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Lying in the age of artificial intelligence: A call to moral and legal responsibility

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ABSTRACT

In Western culture, perceptions and emotions have often prevailed over truth and reality, trivializing the act of lying and undermining trust between individuals and institutions. Today, freedom of expression and the right of citizens to freely form their own opinions—based on facts and not falsehoods—are sometimes threatened by the impunity with which lying is allowed in public debate, even in societies that consider themselves democratic. Lying, especially when practiced by public representatives, can cause serious social harm, and we believe that globalization calls for a higher common standard of respect for the truth. Along with the reflections of historical authors on the subject, in this essay we analyze two cases as examples: the false statistics used to achieve the decriminalization of abortion in democratic countries, and the lies of the Chinese authorities during the Covid-19 pandemic in one of today's leading totalitarian states. We believe that these behaviors should not go unpunished, and therefore we propose to insert new criminal offenses in national and international criminal law, especially for those in public office and media professionals. Our objective is to preserve and promote truthfulness in our societies in order to foster trust and peaceful coexistence among free and equal people.

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1. Introduction

The ‘health’ of information in the ‘digital realm’ does not look very promising. Falsehood affects not just *content* but also the *individual*: there are innumerable bots, which use fake profiles, and bot farms that alter the metrics of interactions. In this public network, it is quite difficult to gauge public opinion, to distinguish the truth from a lie, and to know whether a profile belongs to a real person or just a bot. At the same time, it is almost impossible to articulate a rational debate when the public

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conversation has been artificially automatized. It would be naïve to think that the truth can possibly overcome such circumstances (Pujol 2023, 197).

On the other hand, the emergence of open artificial intelligence (AI), which is free and available to the public, is shaking the foundations of various professions, such as journalism, politics, and teaching. This software is creative and can generate essays, speeches, images, videos, sound, etc. that are ‘original’ to some extent; therefore, it can be difficult for anti-plagiarism software to detect what was truly an individual’s original work and what was created by AI. AI’s ability to create something from already existing material makes it difficult to distinguish work done by human hands from something it reinvented. The advent of AI takes the question of truth and lies in the public network to a higher level. With automated bots, the difficulty lies in detecting which online trends and comments in public conversation are artificial and which are truly human (quantified in views, likes, retweets, etc.). With AI using ‘large linguistic models’, the whole information ecosystem is called into question, from the moment AI can create news, generate speeches, etc.

In late 2021, the BBC published a white paper on ‘Automated news at the BBC’, in which it proposed a model—not completely automated but with a human-in-the-loop system—for critical or borderline cases, such as political elections (Danzon-Chambaud 2021). In this article, we will not analyze the various dilemmas that this generates regarding the quality of data collection or its interpretation. What seems relevant to us is the fact that it is algorithms that construct information based on story models. A machine can be programmed to follow certain human values of truthfulness, fairness, integrity, impartiality, confidentiality, etc., but human judgment is hardly automatable. Therefore, to speak of the BBC’s Machine Learning Engine Principles is to speak of a formal solution to a much deeper and more critical—and thus human—dilemma, which is none other than the dilemma between good and evil, and the contest between intentionality and practical reason.

The automation of information means a greater risk of widely spread propaganda, including propaganda about politics and education. These sophisticated computer structures and configurations are ideal for masking the act of shaping public opinion, politics, and education at all levels, through automated mechanisms.

Manipulation, lies, and propaganda have always existed. What is different now is the scale at which they are used and the lack of control over them. As John Peters says: ‘We have always had promiscuous knowledge’ (Cmiel and Peters 2020, 253–255). There has always been a dilemma about regulating information in the journalistic and political fields, but those in these fields have been given much freedom regarding what they consider ‘the truth’. With the emergence of the Internet and, more recently, AI, we are witnessing a trivialization of the act of lying. What in times of higher moral standards regarding truth and lying was considered intolerable is now becoming a way of interacting between people that is frequent and admitted almost as inevitable. It has become a cause for great concern, as the pillars of social interaction are at risk. This means that we might need to consider the legality of it all.

Fifty years ago, Hanna Arendt published *On Lying and Politics*, along with two excellent twin essays: *Truth and Politics*, which she wrote in 1967 at the time of the controversy over her reporting on the trial of Nazi official Adolf Eichmann in Israel

(which had been published as *Eichmann in Jerusalem: A Report on the Banality of Evil* [1963])—and *Lying in Politics* ([1971] 2022), which was a reflection on the publication of the *Pentagon Papers* in 1971. Both essays address the question of lying in the field of politics, where lying is never morally admirable but may be politically justifiable.

In this pair of essays, Arendt emphasizes the truth's natural weakness when faced with the construction of lies based on both fact and fiction. She criticizes the instrumentalization and abuse of the truth with manipulative motives that has recently become more acute. Arendt always maintained the hope, even at the time of Europe's greatest totalitarian degradation, that no mountain of lies, no matter how great, can completely transform reality (Arendt [1971] 2022, 19). For example, Nazi Germany or the Soviet Union could solemnly deny the issue of unemployment, but the plethora of unemployed people in the streets was evidence that such a claim was false. As Montesquieu said centuries ago with extraordinary lucidity in *The Spirit of the Laws*, human beings are so malleable that we can become completely unaware of our own condition if circumstances force us to do so (Arendt 2011).

