

# LEGISLATING AGAINST FAKE NEWS

Zamir Ali

Juris Doctor, Bond University Australia

[za@uablerta.ca](mailto:za@uablerta.ca)

**ORCID ID** <https://orcid.org/0000-0002-5266-8315>

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**Abstract:** Since the election of Donald Trump, the world has shifted its attention to whom they can blame for the rise of a celebrity to a position that wields so much power. The attention is on 'fake news' which some analysts have said has helped establish a new era in politics that is defined by conspiracy theories and called the 'post-truth era'. 'Fake news' has existed for some time but recently exploded on social media platforms such as Facebook. Although Facebook is not promoting these types of news they are not regulating what content is available for their users and this is the main problem for governments who are now fearful that the current trend set in the UK and the US will occur in other countries that have vital elections looming.

What this essay will examine is how 'fake news' is being shared, what the effect of 'fake news' has on the politics of a country, how social media sites are filtering and regulating 'fake news' and finally the difficulties social media sites and legislators will have in the battle against 'fake news.'

**Keywords:** Elections, Fake News, Social Media, Social Media Platforms, Legislation on Social Media, Post-truth Era, Donald Trump.

## ЗАКОНОДАТЕЛЬСТВО ПРОТИВ ФАЛЬШИВЫХ НОВОСТЕЙ

Замир Али

доктор, доцент в Университете Бонд в Австралии

**Аннотация:** После избрания Дональда Трампа мир переключил свое внимание на то, к кому они могут обвинить в том, что знаменитость стала такой, которая обладает такой мощью. Внимание к «фальшивым новостям», которые, по мнению некоторых аналитиков, помогли создать новую эпоху в политике, которая определяется теориями заговора и называется «эпохой пост-правды». «Поддельные новости» существуют какое-то время, но недавно взорвались на платформах социальных сетей, таких как Facebook. Хотя Facebook не пропагандирует эти новости, они не регулируют, какой контент доступен для своих пользователей, и это основная проблема для правительств, которые теперь опасаются, что нынешняя тенденция, установленная в Великобритании и США, произойдет в других странах, которые надвигаются жизненно важные выборы. Что будет рассмотрено в этом эссе, так это то, как делится «поддельные новости», что влияет «поддельные

новости» на политику страны, как сайты социальных сетей фильтруют и регулируют «фальшивые новости» и, наконец, трудности в социальных сетях и законодатели будут в битве с «фальшивыми новостями».

**Ключевые слова:** выборы, поддельные новости, социальные медиа, социальные медиа-платформы, законодательство о социальных медиа, эпоха постинвести, Дональд Трамп.

## СОХТА ЯНГИЛИКЛАРГА ҚАРШИ ҚОНУНЧИЛИК

Замир Али

Бонд Университети доценти, Австралия

**Аннотация:** Дональд Трамп сайланишидан сўнг, дунё ўз диққатини, ушбу машҳур шахс бу қадар юксак куч-қудратга эга бўлгани учун айбдор бўлиши мумкин бўлганларга нисбатан қаратди. Айрим таҳлилчиларнинг фикрига кўра, сиёсатда фитна назариялари билан белгиланадиган янги даврни пайдо қилган “сохта янгиликлар” га нисбатан диққат-эътибор, “пост-ҳақиқат даври” этиб номланади. «Сохта янгиликлар» бир қанча вақт мавжуд бўлди, аммо яқинда Facebook каби ижтимоий тармоқлар платформаларида портлашлар юз берди. Аслида Facebook бу каби янгиликларни тарғиб этмайди, улар фойдаланувчилар учун қандай контент очиқлигини тартибга солмайди, бу ҳукуматлар учун энг асосий муаммодир, боиси улар Буюк Британия ва АҚШда вужудга келган бугунги тенденция, ўта муҳим сайловлар яқинлашаётган бошқа мамлакатларда ҳам юз беришидан ҳавфсирашади. Мазкур эсседа, “сохта

янгиликлар” қай тарзда пайдо бўлиши, “сохта янгиликлар” мамлакат сиёсатига қандай таъсир этиши, ижтимоий тармоқлар сайтлари “сохта янгиликлар” қандай филтрдан ўтказиши ва тартибга солиши, ниҳоят, ижтимоий тармоқлардаги қийинчиликлар ва қонун чиқарувчиларнинг “сохта янгиликлар” га қарши курашиши каби масалалар кўриб чиқилади.

**Калит сўзлар:** сайловлар, сохта янгиликлар, ижтимоий медиа, ижтимоий медиа платформалар, ижтимоий медиа қонунлари, пост-янгилик даври, Дональд Трамп.

### **Post-Truth**

‘Fake news’ is somewhat of a new phenomenon that has arisen in 2016, and its reach is worldwide due to the web. ‘Fake news’ is being used and shared across different social media sites such as Facebook and Twitter. Some countries such as Germany believe that ‘Fake news’ should be regulated by legislation if social media sites and apps cannot regulate and filter ‘fake news’ from legitimate news stories. ‘Fake news’ is defined by Allcott and Gentzkow as, “news stories that have no factual basis but are presented as facts. By ‘news stories,’ we mean stories that originated in social media or the news media; this excludes false statements originated by political candidates or major political figures.”<sup>1</sup> We will use their definition of ‘fake news’ and ‘news stories’ to ease the confusion between the two.

