



Liars, Skeptics, Cheerleaders: Human Rights Implications of Post-Truth Disinformation from State Officials and Politicians

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Abstract

The purpose of this paper is to philosophically examine how disinformation from state officials and politicians affects the right to access to information and political participation. Next to the more straightforward implications for political self-determination, the paper examines how active dissemination of lies by figures of epistemic authority can be framed as a human rights issue and affects trust patterns between citizens, increases polarization, impedes dialogue, and obstructs access to politically relevant information by gatekeeping knowledge. Analyzing European Convention on Human Rights (ECHR) case law, the paper argues that human rights law provides some argumentative basis for extending individuals' rights as epistemic and political agents towards a "right to truth spoken by politicians". However, challenges in balancing a possible restriction of lies and assessing the real effective harm that comes from them remain, potentially leading to a vacuum of rights protection for less visible long-term harm to individuals and public discourse. In order to have a real chance at tackling the harmful consequences of publicly told lies from a human rights perspective, it is necessary to rethink the notion of harm to encompass more complex and abstract forms of politico-epistemic damage to individuals and the public.

Keywords Disinformation · Post-truth · Human rights · Right to truth · Freedom of expression

Introduction

Knowing is crucial for everyday life. To participate in the public sphere, we need certain knowledge: How is my country's crime rate or gender pay gap? What are my fellow citizens' political attitudes? Who should I vote for and whom should I

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protest? After the 2016 US presidential and BREXIT campaigns, the intentional and strategic dissemination of false information in the public sphere has become well-known and widespread. Consider Viktor Orbán's allegations about George Soros and the EU (Szakacs and Strupczewski 2019; Rankin 2019), Boris Johnson's egregiously false BREXIT leave-campaign slogans (Cassam 2021, 60; Lichfield 2017), or Trump's and Bolsonaro's lies in the recent COVID-19 infodemic (31 Mar 2020, "Coronavirus: World Leaders' Posts Deleted Over Fake News", BBC). Although numerous states have upgraded their disinformation policies in both soft and hard law, lying politicians often remain indirectly or marginally addressed. Public efforts by legal professionals to hold politicians accountable for their lies have not shown successes so far.¹

The issues of post-truth, why politicians lie and why we let them, have been broadly discussed in communications theory (Sunstein 2014), political epistemology (Edenberg and Hannon 2021), and law (Condello and Andina 2019; Sunstein 2021). Much of this research is linked to current affairs concerning disinformation campaigns as acts of international warfare and democratic disruption, the rise of populism, and information chaos and public health (see Brown 2018; Rowinski 2021; Bernard et al. 2021). The corresponding need to protect individuals from deceptions and their repercussions and provide epistemic rights as both "knowers and knowns" (Risse 2021, 354) has also been discussed (Watson 2021; Risse 2021). In addition, some human rights and constitutional law scholars are exploring the limits of freedom of expression and a potential right to lie.²

Nonetheless, disinformation from politicians and state officials requires more in-depth attention. A politico-epistemic environment in which public political figures—with epistemic authority and information monopolies—deliberately deceive comes with negative implications for democracy and human rights. Besides providing the electorate false information on which they base political decisions, disinformation spread by politicians challenges the rights to access to information and the right to political participation, ultimately leading to distrust between citizens, political polarization, knowledge gatekeeping, and damaging democratic discourse. These dynamics surrounding lying politicians are complex, resilient, and have serious short- and long-term repercussions for individual and collective human rights.

Post-truth disinformation by politicians and state officials must therefore be framed as a human rights concern—an angle that is mostly unexplored in academic literature on the topic. Under international human rights law (IHRL), there is

¹ For instance, in the UK, the High Court dismissed a claim to prosecute Boris Johnson for misconduct in public office for his EU BREXIT slogan on giving the EU £350 million a week. In 2021, German legal scholar Ferdinand von Schirach proposed an amendment of the European Charter of Fundamental Rights, including a right to truth spoken by politicians and state officials (7 June 2019, "Brexit: Boris Johnson £350 M Claim Case Thrown Out by Judges" BBC; von Schirach 2021).

² This analysis is prominently taking place in the US-American context, concerning the balance of First Amendment rights. See e.g. Varat. 2006; Ross 2021; Marshall 2004.

currently no right to truth from politicians and state officials. Examining the European Convention on Human Rights (ECHR) caselaw, this paper attempts to make a case for this claim, refining the complexities of disinformation and implications for individuals as rights bearers. To tackle human rights concerns from politicians spreading falsehoods in an efficient and holistic way, a black-letter law analysis is not enough—human rights scholars need to be aware of the background and nuances of post-truth disinformation to adequately address the problem in legislation, courts, and policy. In doing so, the paper aims to bridge a gap between disciplines in recent scholarship, embedding the issue in an interdisciplinary framework of political science, philosophy of knowledge, and communications theory. This background knowledge is then applied to a practical analysis of ECHR case law on freedom of expression, seeking to answer the following questions: How does post-truth disinformation from state officials and politicians affect the right to access to information and political participation? What protection does the ECHR offer and where are its limits? What changes of perspective are necessary to address disinformation by state officials and politicians from a human rights angle. The paper does not offer deeper guidance of how to regulate harmful and lies or bring charges against them.

This paper is structured as follows: the “Disinformation—a spectrum of truth and falseness” section embeds disinformation in a broader context of current politico-epistemic distortions. Subsequently, a definitional framework of disinformation as a falsehood told with harmful intent, tying it to the bigger context of post-truth communication is introduced. The “Implications of post-truth disinformation” section addresses the implications of post-truth disinformation from state officials and politicians, demonstrating that in a disinformed public sphere, deceived individuals are deprived of political self-determination. Furthermore, even when aware of the lies told, intellectual arrogance and widespread testimonial skepticism can favor both polarization and disengagement. The authors argue that these phenomena come at the detriment of individuals’ information access and political participation. The second part of the paper translates this problematic into a language of international human rights law, showing parallels and possible avenues for protection in the ECHR framework as well as respective challenges. Drawing lessons from the previous chapters, a specification and categorization of the harmful effects of disinformation is introduced for a more comprehensive account of lies in politics as a human rights issue.

