Free Speech, Autonomy and the Legal Prohibition of Fake News

A. Abstract

Western European liberal democracies have recently begun enacting laws that prohibit the diffusion of fake news on social media. Such measures remain highly controversial, and many consider that they are incompatible with our individual right to free speech. In this paper, my suggestion is that the legal prohibition of fake news is compatible with freedom of expression, at least on the influential view according to which the value of free speech derives from its autonomy-enhancing character. On my account, indeed, fake news undermines personal autonomy by interfering with people’s capacity to appreciate reasons, and this provides us with pro tanto reasons to regulate it. To accept this conclusion, however, we must reject the liberal conception of autonomy according to which autonomous agents cannot outsource self-government, i.e. provide an external agent with the authority to preselect evidence on the basis of which they make judgments. (144 words)

B. Paper

1. Introduction

Philosophers and cognitive scientists are increasingly worried that fake news leaves lasting traces on the beliefs and behavior of even alert consumers (Levy 2017, Rini 2017, Gelfert 2018). Psychologists, for their part, have expressed doubts that the most widely discussed solution to fake news – fact-checking – is likely to lead to the successful correction of false beliefs (Lazer et al. 2017). Meanwhile, social media giants such as Facebook remain reluctant to remove fake news from their platform, preferring to “demote” deceptive content through algorithmic design. Under these circumstances, Western European democracies have begun implementing laws that aim to
hinder the spread of misinformation on social media. In 2017, for instance, Germany enacted the
Network Enforcement Act, a law which authorizes the government to fine social media sites if they
fail to swiftly remove illegal content – including fake news – from their platform. In the fall of
2018, the French government implemented its own piece of legislation against fake news – the
Law relating to the manipulation of information – which allows French judges to order the removal
of fake news from social media during the three months leading up to a national election.

Legal attempts to curb fake news remain highly controversial. In France, for instance, the
Macron government’s law against fake news was approved by the Constitutional Council without
the approval of the Senate, the members of which continue to argue that such a law is incompatible
with our freedom to communicate. Since the 2016 U.S. election, fake news has been discussed by
philosophers interested in providing a precise definition of this concept (Mukerji 2018, Pepp et al.
2019) and in debating whether such a term has a sufficiently precise meaning to give rise to fruitful
discussions (Habgood-Coote 2018, Brown 2019). Yet, the French Senate’s firm refusal to ratify
Macron’s law against fake news raises a normative question that moral and political philosophers
are only beginning to address (Levy 2019, Mathiesen 2018): are legal attempts to curb fake news
compatible with free speech?

In this paper, my suggestion is that the legal prohibition of fake news is compatible with
freedom of expression, at least on the influential philosophical view according to which the value
of free speech derives from its autonomy-enhancing character. Without defending the details of
the French law, I will argue that individuals are entitled to a form of legal protection against
organizations that deliberately create and diffuse deceptive content. My argument to this effect is
that fake news undermines personal autonomy by interfering with people’s capacity to appreciate
reasons, and this provides us with pro tanto reasons to regulate it. To accept this conclusion,
however, we must reject a liberal conception of autonomy according to which autonomous agents cannot outsource self-government, i.e. provide an external agent with the authority to preselect evidence on the basis of which they make judgments.¹

Before I begin, one remark is in order. In what follows, I set aside harm-based justifications of the legal regulation of fake news in the remainder of my discussion. Although some fake news stories may qualify as harmful speech, indeed, I doubt that all do unless we define harm in a very broad way (including, for instance, harm to one’s rational capacities). Yet, this is not what philosophers typically mean when they discuss harmful speech, which usually covers speech that is likely to lead to physical harm, and sometimes also harm to one’s self-esteem or self-trust (McGowan 2019). In fact, what I am interested in assessing is whether democratic states have strong reasons to regulate fake news qua fake news or, at least, as a kind of deceptive speech which is not necessarily harmful in this restricted sense.

