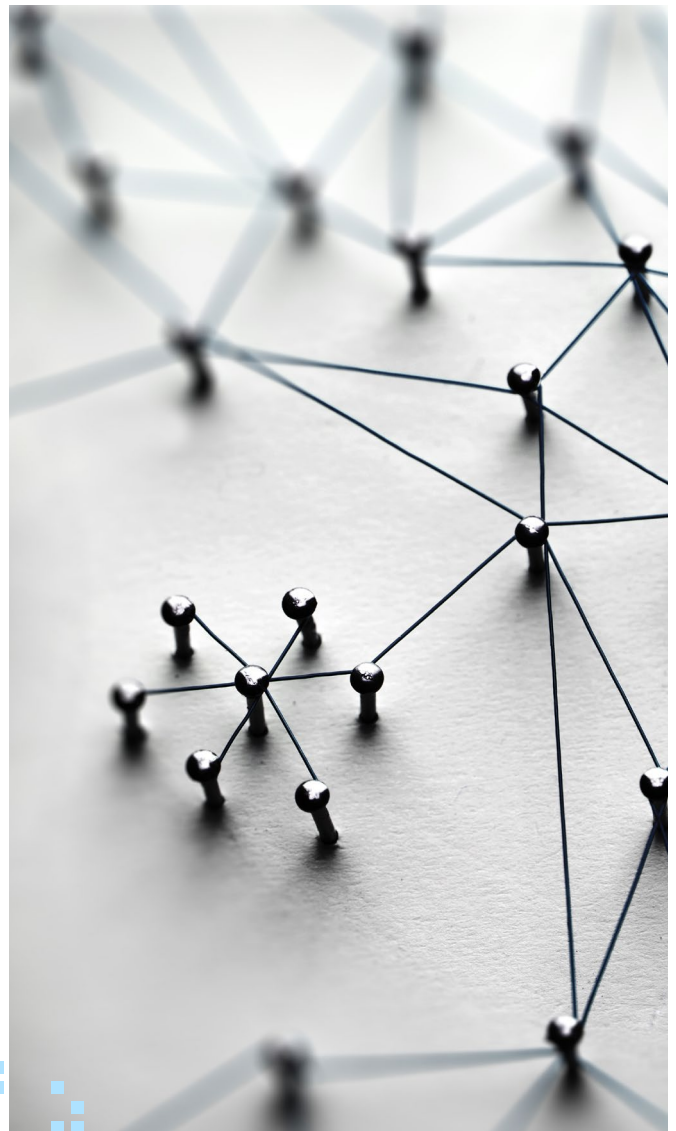
As in every debate—whether social, political, or legal and whether conducted on the front pages of a newspaper, in the chambers of parliaments, on university campuses, or in courts—a necessary precondition to search for the truth is the freedom of speech. We need such freedom to speak about how to search for the truth, what the truth is, and how we should understand it. As John Stuart Mill said, freedom of speech is necessary; however, it should be used not to irresponsibly say whatever one wants to say but to search for the truth.<sup>28</sup> He argued that a prevailing opinion or common knowledge on any matter can be wrong and there is no chance of rectification if people do not have the right to express their views. And these people often know best when they face difficulties, when the “shoe pinches” as John Dewey put it.<sup>29</sup> Even if they might only be partly true, the freedom to question what we know or believe can lead to the discovery of aspects that were not known or recognized before; e.g., that women should have voting rights. However, it is important to choose the right moment to do so, as Mill advises. What is important is not only that the truth is told, but also how it is conveyed. The more difficult the truth, the more care should be taken to express it.

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Questioning the *status quo* or the common knowledge should happen when the emotions are low because that will enable people to listen to each other’s arguments and foster a better understanding of others.<sup>30</sup>

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According to Isaiah Berlin, another famous proponent of the necessity of freedom in our private and public life, the freedom that we have should lead to better understanding. For that, Berlin added, we need tolerance, which requires showing respect to others.<sup>31</sup> Jurgen Habermas adds to Mill’s and Berlin’s prescription for a healthy society a requirement to undertake communication that is governed by communicative rationality, and not merely the rationality that is directed toward achieving a particular goal, because any particular aim can be far from the goal of discovering the truth.<sup>32</sup> Such communication should be based on equal treatment of those that speak or equal treatment of the parties involved in dialogue, which rests on the respect of the dignity of all. There should be mutual respect between speakers: even if what they do or think is not to be respected, they themselves should be.