Disinformation—a Spectrum of Truth and Falseness

Lying Politicians as an Instance of Politico-Epistemic Trouble

As crucial as knowledge and information might be, correct information and an epistemic skill set to properly process information have to be *acquired* in order to avoid the harms and disadvantages of being falsely informed. What we know and how we know it is not a matter of abstract fact-allocations but is embedded in epistemic patterns of information gathering and processing. Such patterns, or *epistemological systems*, as Briana Toole explains, “are like *governing bodies* for knowledge acquisition [...] [they] construct rules for the formation and revision of beliefs, stipulate

what method of forming beliefs we ought to employ or avoid, indicate how we ought to weigh evidence, specify what standards a belief must meet to count as knowledge, and so on” (2021, 84). Importantly, epistemic systems determine if and how access to information, knowledge, and truth is given; they “shape not just *what* we know, but *what we are in a position to know* [second emphasis added]” (Toole 2021, 85).

The reality we gather our information from is not neutral but is distorted.³ Propaganda, false information, political disagreement, epistemic oppression, polarization, epistemic bubbles and echo chambers, conspiracy theories, instrumentalized skepticism, channeled by buzzwords like post-truth or “fake news” increasingly influence our politico-epistemic landscape (Edenberg and Hannon 2021, 1). And while untrustful sources, information bubbles, and information chaos might be ancient, they are amplified due to the rise of fast-paced information and communication technologies (ICT). False information spreads so fast that keeping up with it and tidying up after it is a Sisyphean task. Bots, AI, and algorithms further complicate the picture—as a Council of Europe report states, “the complexity and scale of information pollution in our digitally-connected world presents an unprecedented challenge” (Wardle and Derkashan 2017, 10). The resulting epistemological system makes it hard to distinguish between true and false, fact and emotion, real and fake, and legitimate and illegitimate content or sources. Consequently, in an age of information overflow, access to truth remains scarce.⁴ These social, political, and epistemological dynamics and phenomena that collectively affect information ecosystems will be labeled as “politico-epistemic trouble” in the present discussion.

Information flows are not isolated but are embedded in broader, societal communication networks. As Wardle and Derkashan point out, when information is transmitted, the exchange is not neutral, but has an impact on belief systems and *reality of life*—conflicting accounts are “not pure information but a portrayal of the contending forces in the world” (Carey, 1989, 16; Wardle and Derkashan 2017, 57). Thus, epistemic systems are influenced by social, political, and cultural dynamics. A faulty epistemic system not only affects knowledge-gathering, but takes a toll on public life, possibly creating partisan and ideological rifts, hence *politico-epistemic trouble*. This paper is concerned with a specific form of epistemic trouble, namely, the issue of “post-truth” disinformation from politicians and state officials. Egregious lies and statements that have been later identified as false have become an integral part of political campaigning with a key event for liberal democracies being the US election campaigns of 2012, where “candidates were being more negative than ever, including resorting to outright deception” (Zenor 2016, 42–43).

³ This paper uses the terms “information” or “fact” in a very broad notion, not just including objectively measurable hard facts (“water boils at 100 °C”), but also unquantifiable soft facts like knowledge about social dynamics, understanding of political agendas, etc.

⁴ There is some debate in scholarly discourse on how “new” phenomena of politico-epistemic trouble actually are. Although this paper will not engage in this discussion, it is understood that most of the mentioned phenomena, being somehow connected to and exacerbated by online information flows, are quite distinct to our time.

According to Jason Zenor, “during the 2012 presidential election, Mitt Romney’s claims were judged to be false 25% of the time, and Barack Obama’s comments were judged to be false 15% of the time” (Zenor 2016, 44).⁵ During the term of President Trump, disinformation reached new levels, including claims of crowds in Jersey City applauding the fall of the Twin Towers or health advice to inject disinfectant against COVID-19 (Cassam 2021, 60; Kessler 2019; Cillizza 2020).

For Europe, BREXIT marked the beginning of an increasing disregard for the truth, with slogans such as “We send the EU £350 million a week – let’s fund our NHS instead”, or “Turkey (population 76 million) is joining the EU” (Cassam 2021, 60; Lichfield 2017) propagated in the leave-campaign. In a wave of rising populism and Eurocriticism, other leaders soon followed: Matteo Salvini in Italy and Viktor Orbán in Hungary repeatedly spread lies on immigration and the EU (Mario 2018).

Who Is Lying? The Agents of Disinformation

This paper defines “politicians and state officials” as both elected government representatives and those campaigning for office.⁶ Although digital platforms can act as amplifiers for the spread of false information, this discussion will not be limited to online disinformation⁷ and includes all forms of statements—whether from behind a rostrum, on government websites, election campaign posters, or hastily written 4 a.m. tweets.⁸ Although important, government shadow operations and foreign-based disinformation campaigns as an act of international information warfare are not part of the present discussion.

Politicians and state officials have a “unique position in the information ecosystem” (Pentney 2022, 23): Being “perceived as a source of accurate, reliable and relevant information [...]” (Watson 2021, 51), especially as elected leaders, they have epistemic credibility and authority and have information monopolies on certain topics (e.g. health data and pandemic statistics) (Watson 2021, 51). Consequently, “when official actors are involved, the sophistication, funding and potential impact of a message or campaign of systematic messages is far greater [...]”

⁵ Zenor references information from “Mitt Romney’s File,” Politifact; “Barack Obama’s file,” Politifact.

⁶ While there are notable differences in speech between members of the opposition, campaigning private individuals and elected leaders, in the present discussion, these categories are grouped together for the sake of providing a high-level overview. It is hoped that the distinctions between groups and individuals can be the subject of future research.

⁷ For further reference on how state actors manipulate via ICT, see for example Bradshaw and Howard (2019).

⁸ Use of terms such as “political speech” implies a broad conception of public, political statements unless specified otherwise. Note that the reception and harm of a lie might be contingent on the platform and context in which it is uttered.

(Wardle and Derkashan 2017; 29). Thus, the reception and interpretation of falsehoods might be influenced by the authority, popularity, and influence of the political agent.⁹

Politico-epistemic trouble does not originate from one source but is a product of a network of sharing and forwarding across different levels. Furthermore, the act of receiving, interpreting, and imparting disinformation and lies in different ways significantly influences political discourse. Thus, the “‘agent’ who creates a fabricated message might be different to the agent who produces that message – who might also be different from the ‘agent’ who distributes the message” (Wardle and Derkashan 2017, 6). What looks like an isolated lie told by an individual could be the product of information running through media companies, government shadow operators, social media platforms, or nonhuman agents such as bots and algorithms.