2. What is fake news and how is it currently prohibited?

Several competing definitions of fake news have been advanced by journalists and academics during the last few years. While some scholars argue that the term “fake news” simply expresses the property of being false and presented as news (Allcott and Gentzkow 2017), most believe that a satisfying definition of this concept must also consider the intent of those who produced and initially diffused it (Rini 2017, Gelfert 2018, Mukerji 2018, Mathiesen 2018). Focusing on intent indeed allows us to distinguish between two kinds of news stories that contain false claims. Consider first news that were produced through a generally reliable (i.e. truth-conducive) journalistic process, but nevertheless contain false claims. In this case, a journalist truly intended

¹ See Mathiesen (2018) for a similar argument. In general, my argumentation is compatible with her own although there are important differences in our respective responses to the free speech objection. I comment on these differences in section 5.
to inform the public, but some error(s) slipped into the story at one stage or another of its production process. For instance, a source might have been unreliable, the journalist might have misunderstood what the source meant when she spoke, someone might have made a mistake while transcribing a recorded interview, etc. In general, news stories are true – and not accidentally so – for they have been produced by individuals who desire to reliably transmit accurate information to their audience and take precautions to ensure that this is the case. Yet, journalists occasionally commit errors.

By way of contrast, fake news is produced by individuals or organizations who either desire the public to form false beliefs or are indifferent to the truth, that is, do not intend to inform the public as journalists customarily do. In some cases, originators of fake news diffuse articles which contain claims they know to be false. In other cases, they simply diffuse claims they have no good reason to believe are true because such claims are not the produce of a process that reliably leads to truth. For this reason, Rini (2017) underlines that a central feature of fake news is that it *mimics* the conventions of traditional media reportage while only *pretending* to fulfill its main function, which is to let others know what is happening in the world. Brown (2019) similarly argues that diffusing fake news amounts to a form of intellectual imposture which consists in fooling others into believing that one is a journalist, that is, someone who desires to inform the public and has taken the necessary precautions to do so. In a nutshell, we can say that a news story qualifies as fake when it (i) contains false claims, (ii) presents itself in the traditional format of news stories and (iii) is the result of a production process that is not reliably truth-conducive, which itself suggests that its originator(s) did not intend to inform the public.² This is at least the definition I

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² In the case of news production, *intent* and *process* are arguably linked as someone who truly aims to inform the public will take some precautions to ensure the claims they communicate are true. In fact, definitions of fake news that focus on intentions are not incompatible with those that focus on production processes if we envision the latter as a proxy for determining the former. Of course, we can imagine an incompetent journalist who truly does its best to
will have in mind when arguing that democratic states have *pro tanto* reasons to prohibit fake news.\(^3\) Let us now look closer at how they concretely do so.

As the following excerpt from the French law illustrates, one option is to empower judges to order the removal of misleading content from the internet:

> During the three months preceding the first day of the month of a general election and until the date of the final ballot, when allegations or imputations that are inaccurate or misleading in a way that would alter the sincerity of the forthcoming elections shall be deliberately, artificially or automatically, and massively disseminated through an online public communication service, the judge hearing the application for interim relief may, at the request of the public prosecutor or of any candidate, party, political group or person […] prescribe […] any proportionate and necessary measures to stop such dissemination.\(^4\)

Such a law was designed to target fake news which spread on social media platforms, but its phrasing raises several interrogations. First, it does not solely apply to fake news, but to all allegations and imputations that are inaccurate or misleading. For this reason, and as I discuss below, I believe it significantly threatens people’s interests in diffusing false claims they sincerely believe are true. In my view, such a law should indeed be rephrased to explicitly focus on fake news (using the definition I have provided above or a similar one). One can also wonder whether fake news should only be prohibited during electoral periods as is currently the case, or if judges should have the power to order the removal of fake news from social media at all time. In what follows, I leave this issue aside to consider a more abstract philosophical question: can the state inform the public, but systematically produces news through an unreliable production process. Yet, this is not the epistemic situation in which originators of fake news typically find themselves.

