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OF OSLO**

**“A Special Duty to Inform Properly and Communicate Truthfully for State  
Authorities in Liberal Democracies”**

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## **Summary**

The problem addressed in this thesis is the vulnerability that unrestricted freedom of speech can cause for liberal democracies. While some have focused on the international aspect of the problem, where authoritarian regimes interfere in democracies to destabilize them (Sloss, 2022), I focus on the internal dimension from a conceptual perspective. My thesis is that restricting and/or sanctioning the harmful speech of state authorities is required for liberal democracies to properly function. To do so, I review the concept of freedom of speech and conclude that we have good reason to sometimes restrict this freedom to protect others from harm, and specially so in the case of state authorities. Additionally, I suggest that state authorities in liberal democracies have a special duty to communicate truthfully with citizens, based on citizens' right to know (Watson, 2021).

Key words: Freedom of speech, the right to know, lying, misleading, bullshitting, special duties of State authorities.

## Foreword

I would like to, first, thank my supervisor Alejandra Mancilla for all of her support and feedback which was crucial to get the ideas out of my head and on to these pages, and for this thesis to become something. I would also like to thank professor Christel Fricke for the seminar on Ethics in the fall semester of 2021 which helped me understand better how to produce academic work in philosophy and for all the enlightening discussions.

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## 1. Introduction

In the last years, the worry for the survival of democracies has increased. Indeed, there is evidence that in the last ten years, democracies around the world have diminished in numbers and weakened in some states that remain slightly democratic, while more authoritarian regimes have been installed (V-Dem, 2020). Where some have focused on the information warfare that comes from authoritative regimes, specifically, China and Russia (Sloss, 2022), I focus on the speech of state authorities within liberal democracies. In this thesis I argue that far from being always harmless, the speech of state authorities can harm both individuals and democracy itself, and that we have good reason to restrict and/or sanction their speech in such cases.

The concept of the ‘perfect moral storm’ (Gardiner, 2006) was originally proposed to describe the difficulty of the moral questions raised by climate change. A perfect storm is “an event constituted by an unusual convergence of independently harmful factors where this convergence is likely to result in substantial, and possibly catastrophic, negative outcomes” (ibid., 398). In this paper, Gardiner argued that climate change creates the perfect moral storm due to the complexity of the issue, where a set of global, intergenerational and theoretical problems converge. With this, he suggests that even though we managed to answer these difficult ethical questions we might still find it difficult to act.

The crisis that the COVID-19 pandemic caused, was arguably a moral storm as well. As it is, it was a crisis which was both filled with uncertainty because it was caused by a new virus that we knew nothing about, and for this reason –our lack of knowledge–, the risks associated were incalculable (cf. Hermann, Bayer & Baatz, 2021, 246). If even using our best methods and knowledge there is uncertainty, and if the consequences that people may have to face are extreme, there is more reason to follow the precautionary principle, that is, to be cautious when facing significant risks.

The case of COVID-19 parallels some of the elements that qualify climate change as a moral storm, for example, that those who are most vulnerable are those who have emitted/travelled less; that the early warnings were ignored, dismissed or even suppressed; that there was a time lag between cause (infections/emissions) and effect (serious illness/ climatic impacts), which affected/affects the response; that reasonable response measures to climate change may turn out to be less burdensome than originally thought, just like responses to COVID-19 (cf. Herman, Bauer & Baatz, 2021).

Additionally, there is, at least, a third moral storm. Democracies around the world are weakened and “the ‘third wave of autocratization’ is accelerating and deepening. Democracy declined in 26 countries during 2019, up from 18 in 2017. For the first time since 2001, democracies are no longer in the majority. Down from 55% (98 states) at its peak in 2010 to 48% of the countries in the world as of 2019, the world is now left with 87 electoral and liberal democracies, which are home to 46% of the world’s population” (V-Dem, 2020, 9). It is worth noting that this includes that the attacks on freedom of expression are intensifying (ibid., 18).

Some suggest that democracies are under the attack of authoritarian regimes who are interested in the weakening of liberal democracies for the purposes of their own agendas, and that a way to protect democracies from this attack is to restrict the freedom of speech of actors coming from authoritarian regimes within democratic regimes, especially online (Sloss, 2022). I suggest the restriction of freedom of speech within liberal democracies in a way that is coherent with liberal principles can help navigate these moral storms.

Before diving into the theory, I think it is important to recall recent events and how they have been handled by state authorities around the world. The point of this exercise is that the reader captures the nature of the problem that I discuss throughout this thesis. Though the recapitulation of events here are related to the COVID-19 pandemic, they can also be translated into a similar exercise that collects the history of climate change science and political actors’ (in)actions and statements.

The 31<sup>st</sup> of December of 2019, the World Health Organization (WHO) picked up a statement that had been released by Wuhan’s Municipal Health Commission regarding cases of viral pneumonia. By the 9<sup>th</sup> of January of 2020, Chinese authorities had determined that the outbreak was caused by a novel coronavirus. Between the 10<sup>th</sup> and the 12<sup>th</sup> of January, WHO published and distributed documents with extensive guidance for countries around the world which explained how to manage an outbreak of this disease. By January 13<sup>th</sup> it was possible to diagnose the new coronavirus using PCR tests. The day after that, WHO acknowledged that there was a chance that human-to-human transmission was possible, even though previous reports from the Chinese authorities had denied it. By January 19<sup>th</sup>, it was established that the virus could indeed be transmitted between humans.

The Director-General of WHO declared the coronavirus outbreak a public health emergency of international concern (PHEIC) on January 30<sup>th</sup>. PHEIC is the highest level of alarm that WHO

has available. On February 4<sup>th</sup>, WHO advised its member countries to prepare for the outbreak within their borders while the window of opportunity was open. At the time, 99% of the cases were in China and only 176 cases had been recorded in other places. And finally, as we may recall, on March 11<sup>th</sup> WHO assessed that COVID-19 could be considered a pandemic. WHO claimed to be concerned not only by the alarming levels of spread and severity of the disease itself, but also by the alarming levels of inaction among world leaders and state authorities (WHO, 2022a).

However, the problem was not limited to inaction. There was –and probably still is– a great deal of falsehoods and misinformation going around about COVID-19 as a virus, the pandemic and the measures assumed to prevent contagion. Misinformation has a key role in people’s decisions not to act in a preemptive way, or in their decision to act recklessly. For this reason, “WHO became so worried about the effects of an infodemic that it established a new unit – the Information Network for Epidemics or EPI-WIN – to counter its impact” (Horton, 2020, 39). The content of this “infodemic” amounts to all sorts of claims that are not based on the best available knowledge. Some denied the existence of COVID-19, or the existence of the pandemic. Others made unreasonable and/or unfounded claims about the nature of the virus or of the pandemic –for example, that even if it existed, it was not as bad as WHO made it out to be, or that the pandemic was part of a biological war started in a Chinese laboratory.

These conspiracy theories were not only distributed among small groups of “common” people. Quite the contrary, it was not only casual speakers –regular citizens– who made such claims, but also persons in positions of power –such as presidents or prime ministers. The consequences and nature of this “infodemic” lead to many interesting questions that can and should be investigated. Some of the questions that I explore in this thesis are: Is it within a person’s freedom of speech to make claims as the ones I have described? Do these claims constitute a violation of a right? What, if any, are the moral differences between what state authorities say and what citizens say? What can be reasonably required of a person in a position of power to know? And the underlying question: how can we protect the rights of citizens in liberal democracies when it comes to harm done through misinforming speech?

This thesis is within the theoretical framework of liberal democracy. It takes on a problem that has been popularly discussed in the last years as a part of the public debate from an academic perspective. Namely, the problem is how democracies –and citizens– can be damaged by those who are in charge by the abuse of their so-called freedom of speech. Intuitively, some identify



the uttering of false statements as something bad. For example, books have been written with regard to the “assault on truth” of well-known state authorities as an exercise of emphasizing their misconducts against the democratic community (i.e. Kessler, Rizzo & Kelly, 2020; Osborne, 2021). On the other hand, others identify freedom of speech as the supreme value that must be protected no matter the content of the utterance, even if the utterance is a lie or bullshit in the sense explored in (Frankfurt, 2005). One recent and popular example is Elon Musk’s allegedly free speech-motivated purchase of the social network Twitter, though it was afterwards withdrawn (Milmo & Bhuiyan, 2022 April 30; Paul, Bhuiyan & Helmore, 2022 July 9).

This thesis is partially about freedom of speech, but mostly about the duties that state authorities have in liberal democracies. The methodology used is first to analyze the traditional account of freedom of speech and its limitations when facing this problem in the liberal democratic framework. Secondly, to determine which utterances fall outside of a free speech principle. Then, determine whether or not three special categories of speech (lying, misleading and bullshitting) fall outside of this principle and why. Finally, a special duty for state authorities is put forward to avoid the occurrence of the problem.

The question of freedom of speech naturally arises as a key point to study if we are to defend that some utterances are not acceptable in the public context in liberal democracies. Not only in the public debate, but also within the academic literature, there are different positions regarding the extent to which a free speech principle protects different kinds of utterances. Thus, to face this problem, it is a crucial step to take a stance in this debate and clearly define which utterances could fall outside the protection of a free speech principle. Once this is established and a model that points out which utterances fall outside of a free speech principle is provided, the intuitive idea that false statements belong to this group of excluded utterances can be tested.

Chapter 2 is introductory. First, I briefly discuss the nature of state authorities in liberal democracies, to then revise some of the claims that three of the most popular and important world leaders have uttered throughout the last 10 years. These are claims by are ex-president Donald Trump of the US, President Jair Bolsonaro of Brazil, and Prime Minister Boris Johnson of the UK. These controversial figures, their utterances and their actions, have served as an inspiration to write this thesis. If my argument is correct, they are living examples of state authorities who damaged the democracies of their respective countries and violated the rights

of their citizens by carelessly uttering unfounded statements about matters which have been established and are beyond reasonable doubt.

In Chapter 3 I begin by revising the traditional account of freedom of speech. I conclude that there are powerful reasons to accept that some speech can cause harm, and harmful speech is excluded from protection by a free speech principle. Then, I explore some objections to the limitation of free speech to conclude that it is reasonable and desirable to restrict freedom of speech, especially in the case of state authorities given their special commitments. Finally, regarding the consequences of uttering harmful speech, there are two main alternatives discussed in the literature.

First, some authors defend the use of counterspeech while protecting the liberty to utter almost any claim. The exception here are utterances which directly cause harm, like threats. The suggestion is that counterspeech is a more efficient manner to convince both harmful speakers and listeners that the utterance is wrong (i.e. Warburton, 2009; Brettschneider, 2012). However, some authors defend that some speech should not be allowed, and that the speaker should be sanctioned for it. I take this second position in the case of state authorities.

In Chapter 4 I pay attention to the phenomena of lying, misleading and bullshitting. First, I explore the difference between them, as they are described in the literature. After that, I move on to investigating what is wrong with these acts. I conclude that the primary wrong involved is that they harm the communicative mechanism that allows us to rely on each other and which humans require to be able to cooperate (cf. Shiffrin, 2014; Stokke & Fallis, 2017; Svendsen, 2022). For this reason, I claim that all three phenomena are harmful in human societies where this mechanism is crucial. Consequently, lying, bullshitting and misleading falls outside the protection by a free speech principle for any speaker.