Around the world many countries are dealing with ‘fake news’ and some scholars have stated that we are living in political era that is “post-truth”, where emotions and

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<sup>1</sup> Allcott, Hunt and Matthew Gentzkow, ‘Social Media and Fake News in the 2016 Election’ (2017) *National Bureau of Economic Research*, 4.

personal belief are valued more than real facts.<sup>2</sup> The usage of the term “post-truth” was used heavily in the political situations of Europe in the context of Brexit and the US presidential election; Oxford Dictionary as the international word of the year named it.<sup>3</sup>

‘Fake news’ is essentially conspiracy theories that play to people’s current political beliefs. Although, ‘fake news’ is a new phenomenon in the context of social media platforms, conspiracy theories are not new and have existed throughout many centuries. Conspiracy theories are spread by the word of mouth and usually have an unprecedented effect on the fears and anxieties of people. Nevertheless, some conspiracy theories become a political advantage for a political body. Conspiracy theories are not always seen as a negative force in politics as it provides a population with the ability to question dominance hierarchies while also seeking accountability.<sup>4</sup> However it is best stated that, “these conspiracy theories are slightly different than most fake news we study, in the sense that many fake news articles can be traced back to a single person who invented the article without any facts to back it up, whereas some conspiracy theories could in principle be true and often have no unique origin. Notwithstanding, they are an interesting historical benchmark.”<sup>5</sup>

If we look back to the Dark Age of Europe, there was a conspiracy theory that the diseases and the droughts of the time were created by “witches”, young girls were the target of a campaign to find and kill these so called “witches” to remove the curses that caused diseases and droughts.<sup>6</sup> In

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<sup>2</sup> Karen M. Douglas, Chee Siang Ang, and Farzin Deravi, ‘Farewell to truth? Conspiracy theories and fake news on social media’ (2017) *University of Kent*, 2.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid, 4.

<sup>5</sup> Allcott, Hunt and Matthew Gentzkow, ‘Social Media and Fake News in the 2016 Election’ (2017) *National Bureau of Economic Research*, 22.

<sup>6</sup> Lois Martin, ‘A Brief History of Witchcraft’ (2010). *Running Press*. p. 5.

retrospect, we can see that it is easy to target and blame the most vulnerable people in a society to direct anger and attention away from the powers to be. The religious establishment fuelled this conspiracy and acted upon it. In Asia the arrival of the Mongols in the Muslim world was seen as the arrival of the “Anti-Christ”, this conspiracy fuelled the fear mongering created by the religious establishment to provide the populace with an excuse of their military failures. Finally, if we look at Trans-Atlantic Slave Trade, the conspiracy backed by false science that “proved” Africans were subordinate humans provided the establishment with a justification to circumvent the religious doctrines of equality for all people and inflate the slave trade for pure profit.<sup>7</sup> Conspiracy theories historically and currently are not limited by integrity and morality; it is a way for certain political powers to mislead the populace thorough ignorance for their own political and economic gains.

Today these conspiracy theories are not spread through the word of mouth but through social media platforms. The key similarity between historical conspiracy theories and today’s ‘fake news’ is that they are not created by the benefiting political group but are taken on by them and used in their advantage. It is foreseeable that any political group would do the same as power is known to corrupt<sup>8</sup> but why are the creators of these conspiracy theories or ‘fake news’ not held accountable in today’s world where defamation and civil actions are strong? A possible answer could be that much of the ‘fake news’ created targets social minorities while bolstering those politicians who subscribe to those conspiracies or have

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<sup>7</sup> Alexander Thomas and Samuell Sillen, ‘Racism and Psychiatry’ (1972). *New York: Carol Publishing Group*

<sup>8</sup> J. N. Figgis and R. V., ‘Laurence Letter to Bishop Mandell Creighton’ (1907) *Historical Essays and Studies*.

similar views or similar goals. For example, much of the 'fake news' in the EU is reactionary to the increase of refugees, much of the establishment in Europe have allowed for the placement and safe passage of refugees. Many politicians in the EU are profiting from the 'fake news' about refugees to promote their political parties and ideologies that are xenophobic like Marine La Penn in France and Geert Wilders in Netherlands. Nevertheless, these politicians have some real concerns about the issues facing their countries, they are at the same time profiting from 'fake news' as it is providing them with a larger following and much needed publicity to increase votes. When there is millions of web pages and social media sites which are not regulated, users and readers find it difficult to separate fact from fiction, therefore 'fake news' has found a new breeding ground for conspiracy theories to be spread around the world through digital channels.<sup>9</sup> We must also not the difference between 'fake news' and satirical news. "News satire is a genre of satire that mimics the format and style of journalistic reporting. The fake news stories are typically inspired by real ones, and cover the same range of subject matter".<sup>10</sup> Satirical news exists such as the Colbert Report, the Daily News and John Oliver's Last Week Tonight. Since 'fake news' and satirical news are not the same, are they distinguishable to regular people? This is the difficulty with stating what is fake and what is true, ultimately the fight against 'fake news' might encompass an attack on satirical news stories. However, this may not be a

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<sup>9</sup> Karen M. Douglas, Chee Siang Ang, and Farzin Deravi, 'Farewell to truth? Conspiracy theories and fake news on social media' (2017) *University of Kent*, 2.