\(^3\) Do satirical news stories qualify as fake news? This depends on the extent to which such stories hide or reveal their satirical character. For instance, a satirical news website may have an interface that resembles the one of real news website while revealing to its readers that it does not intend to inform them in an “about” section. It may also signal to readers that it should not be taken as news by having a ludicrous name (“The Onion”) instead of one that is deliberately chosen to fool the public (think, for instance, of fake news websites named after mainstream media organizations such as “breaking-cnn.com.”) Consequently, a legal prohibition against fake news may only apply to false stories that are clearly presented as news while sparing satirical websites that present themselves as such.

\(^4\) Author’s translation.
empower judges to order the removal of fake news from the internet without flouting our moral right to freedom of expression?

3. The free speech objection

The most straightforward justification of the legal prohibition of fake news is broadly consequentialist in character. In order for individuals to efficiently pursue their interests, they need to build a reliable picture of the world, and this in turns requires us to engage in testimonial practices. Yet, fake news disrupts the testimonial practice in which we are engaged with journalists by undermining the epistemic trust without which it cannot adequately function. Implementing bans against fake news, the argument continues, would protect this testimonial practice and generally promote society’s epistemic welfare. The free speech objection to the legal regulation of fake news is deontological challenge to this consequentialist line of reasoning: even if legal measures against fake news safeguard society’s epistemic welfare, doing so is incompatible with one of our moral right to free speech and the protection of people’s moral rights ought to trump society’s quest for epistemic welfare. To assess the strength of this objection, we must assess the reasons we have to judge that our right to free speech covers the diffusion of fake news in social media. As Fish (1995) suggests, no speech is without costs, and any convincing defense of the right to freedom of expression will admit some exceptions such as shouting fire in crowded theatre. As is the case in debates regarding discriminatory speech and incitement to hatred, we need to carefully examine what fundamental interests are promoted and threatened by the spread of fake news to determine whether legal attempts to prohibit it truly violate our right to free speech. To do so, it will help to distinguish between the interests of speakers and the interests of audiences as it has become customary to do so in discussions focusing on freedom of expression.
Most of us will accept that speakers have a legitimate in self-expression, that is, in sharing their understanding of themselves and of the world with others. As Shiffrin (2014, p. 87) notes, this is because expressing ourselves enables us to forge a mental life that “contributes to a distinctive perspective that embodies and represents each individual’s separateness as a person.” To put it simply, becoming myself, that is, someone who is not psychologically the same as others, is intrinsically tied to expressing myself. A similar way to articulate this idea is to claim that freedom of thought and freedom of speech are “practically inseparable” (Nash and Simpson 2018). Indeed, thoughts tend to be indistinct or opaque when they remain unarticulated and they must often be expressed in discourse or writing in order to be properly realized (Gilmore 2011). What is more, having the freedom to share our understanding of ourselves and of the world enables others to relate to us in appropriate manners. Expressing the fact that I belong to a sexual minority or that I support the Green Party, for instance, can help others realize that I share traits and interests with them and forward the right kind of invitations to me (“do you want to come to the climate protest on Saturday?”, “we should go for dinner soon!,” etc.). In other words, freedom of expression not only empowers us to become distinct individuals, it is also instrumental to our ability to freely associate with peers. Without letting others know who I am and what I stand for, it will be considerably difficult for them to determine how, precisely, they should relate to me.

Today, sharing content on social media is an increasingly important way in which we share our understanding of ourselves and of the world with others. Like traditional written or spoken communication, “posting” content Facebook and Twitter allows us to forge our public personas and influence the way others will perceive us. On social media, I can present myself as an assistant professor, a wine aficionado, a married partner, a mother of two, a politically savvy commentator, 5

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5 The expression “practically inseparable” is taken from the introductory chapter of Mill’s On Liberty (1859/1991).
and so on. Moreover, I can vary the emphasis I put on these dimensions of my identity by posting content that relates to my profession, family, hobbies or political views. Interestingly, sharing content online can help me further my interests in becoming a distinct individual and associating with others even if such content mostly contains false claims. If I continuously share conspiracy theories and fake news stories that attack a presidential candidate, for instance, doing so still provide others with information they can use to determine what kinds of relationships (if any) they are interested in creating with me.