However, the fact that it falls outside free speech protection might not be sufficient for a speaker to be punished for performing these acts. I argue that state authorities make a commitment to be involved with the truth about the matters that directly impact the well-being of those who are under the sovereignty of the State which they represent. Thus, there is a moral difference. Furthermore, it is not only the communicative mechanism harmed, but also democracy itself when they lie, mislead or bullshit. Therefore, these manners of speech fall outside free speech protection, and the harm affects everyone in the liberal democratic State. Thus, we may think,

first, that state authorities ought not to speak in such manner, and second, that they may be punished if they do so.

In Chapter 5 I propose a special duty for state authorities. The objective of this duty is to contribute to protect liberal democracies and the rights of citizens. Furthermore, it answers directly to the rights of citizens that state authorities are bound to protect. I use the formulation “State authorities ought to communicate with the public as truthfully as they reasonably can”. I defend that this duty has an epistemic and a communicative component. The epistemic component amounts to what state authorities can be required to know about the matters which directly impact the well-being of citizens. The communicative component is related to citizens’ right to know about the things that concern them (Watson, 2021).

Because state authorities are involved with the issues which impact the well-being of citizens, citizens have a right to be informed about them. For this reason, in a true liberal democracy, state authorities have a duty to communicate the decisions they make and the reasons behind them. After establishing this point, I move on to explore the manners in which citizens’ right to know can be violated, and finally answer to a possible objection to the implications of this duty.

Liberal democratic States ought to have the best interests of citizens when making decisions, ideally, to make everyone’s life better, no one’s life bad and at the very least not harm anyone.<sup>1</sup> Additionally, they ought to protect the rights of the citizens. However, this ideal seems to have taken a second position in the public debate when freedom of speech is perceived as the fundamental democratic value. The fact that freedom of speech is perceived sometimes as a supreme value translates to the idea that the ability of authorities to say whatever they want is more important is than the consequences that their speech may have. If this thesis is correct, absolute freedom of speech for state authorities is incompatible with the values and interests that ground liberal democracy, as the politics concerning climate change and the COVID-19 pandemic have shown.

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<sup>1</sup> I use this formulation throughout this thesis. The reader may wonder why I write “Everyone’s life better and no one’s life bad” instead of worse. The reason is that, for example, it can be argued that in order for many lives to be better, wealth must be distributed. This would mean that people who have a lot of wealth may lose some of it so that this can happen. It can be argued that this would make their lives worse, however, as long as no one’s life becomes bad, I think it is reasonable for governments to make some lives a bit worse to make most lives better. I understand that a bad life is a life in which a person struggles to have her basic needs covered, and also struggles in achieving reasonable happiness. It is true, however, that it is likely that some lives will be bad no matter what a State can do.

## **2. The speech of world-leaders: Bolsonaro, Trump and Johnson**

### *2.1. Authorities in liberal democracies*

In the liberal tradition, governments exist to protect the well-being of those who are under their authority. Even more so, governments should not act directed by their private interests, or for the satisfaction of their own desires (cf. Locke, 1943; Mill, 2015a; Mill, 2015b; Berlin, 2017). In liberal democracies, the rights of citizens must be respected. Furthermore, liberal democracies include mechanisms which are supposed to ensure that authorities do not abuse the power that they earn from the citizens in elections, or from being directly appointed by a democratically elected authority. As Locke wrote:

For all the power the government has, being only for the good of the society, as it ought not to be arbitrary and at pleasure, so it ought to be exercised by established and promulgated laws that both the people may know their duty, and be safe and secure within the limits of the law, and the rulers, too, kept within their due bounds, and not be tempted by the power they have in their hands to employ it to purposes, and by such measures as they would not have known, and own not willingly (Locke, 1943, 187).

The core values of liberal democratic societies are equality, justice and freedom (cf. Rawls, 1971; Mouffe, 2000; Bunge, 2009; Sen, 2010; Dworkin, 2014). For this reason, democracy itself is defended as a value; it represents the fair combination of the previous three that leads to the well-being of the members of liberal democratic societies. As a result, democracy is considered to be the political system which has the greatest chance of being a just system which allows the development of the members of the community. Therefore, to say that a society or a State has a healthy or well-functioning democracy in this sense<sup>2</sup> means, at least, that the rights of the members of the society are respected and protected, and that the authorities of the State fulfill their duties towards the protection of these rights and do not violate them by prioritizing their private personal interests and desires.

Both plain citizens and state authorities are, as human beings, holders of rights and duties. Nevertheless, given the special position of power, the dependence that individuals' wellbeing has to the well-functioning of the State –which state authorities administer– and the commitments that state authorities hold, I claim that they have special duties towards plain

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<sup>2</sup> Other than the procedural elements, like periodic elections, plurality of political parties and so on.

citizens (Hart, 1955; Pettit, 1986; Waldron, 1988). State authorities are in a unique position in the State, where they can make –with their own limitations in the democratic system– decisions that have an impact on virtually everyone who lives within the State’s sovereignty.

Finally, when a person assumes a certain position in the liberal democratic State and becomes a state authority, they make a commitment to defend the values associated to democracy, which reinforce the duties to the wellbeing of the people. Not only do they have a responsibility because they have power over people, but also because, in democracies, they make a commitment to care for their wellbeing.

Because they have these special obligations, their rights and liberties have more limitations than those of plain citizens. This does not mean that plain citizens are excused from being held accountable for their actions. It only means that state authorities can be held accountable for some specific actions while common citizens will not be, or at least not in the same way, because they do not have the same special duties. The moral difference between plain citizens and state authorities in liberal democracies lies not only in the power that they hold, but also in the democratic commitments that they make.

In liberal democracies, state authorities ought ideally to make citizen’s lives better. On the counterpart, they ought to not make anyone’s life bad, and minimally they ought to not harm citizens. I focus on the harm that the unrestricted free speech of these authorities can cause, and why it is required to restrict it. To argue that in authoritarian States without any liberal democratic commitments, authorities have special duties to the protection of their citizens, if possible, is a task for a separate work. The rights and duties of authorities of non-democratic States raise different problems beyond the scope of this project.

However, it is clear that in liberal democracies state authorities’ rights and liberties are strictly limited when the consequences of their actions cause either harm to the democratic system or harm the members of the political community (Mill, 2015a). Such actions go directly against their special duties towards the protection of the wellbeing of citizens and the well-functioning of the State. As a consequence, I will argue in the development of this work that state authorities have more restrictions when it comes to freedom of speech than common citizens. The reason is that their speech can lead to harm in different ways.<sup>3</sup> For example, state authorities can

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<sup>3</sup> This will be explored with depth in Chapter 3 and Chapter 4.

directly harm certain groups of individuals through hateful speech. They can also indirectly harm a part or the totality of the community and democracy itself by bullshitting, lying or misleading. Finally, they can cause harm by uttering false statements while being guilty of non-excusable ignorance.<sup>4</sup>

One further clarification is that this work will focus on the duties of elected/appointed authorities<sup>5</sup> and not on political candidates. It is worth noting, however, that political candidates have a great deal of influence in the public opinion both in traditional and social media. This influence can influence both the public agenda and the beliefs and emotions of plain citizens. (Enli & Moe, 2015; Dang-Xuan, Stieglitz, Wladarsch & Neuberger, 2015; Enli & Skogerbø, 2015; Skogerbø, Bruns, Quodling & Ingebretsen, 2016). It is during election time that people are most engaged in politics, and therefore influenced by the opinions of the candidates. Candidates are even more influential due to the increased use of social media among citizens in liberal democracies. Nonetheless, regardless of the influence they have, there is a crucial moral difference between candidates and elected or appointed state authorities. But, because candidates have not yet assumed the responsibilities associated to the position that they expect to eventually hold, the special duties that they may have are different, and beyond the scope of this work.

Now, let us move on to some problematic examples of prominent state authorities' speech and analyze which is the fault, if any, being committed.

## 2.2. *Why not use disinfectant injections?*

Starting with the ex-president of the United States, Donald Trump, may not come as a surprise in a thesis dedicated to the limits of state authorities' freedom of speech. His controversial claims were constantly in the news around the world. He was banned in 2021 from social media platforms, including the one he used to communicate with the world, Twitter, because of his tweets and statements during the assault of the Capitol (BBC, 2022, June 10). The board of

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<sup>4</sup> For example, by systematically and willfully rejecting and refusing to accept the truth about well-established facts where one could reasonably expect a state authority to be reasonably well-informed. All these questions are extensively studied in Chapter 4 and 5, specifically sections 4.3 and 5.1.

<sup>5</sup> Throughout the thesis I refer to them as state authorities. I leave this category open on purpose because state authorities have different positions, names, powers and so on in different States. However, when I say state authority, I refer to any position or charge in a State where a person has a position in an established institution of the State with some decision-making powers. This includes but, is not limited to, presidents, prime ministers, ministers, congress-people, and so on.

Twitter argued that his tweets had incited to violence and that they had enough reason to permanently suspend his account because of the risk of further incitement to violence (Twitter, 2021, January 8).

There are whole books dedicated to Trump's "assault on truth"<sup>6</sup>. One of the books was written by a team of fact-checkers of the Washington Post which categorize the gravity of the falsity of Trump's statements with one or more "Pinocchios". The amount of "Pinocchios" is supposed to represent whether an utterance is slightly misleading or a full intentional lie. A special category was developed by the team to characterize some of his claims, the "bottomless Pinocchio" (Kressler, 2018, December 10). The bottomless Pinocchio refers to claims who have received three or four "Pinocchios"<sup>7</sup> (Kessler, 2017, January 1) by fact checkers and have been repeated more than 20 times by the same person. Some of the false claims that Trump repeated 20 (or more) times have to do with the State of the US economy, the border wall with Mexico, many of the false claims also concern COVID-19 (Kessler & Fox, 2021, January 20).

Some statements uttered by Donald Trump about COVID-19 that do not qualify as bottomless Pinocchios but are nonetheless concerning, are his comparison of the COVID-19 virus to the flu virus, or his claim that the pandemic was originated by the escape of the virus from a Chinese laboratory without evidence (Lewis, 2020, October 12). In addition, he downplayed the use of facemasks in the beginning of the pandemic, including rejecting to wear one himself (Smith, D. 2020, April 4; Robertson, 2020, July 19; Smith, A. 2020, July 20). These statements have as a counterpart the evolution of the COVID-19 pandemic in the US (Lewis, 2021, March 11).

On March 16th of 2020, the ex-president Donald Trump said, "We have a problem that a month ago nobody ever thought about" (Kessler, Rizzo & Kelly, 2020, 256). If we look back to the chronology of COVID-19, as accounted for in the introduction, WHO first warned countries and distributed documents with extensive guidance on how to manage an outbreak of this disease between January 10<sup>th</sup> and 12<sup>th</sup>. Is it excusable that the president of the US was unaware of the risks of COVID-19 by that time? We will get back to this question in the conclusion of this thesis.