<sup>10</sup> Victoria L. Rubin, Niall J. Conroy, Yimin Chen, and Sarah Cornwell, 'Fake News or Truth? Using Satirical Cues to Detect Potentially Misleading News' (2016) In *the Proceedings of the Workshop on Computational Approaches to Deception Detection at the 15th Annual Conference of the North American Chapter of the Association for Computational Linguistics: Human Language Technologies*, 1.

negative consequence as satirical news may mislead readers who are not able to distinguish real news from satire, since most satire is shared on social media sites which exist beyond political and cultural boundaries it may then naturally change from satire to 'fake news'.<sup>11</sup> Ultimately, the major difference between the two is one makes wide assumptions that have not been proven while the other uses facts but distorts them. Those who claim to be satirical news producers state that they are not journalists such as John Oliver, but 'fake news' producers may state otherwise or allude that they are journalists even though never claim such. 'Fake news' and its makers have one goal in mind and that is to mislead people, a clear lack of ethics.

### **Accountability**

When it comes to holding people or sectors of society responsible for the arise of 'fake news' and the post-truth era, some blame social media platforms like Facebook, while others blame the current established media outlets which have over the years disconnected with the populace by providing news that is perceived to be politically biased and apart of the growing elite.<sup>12</sup> But before we can assign blame, we must consider if the populace is actually concerned with the truth? There is no 'wide and overarching agenda' by the elite and establishment news agencies to control all information about the politics in the region, which is often the claim that 'fake news' outlets make to legitimize their perspective. People have enough personal agency in the region we are discussing to fact check, and to seek alternate news sources.

### **Facebook Ethics**

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<sup>11</sup> Ibid.

<sup>12</sup> Ethical Journalism Network, *Facebook and Matters of Fact in the Post-Truth Era*, <http://ethicaljournalismnetwork.org/resources/publications/ethics-in-the-news/fake-news>

Facebook has stated that it is just a social media platform and not a publisher, even though much of the American population receives their news from such social media platforms. For Facebook to stop its 'platform' from becoming a breeding ground for misleading and deceptive information it should adjust its standards and accept the principles that are entrenched in journalism.<sup>13</sup> "How media rebuilds public trust in quality journalism will be a major question in the coming years, and not just for academics and students of mass communication. The information crisis is one that touches on the prospects for democracy. The rise of propaganda, hate-speech and self-regarding politics with an extremist edge threatens stability and peace both within countries and abroad."<sup>14</sup> Facebook is a large stakeholder in society and connects people all around the world to each other, it has become a public sphere in a sense as this is the place where many people interact daily through a range of services. Facebook has become a social influencer, for example during the French terrorist attacks in 2015 Facebook had allowed people to express their sorrow and sympathy for the French nation by adjusting their Facebook profile picture to be shaded by the French Flag. These types of acts that are great and a good cause, show that Facebook is more than just a mere channel for users to interact, they are able to educate and bring awareness to issues. Facebook must realize its position and power over society because they are contributing to the rise of this post-truth era.

### **Journalism Ethics**

When we talk about news we would ultimately believe that Journalists are the intermediaries between the populace and facts on the ground. However, in this 'post-truth' era where information and news is peer shared, journalists and editors have been sidelined. Journalism has

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<sup>13</sup>Ibid.

<sup>14</sup> Ibid.

an ethical guideline as do most professions that involve representing and working for the public at large. It is interesting to see how these ethics have not been incorporated into the social media platforms that allow the sharing of any type of news. Readers and viewers of 'fake news' maybe under the belief of whatever is said is not a conspiracy but fact that has been verified because of how ethical guidelines exist normally. Nevertheless, journalists have produced 'fake news' in the past and still currently, and it is when Journalists produce such things that they are themselves attacking the principles of Journalistic ethics, "when journalists present news in a way that distorts the truth, their performance is at odds with the commitment to truthfulness that their role substantively requires."<sup>15</sup> Journalists have a responsibility to pursue information through a verification process that "provides epistemologically defensible standards for creating and communicating knowledge about the social world. Among these standards are reliability, truthfulness, and independence."<sup>16</sup> Journalism and journalists have an internal check and balance system, this is criticism, other journalists along with editors check the moral standards of each other before publishing and after publishing.<sup>17</sup> Being accountable to those criticisms is the most important remedy for breaching the ethical standards of journalism. Journalists must be open and respond to the criticism by seeing it as constructive while also providing an explanation for when they breach their own ethical standards.<sup>18</sup> Responding to the criticism and being held accountable will ensure that journalists learn what the standards are or face

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<sup>15</sup> Sandra L. Borden, Chad Tew, 'The Role of Journalist and the Performance of Journalism: Ethical Lessons from "Fake" News (Seriously)' (2007) 22 *Journal of Mass Media Ethics*, 302.

<sup>16</sup> *Ibid*, 303.

<sup>17</sup> *Ibid*, 307.

<sup>18</sup> *Ibid*.

the consequences of having their articles and reporting's removed. "Both traditional and 'fake' ones expect audiences to follow the news, work hard to understand the issues of the day, and care about civic participation. However, traditional journalists also expect audiences to accept their judgement about what is important and their version of the day's events. Traditional journalists also tend to report civic debate in terms of adversarial contests, a frame that effectively excludes the average audience member from meaningful participation. The imitators of news, in contrast, cultivate an egalitarian stance toward the audience."<sup>19</sup>

### **Digital Journalism Ethics**

There is a need for digital ethical guidelines for web based news, having a lack thereof will stall the innovation of technology as the web may be known for deceptive content and will be attacked by the establishment, who are growing to see it as a destructive force. "Restoring the infosphere and making it flourish is a gigantic, ecological effort. We must rebuild trust through credibility, transparency, and accountability. And we have to ground our digital societies on solidarity and benefit-sharing premises. All this will require huge resources and a very high degree of patience, coordination, and determination."<sup>20</sup>

### **Sharing is Caring?**

Social media platforms are created in a way where content can be spread with "no significant third party filtering, fact checking, or editorial judgement, and an individual user with no track record or reputation can in some cases reach as many readers as Fox News, CNN or the New York Times."<sup>21</sup> The way content can spread on social

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<sup>19</sup> Ibid, 310.