**CONCLUSION: NOT THE RIGHT TO TRUTH BUT THE RIGHT STRATEGY**

Knowing the truth is important, because by knowing it we can make adequate decisions. In the face of the information crisis, there are more and more voices pointing out to the need to protect such truth by means of law.<sup>33</sup> There are proposals of public law solutions to guarantee and secure the truth in various areas of public affairs.<sup>34</sup> Some refer to such right, but “the right to truth” refers to an idea and not to a positive law with a specific content. The involvement of the law as the guardian of the truth, however, raises doubts related to fears of introducing censorship, which can lead to violations of freedom of speech. This freedom is important in the process of discovering the truth, as it protects us from the danger of closing ourselves from gaining full knowledge in the best case, and in the worst, from creating conditions in which some people use “the one and only truth” as a justification for developing authoritarian rules.<sup>35</sup> Freedom of speech is therefore necessary for expressing claims, presenting arguments, gaining knowledge and uncovering the truth. Only in some cases it is easy to establish the truth—for example, what was the speed of the car that left skid marks on the street after the driver hit the brakes. Most of the time, searching for the truth will require a long process of discovery and will be a source of conflict. And even though we may not like the fact that there is conflict, some level of it will and should exist, as disagreement is natural when different views are confronted, and it is the basis for new discoveries. The inquiry process should, however, always rest on the willingness of those who disagree to search for the answer, with mutual respect among the opponents.

We operate in a world of complexity that requires a lot of our attention. We are bombarded with data that informs us about the world and with untrue statements about it. Over the course of time, we have accumulated knowledge, yet unforeseen situations happen that flag the limitations of our knowledge and ability to predict the cause of action. We cannot be certain about what may happen tomorrow.<sup>36</sup> To master this complexity, we adopt strategies and procedures. They may prove helpful in search for truth if we adjust them to changing conditions to better complement the existing forms of

seeking the truth through court proceedings and the work of expert groups or commissions. So far, when making an account of profits and losses ensuing from the expansion of new communication technologies at the expense of our privacy and often identity, we gain access to an unlimited amount of information that might be not only true but also manipulated. The goal should be to develop strategies that will allow us to protect not only our privacy but also access to information and prevent the spread of disinformation on the Internet. On the basis of various reports, it is possible to present key recommendations for strategies and procedures that should be adopted for this purpose.<sup>37</sup>

**Education in critical thinking**

The ability to critically assess the credibility of information, a questioning attitude, a willingness to search for an answer, and to not take everything for granted on the basis of the information provided, i.e., a culture of continuous, critical learning, should form the basis of education in the field of new technologies. Education systems should be adapted to the new reality; instead of preparing pupils to assimilate truths, teach them critical thinking. The fight against fake news, information bubbles, and intentional manipulation should start with education and sensitizing young people to how what appears on the web is often intentionally or unintentionally spreading falsehood. The ability to recognize fake content is a key skill in using information in the modern world and can be the basis for counteracting the phenomenon of fake news.

**Empowerment of journalists and users**

It is important to sensitize media employees to the importance of using verified source material, to support independent news media, and to promote high-quality journalism. What is more, users themselves should have more knowledge and control over the results they receive from search engines. It is important to filter information not only for its accuracy, but also for the quality of the source. Readers and viewers should be able to report cases of fake news.

### Transparency

Users should be able to distinguish journalistic content from other information, including private posts and opinions. They should also be able to verify the sources, e.g., political advertising on social media platforms should include clear information on its source, including the author, the country of origin, and the sponsor(s). To ensure better transparency, online platforms also should conduct their own analysis of fake news and inform users when false content has been published. If it is discovered that a user or account has been involved in practices to spread disinformation, they should be banned from earnings from advertising.

### Clear responsibility and liability of tech companies

Tech companies are not passive platforms; they reward what is most engaging according to their business model and growth strategy. They profit from utilizing such a model and therefore they should be held responsible and liable for harmful and misleading content shared on their sites. Repercussions should include conventional criminal sanctions for individuals and financial penalties for digital platforms that do not remove false information in time.

### Non-financial auditing of tech companies

Companies are required to conduct financial audits. The same type of auditing should be required for the non-financial activities of technology companies. They should report about their security mechanisms and algorithms to ensure that they operate responsibly. This auditing should also concern the use of fake accounts on social media and advertising that targets people with disinformation, e.g., during elections. This would require developing a specialized state control service that, as in case of tax control or labor inspectors, would control algorithms used by large technology companies to process and transmit information, e.g., in social media.

### Digital Charter

It is important that the digital rights of users are guaranteed in every country. Establishing a Digital Charter as a new legal mechanism would present legal obligations, terms of liability, and user protection in signatory countries.



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