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<sup>6</sup>Kessler, G., Rizzo, S. & Kelly, M. (2020) Donald Trump and his assault on Truth. New York: Simon & Schuster, and Osborne, P. (2021). The assault on truth: Boris Johnson, Donald Trump and the emergence of a new moral barbarism. London: Simon & Schuster.

<sup>7</sup> For example, three Pinocchios mean that there are significant factual errors and/or contradictions in the statement, and that it is mostly false.

The same applies to another health-related statement uttered by Trump, on the 6<sup>th</sup> of March 2020. With the beginning of the pandemic, there were many who compared the mortality of COVID-19 and the common flu. There, he said “When people have the flu, you have an average of 36000 people dying. I’ve never heard those numbers. I would’ve been shocked. I would’ve said, ‘Does anybody die from the flu?’ I didn’t know people die from the flu—36000 people died” (Kessler, Rizzo & Kelly, 2020, 254). This statement was marked as a lie by the Washington Post fact-checking team. The reason is that Trump would allegedly know that the flu (any flu) has the capacity to kill because his grandfather died due to the Spanish flu. However, one may wonder if it is reasonable to say that Trump lied when he said that he did not know that the flu killed, considering that the Spanish flu is caused by a different virus than the seasonal flu. It is indeed not the same disease. On the other hand, a different issue is raised. Is it excusable that the president of the US is unaware of the mortality of the seasonal flu, given that it takes so many lives every year? I think that the most prominent problem with Trump’s statement, if any, is not that he lied when he said that he did not know that the flu killed people, but the fact that he did not know about it.

Another issue where there is a high degree of certainty, like with COVID-19, is that of anthropogenic climate change. However, Donald Trump has uttered statements that go against what is established in the field of climate change science. For example, he doubted that climate change is indeed anthropogenic (Cheung, 2020, January 23). He also insinuated that there was no global warming due to the strong drops in temperature in the US in 2017 where temperatures reached historic lows (McGowan & Walters, 2017, December 29). He once claimed that the concept of global warming itself was an invention of the Chinese government to prevent the US’ economic development (Jacobson, 2016, June 3). In addition, he has actively refused to believe a scientific report on climate change without good reason (BBC, 2018, November 26), despite the scientific agreement regarding the nature of anthropogenic climate change (Lynas, Houlton & Perry, 2021). This skepticism regarding climate change led to the rolling back of more than 100 measures against climate change (Popovich, Aleck-Ripka & Pierre-Louis, 2021, January 20), including the withdrawal of the US from the Paris agreement (McGrath, 2020, November 4).

It is widely suspected that the erratic messages about facemasks caused confusion among the population (Smith, S. 2020, August 10) contributing to the extension to which the US was affected by the pandemic (Tollefson, 2020). Furthermore, Trump’s speech against scientific



evidence may even have prevented research that could have saved lives (cf. *ibid.*, 190), and caused a harm to public trust in science in the US (and perhaps in more places as well due to the influence of American politics in the world) that may last for years (cf. *ibid.* 192). In addition, Trump's speech may have reduced the pressure to take climate action for other countries by pulling out of the Paris agreement (cf. *ibid.*). Yet, while he was president, little to no consequences followed this. There were two attempts of impeachment against Trump, but both failed (Gregorian, 2019, December 19; Breuninger, 2021, February 8). It was not the institutions of the US that punished Trump in any form, but private companies. In particular, it was the companies Facebook and Twitter which decided to restrict his access to these platforms (Twitter, 2021, January 8; Aljazeera, 2021, January 7; Byers, January 14). However, as I have said before, the reason for these restrictions was not that he had made false claims about climate change, or COVID-19, which put the lives of many in danger. The reason provided by these companies to ban Trump from their websites was that he had incited to violence. However, no reference was made to the falsity or veracity of other claims he had made.

### 2.3. *Vaccines may turn you into alligators, don't say I didn't warn you*

The second figure that I will come back to in the course of this thesis is President Jair Bolsonaro and other members of government in Brazil. Among the utterances he has made during the last few years, some remarkable examples are that climate issues are only important to vegans “who only eat vegetables” (Garcia, 2019, July 27), or that Europe is a climate sect that unfairly blames Brazil for the rising deforestation for commercial purposes (UOL Notícias, 2020, July 16). On the other hand, it is not only Bolsonaro himself who utters these kinds of claims, but also other authorities of his government. For example, his Minister of Foreign Affairs, Ernesto Araujo, asserted that there is no climate change catastrophe (Reuters, 2019, September 11) or that if there is such a thing, it is a plot by cultural Marxists (Phillips, 2020, July 27). It is worth mentioning that, ever since Bolsonaro has been president of Brazil, the Amazon rainforest has been suffering losses at an accelerated rate (BBC, 2020, November 30). According to a report of Human Rights Watch, “he has scaled back enforcement of environmental laws, weakened federal environmental agencies, and harshly criticized organizations and individuals working to preserve the rainforest” (HRW, 2019, September 17).

Regarding the COVID-19 pandemic, Bolsonaro claimed that Brazil was a country of “faggots” because some citizens and other authorities were concerned about the development of the pandemic (Agence France-Presse, 2020, November 11). In this line, he insisted in the beginning

of the pandemic that the disease caused by this virus was nothing but a little flu (Walsh et al., 2020, May 25). One of the most remarkable claims that he uttered during the course of the pandemic, occurred when the vaccines against COVID-19 started being available. He suggested, ironically, that the Pfizer vaccine against COVID-19 could turn people into alligators. With this, he attempted to persuade and to convince the people not to take it (Diário de Notícias, 2020, December 20). This being said, Brazil is the second country with most deaths associated to COVID-19, only after the US (Statista, 2022).

Unlike Donald Trump, Bolsonaro has not been banned from any social network. However, YouTube removed some of Bolsonaro's videos (BBC, 2021, July 22), on the grounds that he was spreading misinformation related to the COVID-19 pandemic. But a different course of action has been taken. On May 2022 a two-day trial took place (Faria, 2022, May 14) against Bolsonaro by the Permanent Peoples' Tribunal simultaneously in Rome and Sao Paulo for crimes against humanity (Aljazeera, 2021, October 20; Brito & Paraguassu, 2021, October 20; Savarese, 2021, October 27). It is expected that the ruling will be dictated in July, though the rulings of this court are symbolic and not legally binding (TeleSur, 2022, May 25).

The accusation was based on a report that implies that Bolsonaro is personally responsible for a great amount of the suffering that COVID-19 has brought to the people of Brazil. This document is backed up by the Senate of the country (BBC, 2021, October 27). Among the charges that he is facing, we find crimes against humanity and charlatanism. However, many in Brazil fear that these accusations will not lead to a prosecution of president Bolsonaro in the Brazilian supreme court, regardless of the conclusions of the Permanent People's Tribunal. The reason is that the attorney general in charge was appointed by Bolsonaro himself (France24, 2021, October 29).

The accusation of charlatanerism against president Bolsonaro is held according to articles 283 and 284 of the Brazilian Penal Code.<sup>8</sup> They basically amount to saying that it is illegal to announce to have a cure to something through a secret or infallible means. Though it is important that charlatanerism exists in the Brazilian Penal Code, this account excludes other

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<sup>8</sup> Charlatanismo Art. 283 - Inculcar ou anunciar cura por meio secreto ou infalível: Pena - detenção, de três meses a um ano, e multa. Curandeirismo Art. 284 - Exercer o curandeirismo: I - prescrevendo, ministrando ou aplicando, habitualmente, qualquer substância; II - usando gestos, palavras ou qualquer outro meio; III - fazendo diagnósticos: Pena - detenção, de seis meses a dois anos. Parágrafo único - Se o crime é praticado mediante remuneração, o agente fica também sujeito à multa. (Penal Code Brasil, 2017).

relevant ways in which someone may endanger or harm others through their speech which are not related to a mysterious cure to a disease.

It is important to remind and highlight at this point that one of the objectives of this thesis is to contribute with arguments that provide justification to the limitation of dangerous and harmful speech that authorities may utter. As a consequence, a wider range of utterances emitted by president Bolsonaro (and any other authority in any other State) than the ones being trialed or the ones that have been removed from YouTube would be captured. All the utterances that have caused harm to the people of Brazil and the Brazilian democratic institutions (and of any other State) that have been emitted by these authorities are subject to being sanctioned, if what I argue in this thesis is correct.

#### *2.4. We remain extremely well prepared*

Finally, the last figure I want to pay attention to in this chapter is soon-to-be former Prime Minister Boris Johnson of the United Kingdom (Amos, 2022, July 7). As with Donald Trump, the concern of citizens regarding the speech of the Prime Minister has led to the writing of at least one book dedicated to Boris Johnson's "assault on truth"<sup>9</sup>, and the creation of a website<sup>10</sup> dedicated to Boris Johnson's alleged lies, called [boris-johnson-lies.com](https://boris-johnson-lies.com).

However, rather than looking at controversial statements uttered by Boris Johnson regarding vaccines or the nature of the virus, I think there is a rather problematic issue pointed out by a book published in the first year of the pandemic (cf. Horton, 2020). Here, the author draws attention to the pandemic simulation of 2016 called 'Exercise Cygnus'. This exercise was a simulation performed in the UK to assess whether or not the UK was in a good position to handle a reasonable-worst-case influenza pandemic as of 2016, some years before Johnson was appointed Prime Minister (UK Government, 2020a). The conclusion, after complex modelling, was that "the UK's preparedness and response, in terms of its plans, policies and capability, is currently not sufficient to cope with the extreme demands of a severe pandemic that will have a nation-wide impact across all sectors" (UK Government, 2020b). Research concluded that partially disregarding this exercise led to the country being unprepared and thus being severely affected by the COVID-19 pandemic (cf. Humphrey & Lorne, 2021, 263). Horton asks, with

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<sup>9</sup> Osborne, P. (2021). *The assault on truth: Boris Johnson, Donald Trump and the emergence of a new moral barbarism*. London: Simon & Schuster.

<sup>10</sup> <https://boris-johnson-lies.com>

regard to Boris Johnson's statement that the UK was well prepared to face the pandemic at its beginning<sup>11</sup>:

Was Johnson aware of Exercise Cygnus and its clear conclusion in 2016 that the UK was most definitely not well-prepared? If he was, he lied to the public. If he was not then he is surely guilty of misconduct in public office. Remember: a pandemic is top of the UK's National Risk Register. A prime minister should reasonably be expected to understand the capability of his country to address the most severe civil emergency risk (Horton, 2020, 49-50).

These questions are crucial for the sake of healthy liberal democracies. Regardless whether Johnson knew or not about the conclusion of Exercise Cygnus, the question is whether he is at fault for not knowing about it when the alarms about a potential pandemic (COVID-19) rang, and whether or not he is at fault for lying if he did know. I will come back to this question by the end of this thesis<sup>12</sup>.