What Makes a Lie? From Falsehood to Disinformation

One token of false information is not like the other. In their Council of Europe report, Claire Wardle and Hossein Derakhshan classify “information disorder” into three categories depending on falseness, motivation, and intent.¹⁰ First, the epistemic environment can be “polluted” by *malinformation*: genuine and truthful information, which is designed to cause harm—consider for example Russian operators hacking the US Democratic National Committee or sharing information from former presidential candidate Hillary Clinton’s emails (Polantz and Collinson 2018).

The counterpart to malinformation is *misinformation*, referring to unknowingly shared false content (Wardle and Derkashan 2017, 20). Following Lee McIntyre’s classification of lies, it is useful to discern between “uttering falsehoods” and “willful ignorance” (McIntyre 2018, 7): in the former case, someone utters (or shares) falsehoods intentionally. In the latter case, “we do not really know whether something is true, but we say it anyway, without bothering to take the time to find out whether our information is correct” (McIntyre 2018, 7).¹¹

Disinformation on the other hand refers to content that is *intentionally* false, inaccurate, or misleading and designed to cause harm or follow a certain motivation (for example, to gain money, political influence, or to create chaos) (Wardle and Derkashan 2017, 20; European Commission 2018). Disinformation is congruent

⁹ If such agents engage in disinformation, they engage in abuse of their perceived epistemic authority, “[leading] to credibility excess, whereby unwarranted credibility is given to information from a perceived epistemic authority, even though it is in fact false or misleading” (Watson 2021, 52 Fricker 2007 and Medina 2011).

¹⁰ The terminology on information chaos used in policy and legal documents lacks consistency. The following definitions focus on the most important characteristics of disinformation which are present in most accounts. Moreover, it should be mentioned that frequently used terminology such as information “disorder,” “pollution,” “chaos” or even the term politico-epistemic “trouble” used above implies that there is a healthy information order—a questionable assumption.

¹¹ This account on misinformation overlaps with the definition of “bullshitting,” as described below in 2.3.

with the intuitive definition of lying—when a falsehood is told with the intent to deceive (McIntyre 2018, 8).¹²

This paper is concerned with instances of *disinformation*. Malinformation, though harmful for public discourse, lacks the element of falseness, which makes framing malinformation as a fundamental rights issue a different case. Misinformation on the other hand lacks the intentionality that makes a lie a lie. Nevertheless, since often misinformation is shared disinformation (Wardle and Derkashan 2017, 29), it remains crucial for the present discussion when it comes to the public's reception and sharing of disinformation from politicians.

The above characterization of disinformation via (a) falseness, and (b) intent to harm, leaves room for speculation. There are many ways of being purposefully untruthful; what is labeled a lie could differ from case to case. Here, it is useful to visualize that disinformation exists on a *spectrum* of falseness and harm. Wardle and Derkashan (2017, 6) mention 7 different forms of (mis- and) disinformation, listed here in ascending order of gravity:

- a) (Satire or parody: not intentionally harmful but potentially misleading)
- b) False connection: when visuals, headlines, or captions do not support the actual content
- c) Misleading content: misleading use of information to frame an issue or individual
- d) False context: when genuine information is shared with false contextual information
- e) Imposter content: when genuine sources are impersonated
- f) Manipulated content: when genuine information or imagery is manipulated to deceive
- g) Fabricated content: new content that is 100% false, made to deceive and cause harm

Although Wardle and Derkashan's report deals mostly with online information disorder, this classification is useful for emphasizing the nuances of "offline lies" as well. Information might be withheld, selectively displayed, put out of context, or distorted by unbalanced emphasis on certain aspects ("spin"). As Katie Pentney notes, practices like labeling journalistic and media output as "fake news" meet the criteria of falseness and intentional harm as well (2022, 16). Some instances, such as misleading use of information and faulty contextualization, seem to be common practice in political speech, while others involving manipulation and lies made from scratch are less acceptable.

While keeping the many forms of disinformation in mind, the main focus here are "intentional lies about matters of public importance" and "egregious false statements that are demonstrably contrary to well-known facts" (Pentney 2022, 2; Pfiffner 2018, 1). The paper is concerned with disinformation on *verifiable* information, not "inadvertent errors, satire and parody, or clearly identified partisan news and commentary" (Joint Communication of the High Representative of the Union for Foreign Affairs and Security Policy 2018, 1). However, even if information is verifiable in principle, true and false can be relative. First, the notion of truth and lies might be subject to cultural

¹² The two terms will be used interchangeably in this discussion.

relativism; politicians in different geographical regions have different rhetorical styles, and their audiences might perceive the notion of truth differently.¹³ Second, truth and falsehood seem to be increasingly subjective and tied to political view.

Obsolete Facts? From Lies to Post-Truth

The Oxford Dictionary defines “post-truth” as “relating to circumstances in which people respond more to feelings and beliefs than to facts” (“Post-Truth”, Oxford Learner’s Dictionaries). Truth is therefore not necessarily meaningless, but subject to interpretation—“[facts] can always be shaded, selected, and presented within a political context that favors one interpretation of truth over another” (McIntyre 2018, 6). As Lee McIntyre says, “one gets the sense that post-truth is not so much a claim that truth *does not exist* as that *facts are subordinate to our political point of view*” (2018, 11). Thus, the information gathering process, standards of evidence and reasoning, along with the idea of objective truth, independent of emotion or partisan affiliation, end up distorted. As Angela Condello points out, post-truth communication thereby “works at a double level”:

[On] the one hand, it produces consensus and legitimizes actions, choices, and judgments based on consensus. A typical example is Trump’s way of communicating via Twitter or other social networks. On the other hand, the consensus is so powerful that it de-legitimizes other forms of power, such as institutional or legal power. This allows for the creation of a different dimension in which the correspondence between language and reality is not verifiable, but is instead based on the authority and charisma of the individual that conveys the truth. (2019, 23)