If this is so, all legal measures that prevent individuals from sharing content on social media can reasonably be envisioned as obstacles to the pursuit of self-expression and association, and the free speech objection to laws against fake news must be taken seriously. Before answering such an objection, however, let me underline that it is not solely motivated by a concern for the interests of speakers – the ones I just described – but also by a concern for the interests of audiences. Indeed, one of the most influential philosophical defense of freedom of expression – let us call it the autonomy defense of free speech (Brison 1998) – is based on the idea that democratic citizens have an interest in being treated as autonomous rational agents by their government. Yet, proponents of the autonomy defense of free speech customarily argue that a democratic state fails to treat its citizens as rational autonomous agents when it enacts laws against deceptive speech in order to prevent them from forming false beliefs. The key idea, here, is that government official who behave in this manner disrespect the rational capacities of citizens by preselecting the evidence to which such citizens should be exposed. When they do so, they assume that citizens are unable to decide whether they should believe the claim they encounter by relying on their own cognitive resources, and this amounts to a morally condemnable form of infantilizing. In “A Theory of
Freedom of Expression” (2003, p. 14), for instance, Thomas Scanlon argues along these lines by defending the following principle:

There are certain harms which, although they would not occur but for certain acts of expression, nonetheless cannot be taken as part of a justification for legal restrictions on these acts. These harms are: (a) harms to certain individuals which consist in their coming to have false beliefs as a result of those acts of expression; (b) harmful consequences of acts performed as a result of those acts of expression, where the connection between the acts of expression and the subsequent harmful acts consists merely in the fact that the act of expression led the agents to believe (or increased their tendency to believe) these acts to be worth performing.

Scanlon’s justification for this “Millian” principle – which he takes to be a natural extension of the thesis John Stuart Mill defends in chapter 2 of On Liberty – is that no individual who takes herself to be an autonomous agent could reasonably reject this principle. Indeed, if such an agent authorized that state to protect her against the harm of coming to have false beliefs through restrictions on speech, she would deprive herself of the grounds for arriving at an independent judgment for she would then only do so on the basis of preselected evidence. In Scanlon’s view, this amounts to deciding for oneself “only in an empty sense” since allowing others to preselect the kind of evidence to which we are exposed gives them the power to strongly influence our decisions. In short, Scanlon’s theory of free speech belongs to a family of view according to there is value in being autonomous, but authorizing the government to place restrictions on deceptive speech arguably counts as forfeiting part of our autonomy by “outsourcing self-government” (Valdman 2010).

4. Fake news and autonomous agency: responding to the free speech objection

Let us take stock. The free speech objection to the legal prohibition of fake news rests on the two following claims. First, such a prohibition sets back our interests as speakers as it makes it more difficult for us to become distinct individuals and freely associate with others by diffusing content on social media. Second, legal attempts to curb fake news threaten our fundamental interest
in being treated as autonomous agents by our government, that is, individuals who make decisions by considering all the evidence available to them. What can be offered as a rebuttal?

One popular response is that such an objection rests on the mistaken assumption that having access to more speech – regardless of its kind – necessarily makes one more autonomous. For instance, Susan Brison (1998, p. 328) has argued that “false or misleading information can undermine autonomous agency.” More recently, Kay Mathiesen (2018) has similarly suggested that “insofar as fake news is fraudulent, it is an attempt to undermine people’s autonomy.” I believe that this is a promising line of response, albeit one that needs to be qualified. What often goes unnoticed, indeed, is that philosophers who argue that speech can undermine autonomy do so on a conception of autonomy that is significantly different from the one endorsed by Scanlon. This should be made explicit. On a liberal conception of free speech, indeed, having access to an unregulated flow of speech increases an agent’s autonomy even if this prevents her from making good decisions. As we have seen, the rationale behind this claim is that the fewer restrictions on speech there is, the least likely it is that agents will make decisions on the basis of preselected evidence. By way of contrast, philosophers who – like Brison and Mathiesen – consider that having access to more speech can sometimes thwart autonomy endorse a reason-responsive conception of autonomous agency according to which the level of autonomy enjoyed by an agent supervenes on her capacity to appreciate (external) reasons (Buss and Westlund, 2018). On this conception, being autonomous does not essentially amount to making a decision that is truly one’s own, but rather to make a decision that allows one to effectively pursue one’s goal.