## 2.5. *Conclusion: speech and special obligations*

State authorities in liberal democracies have special duties towards the people they govern. The fact that there have been efforts from citizens to expose how authorities are not always careful regarding the truth of their statements shows that there is some public concern regarding this matter. I think this is a problem worth attending to from the field of philosophy<sup>13</sup>. In this thesis, I argue that it is dangerous for liberal democracies that state authorities are not careful regarding the truth of their statements. I argue that it is a requirement for democracies to flourish that state authorities have a special duty to inform properly and communicate truthfully. Furthermore, acknowledging the limits of the right to freedom of speech, which are explored in chapter 3, does not necessarily make democracies weaker, but stronger and better protected against a particular kind of harm.

Politicians not only implement measures in democracies, but they also have to justify to the public why they do the things they do and communicate and inform citizens about the issues

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<sup>11</sup> Boris Johnson stated, "Our country remains extremely well prepared, as it has been since the outbreak began in Wuhan several months ago" (UK Government, 2020c)

<sup>12</sup> Some clarity can be found in Section 5.1.

<sup>13</sup> As of other recent efforts in this direction, Onora O'Neill mentioned the problem in her recent book *A Philosopher Looks at Digital Communication* (O'Neill, 2022, 29-30).

that have an impact on their lives. For this reason, politics in liberal democracies is about discussion and communication as much as it is about doing and making decisions. That is why political debate precedes the approbation of new laws in parliaments, and why governments communicate to the public the reasons for their actions.

Thus, speech has a crucial role in the realm of politics, and this is why we need to examine freedom of speech and its limits for state authorities. Some have argued for the unquestionable protection of political speech (cf. Rawls, 1996; Dworkin, 1996; Brettschneider, 2012), mostly excluding only –though not always (cf. Brettschneider, 2012)– hate speech. However, it is no coincidence that the US and Brazil are the two countries with the most deaths associated to COVID-19, and both of them in addition to the UK are among the most affected by the pandemic (Johns Hopkins University & Medicine, 2022; WHO, 2022b). For this reason, it seems counterintuitive that political speech should enjoy a special protection by a free speech principle regardless of who utters it and the commitments they have towards others, and regardless of the harm it can cause to the members of the relevant community. This will be the first issue addressed, in Chapter 3.

### **3. J.S. Mill's account of the right to freedom of speech, and why restricting the free speech of state authorities is required**

In this chapter I will explore the traditional framework of freedom of speech, as put forward by John Stuart Mill in his famous *On liberty* (Mill, 2015a). First, I will present the main arguments provided there by Mill to protect free speech, but also to limit it. Mill proposed what is now known as the no-harm principle, which accepts the limitation of liberties when a harm is produced. After that, I will address five objections against the limitation of free speech and possible counterarguments to them. Finally, I will argue that even if the objections are powerful, we still have good reason to limit free speech in certain cases. However, because the objections are so powerful, it makes sense to implement actual limits and sanctions in specific cases. As a result, I argue that the speech of state authorities is one of these cases where we can have enough certainty to pursue limitations and sanctions.

#### *3.1. Arguments for free speech*

In this section I present the main reasons provided for the protection of freedom of speech since J. S. Mill's original contribution (cf. Mill, 2015a). The arguments can be categorized in three main groups: epistemic arguments, socio-political arguments, and moral arguments.

In *On liberty*, Mill argues for freedom of speech mostly on epistemic grounds. Some scholars even point out that Mill most strongly argued for freedom of speech on epistemic terms, rather than anything else (Halliday & McCabe, 2018). In their words, "Mill's defense of free speech is very much about how knowledge spreads and why it is valuable" (ibid., 71). Indeed, Mill thought that in order to progress in society, we needed to get closer to the truth, and here freedom of speech would mean the free exchange of ideas. For this reason, he suggested that we must be able to discuss in society and be able to hear about different opinions, otherwise we as a society or as the community of all humans will miss chances of moving closer to the truth (cf. Mill, 2015a).

Mill makes the epistemic point with two arguments, or in his words, hypotheses.

But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great

a benefit, the clearer perception and livelier impression of truth, produced by its collision with error. (Mill, 2015a, 19).

The first hypothesis is that if a silenced opinion turns out to be correct, then humanity is robbed from the opportunity of learning the truth about something. To argue for this point, Mill suggests that when someone suppresses an opinion, she assumes that she has certainty about the matter. This means, according to Mill, that she is assuming her own infallibility, and, because no human is infallible, it is wrong of her to settle the matter. Furthermore, the inevitable human errors are corrigible not only thanks to experience, but also with discussion. To rectify and learn from our mistakes, we ought to remain open to criticism of our opinions and conducts.

Additionally, Mill argues that persecution of a true opinion is hopeless because truth will be rediscovered again in the future. (ibid., 30-34). Persecution of ideas restrains freedom of thinking, because in such an atmosphere it is difficult that intellectually active people will emerge. For these reasons, he concludes, free speech should be defended when the silenced opinion is true.

Afterwards, he argues that freedom to express false opinions should be protected as well. Mill argued that humanity is deprived from finding the truth by its collision with error when false opinions are silenced. It should be noted that he believed that truth always comes out victorious in the collision with error (cf. ibid., 19). This is not necessarily the case, because not all persons act according to a proper epistemic attitude where they accept that they are wrong. On the contrary, many insist on their mistakes<sup>14</sup>. However, Mill argued that if the error is not allowed, then the truth is received as a doctrine, as a truism, and not by the rational conviction of the individual, which is undesirable (ibid. 37-43). Mill's project is about the collective search for the truth, where humans employ their rationality.

He acknowledges that

As mankind improve, the number of doctrines which are no longer disputed or doubted will be constantly on the increase: and the well-being of mankind may almost be

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<sup>14</sup> Let us remember, for example, the bottomless Pinocchio developed by fact-checkers to refer to falsehoods repeated over and over even though they have been corrected.

measured by the number and gravity of the truths which have reached the point of being uncontested. (ibid., 43).

Nevertheless, diversity of opinion is advantageous and will continue to be “so until mankind shall have entered a stage of intellectual advancement” (ibid., 45). His position regarding whether or not error should be protected by free speech after reaching this stage is unclear.

Finally, Mill suggests that sometimes it is not about a true and a false opinion colliding, but two opinions which have some truth to them. In this case, he argues that we need all of these opinions which contain some part of the truth to reach the full truth. (ibid., 45-51). Again, he concludes, the freedom to express these opinions is crucial for the epistemic progress of humanity towards the truth.

Mill concludes that sometimes free speech may even exacerbate sectarianism and that when the truth is proclaimed by persons regarded as opponents, it contributes to its rejection. He writes thinking not about partisans, but in the “calmer bystanders” who given their rational attitude would benefit from the collision of opinions. (ibid., 51). He formulates it as

there is always hope when people are forced to listen to both sides; it is when they attend only to one that errors harden into prejudices, and truth itself ceases to have the effect of truth, by being exaggerated into falsehood. (ibid., 51)

In conclusion, what Mill valued was not speech as mere expression, but the overall exchange of ideas made possible by free expression. Free speech is most valuable when it stimulates the genuine and constructive exchange of ideas, and that is why it should be protected (Halliday & McCabe, 2018, 172).

Secondly, there are some socio-political reasons to protect freedom of speech. The liberal tradition, including Mill, attempts to protect the individual from the power which society or the State exercise over her (i.e. Mill, 2015a; Locke 1943). In this case, protecting freedom of speech is an exercise which attempts to avoid that the majority or the State can arbitrarily control that individuals express their opinions. It is for this reason that scholars suggest that democracies are not fully democratic unless the right to freedom of speech is protected (cf. Brettschneider, 2012; Crisp, 2019). Ultimately, if the State or the majority arbitrarily decide what can and cannot be said, individuals cannot properly develop independent or plural ideas, which are crucial for democracies.



Thirdly, and connected to the socio-political reasons, there is a very relevant moral reason. That is, individuals cannot fully develop as such unless they can exercise their freedom and autonomy (Locke, 1943; Mill, 2015a; Rawls, 1996; Shiffrin, 2014). As Mill argued, when an individual cannot freely express her opinions and beliefs, and there are arbitrary restrictions for what can or cannot be said, the intellect cannot flourish in the same way. In order for a person to fully develop, she must have the possibility to speak her mind in sincere conversations with others.

### 3.2. *Limit free speech? Six objections*

In this section I present six objections to the limitation of free speech (Howard, 2019; Reid, 2020)<sup>15</sup>. These objections could lead us to believe that speech should not be restricted at all. Because of the power of these objections, some scholars suggest that counter-speech rather than speech limitation is the morally better alternative when facing harmful or dangerous speech (i.e. Warburton, 2009; Brettschneider, 2012; Strossen, 2018).

In the public context, freedom of speech absolutism takes some space of the discussion<sup>16</sup>. However, in the literature of freedom of speech, it is widely accepted that limitations to freedom of speech are acceptable (i.e. Mill, 2015a; Haworth, 2007; Brettschneider, 2012; Halliday & McCabe, 2018; Howard, 2019; Reid, 2020; Bell, 2021). In section 3.3 I argue that these objections do not necessarily lead to the conclusion that we ought not limit free speech, and if anything, the only available option is to use counter-speech. I argue that we have good reason to, sometimes, limit freedom of speech.

The reason that Mill deemed powerful enough to grant limitation to any freedom is the harm that some perpetrated acts can cause to others. This is known as the harm principle and is expressed as follows: “Acts, of whatever kind, which, without justifiable cause, do harm to others, may be, and in the more important cases absolutely require to be, controlled by the unfavourable sentiments, and, when needful, by the active interference of mankind” (Mill, 2015a, 55).

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<sup>15</sup> These papers offer an extensive review of some these objections to the restriction of free speech.

<sup>16</sup> With free speech absolutism I refer to positions which refuse to accept that there is some wrong in expressing certain positions in some contexts, by appealing to freedom of expression.

To show how this principle affects freedom of speech, he introduced the example of an angry mob in front of a corn-dealer's house. In this thought experiment, he suggested that it would be acceptable for someone to publish an opinion article in the newspaper asserting that corn-dealers are starvers of the poor, whereas, on the other hand, it would not be acceptable to scream to the angry mob in front of the corn-dealer's house that corn-dealers are starvers of the poor. The rationale is that under these circumstances such an utterance would be an instigation of a mischievous act –perhaps an attack to the corn-dealer– even if the person uttering sincerely believes that statement to be true and it even is a true statement. (cf. Mill, 2015a, 55).

Rawls defended, in the same line than Mill, that the content of political speech should always be protected, but that “incitements to the imminent and lawless use of force, whatever the significance of the speakers' overall political views, are too disruptive of the democratic process to be permitted by the rules of order of political debate” (Rawls, 1996, 336). The position that freedoms are restricted when the actions can harm others is not contested in the literature, the discussion is rather whether or not certain actions are harmful.

The first objection or problem that must be overcome to limit freedom of speech is the fact that speech is not only content dependent, but that context plays a big role in determining whether or not an expression is harmful. This objection is conceptual and has as its basis the nature of speech. Given that what speech means or does depends on the context in which it is uttered, it is suggested that the content of a speech should never be limited on its own, but only in some contexts –in very limited cases. For example, it may be suggested that some utterances should not be allowed. Let us say that the majority thinks that no one should be allowed to say, “Non-whites are inferior to whites”. There are many good reasons to propose this, however there are some contexts in which it may be non-harmful, acceptable and even beneficial to utter this (for example, to illustrate a history class).