As a corollary, first, identity-based affiliation can trump facts, and group dynamics can affect perception of truth and acceptance of standards of evidence. Second, the establishment of an alternate reality via bending the truth becomes a political display of power: lying does not seem to be detrimental to political careers—to the contrary, the ability to *create* reality and facts can be a symbol of superiority over the opposition. Such dynamics open a gateway for authoritarian leaders: as Robert Chesney and Danielle Citron write, “[i]f the public loses faith in what they hear and see and truth becomes a matter of opinion, then power flows to those whose opinions are most prominent – empowering authorities along the way” (2019, 1786 cited in Pentney 2022, 19). In this sense, post-truth lies are not meant to deceive individuals, but the liars are *meant to get caught*. Consider Italian vice premier Matteo Salvini, who tweeted in 2019 that Italian ports were closed for refugees at a time they were open. Even if found out, the lie served its purpose of reframing reality and marking political territory (Salvini 2019).¹⁴

¹³ While this issue opens an interesting topic, this paper will not engage in this debate.

¹⁴ One could argue that such falsehoods were not uttered in a literal way, but as a hyperbole, in the spirit of the speaker’s supporters. However, even if the audience does not take the lie literally and is not *actually* fooled, the speaker still sends their post-truth message that facts are subject to political view and interpretation.

Unfortunately, human thinking favors such knowledge and power dynamics—cognitive biases such as assimilation biases (confirmation and disconfirmation biases) and popularity heuristics assign more credibility to those we already agree with or those who are loudest (Sunstein 2014, 46; Anderson 2021, 12). As a result, in a feedback loop or “epistemic bubble,” the same tokens of supposedly true information are repeated, leading to “the failure of a group to update its beliefs in an accuracy-directed response to new information” and “[making] members [...] liable to converge on and resist correction of false, misleading, or unsupported claims circulated within it” (Anderson 2021, 10). Affirmation for one’s own group coincides with disapproval and distrust for those with differing opinions, favoring polarization and radicalization which reinforces bubble dynamics. This bias is amplified by the way information spreads online: social media algorithms are programmed to show what one *wants* to hear and not necessarily what is true, with recommendations and endorsement shaping media consumption (Messing and Westwood 2014, 1044–1045). In other words, “netizens tend to form self-contained groups which circulate precise information crafted precisely for those groups” (Condello 2019, 25), for example in the BREXIT campaign where leavers were mostly exposed to pro-BREXIT content (ibid.).

Note that untrue statements do not have to be designed to cause harm or be explicitly biased to be harmful. For example, former American President Donald Trump once stated that the tiles in his daughter’s nursery had been custom-made by Walt Disney. When the truth of this claim was questioned, he simply responded with “Who cares?” (D’Ancona 2017, 15 as cited in Cassam 2021, 58). Such statements open a different facet on the concept of lying, as they casually dismiss the importance of truth. Trump’s words do not fit the criteria for disinformation but are an expression of a “lack of connection to a concern with truth – [an] indifference to how things really are” (Frankfurt 2005, 33–34), coined with the term “bullshitting” by philosopher Harry Frankfurt. Trump had not much to gain from this lie, he told it because he could. The playfulness of his statement directly translates into a display of power, with the bullshitter entitling themselves to a dissociation from facts and standards of evidence. Being carelessly indifferent is an even more radical form of distancing oneself from the truth than doing so with a particular motive in mind, and can cause politico-epistemic harm even if the lie is about something as trivial as nursery tiles. These “softer” instances of spreading falsehoods show how nuanced disregard for the truth can be and how it potentially overlaps with willful ignorance or inadvertent error.

While disinformation can be characterized as false and intentionally harmful information, the phenomenon is complex. In current political discourse, disinformation has a post-truistic trait: truth and falsehood are subject to political interpretation, altering the importance of facts, standards of evidence, and ways of reasoning. Being connected to power dynamics and group affiliation, post-truth communication must be seen in a bigger scheme of political polarization and information bubbles. Indubitably, strategic fact modification and selectively forwarding information to one’s audience might sometimes be an essential skill in politics. However, it might come with concerning and complex repercussions for individuals as political and epistemic agents, which will be explored in the next section.

Implications of Post-Truth Disinformation

The consequences of post-truth disinformation in the political sphere are concerning: Bolsonaro advocating for COVID-19 treatment with the anti-malaria drug chloroquine likely led to actual deaths (Marcello 2021). Rioters convinced that Trump won the 2020 election faced actual charges after attacking Capitol Hill in January 2021 (Popli and Zorthian 2022). Even under less dramatic circumstances, voters who are badly informed on important electoral matters can suffer from underrepresentation and lack self-determination: As Kristoffer Ahlstrom-Vij and Jennifer R. Steele put it, “if they lack sufficient knowledge on relevant political topics, that person’s political choices might fail to reflect what they truly want” (2021, 193; Zenor 2016, 48).¹⁵ However, besides the dangers of actual deception, disinformation in the public sphere is equally harmful when individuals know about the possibility of being lied to, leading to an atmosphere of skepticism and distrust.

Trust No One—Knowledge Bubbles and Testimonial Skepticism

When individuals become aware of lies by epistemic authorities, there are two inter-related options for the disinformed public: the first is to side with the authority and accept the lies. Especially in identity-expressive discourse, people consciously and willfully stick to inaccurate statements for partisan reasons: when shown unlabeled pictures of former presidents Obama’s and Trump’s inauguration ceremonies and asked which crowd showed more people, 15% of Trump voters pointed to Trump’s significantly smaller crowd—it appears as if “[...] some partisans know the truth, but prefer partisan ‘cheerleading’ if they have nothing to gain from accuracy” (Anderson 2021, 24; Bullock et al. 2015, 519).¹⁶ While this is an extreme example, wrong information might fail to be corrected due to group dynamics and cognitive biases, trapping individuals in knowledge bubbles and echo chambers. The second possible reaction is skepticism of political leaders, but also towards the group they stand for, those sharing their values and ideologies, those deceived by the lies, and those cheering with them. Such skepticism can have worrying consequences for the public sphere. As Regina Rini notices in her discussion of “weaponized skepticism,”

much of our testimonial knowledge relies upon being able to trust strangers or acquaintances who haven’t established an epistemic track record. In day-to-day life, we don’t interrogate the personal history of each testimony-giver; instead, we rely upon the belief that most people are reliable on most topics most of the time. (2021, 42)

¹⁵ Note that individuals mostly do not have a good understanding on political topics anyway (see, e.g., Delli Carpini and Keeter, 1996). For an interesting account on epistemic duties, see Lackey (2021).