Let me illustrate this idea with an example. Imagine that in country x, the Green Party proposes regulations that would be the most effective to protect the environment. If Sarah strongly desires to vote for the party that will most effectively protect the environment, then she has a reason to
vote for the Green Party, at least on a philosophical conception according to which reasons for action can be external in a Williamsian sense (Williams 1979). On a reason-responsive conception of autonomy, forms of speech that make it more difficult for her to appreciate this reason – as well as other reasons she has considering the goals she freely set for herself – generally decrease her level of autonomy. For instance, smear campaigns that deliberately misrepresent the Green Party’s proposed environmental measures can lead Sarah to misunderstand what policies such a party truly plans to enact, or what the expected effects of these policies are. If she does, she might to decide to vote for another party, unable to realize that doing so would in fact prevent her from achieving her own goal.

On a reason-responsive conception of autonomy, misinformation similarly undermines autonomous agency by inciting agents to form false beliefs that can hinder the pursuit of their goals. Consider the following fake news story. In March 2017, several fake news websites published a story titled: “Holistic Doctors Who Discovered Cancer Enzymes in Vaccines Found Murdered.” While the medical doctors mentioned in the story were indeed deceased, only one of them, whose death was ruled as a suicide, participated in the debate about the putative dangers of immunization through vaccines. What the story suggests, however, is that all these doctors have been murdered, presumably on the behalf of individuals who have a strong interest in hiding the

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6 Unlike the remarks contained in section 3, the present discussion assumes that fake news can effectively induce false beliefs in its target audience. Indeed, philosophers and cognitive scientists have recently argued that fake news successfully exploits documented psychological tendencies (Levy 2017, Gelfert 2018). First, fake often comes from little-known websites, and studies suggest that “when people know little about a source, they treat information from that source as credible” (Rapp 2016, 284). Psychologists have also found that being repeatedly exposed to the same piece of information increases the likelihood that we will believe it (Dechênes et al. 2010). On social media, users often encounter viral fake news stories multiple times either because their peers share it online or because these stories tend to be discussed in the public space (including by journalists who attempt to debunk them). Furthermore, psychological studies suggest we often fail to recall the source of information we acquire (Marsh, Cantor, and Brashier 2016; Rapp 2016). When presented with a fake news story, we may therefore judge that the claims it contains are false, but subsequently forget where we encountered them or even attribute them to a reliable source. That said, I do not wish to suggest that empirical studies decisively support the claim that fake news always leads to the formation of false beliefs in those who are exposed to it, but – more prudently – that we have few reasons to believe that we are immune to it. See also Brown 2018 for a more detailed discussion of these findings.
fact that vaccines can be linked to cancer, a well-known conspiracy theory that remains unsupported by empirical evidence. Given that most parents strongly desire to protect their children’s health, and that vaccination is in fact an effective way to do so, coming to believe that vaccines are dangerous as a result of being exposed to fake news can prevent parents from appreciating the reason they have to vaccinate their children. Along with the hypothetical Sarah involving Sarah and the Green Party, such an example helps us understand that a central problem with fake news is that they end up creating fake reasons.⁷

We seem to have reached a philosophical dead end. On the reason-responsive conception of autonomy I favor with Brison and Mathiesen, laws against fake news promote rather than undermine autonomy insofar as they lead agents to form false beliefs that in turn prevent them from appreciating reasons, thus hindering the pursuit of their individual interests. This conclusion does not seem to hold if we endorse instead a liberal conception of autonomy according to which an agent is autonomous insofar as others – including government officials – do not attempt to control the information that is available to her independently of its quality.⁸ Are there also reasons to prefer the reason-responsive conception of autonomy over the liberal one?