The second is an empirical objection which amounts to the fear that if free speech is restricted, dangerous speakers will avoid the public discussion, exclude themselves from the mainstream media and thus ‘be driven underground’. If dangerous speakers are hidden from society and surrounded by others who support their ideas, this could make them more dangerous and/or more difficult to identify. Thus, limiting some forms of speech, instead of being beneficial, results in the increase of the original danger. Instead of allowing them to freely speak in the first place, and accepting their harmful speech, they become even more dangerous underground (Brettschneider, 2012).

The third objection is one of principle. As free speech is valued as a core principle of liberal democracies, posing restrictions to freedom of speech is translated into an undermined democratic legitimacy of a State. In this view, restricting this specific freedom means to dismiss it as a value (cf. *ibid.*).

The fourth objection against the limitation of free speech points out the difficulty in determining what amounts to harm and what, on the other hand, is merely offensive speech. The literature suggests that offensive speech should be tolerated as free speech when it is not harmful, while harmful/dangerous speech is subject to being limited and sanctioned (cf. Bell, 2021).

The fifth objection is also empirical. It considers that banning dangerous speech would inevitably mean that some legitimate speech gets suppressed. The reason is that there would be practical difficulties in the implementation of free speech restrictions (cf. *ibid.*). For example, humor can sometimes be difficult to detect. Someone could be ironically portraying a dangerous speaker and be unjustly sanctioned or quieted because it is unclear that she was being ironic.

The final objection suggests that there is a possibility that the politicians of a State may be unscrupulous or corrupt. If this is the case, having the power to restrict speech is too much power for them to have because they could arbitrarily use it in a way that benefits their own agenda, for example by silencing the legitimate political opinions of the opposition (Brettschneider, 2012; Shiffrin, 2014).

### *3.2.1. Context and content*

The limitation of free speech is both content and context dependent. Speech is not determined only by the words or the message it carries, but also by the context where it is emitted (Mill, 2015a; Haworth, 2007; Brettschneider, 2012; Halliday & McCabe, 2018; Howard, 2019; Reid, 2020; Bell, 2021). As Mill suggested, it would not be wrong to publish in the newspaper that corn-dealers are starvers of the poor<sup>17</sup>, but it would be wrong to yell that corn-dealers are starvers of the poor to an angry mob in front of a corn-dealer's house, because this might incite them into acting with violence against the corn-dealer. The apparent problem with the limitation of free speech is that "our duties cannot admit of finer-grained differentiation between tokens

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<sup>17</sup> If that were true, or the person believed it to be the truth. In Chapter 4 I extend on the problem of lying, bullshitting and misleading, and in Section 5.1. I refer to what a person can be reasonably be expected to know before speaking.

of a common type, such that morality condemns certain tokens of the type but not others” (Howard, 2019, 240).

In this case, the type would be to say that corn-dealers are starvers of the poor, and the tokens, each instantiation of this utterance in a particular context. While publishing it in the paper is not wrong, it is wrong to do so in the second context. However, this need not be a problem. Indeed, the wrong is not the fact that someone has uttered the words “corn-dealers are starvers of the poor”, but the harm that such an utterance causes to others, in this case, the possibility that the corn-dealer will be attacked (Howard, 2019).

Free speech restriction requires a case-to-case assessment of whether the speech is harmful or harmless. Even the most horrific utterances can be protected in some specific contexts. For example, there are countries with severe restriction of the use of Nazi iconography or speech. Nevertheless, this does not mean that they are prohibited in every context. Indeed, they belong in history books. These utterances are not prohibited by themselves, or what they represent, but because they are harmful in a wide variety of contexts. They are only acceptable in contexts in which they are presented in such a way to make them harmless.

### *3.2.2. What if dangerous speakers are driven ‘underground’?*

In the literature, it has been suggested that there is a possibility that dangerous speakers are driven ‘underground’. This means that they continue to preach these ideas in a harmful way, but they do it covertly (Warburton, 2009; Brettschneider, 2012; Strossen, 2018). This poses two problems: first, that they are harder to identify, and thus that it becomes more difficult to persuade these dangerous speakers to change their views, and secondly, that they become more dangerous because they are deprived of a manner to vent their anger and thus more likely to be violent themselves (Howard, 2019, 244-245).

It is for this reason that, when restricting freedom of speech, we must evaluate whether restricting dangerous speech can be more harmful than protecting it. The risk that dangerous speakers will move underground means that some individuals will choose to dangerously speak in contexts where they do not perceive a risk of being heard by anyone who will report them or anyone who can or will implement sanctions for such speech. For example, on social media platforms, these speakers choose to use platforms with less restrictions in terms to their content,

or with better security to remain anonymous, such as Telegram (Rogers, 2020; Walther & McCoy, 2021; Solopova, Scheffler & Popa-Wyatt, 2021).

Some authors argue that it is better to allow dangerous speakers to speak than to deal with the uncertainty of underground speakers and how dangerous they may become (Warburton, 2009; Brettschneider, 2012). Warburton uses the example of an author who published a history book about the falsehood of the holocaust relying on questionable sources, to suggest that it was more effective to allow him to speak than to ban his book.

When this occurred, the book was banned in a country. This resulted in the author portraying himself as a free speech martyr, which made him gain the sympathy of some who felt that freedom of speech could be at stake. On the other hand, when the book was presented in a different country where he was allowed to explain his arguments, his speech was subjected to counter-speech and the legitimacy of the book and his views were rejected (Warburton, 2009).

Brettschneider goes a step further in the defense of counter-speech and suggests that liberal democracies should allow all dangerous speakers to utter their views, no matter how harmful, but that the State should use its expressive power to offer counter-arguments to why these views are wrong and promote the values of freedom and equal democracy while persuading all the citizens of the State to accept them and change the minds of those who spoke against them in the first place (cf. Brettschneider, 2012).

While counter-speech is valuable, there are limitations that have been pointed out that we must consider (cf. Shiffrin, 2014). Specifically, Shiffrin claims that in the case of lies, counter-speech is effective when the perpetrated harm comes merely from the content of the utterance. The motive is that counter-speech offers reasons to reject the harmful content to the listeners, in this case, showing why a lie is a lie. Nevertheless, it does not remedy the damage of the speech itself. As I argued earlier, speech can be harmful not only because of its consequences –i.e. promoting a mischievous act– but it can itself produce harm on persons without having explicitly promoted any further mischievous act.

Additionally, counter-speech does not mend a harm produced by the lies themselves, that is a “willingness on the part of its issuer to misrepresent while presenting the speech as veridical. This willingness undermines the reliability of that speaker’s testimonial warrants. It gives us reason to reduce our confidence in testimonial warrants from the speaker” (Shiffrin, 2014, 139).

Shiffrin's argument is that because we rely on each other to navigate the world, we need to be able to trust each other. However, allowing liars to lie, even if we systematically produce counter-speech to show the listeners of the liar the truth and expose her as a liar, the break of trust is a harm in itself that cannot be remedied.

The same can be said about hate speech. No matter how systematic counter-speech becomes, the harm perpetrated directly by the uttered hate speech remains in those who are attacked by it and those who witness others being treated in such a way. Further, it has been argued that hate speech not only harms individuals, but also that it harms society as a whole (cf. Reid, 2020). This argument is constructed on the fact that hate speech typically affects more the communities that historically have been or are in a position of structural disadvantage in society i.e. women or people of color. Thus, when we provide legitimation to this sort of speech by granting it free speech protection, the structural disadvantage is continued as well. Protecting these utterances facilitates that those who belong to these groups may refrain from participating in society and expressing their opinions because being attacked with hate speech is a foreseeable consequence, and their speech may be considered less worthy or trustworthy because of what has been argued to be epistemic injustice –that some are deemed worthy of less credibility because of some qualities, such as gender or ethnicity (cf. Fricker, 2007; Reid, 2020).

Summing up, Warburton and Brettschneider, show the same kind of optimism as J. S. Mill regarding the proper epistemic attitude. Counter speech works only when all the members of society participate in the honest search for truth. But also, if that was the case, there would probably be no need for counter-speech. However, this is not the case, and for this reason, we should choose to restrict harmful speech. Harmful speech is not protected as free speech because it harms others without good justification, so considering that we cannot count on society at large being more interested in the search for truth than in partisan disputes, there is no good reason to choose to protect it. The problem of the dangerous underground speakers is an empirical problem, which must be studied and solved, but it does not provide with sufficient moral reason to allow their harmful speech in the public discourse.

Because this is an empirical matter, empirical reasons should be provided by social science research to accept that it is preferable to allow dangerous speakers to speak freely in public. The reason that would be strong enough to accept this position would be that it was proved that the harm produced by underground speakers tends to always and in every context be greater

than the harm caused by allowing all dangerous speakers to dangerously speak in the public context. I think it would be extremely hard to determine that this is the case. Whereas extreme events associated to underground speakers (for example, terror attacks perpetrated by individuals who have become radicalized by sharing with others in these groups) have been devastating, determining that they would not have taken place had it been possible to express dangerous ideas in public is not an easy task, if possible at all. However, I suspect that research conducted to determine whether or not the acceptance of dangerous speakers in the public context as legitimate actors, where they are capable of reaching positions of power in the State, leads more clearly to the conclusion that severe harm is caused. For example, if dangerous speakers are in positions of power in the State, and they state that some kinds of citizens are superior to others, they are not only potentially harming individual citizens, but the core values of democracy themselves.

Finally, we may wonder whether dangerous speech can be harmful among like-minded people. For example, let us imagine a context in which all the members of an underground group believe that non-whites are inferior to whites. Thus, one may argue that no harm is produced if one of them utters that non-whites are inferior to whites, because they all share the same belief. However, this is not the case. Though no one in the group is directly harmed by the content of this utterance, there is a reasonable risk that the members of this group will be instigated to perpetrate harmful actions against non-whites. As in the case of the mob in the corn-dealers house, the harm does not lie in that the utterance is attacking the listeners, but in that the listeners become more dangerous and willing to take actions which harm others.

### *3.2.3. Does limiting free speech undermine democratic legitimacy?*

A third objection against the limitation of free speech that I will account for consists mainly in the idea that if we restrict freedom of speech, the democratic legitimacy of a State is diminished. Freedom of thought and the freedom to express these thoughts are regarded as central elements for liberal democracies and a central element that distinguishes them from tyrannies (Rawls, 1996).

For Rawls, the content of a political utterance does not matter, it is always protected. Some forms of speech, such as, for example, defamation of private persons, have no significance for the public use of reason and thus is not only a form of speech unprotected by freedom of speech

but a public wrong (cf. *ibid.* 336). Rather, it is the particular political utterance given contexts that can be restricted or sanctioned. As he says:

So long as the advocacy of revolutionary and even seditious doctrines is fully protected, as it should be, there is no restriction on the content of political speech, but only regulations as to time and place, and the means used to express it. (Rawls, 1996, 336).