¹⁶ Anderson also refers to Schaffner and Luks (2017 and Bullock et al. (2015, 519).

Relying on others as epistemic sources is both necessary and legitimate for information gathering; a radical skepticist position where nobody is trusted is just impractical. Nevertheless, Rini argues that *testimonial skepticism* might be appropriate under certain circumstances. Drawing on Russian interference with American social media, Rini describes online networks as being a manipulated epistemic environment where the involvement with a distorted epistemics and the *awareness* of possibly being manipulated trigger default-distrust towards others. Given these conditions, we cannot rely on most people being correct most of the time; we are instead given good reasons to doubt others as reliable vectors of knowledge (2021, 44).

A certain level of distrust towards others—especially politicians—as epistemic sources is nothing new. However, it is important to stress the scale of the issue. Epistemic systems are influenced by social, political, and cultural dynamics, frictions, and distortions. A faulty epistemic system does not only affect knowledge gathering but also impacts private and public communal life, for example affecting personal relationships or creating partisan rifts. Here, Rini notes that distrust resulting from politico-epistemic trouble extends to doubts about others as members of a community: “It is not *just* that citizens, increasingly unsure what to believe, are deprived of the benefits of knowledge transmission. Testimonial skepticism goes beyond this, to undermine citizens’ trust in one another *as citizens*, not just as epistemic vectors” (2021, 32, 33, 45; Anderson 2021, 11). This shows that skepticism is much more universal: it is not limited to the disseminator of disinformation but leads to distrust in politics and the public sphere *as a whole*. Distrust in one’s fellow political agents thereby becomes a serious threat to democratic life. As Rini writes,

[b]y participating in defective testimonial chains, citizens become complicit in their own epistemic victimization. And once citizens come to realize this fact, they reasonably begin to distrust one another’s competence as co-participants in the collective epistemic projects that make democratic culture possible. (2021 32-33)¹⁷

Whether cheerleaders or skeptics, when confronted with lies, individuals tend to engage in what Michael Lynch calls *intellectual arrogance* or the “psycho-social attitude that you have nothing to learn from anyone else about some subject or subjects because you know it all already” (2021, 258). As a result, a feedback loop of polarization is set into motion, whereby epistemic agents trust “their group” more than outside sources.¹⁸

Access Denied—Information Gatekeeping and the Argument from Resources

Having reason to be skeptical or intellectually arrogant, many sources of testimonial knowledge cease to exist. This can leave the epistemic agent in charge of identifying and replacing untrustworthy sources, spending energy on doing their own research. Consequently, when the disinformation chaos becomes increasingly fatigable,

¹⁷ According to Rini, it is the political divisiveness following the skepticism that truly damages democratic discourse and can be weaponized in an international context (hence *weaponized skepticism*).

¹⁸ See also deRidder 2021 240, 245.

(political) disengagement seems like a naturally resulting problem. While for some, disengagement might result from frustration, for many, it might come from an involuntary lack of resources. The reasoning behind this claim is that the more knowledge sources individuals are skeptical about, the more *effortful* the gathering of decision-relevant information becomes. Remaining properly informed under conditions of testimonial skepticism requires energy, time, and an advanced epistemic skill set that individuals might not have. This argumentation holds for polarized individuals stuck in information bubbles, whose access to information is obstructed by default.

With this argument from resources, access to information is increasingly gatekept in a post-truth environment: considering time, money, and skills as necessary resources to get access to information, issues of vulnerability and class, race, and gender inequalities arise. Less privileged individuals or groups have less access to resources and are consequently less able to debunk disinformation and access politically relevant information. Indeed, online information sources, which are mostly free from traditional gatekeepers like money, are so distorted that they might end up impeding information acquisition rather than aiding it.

These considerations give rise to concerns of epistemic vulnerability and oppression, defined by Kristie Dotson as “a persistent and unwarranted infringement on the ability to utilize persuasively shared epistemic resources that hinder one’s contributions to knowledge production” (2014, 116). And when epistemic rights are unequally distributed, the debate ties back to the power dynamics of information, leaving the disinformed disempowered.¹⁹

Recapitulating, disinformation from politicians and state officials can have the effect of depriving the unknowingly disinformed electorate from political choice. However, things are equally concerning when individuals are aware of the deception. Active dissemination of lies by figures of epistemic authority not only affects trust towards the speaker, but also towards other citizens. Such widespread testimonial skepticism increases us-versus-them thought patterns, damages democratic discourse, and makes information access increasingly complicated. Knowledge becomes gatekept, facilitating problematic epistemic power dynamics. These implications are serious enough to give rise to human rights concerns regarding access to information and political participation, as explored in the next chapter.

Human Rights Framework Analysis

Translating the concerns raised in previous sections in the language of international human rights law is challenging as the existing human rights framework offers only a limited basis for protection. Indeed, disinformation is not a legal category and “[i]nternational

¹⁹ Such a claim is for example backed up by empirical data on how the affluent usually are better informed on public affairs, or connections between education level and susceptibility for conspiracy theories and populism (Christiano 2021). For further insight on epistemic vulnerability from a postcolonial and gender perspective and a more legal perspective respective, see e.g. Fricker (1999); Kessler and Pozen (2018); and more generally Watson (2021, vii).

case law on freedom of expression did not yet come to address specifically disinformation-related legal questions” (Policy Department for Citizens’ Rights and Constitutional Affairs Directorate-General for Internal Policies 2021, 9, 15). There is currently no right to truth spoken by politicians or a right to true and trustworthy information. However, such rights could be seen as *indirectly* protected (Watson 2021, 53–54). The following section embeds issues of epistemic trouble resulting from post-truth disinformation by state officials and politicians in a human rights perspective—an angle that is mostly unexplored in academic literature on the topic. Focusing on ECHR case law, it will analyze how the existing human rights law framework can be used to argue for a right to truth spoken by politicians and state officials, showing its limits and showing where our legal and theoretical understanding might need to be reevaluated. It further introduces a more nuanced categorization of the harms resulting from disinformation.