Mathiesen (2018) offers an argument that support this conclusion. In her view, Scanlon’s theory of freedom of expression requires too much of autonomous persons as it “assumes a kind of epistemic individualism that, if it has ever been possible, is most certainly not so now.” Today, social media platforms heavily control the flow of information to which we are exposed through

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⁷ A slightly more technical way of putting this would be to invoke Bernard William’s (1979) famous distinction between internal and external reasons, and to point out that while parents who want to protect their children’s health but falsely believe that vaccines cause cancer have an internal— but no external — reason not to have their children vaccinated.

⁸ I thank Benjamin Davies for pressing me on this point.
algorithmic design and, as a result, no social media user counts as fully autonomous in the liberal sense. As Mathiesen explains, indeed, the algorithms used by Facebook, Twitter and Google:

determine what information appears on our screens, filtering out information that they think we don’t want to see and adding information that their advertisers do want us to see. While Google does not typically block particular sites, the fact that some links are so far down the list means that for all practical purposes they are hidden from us.

Is such a suggestion plausible? Again, I believe that it is. Yet, the claim the social networking sites already control what information appears on our screen does very little to support the conclusion that democratic governments can legitimately control it even more than is currently the case by enacting laws against fake news. In fact, Mathiesen’s remark could be used by liberals to argue the claim that both the government and social media platforms should be prevented from preselecting the evidence to which we are exposed. Interestingly, this means that philosophers who endorse a liberal conception of autonomy might also have reasons to endorse the claim that social media platforms should be more tightly regulated, but it is very likely that their preferred reforms would include bans against fake news. Nevertheless, and most importantly, the normative claim that the flow of information ought not be regulated by the government is in no way compromised by the factual statement that such a flow is already controlled by private actors.

A more promising way to argue that we should prefer the reason-responsive conception of autonomy over the liberal one is to point out that only the former is compatible with uncontroversial laws against deceptive speech that liberal philosophers usually endorse. If we did not strongly value peoples' capacity to make good decisions by appreciating reasons, indeed, we could difficultly make sense of the type of legal measure that ultimately led Scanlon to reject his own Millian principle as too restrictive of government’s action: laws against false advertising. ⁹ In

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⁹ In a recent discussion of Seana Shiffrin’s work, Scanlon (2011) writes that the Millian principle is too restrictive as “it would, for example, undermine perfectly legitimate justifications for laws against false advertising.”
the U.S., for instance, the Federal Trade Commission enforces truth-in-advertising laws according to which all advertisements must be truthful, not misleading, and, when appropriate, backed by scientific evidence. One possible way to justify such laws is to claim that, in some cases, false advertising can lead to harm, and that democratic states can legitimately attempt to protect its citizens from harm. Think, for instance, of a cancer patient that chooses to take herbal infusions instead of undergoing radiotherapy treatments because such infusions have been falsely advertised as a panacea. Yet, consumer protection laws regularly stipulate that advertising must be truthful even in cases where deception is not likely to lead to (physical) harm, and the most straightforward justification for such laws is that the rights of consumers are flouted when their interests are set back by deceptive advertisers. Think, for instance, of an Orthodox Jew who has been fooled into consuming dishes that have been falsely advertised as Kosher. Like fake news, false advertising hinders our capacity to appreciate reasons, in this case to purchase or not to purchase a product or service. Although it seems acceptable for a private actor to make financial gains by advertising products or diffusing news stories, the legal systems of liberal democracies customarily imply that private actors’ interest in profiting from deception is not as worthy of legal protection as the public’s interest in not being deceived. What I ultimately wish to suggest is that philosophers who support laws against false advertising also have strong pro tanto reasons to support laws against fake news, for fake news and false advertising threaten people’s capacity to pursue their goals in a very similar way, that is, by preventing them from appreciating reasons.