An even greater risk to society is the proven ability of totalitarian regimes to make ordinary people forget the difference between the truth and a lie. In the event of a conflict between the love of truth and the love of life, Arendt assures us that most human beings will opt for survival, even if it means a miserable, enslaved life. Totalitarian regimes are well aware of this human tendency and take advantage of it (Arendt [1971] 2022, 20).

When the lies come from public authorities, the issue becomes even more serious. In recent decades, we have witnessed attempts to set up models of 'organized lying' (Arendt [1971] 2022, 10; 40) like the 'Ministry of Truth' in George Orwell's novel *1984*. There are teams of people with public salaries who are dedicated to creating and disseminating lies, taking advantage of the Internet's capacity to broadly diffuse such nonsense. Lies and propaganda have gone unchecked and influenced electoral processes and manipulated public opinion in Western societies that consider themselves democratic. Is there anything we can do about it? We think so. In this essay, we offer a theoretical contribution, based on ethics and law, which we hope will inspire academic reflection. We focus on an issue notorious to all, but that has not received sufficient treatment in legal debates and in the world of communication at the present time. We point out some possible solutions to reverse this process of trivialization of lies that is causing so much damage to the social fabric, undermining some basic pillars of our societies. To do so, we have used a descriptive-analytical method.

2. The ethical question of truth

But what is lying and what is its ethical and legal relevance? Does one have to tell the truth at all times and under all circumstances? Certainly not. The classical philosophical tradition holds that the virtue of truthfulness recognizes both a fair middle ground between what must be said and revealed to one's neighbor, as well as the confidentiality that must be protected for the sake of justice and charity. It is a prudential question of honesty and discretion that corresponds to the individual.

Often, these criteria of justice and solidarity are violated by interests that are not for the common social good.

For Augustine, the act of lying ‘is to tell a falsehood with intent to deceive’ (Augustine 2007, 491). It is particularly grave because it misleads those who have the right to know the truth. Both the individual and society suffer from the sinful act of lying, since it has the capacity to destroy relationships within our social coexistence. ‘Men [...] could not live together if they did not have reciprocal trust, that is, if they did not manifest the truth to one another’ (Aquinas 2013, *Summa theologiae*, 2–2, q. 109, a. 3 ad 1).

Lack of truth in relationships destroys social coexistence because it ruins trust between people. Deception and lies destroy the balance in interpersonal relationships (family, friendship, neighborhood, work, etc.) because a vital point of reference and human expectation is lost. Trust in people and social structures provides security and peacefulness.

The security that truth provides is also necessary for political, economic, religious, and media institutions. In that respect, it is no coincidence that the crisis of the lack of trust in the media, politicians, and the financial sector coincides with the crisis of truth. It is a significant crisis that affects the truth of man himself and the structures he creates, whether he is a Wall Street broker, a New York Times journalist, a social media influencer, an algorithm programmer, or a politician. Human beings have been—and always will be—behind the ideation and dissemination of information or falsehoods. After all, human beings program algorithms.

According to professors Gili and Maddalena, the manipulation of information and the dissemination of fake news can be placed into various categories of lying. These professors speak of ‘factoids, falsifications, and omissions’ (Gili and Maddalena 2018). According to them, factoids are simulations, ‘news about events that never happened’. Forgeries are qualitative or quantitative alterations of factual data, and omissions are ‘the deliberate exclusion or marginalization of information relevant to the understanding of a fact, phenomenon or problem’ (Gili and Maddalena 2018).

These three strategies for manipulating the truth—factoids, falsifications, and omissions—should not be confused with ‘rumors’, which would be ‘potential news’ (Argemí 2017), nor with ‘selectivity, the simplification of a message or the transmission of inaccurate information’ (Gili and Maddalena 2018). As such, a certain ideological-subjective ‘bias’ that every human being possesses, as a set of prejudices or ideological inclinations, is inevitable. We have different ways of understanding the world, and the dominance of different ideological agendas will always be present. The influence of a particular ideological vision is different from the intentional factor of deception that Augustine speaks of as ‘inducing error’—a determining and differentiating element. What is certain is that the citizens should be able to distinguish the actors and their credibility. That is, know who says what, and *then* decide freely after informing themselves properly.

While not trying to be moralistic, we think that in today’s ‘liquid society’—to use Bauman’s expression—sensations, emotions, and experiences prevail. The dominant factor is not so much the ‘truth’ so much as it is ‘perceptions’. When it comes to perceptions, the concepts of truth, verisimilitude, and experience are mixed up. The

crisis of reflexivity and the primacy of aesthetics over ethics explain why we have become accustomed to living with lies—something that comes with risks. We have not reached this point by chance. In this case, the crisis of truth comes from the epistemology left to us by modernity.

The vision shared for many centuries about truth as ‘the way things are’, being based in reality, disappeared with modernity. This realist approach to truth was exchanged for a truth that must be scientifically validated. The model of the experimental sciences was applied to the social sciences and to journalism, as well. Scientific truth in journalism led to a distinction between fact and opinion, with impartiality and neutrality as the most important absolute values.