Liberal democracies are forms of government characterized by liberal values, meaning that those who live within this system are considered to be free and equal, and to be treated with fairness (cf. Rawls, 1971; Mouffe, 2000; Bunge, 2009; Sen, 2010; Dworkin, 2014). Because the members of the community are free and equal, the restrictions to freedoms must be fair and the same for everyone. Within this framework, some authors (cf. Brettschneider, 2012) have argued that it is not possible to restrain free speech without being unfair. Brettschneider argues that to restrict the speech of some people means to actively discriminate them for having a particular opinion, and this would go against the values of democracy, even when the restricted opinion goes against the values of free and equal citizenship. This is an argument of principle: if free speech is a value of democracy, then to restrict it goes directly against the values of democracy.

Though it seems difficult to imagine that we would be discriminating a member of the Ku Klux Klan because we deem that their speech does not enjoy free speech protection when he claims that non-whites are inferior, members of the Klan have received first amendment protection. The result of the 1969 case of *Brandenburg vs. Ohio* overturned the conviction of a member of the Klan and created a precedent in First Amendment Law that unless the speech incites or produces imminent lawless actions, it continues to be protected speech (cf. Gruberg, 2009; Walker, 2009; Brettschneider, 2012). This defense of free speech has a rather lax conception of the no-harm principle; the only non-protected speech is the one which incites or produces imminent lawless actions, like Mill's example of the person who tells the furious mob in front of the corn-dealer's house that corn-dealers are starvers of the poor.

However, as argued in Section 3.2.1., restricting speech is always content and context dependent. For this reason, the point is not that it should be prohibited to utter "non-whites are inferior to whites", but that should be sanctioned to do so in a context where it results in harm. This should be determined case by case, and in the case of some utterances (such as "non-whites



are inferior to whites”), a precautionary principle should be applied to find out in which contexts an utterance like this would not be harmful, such as in history books and lessons.

Furthermore, not everything we utter are opinions, and not all opinions are sincere. If what we care about is democratic legitimacy, we must look at the argument that deliberate and unambiguous misrepresentations weaken the point of compromise and encourage cynical opposition (cf. Shiffrin, 2014). When we legitimize lying and bullshitting (cf. Frankfurt, 2005) in the public sphere as a part of the political speech that should be valued in democracies, there is more harm than good that comes out, and as I argue in Chapter 4, we have good reason to restrict it.

A formulation of this worry, and the harm it causes, is that accepting lying in the public sphere “justifies the supposition that parties do not negotiate and compromise from genuine positions of conviction, but rather that they advance false positions to gain leverage and advantage” (Shiffrin, 2014, 143). Under this understanding, it does not seem to be correct that limiting speech harms democratic legitimacy rather than protect it. Citizens become dubious of the intentions of politicians and withdraw their trust in democracy, which is necessary for societies to function properly. Thus, ultimately, political speech with no restrictions can harm democracy.

#### 3.2.4. *Harm and offense*

The fourth objection to be discussed is the one which claims that there is a difficulty in determining whether an utterance is harmful or merely offensive. The debate regarding the limitation of freedom of speech is not centered on whether we can limit it or not, because there is a reasonable consensus that harmful speech can be excluded from a right to free speech. Conversely, it lies in the question of what utterances are considered to cause harm. Some concepts used in the literature to navigate this difficulty are dangerous speech (Howard, 2019; 2021), offensive speech and abusive speech (Etzioni, 2019), harmful and harmless speech (Bell, 2021), and hate/hateful speech (Greenawalt, 1989; Parekh, 2017; Reid, 2020).

The limitation to harmful speech is widely accepted in the literature, though perhaps in different degrees and under specific conditions. Additionally, and possibly specially after Austin’s *How to do things with words* (Austin, 1975), harmful speech is conceived not only as speech that instigates a mischievous act, but also as speech that may be harmful in itself (Greenawalt, 1989;

Haworth, 2007, Parekh, 2017; Crisp, 2019; Levy, 2019; Etzioni, 2019; Howard, 2019; 2021; Reid, 2020). Some authors additionally consider that speech that fails to express a genuine opinion should not fall under free speech protection (Shiffrin, 2014; Bell, 2021). Finally, it has been argued that speech that instead of intending to contribute to the collective search for truth seeks to produce unsubstantiated doubt should not fall under free speech protection either (Lavik, 2016).

Though using different terminologies, there is an overall consensus that not all apparently harmful speech is actually harmful. We must differentiate between speech that is somehow offensive and speech that produces harm. Dangerous, abusive, harmful and hateful speech are forms of speech which cause harms. There are many different ways in which speech can be harmful, for example, by instigating mischievous acts, by insulting or demeaning the present listener or others, by harming the conventions that allow individuals to trust each other, or by harming democracy. Nonetheless, scholars suggest that there is a second category of suspicious<sup>18</sup> speech, that is offensive speech which ultimately is harmless.

For example, Bell (2021) claims that no matter how offensive harmless speech may be, it should be protected. Harmful speech and speech that fails to express a genuine opinion, on the other hand, do not deserve free speech protection.<sup>19</sup> Dangerous speech, that is, speech that unjustifiably endangers others has also been argued to not warrant free speech protection (Howard, 2019; 2021). Brettschneider (2012) argues for a less restrictive regime where almost every utterance except for direct threats are under the protection of freedom of speech, but this suggestion does not ultimately cover all the utterances which harm or endanger others. There is no reason why threats should be sanctioned while other forms of speech that harm or endanger are protected. Threats hold no special status over other forms of dangerous speech, and thus they should not be differentiated.

The difference between offensive but harmless speech and harmful speech can be illustrated with a thought experiment. For example, let us imagine that a person, Randal, utters a racist

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<sup>18</sup> I call suspicious the speech that is suspected of being harmful. The suspicion can be confirmed in which case the speech is indeed harmful or dangerous speech, or unconfirmed, although potentially still offensive speech.

<sup>19</sup> “an opinion or viewpoint should not be restricted, no matter how offensive, unless it is also harmful. Harmful speech that does not convey an opinion or viewpoint, however, generally will not deserve protection. Moreover, the means of conveying even an opinion or viewpoint can justifiably be restricted if it risks significant harm to nonconsenting others (the harm principle), and should be so restricted to the extent the restriction does not risk more harm than would occur in its absence” (Bell, 2021, 178)

slur against people of color. In this case, there is a group of people of color and whites who strongly believe in the liberal democratic values, including diversity and equality. This group is harmed by Randal's utterance, either because it affects them directly as individuals, or because it goes against the democratic values that are central to their view of society. In a different scenario, Randal tells the same group, where all the members of the group are wearing the same shirt, that he thinks that the shirt is aesthetically ugly. They may all take offence that Randal tells them that the shirt is ugly, but they are not harmed.

In the first case, where Randal is uttering harmful speech, it would be reasonable to claim that his utterance is not protected as free speech and is subject to being sanctioned. In the second case, Randal could perhaps be more sensitive in communicating that the shirt is ugly, because the people are offended, but it is difficult to make a case that this would amount to harmful speech which is subject to being restricted.

The determination of whether an utterance is harmful will always be case-to-case. For similar reasons than the ones explored in Section 3.2.4., there are empirical limitations to assess all utterances emitted. To do this in a proper way, a well-established procedure should be developed and implemented. This goes beyond the remits of this thesis, but whichever the details of this procedure, they should be in accordance to the justice systems within liberal democracies.

Dangerous speech falls outside of free speech protection when it is indeed dangerous (it can cause harm). Does this mean that the harm that dangerous speech can cause has to occur to the intended audience of the speaker? Imagine that hateful groups have effectively been 'driven underground' and that the listeners of these hateful speakers are others who hold the same opinions. Additionally, they are honest in their promises and have promised to never share anything that has been said with anyone outside of the group. Because they share the same views and opinions, it could be argued that there is no apparent harm being produced, and because they will not share what is said, there is no risk that an outsider will be hurt. We can further imagine that even though they hold the most hateful views, all of the members of the group are pacifists. This means that they will not harm others in any way. It could be then argued that this speech is not dangerous after all, because apparently no harm can be produced among these peaceful like-minded private individuals. In this context, speech that is otherwise considered dangerous is harmless. However, though they are not directly offended or harmed by the speech that is being uttered, the harm to liberal democracy and its ideals remains. In

addition, it is hard to imagine that the speech shared within this group will not reach anyone outside of the community, even if none of them shares the content. For example, hackers, by passers or infiltrators can access the group and its contents intentionally or by accident. Finally, the potential that their underground speech is made mainstream is itself dangerous.

### 3.2.5. *What if some legitimate speech gets suppressed?*

A practical objection to limiting free speech concerns the suppression of some legitimate speech, for example, humor. What this objection points out is that if we ban some forms of speech, for example racist speech, it would be inevitable that some legitimate speech that is under free speech protection, for example humoristic representations of racists (cf. Shiffrin, 2014) would be censored due to the practical difficulties of implementing free speech restrictions and sanctions (Warburton, 2009; Brettschneider, 2012; Llansó, 2020).

This objection is particularly difficult to overcome. It entails the foreseeable consequences of any measure that we could possibly implement intended to control speech that is outside of the protection by a free speech principle. This concern emerges given the conditions that we can expect in societies and persons today –the current state of technologies, instability of some democracies, foreseeable partiality and/or biases of ‘speech arbiters’ etc.–. There are three difficulties raised by this objection that I will address.

First, it is difficult to identify all possible and all emitted utterances which fall under the category of dangerous or harmful speech. Indeed, speech is determined not only by its content but also by its context, which means that we cannot determine what a certain utterance means only by looking at what it says, we also need to look at the context in which it was uttered. As a consequence, there is a need to examine utterances case-by-case to determine whether they are harmful or not (Mill, 2015a; Haworth, 2007; Brettschneider, 2012; Halliday & McCabe, 2018; Howard, 2019; Reid, 2020; Bell, 2021).

Humor is a perfect example where unfair censorship may occur. For example, let us imagine that a person, Mary, posts on a platform a statement which was meant to emulate a racist person’s beliefs for the sake of being critically ironic. If the platform automatically eliminates her post because it contained a combination of words which are typical of racist speech, it is being unfair, and censoring Mary. The question about the limits of humor is not the one being addressed here. However, I am referring to situations in which the speaker, in this case Mary,

has somehow made it clear that she is being humoristic or ironic with her utterance (Shiffrin, 2014). It is for this reason, since it is clear that she is not emitting racist utterances but mocking people who do, that there is no doubt that her speech is legitimate. The only reason which would make it reasonable to somehow sanction Mary would be that her irony is in fact harmful. The fact that some utterance is humoristic does not necessarily mean that it is harmless. As said before, offensive speech is acceptable, but not speech that produces harm.

Second, a task of analyzing case by case all utterances emitted requires tremendous efforts. The feasibility of having, on the one hand, enough “speech arbiters” is limited<sup>20</sup>. Additionally, the feasibility that all of these “speech arbiters” are reasonably well-trained in speech matters, so that their judgement will be fair, unbiased and impartial, is reduced and depends on a lot of factors. To make this task more approachable, it has been suggested (Ramachandran & Feamster, 2006) that artificial intelligence (AI) would make this task easier online. But though technologies have become more sophisticated in the last years and continue to become so every day, the core problems of filtering remain (Llansó, 2020).