Freedom of Expression and Political Participation—Arguing for a Right to Truth Spoken by Politicians

In the ECHR human rights system, access to information is granted under Article 10 on freedom of expression of the European Convention on Human Rights. Freedom of expression has repeatedly been seen as the “bedrock of any democratic system” (*Bowman v UK* ECtHR 1998, para 42) in the eyes of the European Court of Human Rights (ECtHR) (see also *Handyside v UK* ECtHR 1976, para 49). The provision covers freedom of speech and opinion, including the freedoms to receive and impart information.

The general notion of the public’s “right to know” has been commonly interpreted as a free, open, and rich media environment, with state obligations concerning “freedom of the press as a means of ensuring the public’s right to impartial information about world events, urging that the right to know must be viewed as a public, rather than private good” (Watson 2021, 57).²⁰ In canon ECHR case law such as *Sunday Times v UK*, the ECtHR confirmed that freedom of press “guarantees not only the freedom of the press to inform the public, but also the right of the public to be properly informed” (ECtHR 1979, para 66).

Besides freedom of press and protection against media interference, the right to know can be framed as the right to access otherwise non-accessible government information or official documents. Even though the ECHR—unlike the UDHR and ICCPR—entails no specific right to “seek” information, “such a right or obligation [to access information] may arise, [...] in circumstances where access to the information is instrumental for the individual’s exercise of his or her right to freedom of expression, in particular ‘the freedom to receive and impart information’ and where its denial constitutes an interference with that right” (*Magyar Helsinki Bizottság v Hungary* ECtHR 2016, para 156).²¹ Such a right has been granted by the Court in

²⁰ Also see *Handyside* paras 14–16.

²¹ For reference, in the Inter-American system, the right to truth as a notion of access to government-held information is well established as a victims’ right to know what happened in the case of mass atrocities and gross human rights violations. Victims’ rights to know what caused their suffering in the case of, e.g., extrajudicial killings or enforced disappearances is an important pillar for redress and transitional justice. For further reference, see Mac-Gregor (2016) or Klinkner and Davis (2019).

the case of access to authority-held personal information, or in cases of threats to bodily integrity, such as environmental hazards and health risks (*Leander v Sweden* ECtHR 1987; *Guerra and others v Italy* ECtHR, 1998a). In *TASZ v Hungary*, a case concerning an NGO requesting access to official documents from Hungary's Constitutional Court, the ECtHR further ruled that government bodies' refusal to provide information relevant to "public debate on matters of legitimate public concern" amounts to indirect censorship in violation of Article 10, and that information gathering "is an essential preparatory step" for journalism and watchdog NGOs (ECtHR., 2009, para 27). This judgment includes public authorities' "measures which merely make access to information more cumbersome" (ECtHR 2009, para 26). More recently, according to Pentney, the ECtHR showed "willingness" to see governments actively withholding information on COVID-19 or climate change impedes the access to information limb of freedom of expression (2022, 12).²² In an important recent decision for *Association Burestop 55 and Others v. France*, the Court held for the first time that "dishonesty, inaccuracy or inadequacy of information supplied by a public authority under an obligation to provide information prescribed by domestic law [...] was akin to a refusal to provide information." (ECtHR 2021)²³—uttering false information therefore seems to be equally impeding access to information as never disclosing that information at all.

Furthermore, the Court stresses the connection between political self-determination and information access—in *Guerra and Others v Italy*, it held that in order to make informed choices, individuals might be dependent on government information (ECtHR 1998a, para 60). Access to information is especially interdependent with individuals' capability to enjoy the right to political participation and free elections, with "opinions and information of all kinds are permitted to circulate freely" (*Bowman v UK* ECtHR 1998b, para 42). Without such, citizens simply lack an important means to hold their leaders accountable; "without [access to information] the citizens of a democracy have but changed their kings" (Cross 1953, 1 as cited in Watson 2021, 58).

While Article 10 mostly calls for negative state obligations, the Court emphasizes positive state obligations to cultivate an open public sphere and maintain "an enabling environment by allowing for everyone to take part in public debate and express their thoughts and opinions free from fear [...]" (*Dink v Turkey* ECtHR 2012, para 137 translated in Pentney 2022, 18). State efforts "must be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness" (*Şahin Alpay v. Turkey* ECtHR, 2018, para 180).

From this framework, individuals as knowers are to be protected. However, can such protection be extended to cover a right to truth spoken by politicians? Although the cases cited are not about disinformation, they nevertheless offer some help in addressing such a claim. The human rights framework on access to information clearly seeks to empower and protect individuals as knowers and recognizes the importance of

²² Pentney refers to ECtHR 2016, *Magyar Helsinki Bizottság v Hungary* and ECtHR 2020, *Centre for Democracy and the Rule of Law v Ukraine*.

²³ The case concerns an environmental NGO claiming that the events surrounding the construction of a nuclear waste storage site violated access to information under Article 10 ECHR and right to fair trial under Article 6 ECHR (ECtHR 2021).

an open information landscape for them as epistemic and political agents.²⁴ An environment of increased post-truth disinformation collides with this aim since it does not constitute an environment of free communication and can interfere with individuals' political self-determination. Besides the refusal to provide information, false information coming from public authorities can, under certain circumstance, interfere with the right to access information. Furthermore, information bubbles and individuals' inability to trust one's co-citizens as epistemic vectors *and* political agents do not constitute a setting where diverse and pluralist ideas can circulate and publicly relevant information is accessible in an unbiased and "uncumbersome" form. A serious commitment to creating and protecting a pluralist public sphere should include the facilitation of news gathering and refraining from contributing to politico-epistemic trouble. Additionally, the gatekeeping effect of making knowledge gathering increasingly effortful might constitute an obstacle to access to information that is on par with other gatekeepers like illiteracy and language.²⁵

Still, the Court's take on access to information is rather different than the one implied by a right to truth spoken by politicians. As Katie Pentney argues,²⁶ not all instances of government disinformation are equally contestable under freedom of expression provisions: When protecting freedom of expression and access to information, the Court is mostly concerned with the state as a *regulator*, either censoring or withholding relevant information. However, when politicians lie, they are not restricting information access in this sense, but they *actively* disseminate disinformation as a participant and speaker in the public sphere. Such speech

[...] does not impede the exchange of information of ideas (as is the case with censorship and withheld information), nor does it target or impair the messenger (as in false claims of 'fake news'). Instead, it covers mainly new terrain: governments as participants in communicative processes, conveyors of information of public importance. (Pentney 2022, 21-22)

This notion is significantly different than what the drafters of freedom of expression provisions had in mind for the scope of protection (Pentney 2022, 22). However, overall, keeping teleological interpretation methods and the "living instrument doctrine"²⁷ of the ECtHR in mind, there is some argumentative basis for extending the right to know towards a right to truth spoken by politicians as a logical progression of ECHR case law.