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10 In the United Kingdom, the government similarly prohibits private actors from including false or deceptive messages or leaving out important information in their advertisements.  
11 One could attempt to justify laws against false advertising by invoking a duty of commercial fair play: if most private actors refrain from deceptive advertising, then it seems unfair that some engage in such practice. The problem with such a justification, however, is that it equally supports the conclusions (a) that no private actor should be authorized to engage in deceptive advertising and (b) that all private actors should be authorized to do so.
Let us now return to the interests of speakers. On social media, fake news often spread through the action of inadvertent users who find them interesting and sometimes believe them to be true. Can we object to laws against fake news on the grounds that they unduly prevent such users from sharing content? Remember, indeed, that individuals have an interest in sharing content even when such content contains false claims. Still, I want to dispute the claim that laws against fake news significantly threaten these interests. To see this, let us picture a social media user who logs in her Facebook account to realize that a fake news story she posted on her wall has been removed because a judiciary official has ordered its removal. Imagine also that this user is aware of and profoundly angered by this fact, and that she strongly opposes the legal regulation of fake news. In this case, nothing prevents her from sharing her frustration with her friends or followers on social media, for instance by publicly condemning her government’s law against fake news. What is more, she can easily point out that she believes the claims contained in the fake news story to be true, and reiterate those claims is she sees fit. What does this social user lose by having a fake news article removed from her wall? Not much. Indeed, the interests that a social media user can pursue if and only if her sharing of fake news stories is left untouched by both the state and social media platforms (if any) are hard to pin down. This hypothetical scenario also helps us realize that laws against fake news – at least those I have in mind – are not content-based regulations of speech. What they prohibit instead is a certain technique of expression, one which consists in faking the expertise of journalists without taking the necessary precautions to ensure that the claims one communicates are true. While the legal prohibition of fake news prevents users from sharing fake news stories (or, more precisely, from having them stay on their wall), social media platforms provide them with alternative ways of expressing their deeply held beliefs. In my view, a social media user’s right to assert that the Earth is flat, for instance, ought to be legally protected for
when she does so, she is merely expressing her personal convictions, not faking the expertise of journalists.¹²

Let me reformulate the question with which I began: is the legal prohibition of fake news compatible with our individual moral right to free speech? In the end, I see no better way to answer this question than comparing the set of interests that such a legal measure simultaneously threatens and promote. As mentioned, Laws against fake news threaten commercial actors’ interest in profiting from deception and, possibly, people’s interest in becoming distinct individuals and associating with peers through the sharing of content on social media. Yet, social media platforms offer their users various ways to express their deeply held convictions, and it is unclear that having the ability to share fake news significantly enhance their ability to do so. At the same time, laws against fake news promote individuals’ autonomous agency by protecting their capacity to appreciate reasons, which is central to the pursuit of their interest. In the end, the interests promoted by the legal regulation of fake news appear to me to be more fundamental than the interests it threatens. Here, my view largely coheres with Sean Shiffrin’s thinker-based approach to free speech, according to which the value of free speech partly derives from its ability to foster the development of a capacity for practical and theoretical thought, and to lead thinkers to apprehend the truth. As Shiffrin notes, indeed, each thinker has a fundamental interest in “developing her mental capacities to be receptive of, appreciative of, and responsive to reason” as well as in “believing and understanding true things about herself, including the contents of her mind, and the features and forces of the environment” (Shiffrin 2014, 86). Philosophers who subscribe to a liberal conception of autonomy might reasonably disagree with this conclusion, but I have suggested that

¹² As mentioned in section 2, I believe that French citizens’ ability to express their deeply held beliefs sufficiently protected given that the phrasing of the French law against the manipulation of information is too broad and that its application is not clearly restricted to fake news.
such a conception is in tension with laws against false advertising, which at least some of them are inclined to endorse. (4969 words)

References


Loi n° 2018-1202 du 22 décembre 2018 relative à la lutte contre la manipulation de l'information (France).