This model, which Galdón calls ‘objectivist journalism’, is based on the one hand, on a positivist vision of truth in which there are no antecedent objective truths to guide journalistic activity (Galdón 1999, 73), and on the other hand, on the idea that reality must be related nakedly, as objective facts devoid of any interpretation.

To this objectivist vision of journalism, social networks have added other factors to the existing crisis. In social networks, information is shared and developed among peers, without the intermediation of an authoritative hierarchy. In this digital realm, the same technology companies have validated the notion of ‘consensual truth’, which is a negotiated view of the truth. This notion of truth is unsustainable in the long run because reality and the nature of things are non-negotiable. As Arendt ironically says, ‘Truth carries within itself an element of coercion [‘it’s] beyond agreement, dispute, opinion, or consent’ (Arendt [1971] 2022, 21), because it is bound to what reality *is*—unlike politics, which can be tailored in many ways, considering factional interests and the intention to persuade. As the old adage from Grotius says: ‘Even God cannot make two times two not to make four’, placing the compelling force of truth against the persuasive dynamism of politics.

From what has been said above, Arendt suspects that, by the very nature of the political arena, it seems to be ‘at war with truth in all its forms’ (Arendt [1971] 2022, 21). In this regard, she states that, in the political arena, ‘Commitment even to factual truth is felt to be an anti-political attitude’ (Arendt [1971] 2022, 21). The conclusion is clear: ‘Facts are beyond agreement and consent [...] One can argue, reject or compromise with unwanted opinion, but unwanted facts possess an exasperating stubbornness that nothing can move except outright lying’ (Arendt [1971] 2022, 23).

Numerous current events highlight the limitations of the scientific and consensus models of truth. If truth is not what it is, then ‘your facts’ can be rejected with ‘opposing facts’. If reality is constructed from different narratives that everyone invents, lacking a common, objective truth, then a person can come along and use alternative facts against yours. You deny reality by opposing it with alternative facts. Thus, Arendt points out, ‘Freedom of opinion is a farce unless factual information is guaranteed and the facts themselves are not in dispute’ (Arendt [1971] 2022, 19). The constructivist fallacy is quite dangerous to society because it means the common playing field, a shared reality based on the truth of how things are, is destroyed; and in its place persuasive narratives are constructed and imposed as normative.

As Galdón says on this concept: ‘Without truth, without a renewed journalism that seeks it, social and civil coexistence in justice and freedom is impossible’

(Galdón 1999, 73). Faced with the confrontation of my facts against your facts, ‘new polygraphs’ are sought to detect lies or obtain irrefutable evidence. We look for, in a machine, what technology cannot provide. In the end, any software—no matter how sophisticated—will give you a number of possibilities, nothing more. There will never be algorithms for finding the truth. The journalistic profession was created to exercise this judgment of truthfulness of information, using verification processes, honest principles, and codes of professionalism. It is true that not everyone honors them, which has led to a denigration of professional pride; however, what killed the profession was mistaking the enemy that ‘is neither error nor illusion nor opinion, [...] but the deliberate falsehood, or lie’ (Arendt [1971] 2022, 35).

The renewal of journalism and politics must come from serious commitment to *reality* and the truth, and not only complying with procedures. This renewal points to the dilemma between being a *truthteller* or a *fabricator* of news that serves the narrative of a cause. Michael Schudson, professor of journalism at Columbia University, vindicates the honesty of the profession: ‘[Journalists] do not publish transcripts of reality. Even in their best efforts, they would not provide a copy of reality, but reality in a frame, reality enhanced, reality reconfigured by being heightened on a page or a screen, reality retouched by the magic of publication itself (Schudson 2017). In this regard, the objectivist fallacy of journalism, under the names of impartiality and neutrality, has proven to be a devastating chimera.

For Arendt, the liar is a man of action, in contrast with the *truthteller* who simply reports the facts. The liar needs to persuade, because ‘he wants things to be different from what they are—that is, he wants to change the world’ (Arendt [1971] 2022, 37). This is why a journalist must be careful not to cease to be a journalist by entering the world of politics, that is, by actively serving the ‘cause’ of a certain interest group, instead of the cause of ‘truthfulness’, guaranteed by impartiality, integrity, and independence. This is why, ‘where everybody lies about everything of importance, [...] the *truthteller* will soon find himself at an annoying disadvantage [...] in a context where everyone fashions his *facts* to fit the profit and pleasure, or even the mere expectations of his audience’ (Arendt [1971] 2022, 39). From Arendt’s perspective, lies are always more persuasive than the truth. This also occurs in the new phenomenon of cancel culture and the rewriting of history. However, as Arendt boldly said: ‘Persuasion and violence can destroy truth, but they cannot replace it’ (Arendt [1971] 2022, 30).