²⁴ While the focus here is on access to information in connection with political participation, this should not imply that citizens who have the status to actually partake in elections should be the sole bearers of a right to truth spoken by politicians and state officials.

²⁵ In *Öneryıldız v Turkey*, a case concerning a garbage-tip landslide destroying nearby slum dwellings, the applicants alleged "that the Government could not evade their obligations by requiring their poorest and, indeed, least educated citizens to obtain information about environmental matters of such significance" (ECtHR 2004, para 66) and therefore put an important emphasis on epistemic vulnerability. Despite agreeing with the applicants' claim on information access, the ECtHR did not take the chance to further elaborate on the vulnerability issue.

²⁶ See Katie Pentney's (2022) thorough and convincing review of ECHR case law on freedom of expression and government disinformation.

²⁷ As first applied in *Tyler v UK* (ECtHR, 1978).

Censorship and Effective Harm—Challenges of a Right to Truth Spoken by Politicians

Since prohibiting lies in political speech implies a restriction of politicians' active right to freedom of expression, establishing a right to truth raises the question of more expression or less expression. When it comes to political speech, the former is usually favored, and high levels of protection against restriction are granted. When deciding on whether restriction of freedom of expression is permissible, the ECtHR follows a three-part test: the restriction must be prescribed by law, follow a legitimate aim, and be necessary in a democratic society (ECHR *n.d.*, Art 10(2)). As far as freedom of expression and false information are concerned,

Article 10 of the Convention as such does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful. To suggest otherwise would deprive persons of the right to express their views and opinions about statements made in the mass media and would thus place an unreasonable restriction on the freedom of expression set forth in Article 10 of the Convention. (*Salov v Ukraine* ECtHR 2005, para 113; Pentney 2022, 25)²⁸

Relatedly, the “verifiability” of a lie might lead to challenges in assessing a potential right to truth spoken by politicians and state officials: In *Lingens v Austria*, the Court has pointed out that value judgments, not being “susceptible of proof,” should be protected more strongly than false facts (ECtHR 1986, para 46).

The reasoning behind favoring less restriction to prevent authorities from arbitrarily censoring “false” statements is legitimate. Indeed, worldwide various disinformation regulation schemes have been implemented to create a lawful gateway to silence dissent.²⁹ However, the dangers of state interference with freedom of expression need not come at the detriment of truthfulness in public discourse. From another perspective, it is worth questioning whether allowing falsehoods to circulate is in keeping with the “demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’” (*Handyside v UK* ECtHR 1976, para 49). As Seana Shiffrin states, “[d]eliberately insincere speech should not garner the same sort of respect because it does not participate, even at the fringe, in the same values as sincere or transparent speech. Moreover, if deliberate misrepresentations undercut the warrants we have to accept each other’s testimonial speech, then we have reason to think that deliberate misrepresentations interfere with the aims of free speech culture” (Shiffrin 2014, 117). More recent International Human Rights Law documents mirror this dismissal of an either-or approach: as the UN (2017)

²⁸ In the *Salov* case referenced here, Ukraine was found to be in breach of Article 10 for convicting a private individual for dissemination of false information on an electoral candidate. An exception in the Court’s case law with regard to the protection of false statements are Holocaust denial claims, where freedom of expression is interpreted with an “abuse clause” (ECHR *n.d.*, Article 17) which “prohibits the destruction of and excessive limitation on the rights and freedoms set forth in the Convention” (ECHR *n.d.*, Article 17; Cannie and Voorhoof 2011, 58; *Garaudy v France* ECtHR, 2003).

²⁹ See e.g. the recently adopted Anti-Fake-News legislature in Malaysia, Singapore, the Philippines and Turkey.

Joint Declaration of International Mechanisms on Freedom of Expression and 'Fake News', Disinformation and Propaganda stresses,

the human right to impart information and ideas is not limited to “correct” statements, [...] the right also protects information and ideas that may shock, offend and disturb, and that prohibitions on disinformation may violate international human rights standards, while, at the same time, this does not justify the dissemination of knowingly or recklessly false statements by official or State actors. [...] State actors should not make, sponsor, encourage or further disseminate statements which they know or reasonably should know to be false (disinformation) or which demonstrate a reckless disregard for verifiable information (propaganda). (preamble, 2.c)

Another challenge to the right to truth as a human right is to assess the harm coming from disinformation. *Salov v Ukraine*, as Pentney notes, shows “important a *contrario* potential” (2022, 27) in this regard, even though it did not restrict the spread of false information. *Salov* concerns a private individual disseminating falsehoods, with limited range of influence and unproven intent to deceive. If there was broader influence and proven intent, the Court’s decision might have been different (Pentney 2022, 27). It seems therefore that in a possible case before a human rights judicial body, what counts might be the real and effective harm resulting from the lie.³⁰ Sometimes, such harm might be immediately visible and assessable, especially if false information leads to repercussions for more tangible rights such as the right to health during the COVID-19 or Ebola pandemics (High Representative of the Union for Foreign Affairs and Security Policy 2020; Fidler 2019), or the right to bodily integrity in case of risk of environmental hazard. Moreover, disinformation might be a gateway for unprotected illegal speech, discrimination, and incitement, especially when it is targeted at vulnerable groups. Lastly, in political campaigning, disinformative statements often take the shape of untrue information about other candidates, harming their reputation.³¹ In such cases, human rights provisions on the rights entangled with freedom of expression, such as the right to health or prohibition of discrimination and defamation help arguing for a right to truth spoken by politicians.