<sup>20</sup> Cyber Security Start Up Italia, *Fake news, authenticity, and why we need a new digital ethics* (7 January 2017) <<http://cybersecurity.startupitalia.eu/53819-20170107-post-truth-fake-news-new-ethics>>

<sup>21</sup> Hunt Allcott, Matthew Gentzkow, 'Social Media and Fake News in the 2016 Election' (2017) *National Bureau of Economic Research*, 2.

media platforms has been compared to the spread of a disease, it is almost impossible to stop. Certain content can be shared millions of times within a single day and that is just on one social media platform. People who use social media sites are known to share whatever they find interesting whether they agree with it or not. For example, if a person likes a 'news story' on Facebook many of their friends would be able to see on their personal news feed. Also, now users on Facebook are able to react to certain content by a range of emotions such as anger, love, hate and sadness, these reactions also show up on their friend's personal news feed. All content is being shared whether a user actively clicks or shares or simply likes or reacts to content.

But the question is how much of the content being shared is 'fake news'? According to Silverman's research, "Recent evidence shows that: (i) 62 percent of U.S. adults get news on social media; (ii) the most popular fake news stories were more widely shared on Facebook than the most popular mainstream news stories; (iii) many people who see fake news stories report that they believe them; and (iv) the most discussed fake news stories tended to favour Donald Trump over Hillary Clinton. Putting these facts together, a number of analysts and commentators have suggested that Donald Trump would not have been elected president were it not for the influence of fake news spread through social media."<sup>22</sup> It was found that 'fake news' stories that were anti-Hilary Clinton were shared 30 million times in the run up to the election, while anti-Donald Trump 'fake news' was shared 7.6 million times during the same period.<sup>23</sup>

### **The Secret Recipe for Social Platforms**

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<sup>22</sup> Ibid.

<sup>23</sup> Hunt Allcott, Matthew Gentzkow, 'Social Media and Fake News in the 2016 Election' (2017) *National Bureau of Economic Research*, 3.

It is hard for academics and governments to pinpoint what exactly Facebook and other social media platforms need to change in order to stop 'fake news', this is because companies like Facebook maintain secrecy in their managerial systems and also their technological systems to maintain an edge over up and coming social media platforms. This fear of becoming obsolete just as other platforms like MSN messenger, Yahoo, etc. is understandable and evident as they are constantly growing and improving their services for their users. For some time, Facebook had ignored the calls that it has responsibility in filtering content because of the power that the social media platform has to change the way users see the world and how the socio-political world works. During this time, many Facebook employees understood what the management did not, they saw there was a massive "spread of racist and so-called alt-right memes across the network, according to interviews with 10 current and former Facebook employees. Others are asking whether they contributed to a 'filter bubble' among users who largely interact with people who share the same beliefs."<sup>24</sup>

### **The Politics of Fake News**

There is a worldwide debate about the effects and influences of 'fake news' has on the politics of a region and the world, many believe it is destabilizing the current social order. Politicians and legislators have called for the regulation of social media platforms and more specifically 'fake news' creators to curtail the influence 'fake news' has on the region. Penalties have also been mention by various law makers, it seems that there is a beating of war drums against 'fake news' creators.

Euopean Union Justice Commissioner Vera Jourovahas warned tech companies such as Facebook and

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<sup>24</sup> Mike Isaac, 'Facebook, in Cross Hairs After Election, is Said to Question its influence', *New York Times (San Francisco)*, 12 November 2016.

Twitter that if they don't find ways to eliminate hate speech and combat fake news, a law mandating action may be necessary. Commissioner Andrus Ansip reinforced that threat last month, albeit in softer language, prompting social-media giants and traditional media to announce a flurry of initiatives aimed at combating fake news.

Italy's antitrust chief, Giovanni Pitruzzella, has said that EU countries should set up a network of government-appointed bodies to remove fake news and potentially impose fines on the media. Pitruzzella doesn't hide his political agenda – he wants to target his opponents on the populist left and right. “Post-truth in politics is one of the drivers of populism, and it is one of the threats to our democracies,” he told the *Financial Times*.

In Germany, politician's eager to counter Russian meddling and populist movements in upcoming parliamentary elections have issued similar calls. Justice Minister Heiko Maas argues that authorities need the power to impose prison terms for fake news on social media. “Defamation and malicious gossip are not covered under freedom of speech,” Maas said. “Justice authorities must prosecute that, even on the Internet. Anyone who tries to manipulate the political discussion with lies needs to be aware (of the consequences).”<sup>25</sup>

There is a rise in populist leaders like Marine la Pen and the Netherlands' Geert Wilders who are emboldened by 'fake news' which targets the current establishment and minorities in the country, which suit their political agendas. Just as Donald Trump who is another populist leader was elected to power with the influence of 'fake news'. The Trump administration directed their efforts to regulate the media by not attacking 'fake news' but by attacking the

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<sup>25</sup> David Bond and Duncan Robinson, 'European Commission fires warning at Facebook over fake news', *Financial Times*, 2017 <  
<https://www.ft.com/content/85683e08-e4a9-11e6-9645-c9357a75844a>>

current established news media outlets by calling them ‘fake news’. Nevertheless, the current established media in the US does need to be more heavily regulated and checked as they are seeming to present politically biased news, but not in the same sense that ‘fake news’ presents information.