3. The ‘old art of lying’ in the ‘new age of infocracy’

It is held that Winston Churchill used to say with a mixture of realism and irony: ‘A lie gets halfway around the world before the truth has a chance to get its pants on’ (Dershowitz 2021, 17). In this uninhibited environment of hyper-information—and, in some cases, of disinformation by hiding information or creating a flood of information (Pujol 2023, 197)—the art of lying becomes more sophisticated, but it’s more or less the same. In the new digital realm, what counts is attention. The strategy is to weaponize the capacity of information to attack through censorship, blackmail, public shaming, demoralization, confusion or subversion. ‘Rather than

silencing an inconvenient speaker, the new methods of censorship aim to capture the attention of listeners, mainly with ‘troll armies’ mobbing someone on social media or with ‘flooding tactics’ of the mass distribution of disinformation’ (Pujol 2023, 143–144). This situation is causing what has been called an *infodemic*, a disease of the information environment that has brought a huge fragmentation of public discourse into filter bubbles, along with a disturbing level of polarization and social division. As Arendt puts it, all these contours and maneuvers of lying ‘harbor an element of violence; organized lying always tends to destroy whatever it has decided to negate’ (Arendt [1971] 2022, 40).

The difference added by the digital realm is that the lie does not hit only the enemy but society as a whole. With the Internet, the penetration and generalization of the evil caused has been greatly amplified, not only harming individuals, but also key structures: informational, educational, political.

As the Korean philosopher Byung-Chul Han has lucidly pointed out, ‘The digitalization of the world we live in is advancing inexorably. It subjects our perception, our relationship with the world and our coexistence to radical change. We are stunned by the frenzy of communication and information. The tsunami of information unleashes destructive forces. In the meantime, it has also taken over the political sphere and is causing massive distortions and disruptions in the democratic process. Democracy is degenerating into infocracy’ (Han 2022, 25).

Along with the epistemological crisis of truth mentioned in the previous section, we should also mention the social crisis of truth, which is when society disintegrates into groups or tribes among which no understanding or shared view of reality is possible. This social crisis of truth also entails the loss of a common world and middle ground. Truth acts as a social regulator, a regulating social concept where one starts from a common framework with common rules accepted by all (Han 2022, 73).

Truth exerts a centripetal force that holds a society together, and the centrifugal force inherent in false information has a destructive effect on social cohesion. The new nihilism is gestated within the destructive process in which discourse disintegrates into unchecked information, leading to an inevitable crisis of democracy (Han 2022, 73).

In his early nonfiction work, George Orwell had omitted uncomfortable facts for literary reasons, but he wrote *Homage to Catalonia* with a commitment to respect accuracy as a moral virtue. For the British writer, truth matters. Without a reality recognized by the citizens of a society, he argued, there can be no discussion, and it is impossible to reach any sort of agreement (Orwell 2000). Orwell was aware that it is not always possible to reach objective truth, but if we do not even accept that such truth exists, the picture changes completely... and *not* for the better.

The philosopher Byung-Chul Han uses a Platonic metaphor to say that today we are imprisoned in a *digital cave*, even though we believe we are free. We find ourselves chained to the digital screen. The prisoners of the Platonic cave are intoxicated by mythical narrative images. The digital cave keeps us trapped in an abundance of information. In that torrent of data, the light of truth is completely extinguished.

Truth has a very different temporality from the dynamics of digital information. While the latter is very ephemeral, truth is characterized by its duration in time,

bringing stability to life. Hannah Arendt explicitly underlines the existential significance of truth. ‘Conceptually, we can call truth that which we cannot change; metaphorically, it is the ground we walk on and the sky that stretches above us’ (Arendt [1971] 2022, 57). The earth and the sky belong to the earthly order of human existence, which is currently being replaced by the digital order and even by a parallel world (the metaverse), rendering everything fictitious.

In any totalitarian state built on a complete lie, telling the truth is always a revolutionary act, as Orwell stated. The courage to tell the truth is what Michel Foucault called ‘parrhesia’ (de Foucault 2009, 170). However, in our post-factual information society, the pathos of truth goes nowhere because it ends up getting lost in the noise of uninterrupted information. Truth ends up disintegrating into a kind of informational dust blown by the digital wind in which it will have been only a moment in time (Han 2022, 92).

Orwell, in a review of Bertrand Russell’s *Power. A New Social Analysis*, questioned the assumption that common sense will prevail: ‘The present moment is especially horrible because we cannot be sure that it will be so. We may well be entering an age when two plus two will be five if the Leader so stipulates [...] One has only to think of the sinister possibilities of state-controlled radio education and the like to realize that “truth is great and will prevail” is a plea rather than an axiom’ (Orwell [1939] 2021, 311–312). Modernity’s enlightened optimism that truth always wins has proved illusory, and, in its place, has left us with a scientific notion of truth that is very apparent but offers only partial answers.

Malcom Muggeridge, a friend of Orwell’s, wrote about the 1930s that ‘this craving for data and the abundant supply of it goes hand in hand (ironically, or perhaps inevitably) with a craving for fantasy and an abundant anticipation of it. We may assume that until now statistics have never been in such demand and never so profusely falsified’ (Muggeridge 1940). The cultural obsession with data as ‘scientific truth’, not surprisingly, has encouraged the fabrication of false information and, consequently, instead of bolstering the truth, has ended up producing stronger falsehoods.

4. Statistical lies

Daniel J. Levitin in his book *The Lie as a Weapon*, shows how the language we use has begun to blur the relationship between fact and fiction. This confusion between the two is a threatening consequence of the lack of education and capacity to think critically in our country—Levitin refers to the United States, but we believe this concept can be applied generally to most of the world—and it has affected an entire generation. These two facts have caused lies to proliferate in our culture at an unprecedented rate (Levitin 2019, 11).