³⁰ Such a harm-based approach is applied in the US-landmark case *United States v Alvarez*, where the Supreme Court deemed knowingly lying as lawful under the First Amendment as long as it did not produce actual harm (US Supreme Court 2012, 718–719).

³¹ As far as defamatory lies are concerned, in his concurring opinion in *Lindon, Otchakovsky-Laurens and July v France*, judge Loucaides argues that “the suppression of untrue defamatory statements, apart from protecting the dignity of individuals, discourages false speech and improves the overall quality of public debate through a chilling effect on irresponsible journalism. Moreover, such debates may be suppressed if the potential participants know that they will have no remedy in the event that false defamatory accusations are made against them. The prohibition of defamatory speech also eliminates misinformation in the mass media and effectively protects the right of the public to truthful information. Furthermore, false accusations concerning public officials, including candidates for public office, may drive capable persons away from government service, thus frustrating rather than furthering the political process” (ECTHR 2007, concurring opinion).

However, phenomena of epistemic trouble and epistemic injustice that come from disinformation, while incredibly worrisome, do often not have an immediate and visible repercussions for other rights—most falsehoods do not really constitute illegal content like defamation or incitement that would be unprotected by freedom of expression (Wardle and Derkashan 2017, 9). In such cases, “the requisite causal connection between the government’s speech and harm to its targets’ choices and opportunities” (Norton 2019, 8; Pentney 2022, 25) can be tangled. This is especially true for more intricate instances of damage to individuals’ access to information and the public sphere, when individuals are partly aware of the lies (i.e., testimonial skepticism and information bubbles). Additionally, harm might be even more difficult to assess when the rights affected are cultural and social rights, such as freedom of religion or participation in cultural life. The harms might also be long term: lack of trust and polarization of society could plant the seeds for political destabilization that could end up costing opportunities or even lives—but that might take years or decades to happen. In fact, the abstract and long-term nature of these harms is likely part of the reason why we often fail to recognize lying politicians as a human rights problematic in the first place.

However, in the current system, unless there are tangible rights breaches, a right to truth spoken by politicians might fail in the admissibility phase (see Pentney 2022, 25), and deep, long-term harms to the public and individuals might face a vacuum of protection. In order to properly address disinformation from a human rights perspective, it is necessary to specify, redefine, and categorize the notion of harm to encompass more complex and abstract forms of politico-epistemic damage to individuals and the public.

The following matrix (Table 1, below) offers some guidance in an overview of potential harms, classified by whether their effect is long-term or short-term, more tangible or less tangible. “Tangibility” refers to how visible, measurable, and provable a harm is, and how clear the causal connection to the disinformation spread is. Note that these categories are meant to be understood as a spectrum and overlaps are likely.

Many of these harms are yet difficult to express in the language of human rights law or in legal terms in general. Proof of harm can be challenging. Nevertheless, when handling disinformation-related cases, courts and policy makers should consider the full spectrum of potential harms to individuals, groups, public debate, and democratic institutions that follow from the spread of untrue information by agents with epistemic and political authority.

Conclusion

The dissemination of lies by figures of public and epistemic authority deprives the unknowingly disinformed electorate from genuine political choice and diminishes trust towards both authorities and fellow citizens. Such widespread testimonial skepticism is increasing polarization, impeding dialogue, and making information access increasingly complicated, thereby gatekeeping knowledge, creating worrisome epistemic power dynamics, and further entrenching systemic injustice. The consequences are worrisome for freedom of expression, political participation, and a healthy public

debate. ECHR case law, keen on fostering freedom of expression for a functioning democratic public sphere and protecting individuals as knowers, provides some argumentative basis for the suggested extension towards granting a right to truth spoken by politicians. However, (a) the perspective on the government as a regulator rather than a speaker, (b) the high protection level of political speech, and (c) the absence of immediate harm pose challenges and call for a careful case-by-case assessment of potential claims for a right to truth spoken by politicians. Unbalanced review might lead to a misleading inflation of the “democratic value” of false statements, as well as a vacuum of rights protection for less visible long-term harm to individuals and public discourse. Politico-epistemic trouble is complex—dangerous dynamics arise at

Table 1 Matrix of harms resulting from post-truth disinformation by state officials and politicians

	Short-term	Long-term
Tangible	<p>Because of the spread of false information, other rights breaches occur. The damage is visible, clearly attributed to disinformation, and assessable with current legal vocabulary.</p> <p>Examples: An individual treats their COVID-19 symptoms with chloroquine following Bolsonaro’s hazardous health advice, suffering immediate harm to their health.</p> <p>When disinformation entails defaming, discriminating, or inciting content, damage to reputation and threats to the security of groups and individuals follow.</p>	<p>Because of the spread of false information, collective and individual politico-epistemic attitudes are set in motion and set the scene for future harm.</p> <p>Examples: An influential politician has a post-truth attitude towards anthropogenic climate change. Their country fails to adopt necessary mitigation measures, leading to severe harm in the future.</p> <p>The repeated spread of falsehoods about certain marginalized groups leads to us-versus-them dynamics and entrenched systemic injustice.</p>
Non-tangible	<p>The spread of false information leads to missing access to politically relevant information. While negative effects can occur in the short term, they are less visible, harder to measure and to track back to disinformation. Note that the examples for this category can stretch into long-term systemic problems.</p> <p>Examples: A voter loses track of what is true and false in a disinformation-heavy campaign, and their political choices end up not reflecting what they actually want. Members of marginalized communities do not have the necessary resources to keep up with information chaos and end up being excluded from current political discourse.</p>	<p>The spread of disinformation leads to politico-epistemic dynamics that are extremely harmful to democratic society, but can take years to develop and result from complex causal chains connected to disinformation and related politico-epistemic trouble.</p> <p>Examples: Testimonial skepticism between citizens and the perception of truth as something malleable stifle dialogue and plurality, foster narrowmindedness, and distrust in scientific authority and democratic institutions.</p> <p>Such conditions are breeding grounds for autocratization and political instability.</p>

the intersection of existing vulnerabilities, socio-political trends, and human patterns of knowledge acquisition. In order to properly address post-truth disinformation from politicians and state officials from a human rights perspective, courts, policy makers, and society as a whole should be vigilant about the harms that come with lies in politics, especially if the damage is less visible, measurable, and manifests over a long period of time.

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