### **Pecuniary Penalties**

Angela Merkel has called for a fine upon social media sites like Facebook who fail to stop the spread of ‘fake news’ on their platform<sup>26</sup> will most likely be met with criticism and setback by those who are profiting from ‘fake news’ such as the populist leaders mentioned earlier. The problem is that even if the Merkel government passes such laws in Germany it will not be passed in the EU overall if these populist leaders are elected.

Another problem with passing such a legislation is when and where will this law apply, will it apply retrospectively? If it does, then there will be an issue of cleaning out the internet of ‘fake news’ which is a huge task that would probably take a long time. Also, does it apply only to ‘fake news’ in relation to Germany? If it does, then how will they stop internet users from seeing these stories if they are outside of Germany or if they are created outside of Germany. Lastly, who will decide what is the truth and what is not the truth? There will be needed a group that can verify facts in news stories, this could ultimately take lots of time especially when election cycles are short and the creation of ‘fake news’ can be replicated many times and shared instantly almost like a disease, when it gets into the system it’s almost impossible to stop immediately.

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<sup>26</sup> McGoogan, Cara, “German politician threatens to fine Facebook €500,000 every time it shows fake news” *The Telegraph*, December 19, 2016  
<<http://www.telegraph.co.uk/technology/2016/12/19/german-politician-threatens-fine-facebook-500000-every-time/>>

There are already certain limitations governments have when it comes to limiting people's ability to express themselves and their beliefs while also balancing the powers given to the press. The US constitution limits the US government from hindering of the freedom of the press,<sup>27</sup> while other countries have limits on what can be regulated in relation to the press. These checks and balances were created to stop the establishment from creating a propaganda state. Historically, dictators or any other extreme type of government have used the media to their full benefit, therefore the natural response by countries to ensure that this does not happen is to create powers and exceptions for the press to operate free from governmental control. This could be a possible hindrance for governments to the stop the rise of populist leaders from the usage of 'fake news'.

If certain governments do decide to ban 'fake news' there could be a backlash from a sector of society that subscribes and identifies with the content created. The government might then be seen as them a authoritarian regime seeming to silence opposing views while establishing propaganda.

### **Platform Regulation**

In May 2016, Facebook was accused that some of its employees were politically biased because they were censoring conservative topics in the 'Trending Topics' section of the Facebook feed, this led Facebook to lay off the 'Trending Topics Team'.<sup>28</sup> We can see that there is already a form of regulation but only when there is coverage to their hidden practices. Facebook claims that it is regulating 'fake news' and conspiracy theories through user reports.<sup>29</sup> Most

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<sup>27</sup> U.S. Constitution 1791

<sup>28</sup> Mike Isaac, 'Facebook, in Cross Hairs After Election, is Said to Question its influence', New York Times (San Francisco), 12 November 2016.

<sup>29</sup> Karen M. Douglas, Chee Siang Ang, and Farzin Deravi, 'Farewell to truth? Conspiracy theories and fake news on social media' (2017) University of Kent, 6.

social media platforms have a feature that allows them to flag inappropriate posts, and these companies have teams devoted to the timely response of these flags to identify and remove the content. But is this enough? Since ‘fake news’ hasn’t been stopped and is emboldened by these platforms, this type of user regulation does not seem to be enough to combat false and misleading information being shared between users. It could also be that the teams devoted to remove offensive content are ill equipped or trained to deal with ‘fake news’ or there could be a possible bias as mentioned before. “Similar technologies for detecting unwanted messages currently exists in form of spam filters. However, detecting problematic Facebook messages in a culturally diverse environment will require in-depth understanding of cultural nuances which are beyond the reach of current artificial intelligence technology.”<sup>30</sup>

Facebook has responded to the criticism by stating that its current policies undermine ‘fake news’, they state that the Facebook Audience Network Policy creates standards. Such as:

Don’t integrate or display ads in apps or sites containing content that is illegal, misleading or deceptive, or that promotes regulated goods, pornography, adult products or services, casual dating, violence, weapon sales, online real money games of chance or skill, work-at-home schemes, spy cameras, fake news or anything that falls within any other categories that are prohibited by the [Facebook Community Standards](#), with the exception of apps or sites that display news editorials featuring the above content or if you have our prior written permission.<sup>31</sup>

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<sup>30</sup> Karen M. Douglas, Chee Siang Ang, and Farzin Deravi, ‘Farewell to truth? Conspiracy theories and fake news on social media’ (2017) *University of Kent*, 7.