Using statistics and graphs to manipulate and convey a self-serving message is quite a skillful tactic, since we know that a large majority of people will not take the time to look at what is behind those figures and fact-check. However, the truth is often within anyone’s reach and, when an individual knows some basic principles for

interpreting lies versus the truth, graphs quickly reveal how legitimate they are or what they are disguising (Levitin 2019, 19).

The falsified figures and statistics are presented to us as irrefutable, concrete facts, when they are numbers. In fact, those who compile statistics are human beings. It is individuals who decide what to count, how to count it, and which results to share with others (Best 2005, 210–214). Statistics do not offer facts, but *interpretations* based on numbers. That is, they allow for different interpretations, which is why a healthy dose of skepticism is necessary when reviewing statistics.

Levitin states that sometimes the numbers are wrong, and the simplest thing is to do a quick test of plausibility. Then, even if the figures pass the test, there are three common types of errors that can lead us to believe things that are not true, errors in how those figures have been obtained, how they have been interpreted, and how they are represented graphically (Levitin 2019, 23).

For example, what would we think of the following statement? In the thirty-five years since anti-marijuana laws ceased to be enforced in California, the number of marijuana smokers has doubled every year (Levitin 2019, 23).

It sounds plausible, so where do we start? Let's assume that thirty-five years ago in California there was only one marijuana smoker, a fairly restrained estimation (there were no less than half a million arrests for marijuana possession in 1982). Doubling that number every year for thirty-five years yields a result of 17 billion, a figure larger than the global population. Consequently, the claim is not only implausible, it is actually impossible. Unfortunately, many people find it difficult to reason clearly about numbers, as they are intimidated by them (Levitin 2019, 24). However, it should be noted that in order to dismantle some lies, basic arithmetic and reasonable deduction is all it takes.

In 2016 a newly elected president of the United States, having won the electoral college vote, claimed that he had also won the popular vote, when there was abundant, concrete evidence that this was not the case. The lie kept being repeated. Shortly thereafter, a poll revealed that 52% of the president's supporters, tens of millions of people, believed the lie without question (Levitin 2019, 161).

But it is not only in politics that lies are spread. There are examples in science, current affairs, celebrity gossip, and even so-called pseudohistory. Of course, science is not infallible, but scientific thinking today still represents the basis for much of what we do. Unfortunately, it must also be acknowledged, as brutal as it may be, that some researchers make up data. In the very worst cases, the data reported has never been collected or the experiments have never been conducted. They get away with it because fraud is relatively rare among researchers, and thus expert evaluators are unprepared for such gross deceptions (Levitin 2019, 195–196).

A case of scientific fraud occurred in 2015 when Dong-Pyou Han, a former biomedical researcher at Iowa State University in Ames, Iowa, was found to have falsified and fabricated information about a potential HIV vaccine. As an unexpected result, he not only lost his job at the university, but was sentenced to nearly five years in prison (Levitin 2019, 196). Action must be taken, so it might be worthwhile to explore ways of holding people accountable and liable in the international and national courts.

5. Two cases of *organized lying*: legalization of abortion and Covid-19

A critical issue is the use of lies as a tool for social transformation. This is clear, for example, in the case of statistics that are used to persuade the public that an opinion is that of the majority, or to diminish the dimensions of a problem in order to make the desired change (López Quintás 2001, 129).

A paradigmatic case is the legalization of abortion, in which we find the well-known public testimony of Dr. Bernhard Nathanson, director, for a time, of the most active abortion clinic in the United States who converted to the defense of the life of the unborn when he reflected, in great astonishment, on a film recording of an abortion. We find it pertinent to transcribe his testimony here:

I was one of the founders of the most important organization that sold abortion to the American people [...] We were based on two great lies, the falsification of statistics and surveys that we claimed to have done, and the choice of a victim to blame for the evil of abortion not being approved in North America. That victim was the Catholic Church [...]. When later the pro-abortionists used the same slogans and arguments that I had prepared in 1968, I laughed a lot, because I had been one of their inventors and I knew very well that it was a lie.

Falsifying statistics. It is an important tactic. In 1968, we used to say that there were one million clandestine abortions in America, when we knew that there were no more than 100,000, but this figure was useless to us and we multiplied it by ten to attract attention. We also constantly repeated that deaths from clandestine abortions were close to ten thousand when we knew that there were only two hundred, but this figure was too small for propaganda. This tactic of deception and the big lie, if repeated too much, ends up being accepted as truth.¹

The author exposes some of the manipulative procedures used to legalize abortion: inventing, fabricating, and falsifying figures. Now, with the passage of time, we can see how horribly effective these falsehoods were. The incoherence of the figures seemed too obvious for the general public not to realize that it was a fabrication. The fact is that such falsehoods were accepted and widely disseminated (López Quintás 2001, 132).

Another contemporary case that seems pertinent to us is that of lying in the management of public calamities, specifically during the last pandemic, that of Covid-19. We have already begun to study the use of lies and the damage caused in the management of the major health crisis by the communist government of the People's Republic of China—in this case, it is a non-democratic government, but their techniques were later astonishingly reproduced by Western governments.