AI is far from being unbiased; it has been pointed out that algorithms and AI can be affected by the biases of the data sets it has been given to train, or by the biases of the programmer (for example Nelson, 2019; Noseworthy, 2020; Daneshjou et al, 2021). AI learns from data sets, which in this case would include a lot of human text which would be almost inevitably biased. Furthermore, it is not unthinkable that, if an AI is programmed by someone who holds hateful views, the AI can become hateful itself. Further, though AI would contribute to the requirement of a case-by-case approach, it is difficult to imagine today that technologies would solve a problem that requires a certain degree of specialization in philosophical thought and that is still under discussion, such as the boundary between harmful and harmless speech.

The third and final difficulty to be discussed here is that we can reasonably expect that there will always be utterances that escape any form of judgement. This includes harmful speech that is not under free speech protection. The fact that utterances can escape the judgement of parties that were not intended to hear or see them is a valuable consequence to the fact that, in principle, liberal democracies are not surveillance societies where all of our speech is somehow heard or seen by third parties for institutional evaluation.

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<sup>20</sup> Experts who can determine whether or not some speech is harmful.

Because freedom and autonomy are necessary for our proper development as human beings (Locke, 1943; Mill, 2015a; Bunge, 2009; Berlin, 2017), if all of our speech were subject to such surveillance and control, we would not be able to thrive. Humans who are deprived of freedom will not lead a fulfilling life. The act of surveillance affects the choices that individuals make, jeopardizing their freedom (DeBrabander, 2020). For this reason, liberal democracies are incompatible with surveillance society. Further, even in a potential or perhaps already existing surveillance societies, it is difficult to imagine that all emitted utterances can be heard or seen by speech arbiters. It would require not only an extensive surveillance infrastructure, but also enough and well-trained arbiters, in addition to somehow making it impossible for ‘blind-areas’ to exist.

Moreover, it is more difficult to prove that the speech that someone has uttered is indeed dangerous speech, than to prove that other performed actions are dangerous, for example, driving a car under the influence of alcohol. Additionally, it is also difficult to prove that the dangerous speech has been uttered at all. In the case of other actions, it is relatively easy to know that something has happened. For example, if Ana goes inside someone else’s house without permission, and makes a mess in the house, it may be difficult to prove that it was Ana who did it, but not that someone went into the house and made a mess. However, speech—at least non-virtual, non-recorded speech—has a different nature.

Imagine that Ana goes to a gathering with a few people: Beata, Cristina and Daria. In this scenario, Ana and Beata hold racist opinions and beliefs whereas Cristina and Daria do not. When Ana utters some dangerous racist claim in front of them, Cristina and Daria are harmed. But because the harm is in this case of psychological nature, it is difficult for Cristina and Daria to convince others that Ana uttered a dangerous racist claim, especially if Beata is trying to persuade the same group that Cristina and Daria are just overly sensitive and Ana did not say exactly what Cristina and Daria claim she said. Even recordings can be problematic given the existence of deep fakes, where one can create false evidence of a person saying something they did not actually say.

### *3.2.6. Is it too much power for unscrupulous politicians to have?*

This objection is based on the assumption that, because politicians can be unscrupulous, they can be uncaring about making the life of citizens better, or at least no one’s life bad, and at the very least, not causing them harm. The worry stems from the idea that what politicians really

want is to acquire power to fulfill their own ends, which goes directly against what politicians should be like in liberal democracies (Locke, 1943, 187). If this supposition is correct, then it is not desirable that politicians in general should have the power to determine where the limits to free speech are (Brettschneider, 2012; Shiffrin, 2014).

This objection assumes that if unscrupulous people became politicians, and if politicians had the possibility to limit speech, they would implement arbitrary limitations. These arbitrary restrictions of free speech would help them work towards their own selfish goals and advantage. Additionally, it would imply that some legitimate political opposition to their actions and rulings would be unfairly silenced. For this reason, politicians should not have the possibility at all to restrict free speech.

There are several matters to consider in this case. First, unscrupulous politicians can pass laws or measures concerning a variety of subjects, so why should we specifically make it impossible for politicians in general to legislate or implement measures concerning certain forms speech and not measures regarding other matters? If we fear that unscrupulous individuals may obtain political power in a society, following this line of thought, we should at least consider limiting the capacity of politicians to legislate about a variety of matters. This may be right.

But why should speech be any different than for example taxes?<sup>21</sup> Unscrupulous individuals who only care about their own economic interests in this case, would perhaps try to approve laws that minimize or eliminate the taxes in a way that benefits them. Should we then limit the possibility of politicians to make laws about taxes too? The same applies to environmental regulations. As it is, unscrupulous politicians may take advantage of a position of power in to eliminate environmental regulations that would otherwise reduce their profits. Possibly, no matter that can be legislated would be free of potentially harming individuals if what is at its core is not a concern for the general wellbeing but selfish interests. But that should not mean that the fact that politicians can be selfish, unscrupulous or even perhaps evil, can be taken as a ground for limiting their capacity to legislate in liberal democracies, for political actors without power to act are pointless. Furthermore, some will have the best interests of the people when they act, and otherwise corrupt authorities should be sanctioned.

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<sup>21</sup> Assuming that taxes are fair and destined to cover the services that the State provides for citizens.

But what if speech regulations are actually different from taxes and environmental regulations and this difference justifies special boundaries that not even politicians can cross? Let us consider this line of argumentation. First, regulations to free speech seek to pose boundaries to the expressive capacity of humans. The objective with this is to prevent that harmful speech is uttered and to sanction it in the event that it is uttered. Secondly, taxes are, broadly speaking, parts of the value of the capital or the income of individuals that either by agreement or imposition are given to the organization of this society (the State). The objective of taxes is to distribute the wealth among the population, by maintaining the common goods and offering public services. Environmental regulations are, among other things, limitations to the amount of emissions that can be produced by individuals or organizations, to the exploitation of the land, animals, or plants, stipulations of how some areas should be preserved or protected, etc. Their objective is to prevent or mitigate a future climate catastrophe.

All three of these kinds of policies impose some form of limitation to freedom. Taxes limit the freedom to possess capital and/or income by demanding a part of this capital or income, environmental restrictions may affect several freedoms, such as the freedom to run business in the most profitable way, or the freedom of movement if the only way to travel to where one wishes to go involves an amount of emission that is not admissible by the law, and restrictions to speech limit our freedom to utter sentences. And yet, it is generally accepted that politicians can legislate about taxes and environmental regulations, even if individually we do not agree with what is finally promulgated. There is no reason why we should think that the fact that laws would limit freedom is a reason to not allow politicians to legislate about a matter, including speech. There are reasons why it is valuable to limit individual freedom, and as said earlier, a fundamental one for the liberal tradition is harm (Mill, 2015a). The fact that laws can be unfair is another matter, for which we should have other mechanisms to prevent it and for which liberal democracies have mechanisms, even if they may sometimes fail (Levitsky & Ziblatt, 2018).

A further difference might be that freedom of speech is more fundamental than freedom to own property, and that this importance grants it special protection against legislation. Let us concede the point that it may be more fundamental, first because it is crucial for humans to express themselves, and second because we are social creatures that require each other to survive and to do so we have to communicate. However, it is hard to imagine that freedom of movement would not be at least as fundamental. It is also crucial for us to move around freely, to fulfill our needs and interests. Nevertheless, as seen before in the example of environmental



regulations, it is accepted to limit it. But it can be argued that in my example of environmental restrictions, there is not really a limitation to move. In my example there is not really a limitation to the freedom of movement, since what is excluded is not the freedom of movement itself, but the medium we use to get to where we want to go, such as airplanes.

However, environmental regulations can also restrict the access to some areas to protect the biodiversity in them. In addition, we limit freedom of movement under very specific circumstances where there is a potential harm to others. For example, people are not allowed to cross private property without the permission of the owner, and prisoners are not allowed to leave the places where they are being kept. The importance of a certain freedom does not seem sufficient to discard the possibility of creating norms that somehow regulate it under specific circumstances, like when there is a reasonable risk of harm.

Secondly, unscrupulous politicians that behave in such a way in a liberal democracy –only attending to their own interests and ignoring the common good with the result of the promotion of harmful policies– are to be considered corrupt. Moreover, because we cannot in principle prevent corruption, we can assume that liberal democracies should include mechanisms that ensure that corrupt politicians face justice. If the party Yellow promoted a measure promoted to restrict harmless speech that goes against their beliefs because it is inconvenient for them, they should be subject to an investigation of corruption. The members of Yellow should face sanctions for promoting the restriction not only of harmless but valuable speech. But before corrupt politicians have to face justice –if they have to at all– they can do an abundance of harm, which is why it is important to pay attention to dangerous acts, including speech.

Taking that into account, it is natural to wonder if we can explicitly avoid that politicians approve measures that limit harmless speech because it is inconvenient for their own purposes and interests. To start with, if we imagine a reasonably well-functioning liberal democracy, it is difficult to think that authorities would be able to approve a measure that restricts the expression of the views of the opposition of one politician's or one party's interests. In liberal democracies there is a plurality of parties and ideologies with seats of representation in parliaments, where the absolute majority of an illiberal group is unlikely. However, it is not impossible. Therefore, there should be special norms which protect harmless speech while others establish how dangerous or harmful speech ought to be sanctioned, including when the dangerous or harmful speech harms or threatens the democratic system.

If we think of a scenario that is further from the ideal of liberal democracies, it could feasibly occur that the party that promotes such a measure has absolute majority, or that several parties with the same interests unite to approve it. I suggests these special norms that protect harmless speech and sanctions dangerous and harmful speech because, if the scenario I describe is possible –i.e. that politicians who should protect the interests of society as a whole can align themselves to approve clearly harmful policies, then there is a problem with the state of this democracy. A democracy in the strict liberal sense is not a democracy only because of its mechanisms –for example, elections and debates– but also because of the defense of the democratic values of freedom and equality (Rawls, 1996; Dahl, 1998; Mouffe, 2000; Bunge, 2009).

### 3.3. *Limiting speech: the special case of state authorities*

After addressing six powerful objections against the restriction of free speech and showing that they are not enough to justify freedom of speech under all circumstances, I now assess whether or not there are especially good reasons to consider restricting freedom of speech of state authorities.

There are very good reasons to protect freedom of speech. There is no question that in liberal democracies, freedom of speech must be defended. If there is no freedom of speech, individuals are limited in their personal development; they cannot discuss their ideas with others. If there is no freedom of speech, progressing towards the truth is difficult as no alternatives to the assumed doctrines can be discussed.

However, the arguments that are sustained on the optimism that truth always prevails when confronted with error are not as strong as they purport to be. Indeed, truth would perhaps only prevail in all cases if every or nearly every member of humanity had a certain epistemic attitude when navigating the world, which is not the case. Quite the opposite, many choose to believe what benefits them, or choose to believe evidence that confirms their beliefs, even though it has questionable quality, or even conduct ‘scientific’ enquiries, the purpose of which is to produce doubt to what has been well-established with good methods (Conway & Oreskes, 2010; Bardon, 2020). Instead of contributing to the progress in the search for the truth, insisting on error and refusing to change can have the opposite effect and harm the relation that big groups have with the best available knowledge (Tollefson, 2020).