<sup>31</sup> Facebook for Developers, *Facebook Audience Network Policy*, <<https://developers.facebook.com/docs/audience-network/policy>>

But since the election of Donald Trump and ‘the witch hunt’ that has taken place to blame certain people or organizations that allowed the election of Trump to occur, Facebook on January 2017 announced the ‘Journalism Project’.<sup>32</sup> This ‘Journalism Project’ will be established in three ways to combat ‘fake news’ and its creators but also by educating the public on Journalism ethics. The first part of the project, is to work with other news organizations by connecting the engineers at Facebook with these news organizations. This will help change the way news organizations provide their news by helping them adjust to the changing ways users would like to have their news presented to them on the platform. “We’re going to start testing this using Instant Articles, so that readers can start to see multiple stories at a time from their favorite news organization. This is a very early test- and we will continue to work with partners on how to make this product great for them.”<sup>33</sup> It will also involve promoting local and independent news, by bringing them into the conversation and allowing them to have access to the engineers at Facebook. There will be a business model created for news organization that require subscriptions, Facebook will try to help contribute to those subscription services, to have more users access legitimate news. “This month our engineering team in collaboration with the engineering team of the German news organization BILD will launch a test to explore offering free trails to engaged readers, right from within instant Articles.”<sup>34</sup>

The second step is to provide journalists with training and tools, by the form of a e-learning course on Facebook

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<sup>32</sup> Facebook Media, ‘Introducing: The Facebook Journalism Project’

<<https://media.fb.com/2017/01/11/facebook-journalism-project/>>

<sup>33</sup> Facebook Media, ‘Introducing: The Facebook Journalism Project’

<<https://media.fb.com/2017/01/11/facebook-journalism-project/>>

<sup>34</sup> Ibid.

products and services in 9 different languages. They have begun to work with many journalism society groups and foundations that will help promote the ethics of journalism online, while also providing training and accreditation from these societies. “Going forward, we will be providing training at scale for local newsrooms through collaborations with Knight Foundation, Detroit Journalism Cooperative, Institute for NonProfit News, Local Independent News Online (LION), Institute for Journalism in New Media, Montclair State University’s Center for Cooperative Media and more.”<sup>35</sup>

The third step is initiative to help curb news illiteracy and to curb news hoaxes. “In the short-term, we are working with the [News Literacy Project](#) to produce a series of public service ads (PSAs) to help inform people on Facebook about this important issue. Our longer-term goal is to support news organizations with projects and ideas aimed at improving news literacy, including financial grants where needed.”<sup>36</sup> “We launched a program to work with third-party fact checking organizations that are signatories of [Poynter’s International Fact Checking Code of Principles](#) to identify hoaxes on Facebook. This problem is much bigger than any one platform, and it’s important for all of us to work together to minimize its reach.”<sup>37</sup>

This initiative by Facebook is a positive step forward towards regulation, but other social media platforms need to follow suit. Nevertheless, showing an intention to change and challenge the way ‘fake news’ operates on platforms does not mean they will achieve their desired result or even the desired result of the government. If these regulation efforts are found unproductive or fruitless then this could

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<sup>35</sup> Ibid.

<sup>36</sup> Facebook Media, ‘*Introducing: The Facebook Journalism Project*’  
<<https://media.fb.com/2017/01/11/facebook-journalism-project/>>

<sup>37</sup> Ibid.

cause an even harsher reaction by governments to crack down on 'fake news'.

### **Canadian Example**

Countries are not new to 'conspiracy theories' or false information being spread by individuals or groups as stated earlier. Many of these countries have already implemented certain legislations that deal with 'fake news' or other misleading information that is being shared. For example, Canada has in their *Criminal Code* section 181 that states "Everyone who willfully publishes a statement, tale or news that he knows is false and that causes or is likely to cause injury or mischief to a public interest is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years."<sup>38</sup> This law is an example of making 'fake news' a criminal issue rather a civil issue of defamation. The problem with making an action into a criminal offence and prohibited by the government in statute is that in countries like Canada civil issues are not subject to the *Charter of Rights* but when it is a criminal law set by the government then it becomes under the scrutiny of the *Charter of Rights*.<sup>39</sup> Section 181 was valid up until the 2006 Supreme court case of *R v Zundel*,<sup>40</sup> this was a landmark case by the Supreme Court where the Holocaust denier Mr Zundel was "spreading false news" by publishing a pamphlet entitled "Did Six Million Really Die?" in Canada, this pamphlet was contrary to section 181. The Supreme court found that Mr Zundel did violate section 181 but also that section 181 of the Criminal Code violated section 2(b) of the Charter of Rights which states "2. Everyone has the following fundamental freedoms: (b) freedom of thought,

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<sup>38</sup> *Criminal Code* 1985 (Canada) s181.

<sup>39</sup> *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982 c11*

<sup>40</sup> *R v Zundel* [1992] 2 S.C.R. 731

belief, opinion and expression, including freedom of the press and other media of communication.”<sup>41</sup> This is followed by the belief of the Supreme Court that minorities are entitled to their views even if the majority find the view as false. Furthermore, the court found it violated section 1 of the Charter of Rights which states that the law should be “demonstrably justified in a free and democratic society.”<sup>42</sup> This case shows that there is a difficulty when creating laws that tackle ‘fake news’ as it may impede on people’s ability to express themselves under the guise of freedom of speech.

Freedom of expression is not only a creature of the *Charter* in Canada. It is one of the fundamental concepts that has formed the basis for the historical development of the political, social and educational institutions of western society. Representative democracy, as we know it today, relies on free expression and discussion of varying ideas. The principle of freedom of speech and expression has been firmly accepted as a necessary feature of modern democracy. Canadian courts have recognized this fact as in the case of *Dolphin Delivery*.<sup>43</sup> The courts have decided that the meaning of ‘expression’ is an activity by which one conveys or attempts ‘to convey meaning’ which will be prima facie protected by s. 2 (b) as stated in the case of *Irwin Toy*.<sup>44</sup> This case also stated that ‘expressions’ which are ‘violent or nonsensical’ are not protected by the *Charter*. This broad interpretation of what is an expression in Canada will definitely deter the legislators from enacting laws that fine or stop people who are creating ‘fake news’.