It has been published by a Harvard University study that the beginnings of the epidemic were earlier than officially declared (Nsoesie et al. 2020). Based on analysis of satellite images of the Chinese city of Wuhan and the volume of Internet searches for some terms referring to the symptomatology of the disease (such as diarrhea), it is thought that the disease could have started circulating in early fall 2019.

Another accusation is the poor level of transparency regarding the information shared by officials in Wuhan and Hubei province. Local officials have been heavily criticized nationally and internationally for lying about the initial outbreak. They had withheld information that could have been unfavorable to them in order to cover up and minimize the initial discovery and severity of the outbreak, with apparent

consequences for public health (*The New York Times* 2020). Allegations speak of insufficient medical supplies, lack of transparency with the press, and the use of social media censorship during the first weeks of the outbreak (Hernández 2020).

The Chinese government informed the WHO about the new coronavirus on December 31, 2019, while keeping ‘its own citizens in the dark’ (Kynge, Yu, and Hancock 2020; Griffiths 2020). Some international spectators have attributed this to institutional censorship of the country’s press and Internet exercised by the president, Xi Jinping, which has placed limitations on the press and what can be shared on social media. This caused even senior officials to have inaccurate information about the outbreak and ‘contributed to a prolonged period of inaction that allowed the virus to spread’ (Kristof 2020; Lau 2020). The entire world paid the price for this misinformation (León, López-Goñi, and Salaverría 2022).

Human Rights Watch noted that ‘there is considerable misinformation on Chinese social networks and the authorities have legitimate reasons to counter false information that may cause public panic’, but also denounced the authorities’ censorship of social network posts made by families of infected people seeking help, as well as by people who were locked up in cordoned-off cities without access to reliable information (Human Rights Watch 2020).

Then there is the case of a group of eight medical staff, including Li Wenliang, an ophthalmologist at Wuhan Central Hospital, who, in late December 2019, posted warnings about a new strain of coronavirus like SARS. They were detained by Wuhan police and threatened with prosecution for ‘spreading rumors’ by comparing the new virus to SARS (Pérez 2020; Zhong 2020). Li Wenliang died on February 7, 2020, from Covid-19, and was widely recognized as a brave man who had dared to speak the truth in China, but some of the messages posted in his defense such as ‘Wuhan government owes Dr. Li Wenliang an apology’ and ‘We want freedom of speech’ were blocked by the Chinese government (Zhong 2020; Hegarty 2020; Yu 2020). His death outraged the public in what has been labeled ‘one of the largest demonstrations of online criticism of the government in years’, and thankfully the authorities were unable to cover up the injustice (*The Economist* 2020).

As late as January 20, 2020, Xi Jinping spoke for the first time in public about the outbreak and referred to ‘the need for timely disclosure of information’ (Xinhuanet Newsroom 2020). The next day, the CCP’s Central Commission for Political and Legal Affairs—the most powerful political body in China, which runs the police and ensures that laws are enforced—brazenly asserted that ‘self-deception will only worsen the epidemic and turn a natural disaster that can be controlled into a man-made disaster at great cost’, and that ‘only openness can minimize panic to the greatest extent’. The commission was later allowed to add that, ‘Anyone who deliberately delays and conceals the reporting of cases out of self-interest will be nailed to a pillar of shame for eternity’ (Fifield, Sun, and Bernstein 2020; Zheng and Lau 2020).

Xi Jinping himself later instructed the authorities ‘to strengthen the guidance of public opinions’—language that amounted to a call to tighten censorship after comments on social media became increasingly critical of the government due to the harm caused by the epidemic (Pérez Laureano 2020). On January 30, 2020, even China’s Supreme Court sharply criticized the country’s police forces, stating that such

‘unreasonably harsh crackdown on online rumors’ undermines public trust. Supreme Court Judge Tang Xinghua said that if police had been more lenient with rumors and allowed the public to hear them, early adoption of ‘measures such as wearing masks, strict disinfection and avoiding wildlife markets’ could have countered the global spread of the virus (*The Guardian*, 2020). It could be said that there has been very little experience with such a pandemic, but telling the truth would have been very helpful in dealing with it in the best way possible (Iacovitti 2022).

Along with criticism of the local response, amazingly, the central government of China has been praised by international experts, by some countries, and also by international media for the subsequent handling of the crisis (Wei and Deng 2020; Carrasco-Villanueva 2022). However, it is well known that the provincial governments tend to hide local incidents due to the historical fear of retaliation from the central government, as we saw in the case of Chernobyl (Jo Kim 2020). Wuhan’s own mayor, Zhou Xianwang, defended himself by publicly blaming regulations that require local governments to have Beijing’s approval before releasing any relevant information, which, in this case, delayed the release of data that could have contained the virus. In an interview, he said, ‘As a local government, we can release information only after we are given permission to do so. That is something many people do not understand’ (*Reuters*, Ching 2020).