The core values of free expression, promotes participation in social and political decision-making, and

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<sup>41</sup> *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982 c11*

<sup>42</sup> *R v Zundel* [1992] 2 S.C.R. 731

<sup>43</sup> *RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573

<sup>44</sup> *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927

the communal exchange of ideas. Free speech protects human dignity and the right to think and reflect freely on one's circumstances and condition. It allows a person to speak not only for the sake of expression itself, but also to advocate change, attempting to persuade others in the hope of improving one's life and perhaps the wider social, political and economic environment. However, in Canada it was shown in the case of *Keegstra*<sup>45</sup> that hate speech against a specific group of people can be criminalized because ethnic/religious groups have protection under s2b of the *Charter* against 'hate speech'. But there must be a rational connection between criminal prohibition of hate propaganda and the objective of protecting group members, for fostering harmonious social relations. The provision must not unduly impair freedom of expression. This is a great model for other countries to follow to allow people to have freedom of speech but without expressively hurting social groups within the jurisdiction.

Nevertheless, there are many other routes to legislate against 'fake news' that target politicians, another example in Canada is the *Elections Act*,<sup>46</sup> which has a provision that makes it a guilty offence to change the vote by altering societies perception of a candidate based on false information.<sup>47</sup> This part of the act has not been invalidated by the courts in Canada but is at the same time is subject to scrutiny of the *Charter of Rights*. However, current governments that are struggling with 'fake news' are pushing for legislation against social media platforms rather than the creators of 'fake news' itself. Regulating social platforms is an easier battle to win as these platforms are businesses and they may not have the right to freedom of

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<sup>45</sup> *R. v. Keegstra*, [1990] 3 S.C.R. 697

<sup>46</sup> Canada Elections Act (S.C. 2000, c. 9)

<sup>47</sup> Canada Elections Act (S.C. 2000, c. 9), s 91.

speech and expression as individuals do in certain jurisdictions.

### **Government Regulation**

Most countries have established legal principles on hate speech, defamation and slander but many of these laws both civil and common law were not created to deal with the social media problems we have today, these laws must be updated to keep up with evolving society and technology. A possible solution would be to have these laws interpreted in a broad scope to include the technology we have today to combat 'fake news'. Alternatively, introducing new law or broadening current defamation laws would also help tackle 'fake news'. Some of the new draft laws created in Germany to combat 'fake news' on social media platforms require that their 'code of conduct' become legal obligations to the state. This is because of the belief that sites like Facebook who have code of conducts are acting negligently or not acting in their full capacity to stop the spread of 'fake news'. "A survey by the justice ministry's youth protection agency, released on Tuesday, found that YouTube was able to remove around 90 per cent of illegal postings within a week, while Facebook deleted or blocked just 39 per cent of content deemed criminal under the law and Twitter only 1 per cent."<sup>48</sup>

EPA European Commission spokesperson said the commission would be "following closely" steps taken by social media companies and plans to issue "guidance on the different types of voluntary measures adopted by online platforms" later this year. A Facebook spokesperson said it took its responsibility to tackle fake news "extremely

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<sup>48</sup> Eric Auchard and Hans Busemann, 'Germany plans to fine social media sites if they don't remove hate speech' *Globe and Mail*, March 14 2017 <  
[http://www.theglobeandmail.com/report-on-business/international-business/european-business/germany-plans-to-fine-social-sites-if-they-dont-remove-hate-speech/article34295688/?click=sf\\_globeafb](http://www.theglobeandmail.com/report-on-business/international-business/european-business/germany-plans-to-fine-social-sites-if-they-dont-remove-hate-speech/article34295688/?click=sf_globeafb)>

seriously”. Google and Twitter declined to comment. “We want people to feel confident that what they see on Facebook is meaningful and authentic, and recently announced a series of measures designed to tackle hoax news on our platform,” the spokesperson added.<sup>49</sup>

Within the debate of the influence of ‘fake news’ there is call by politicians in the European Union to combat ‘fake news’ by the use of legislation with penalties for such acts of creating and distributing ‘fake news’.<sup>50</sup> It can be argued that living in a post-truth world where ‘fake news’ is a source for people’s knowledge about the current political situation in a region will tear the social fabric apart as it threatens the establishment. But creating legislation that challenge false information is very likely to have counter positive effect. It was during times of war and dictatorships where there had been created certain bodies to establish what is true and what is not true, these bodies let to the creation of a propaganda state where the governments become arbiters of truth. Nevertheless, the liberal democracies that are struggling with ‘fake news’ are not dictatorships or any other form of authoritarian government, but having a limit of free speech is a slippery slope. “Above all, rather than strengthening established media institutions, banning fake news might very well undermine them in the eyes of the public. If alternative outlets are prosecuted or shut down, mainstream media risk being seen as unofficial propaganda tools of the powers that be. Behind the Iron Curtain, nonofficial media outlets had

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<sup>49</sup> David Bond and Duncan Robinson, ‘European Commission fires warning at Facebook over fake news’, *Financial Times*, 2017 <

<https://www.ft.com/content/85683e08-e4a9-11e6-9645-c9357a75844a>>

<sup>50</sup> Flemming Rose and Jacob McHangama, ‘How regulating ‘fake news’ will backfire’, *Twin City Pioneer Press*, February 16, 2017