Premier Li Keqiang was later sent to oversee epidemic control and prevention, and this has been said to have made Li a convenient ‘political scapegoat’ (Page 2020), suggesting that China’s single party and state media were thus attempting to limit the risk of political fallout for Xi due to this crisis (Shih 2020). The party’s censorship and propaganda served to increase distrust in its handling of the outbreak—most particularly among young people (Yuan 2020).

There have already been studies published on the dramatic consequences on social relations and the credibility of public representatives following the deceitful handling of information and disinformation during the pandemic (Belardinelli and Gili 2022).

6. The legal question of truth

The proliferation of lies in the public sphere is neither novel nor exclusive to our time. What *does* seem characteristic of our moment in history is the propagation of the trivialization of lies. The media determines the culture of each historical period, as happened with the printing press, the spread of books and then newspapers, and, later, in the 20th century, radio, cinema, and television, each with their own logic and dynamics. In this vein, the *logic* of the Internet and social networks is traffic, attention. The Internet is monetized by page views and clicks. This is called ‘engagement’, which is quite ironic, since the ‘scroller’ is hardly *engaged*. In this medium based on capturing attention, the volume of new information per minute is so high that there is no room for verification or correction.

In the field of criminal law, lying is almost irrelevant, save for some verifiable cases, such as the crimes of libel, slander, false testimony, perjury, or fraud, where damage can be objectified, and in the case that those who lie are public officials. The reality is that crimes against reputation normally follow a civil process, while

economic crimes involving lies or deceit have a penal process. As a general rule, in the field of information, it is the individual who has to assess credibility. There is a reasonable resistance towards putting legal controls on the media's dissemination of the truth. However, the fake news crisis has unveiled the effects that rumors and falsehoods can have on personal and institutional reputations, and on public opinion in general. This is a very sensitive but crucial issue, as the digital realm has changed the way in which people demand the truth be told by those who have the duty to tell it.

Some countries have already criminalized the production or dissemination of fake news, by defining new offenses or by adapting existing laws to include social networks. For example, the Colombian penal code (art. 302) criminalizes those who commit the crime of igniting economic panic. In Costa Rica, hoaxes that pose a serious risk to the security and stability of the financial system are punishable by law (art. 236). In other places, the crime of disrupting electoral processes is covered by law, as is the crime of creating and disseminating a hoax that generates social panic and mobilizes police, assistance services, or rescue services. In Spain, there is a law against the creation of a hoax that directly incites hatred towards a vulnerable group based on race, sex, or religion (art. 510 Penal Code). Also in Spain, since 2015 quite a lot of new criminal legislation on this subject has been introduced (in Article 197 et seq. of the Spanish Penal Code).

This raises very complex questions, such as what lies can be considered criminal, or how we can solve the regulatory vacuum and the absence of express criminalization.

Lies told by individuals do not have the same legal relevance as those told by public officials, nor do individuals have the same level of responsibility that can be demanded of technological platforms. Obviously, big tech companies such as Meta, Google, and YouTube, cannot be held liable for the content their users post; however, these technology companies, as information mediators, should be held liable as information fiduciaries (Balkin 2016, 1221) for the dissemination of false news, as it seriously endangers collective legal interests such as public health, public order, and financial and democratic stability. This requires they have a proactive, vigilant attitude, that they might only take seriously when they are fined.

On November 16, 2022, two laws that mainly affect social media giants, and that had already been elaborated and approved came into force in the European Union. One law requires social media giants to remove illegal content (hate speech, child pornography, terrorist videos, and disinformation), while the other aims to address issues of commercial competition and innovation. The latter, the gatekeeper law Digital Markets Act or 'DMA'² imposes more responsibilities on gatekeepers: rules to preserve competition, online searching, social networking, video-sharing platforms, cloud computing, Internet messaging services, online operating systems, online marketplaces, and advertising products. The Digital Services Act, on the other hand, aims to create greater accountability by requiring content liability to limit the spread of illegal material and goods on their networks. 'The largest platforms like Facebook, Google and Amazon will have to provide regulators and outside groups with greater access to internal data, and appoint independent auditors who will determine if these firms are compliant with the new rules' (Scott, Larger, and Kayali

2020). The platforms are requested to carry out risk assessment with more transparency and accountability, for example in ad targeting, or the private content that they access (like emails). The national regulators will have a more active role and more power to enforce these new rules.

We think that the tool to fight lies cannot be any kind of censorship, a priori or a posteriori, by private companies (e.g. gatekeepers as censors of the contents published by their users). Is it acceptable that some people are forced off social networks just because some private fact checkers consider that it should be so? It seems to us that it is not, and that everyone has the right to go to court to defend the truth. Therefore, it should be a judicial system with integrity and independent of political power that decides all these issues.

For those in an authoritative position, the main problem is the criterion of truth. They are not required to know everything, nor to say everything, to maintain security and public order. The demand for the truth and the rejection of manipulation requires there be a distinction made between information and misinformation. In the case of the authorities, they are required to present ‘what is proven, as proven’, and ‘what is probable, as probable’.

In Spain, the duty that a witness in a court case must tell the truth is clear (Rey, Belloch, and Agustina 2019). The basis of the punishment for a breach of such a responsibility seems to be located in the violation of the oath or promise to tell the truth in court, perjury, or in the infringement of the duty to be truthful when testifying in court, false testimony in the strict sense. There are more serious or severe punishments depending on each country’s legislation (Adip 1977, 1–4).

But should journalists and politicians who lie pay the consequences legally? The crime of telling a lie is a crime by the simple fulfillment of the false activity and needs no further proof. The crime begins the moment false statements are made by someone *knowing* that they are false. It is usually committed by altering a document³ or any of its key elements (false certification), but it is also punishable when the truth is not told when recounting the facts (ideological falsehood). To be punishable, ideological falsehood must be committed by an authority or public official in the exercise of his office or on an official occasion (STS 1998). It is a very serious crime because the protected legal interests are the legal security and the public’s, citizens’, and institutions’ confidence in the authorities and public officials.

This type of crime requires a false intention, in addition to a subjective element of the crime constituted by the active subject’s purpose to deceive those persons to whom the false narratives are addressed: the citizens.

7. Extension of legal liability against falsehood

No one is surprised that in totalitarian regimes, lies proliferate as another way to subjugate the population. For example, Putin, on the first anniversary of the war with Ukraine, claimed that Russia was the victim of the war and that his government did everything possible to resolve the conflict peacefully before launching the offensive on February 24, 2022. But we should not get used to witnessing the continuous lies uttered with impunity by the rulers of the so-called Western democracies because

these lies undermine the confidence of individuals in the institutions and sometimes cause irreparable intangible damage, which is difficult to quantify.

To have true freedom of expression and information, and for citizens to be able to freely form their own opinions, we should hold people in power (and people in the media) accountable for the falsehoods they disseminate.

Journalistic and political ethics are necessary for assessing responsibility in professional performance, but they are not sufficient. By their very nature, these professions can become excessively pragmatic and guided almost exclusively by short-term political and economic gain. This is where the law can significantly help to safeguard the common good and protect the public from the lies their public official or media professionals spread, which pose a threat to trust and social coexistence. If we value truth as a fundamental element in achieving social peace and progress, the means to protect it must be proportional to the importance we give it.

It is well known that Anglo-Saxon countries have lower tolerance for lying in the public sphere than other less ‘rigorous’ cultures. It seems to us that globalization demands a common, higher standard for respecting the truth.

In some areas, the universal right to know the truth should be recognized, not in the ontological or philosophical sense, but in its more prosaic and common usage as the right not to be deceived by statements that are known to be untrue at the time they are made, especially in cases where such deceptions cause significant harm. In academia, a principle of competence could be established, since not everything is valid in the name of academic freedom. As MacIntyre says, ‘Academic freedom does not include a right to spread falsehoods’ (Pujol 2023, 260).

In the field of the media, criminalizing false information would mean, in practical terms, putting a few journalists in jail, but this would clash with another fundamental right that is key to social and political life: freedom of expression.

Could those who publicly tell lies that cause material and immaterial damage to the public be criminally punished with fines, reparations, disqualification from holding public office or responsibility in the media, or even imprisonment? Could a politician be punished for making electoral promises on important issues and then failing to fulfill them once elected, leaving a kind of ‘contract with the voters’ unfulfilled? Could a communications professional be punished for damaging the reputation of a person or institution by falsely reporting on reprehensible conduct that was not committed by that person or institution?

We are aware that criminal law is reserved in the legal systems of free and democratic societies for the most serious conduct detrimental to the common good. Isn’t lying detrimental to the common good? Should conduct that seriously damages the common good—such as falsifying statistics and thus manipulating public opinion in the exercise of so-called ‘social engineering’—go unchallenged by the law? Should lying about a virus outbreak which caused millions of deaths worldwide go unpunished in one country simply because other governments behaved similarly?

We believe that these behaviors should not go unpunished, and therefore we propose the inclusion of new criminal offenses in national and international criminal laws (when they lack them). These norms should punish an actor in proportion to the damage caused, especially in the case of those who hold public office and those

who are media professionals. We acknowledge, of course, that it is not only a question of new legal tools, nor of implementing a system of censorship. It is a question of fostering social awareness of the harm caused by lies and combating it with all the legitimate means at our disposal. By doing so, we would be protecting truthfulness in our societies as a fundamental element for preserving trust and peaceful coexistence among free and equal persons.

Notes

1. These texts are borrowed from the lecture given by Dr. Nathanson at the Colegio de Médicos de Madrid, on November 15, 1982. The translation is our own.
2. ‘The EU Commission outlined plans to ban certain business practices like *dominant digital companies displaying or ranking their own products ahead of those of rivals*, known as self-preferencing. Apple, for instance, could see restrictions on how it promotes its new suite of digital services, while Google may be limited in placing its own products at the top of people’s search results.’ See ‘Europe rewrites rulebook for digital age’ in *Politico*, December 15, 2020. <https://www.politico.eu/article/europe-digital-markets-act-services-act-tech-competition-rules-margrethe-vestager-thierry-breton/>.
3. For criminal prosecution purposes, a ‘document’ is considered to be any material or support that expresses or incorporates data, facts or narratives which are legally relevant. As indelible support could be any device, computer or telematic support. Documentary evidence of a multitude of falsehoods can be found in all cell phones, newspapers, computers, or any electronic device or computer.

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