<<http://www.twincities.com/2017/02/16/rose-mchangama-how-regulating-fake-news-will-backfire/>>

more credibility than official media in spite of the fact that not everything they published was accurate or fact-checked. The hashtag #fakenews could become a selling point with the public if it were banned rather than rigorously countered and refuted.”<sup>51</sup>

### **Conclusion**

‘Fake new’ is a new phenomenon in society causing what we can identify today as post-truth politics, where politicians are relying on conspiracy theories to increase their followings. Although, conspiracy theories are not a new phenomenon the way ‘fake news’ is spreading amongst society is sounding alarm bells in the political establishment of countries. The threat of a wave of populist leaders attaining power is forcing society and governments to look at how ‘fake news’ is able to operate where the truth is easily accessible. Facebook and other social media platforms have been blamed for stopping the spread of ‘fake news’ on their platforms even though they already had policies that forbid such content. Regional governments who are highly at risk from the spread of ‘fake news’ have taken a hard stance on the topic such as Angela Merkel whose election is considerably soon. The German government is considering enacting laws that put a fine on Facebook if they do not remove content that is misleading, they seek to make legal obligations out of these platforms own content policy. Overall, governments should do what must be done to protect their society and their country as a whole from false information that could possibly change the political and social environments of the region. But there is a real possibility that these governments can over step the separation between state powers and freedom of press and

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<sup>51</sup> Flemming Rose and Jacob McHangama, ‘How regulating ‘fake news’ will backfire’, *Twin City Pioneer Press*, February 16, 2017  
<<http://www.twincities.com/2017/02/16/rose-mchangama-how-regulating-fake-news-will-backfire/>>

freedom of speech. It is equally as dangerous to have social media platforms decide what is the truth when it comes to news, this will give them incredible power over the population that uses their services as a primary source of news. It is important for governments and platforms to attain a balancing act between laws against 'fake news' and maintaining the freedom of press and freedom of speech and expression.

## BIBLIOGRAPHY

### A. Articles, Books and Journals

David Bond and Duncan Robinson, 'European Commission fires warning at Facebook over fake news', *Financial Times*, 2017 <  
<https://www.ft.com/content/85683e08-e4a9-11e6-9645-c9357a75844a>>

Eric Auchard and Hans Busemann, 'Germany plans to fine social media sites if they don't remove hate speech' *Globe and Mail*, March 14 2017 <  
[http://www.theglobeandmail.com/report-on-business/international-business/european-business/germany-plans-to-fine-social-sites-if-they-dont-remove-hate-speech/article34295688/?click=sf\\_globebf](http://www.theglobeandmail.com/report-on-business/international-business/european-business/germany-plans-to-fine-social-sites-if-they-dont-remove-hate-speech/article34295688/?click=sf_globebf)>

Flemming Rose and Jacob McHangama, 'How regulating 'fake news' will backfire', *Twin City Pioneer Press*, February 16, 2017 <  
<http://www.twincities.com/2017/02/16/rose-mchangama-how-regulating-fake-news-will-backfire/>>

Hunt Allcott, Matthew Gentzkow, 'Social Media and Fake News in the 2016 Election' (2017) *National Bureau of Economic Research*.

Karen M. Douglas, Chee Siang Ang, and Farzin Deravi, 'Farewell to truth? Conspiracy theories and fake news on social media' (2017) *University of Kent*.

Mike Isaac, 'Facebook, in Cross Hairs After Election, is Said to Question its influence', *New York Times (San Francisco)*, 12 November 2016.

Sandra L. Borden, Chad Tew, 'the Role of Journalist and the Performance of Journalism: Ethical Lessons from "Fake" News (Seriously)' (2007) 22 *Journal of Mass Media Ethics*.

Slaw, 'Thursday Thinkpiece: Crawford on Fake News in Canada', (23 February 2017)

<http://www.slaw.ca/2017/02/23/thursday-thinkpiece-crawford-on-fake-news-in-canada/>

Victoria L. Rubin, Niall J. Conroy, Yimin Chen, and Sarah Cornwell, 'Fake News or Truth? Using Satirical Cues to Detect Potentially Misleading News' (2016) In *the Proceedings of the Workshop on Computational Approaches to Deception Detection at the 15th Annual Conference of the North American Chapter of the Association for Computational Linguistics: Human Language Technologies*.

B. Cases

*Irwin Toy Ltd. v. Quebec Attorney General*, [1989] 1 S.C.R. 927

*RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573

*R v Zundel* [1992] 2 S.C.R. 731

*R. v. Keegstra*, [1990] 3 S.C.R. 697

C. Legislation

Canada Elections Act (S.C. 2000, c. 9), s 91.

*Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982 c11*

*Criminal Code* 1985 (Canada) s181

*U.S. Constitution* 1791

D. Other

Facebook for Developers, *Facebook Audience Network Policy*, <https://developers.facebook.com/docs/audience-network/policy>

Facebook Media, 'Introducing: The Facebook Journalism Project' <<https://media.fb.com/2017/01/11/facebook-journalism-project/>>

Cyber Security Start Up Italia, *Fake news, authenticity, and why we need a new digital ethics* (7 January 2017) <<http://cybersecurity.startupitalia.eu/53819-20170107-post-truth-fake-news-new-ethics>>

Ethical Journalism Network, *Facebook and Matters of  
Fact in the Post-Truth Era*,  
<http://ethicaljournalismnetwork.org/resources/publications/ethics-in-the-news/fake-news>