Mill's infallibility argument has been extensively reviewed (for example, Haworth, 2007). A point that I think worth explicitly making here is that rejecting to accept an opinion as valid in a certain context need not mean that someone assumes to be infallible. For example, let us imagine that Steve rejects the idea that climate change exists. He thinks that God made the Earth for humans to live on and that he made it stable. Steve is the greatest representative of this position in the public sphere, so it would be thought of as natural that if there was a debate about climate change to be held on the National TV channel, NTV, Steve should be present.

However, NTV decides against inviting Steve not only because his opinions are not sustained on the best available knowledge, but because, although he has been proven to be wrong, he insists on his opinions and makes up evidence to back them up. NTV has been regulated by the State to not include these kinds of voices. The justification is that if the people invited to NTV do not base their claims on the best available evidence, and on the contrary, do not employ the proper epistemic attitude, they will not contribute to the common search for truth, but harm this common effort by being presented as a good or legitimate option. Some may think that this exclusion is unfair because there are many who think like Steve, and they should be allowed to have a voice.

But if someone is not capable of accepting to be wrong when it is obvious that they are, they are not contributing to the discussion. Neither NTV nor the State are assuming their own infallibility. The criterion is not that someone who does not sustain the perceived truth will not be allowed to participate in the program, but that to have a space on NTV, they must have the proper epistemic attitude to contribute to the discussion for the search of the truth. Those who, on the other hand, harm it, are excluded. In this manner, we can, at the same time, assume that human methods are fallible, and we might find a better way to understand the world and move closer to the truth, but still restrict some speech in some contexts.

As it is, the reason to restrict speech is harm. Harm need not be done to people directly, it can be done to institutions, such as democracies, or projects, such as the common search for the truth. The difficulty of determining whether or not harm has been done in a conclusive way, so that there is no doubt that there is a wrong being committed, remains. To overcome this difficulty, I think that a procedure which is fair and coherent with liberal democracies should be established. Such a procedure should be developed in a different work.

Should one then also restrict the freedom of speech of casual speakers who commit similar actions? I do not think so. Indeed, it is not plausible or desirable to implement a system of generalized surveillance to keep track of the utterances of the casual speakers of a State. Additionally, it is difficult to argue that casual speakers harm democracies or the common project for the search of truth to the same extent or gravity than speakers in a position of power. The surveillance of citizens is not desirable in liberal democracies. There are many ways in which it could be misused, for instance, to collect information about citizens in a massive way to then manipulate them, in a similar way to the Cambridge Analytica scandal (Granville, 2018, March 19; Meredith, 2018, April 10), or to prosecute citizens for their beliefs if the State takes an authoritarian turn<sup>22</sup>. For this reason, if casual speakers are to be sanctioned for their speech, the case would have to follow the established procedure and receive a proportional sanction to the harm produced.

It is worth insisting that the purpose of protecting freedom of speech is to avoid that the majority or the State could arbitrarily control what individuals can say, in such a way that they are prevented from expressing their opinions. For this reason, it is interesting to focus on the speech of state authorities. On the one hand, by focusing on the speech of authorities we surpass the problem of arbitrarily restricting the speech of casual speakers, because the measures primarily apply to those who have power. On the other hand, we must consider that state authorities have more capacity to harm because they have more capacity to act and make decisions that change the life of every member of a community.

As a result of this particular position, they can also cause a great deal of damage in a State. For instance, it has been widely argued that the speech of politicians can result in a severely polarized society, where the extremes refuse to listen to each other (cf. Hetherington & Weiler, 2009; Parsons, 2010; Lau et al., 2016; Rogowski & Sutherland, 2016; Hannon & De Ridder, 2021), contributing to a state of mistrust and tension among citizens.

Furthermore, because of their special position of power, state authorities also receive more attention from the media, which makes it easier to keep track of their utterances while avoiding implementing questionable surveillance mechanisms. Moreover, there are already plenty of fact-checking services which can help institutions keep track of the potential harms that are

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<sup>22</sup> Cases which are beyond the remit of this thesis.

being performed against democracy, or against the trust mechanisms between individuals (cf. Shiffrin, 2014).

Regarding the objection of context and content, state authorities always speak to the public when they speak as state authorities. For this reason, the difficulty that comes from assessing the harm of the utterance in a specific context diminishes, because the context is fairly stable: it is the public context. Here, political debate should be characterized in liberal democracies by the search for the truth and the common good. If the utterances harm these objectives, then they are subject to being sanctioned.

What if state authorities move their harmful discourse underground because they are sanctioned when expressing it in the public context? As long as they speak as public authorities and refer to questions that are publicly relevant, their discourse remains public. Moving their discourse to an alternative platform in an attempt to surpass the regulation of more mainstream platforms should not be an option. It is for this reason that speech regulations should not be in the hands of private companies. The CEOs of the mainstream social media platforms were not democratically elected and do not answer to the public (Sloss, 2022). While some attempt to or claim to protect democracy by implementing restrictions in what can be published in their social media, some do not. Because of this variability, this should not be up to CEOs to decide. We cannot rely on the good will of private individuals for State problems, but design well-founded general policies.<sup>23</sup>

Finally, as I briefly discussed in Section 2.1., state authorities have special duties to those who are under their power. For this reason, when they go against their duties<sup>24</sup>, they are not only harming the mechanisms of trust between individuals, but also the trust in the democratic system and thus in democracy itself. Because they can harm democracy so deeply, we need to be especially cautious when it comes to state authorities' speech, assess whether or not they are committing harm and sanction accordingly.

It is not particular contents of utterances that should be sanctioned, but the fact that uttering these contents causes harm in particular contexts. Political speech ought to be protected. Ideally, political speech should contribute to the search for truth and for the common good. Minimally,

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<sup>23</sup> In Chapter 6 I discuss the implementation of my proposal for regulation in the real world.

<sup>24</sup> I suggest that state authorities have a special duty to communicate truthfully in Chapter 5.

political speech cannot produce harm. Political speech is also subject of being unprotected and sanctioned when it not only does not contribute to the search for truth but causes harm.

#### 3.4. *Conclusion: The case for limiting freedom of speech for political authorities*

In this chapter I have presented some of the arguments sustained to defend the protection of freedom of speech in the liberal democratic tradition based on J. S. Mill's original contribution. In particular, I presented some epistemic, socio-political and moral arguments.

Afterwards, I have presented and assessed six objections against the restriction of freedom of speech. Some of the objections are primarily empirical, while others are conceptual. I conclude in Section 3.3. that, while there are good arguments for protecting freedom of speech and that the objections against its restriction are robust, we still have good reason to restrict freedom of speech in some cases.

The cases in which we have good reason to restrict freedom of speech are limited to the utterances which somehow produce harm to others or to crucial institutions and mechanisms<sup>25</sup> in liberal democracies. However, because of the empirical limitations, I argue that we have especially good reasons to restrict the speech of political authorities. I argue that, because state authorities are public figures, when they speak as public authorities, the empirical problem of the surveillance explored in Section 3.2.4. is overcome. We need not implement special surveillance systems –which are questionable in liberal democracies– for the speech of authorities, because they already speak to the public. Furthermore, there is some stability in context which makes the task easier.

Additionally, another empirical worry is overcome. The objection explored in Section 3.2.5. manifests a reasonable worry that state authorities may be unscrupulous and restrict the speech of opponents for their own benefit. Here, instead of arbitrarily limiting the speech of casual speakers, it is the harmful speech of authorities which is subject to restriction in order to protect the values of democracy. Moreover, because they are in unique positions of power, they can cause more harm than casual speakers. Not only are their voices amplified by the media, but they also have the power to make decisions about issues that matter to all the members of a community. Finally, I argued against the possibility of state authorities going 'underground' by

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<sup>25</sup> For example, the mechanisms which allow us to trust each other, necessary to live in community.

using 'alternative' social media and remaining state authorities. This raised the issue of the fact that some social media platforms restrict some speech while others do not.

For these reasons, I conclude that being especially attentive to the speech of state authorities and restricting or sanctioning it when they cause harm is required to keep well-functioning democracies.

#### 4. Lying, misleading and bullshitting

In her recent work, “A Philosopher Looks at Digital Communication” Onora O’Neill claims that

Communication of all sorts is likely to be seen as ethically defective if it violates prohibitions on lying, perjury, deception, defamation, fraud, cheating, bullying, manipulation, intimidation, plagiarism or if it breaches privacy or confidentiality. Conversely, communication is likely to be seen as meeting ethical requirements insofar as it is honest, truthful, civil, courteous, trustworthy and honours promises. (O’Neill, 2022, 29-30).

Communication is likely to be seen as both ethically and epistemologically inadequate if it misleads, misinforms, spreads propaganda or disinformation, if it withholds, ignores or falsifies evidence, or if it spreads false, inaccurate, evasive or exaggerated claims. And it is likely to be seen as epistemically acceptable insofar as it respects evidence, aims for accuracy and avoids evasion and exaggeration. (ibid., 30).

This chapter is dedicated to examining to what extent and in which cases some of what O’Neill depicts as ethically and epistemologically inadequate communication is harmful and should thus not be protected by a free speech principle. In the previous chapter, I assessed the possibility of limiting freedom of speech. After examining six powerful objections, I concluded that it is required to do so in some cases (Mill, 2015a; Greenawalt, 1989; Haworth, 2007, Parekh, 2017; Crisp, 2019; Levy, 2019; Etzioni, 2019; Howard, 2019; 2021; Reid, 2020).

In this chapter, I will move on to the analysis of the particular cases of lying, misleading and bullshitting. First, I will explore the categories of lying, misleading and bullshitting and determine their differences, but also how they overlap. It is worth noting that in this exercise, I will emphasize the fact that it can be faultless to claim something other than the truth, that is, to make statements which are false, inaccurate or exaggerated, so long as the speaker believes that what she says is the truth (Stokke, 2013b; Shiffrin, 2014; Svendsen, 2022). Nevertheless, there are cases in which uttering something other than the truth can be problematic, regardless of the beliefs of the speaker, and these will be discussed and assessed in Chapter 5.

In this chapter, I assess whether or not it is problematic that speakers utter something other than what they believe to be the truth about something. If it is, then they are subject to being excluded



from free speech protection. Thus, these speakers can be sanctioned. However, it can be difficult to assess the beliefs of speakers regarding the truth of a question under discussion, and for this reason, there are practical problems of how this limitation and potential sanctions can be implemented. For this reason, I will focus on the consequences on free speech and communication of lying, misleading or bullshitting by public authorities. State authorities are individuals who have made a commitment to attend to the questions which deeply affect citizens' lives. Even more so, I will specifically focus on the cases where there is scientific evidence and consensus beyond reasonable doubt about the truth of a question under discussion (Stokke & Fallis, 2017). In particular I will refer to the question of COVID-19.

#### *4.1. The difference between lying, misleading and bullshitting*

Lying is a common phenomenon in everyday life, but what does it actually mean to lie? According to traditional definitions, to lie involves the speaker saying something she believes to be false because she has the intention to deceive a listener (Augustine, 1952). However, the scholarly discussion has questioned this traditional definition in the last years (cf. Stokke, 2013a; 2013b; Shiffrin, 2014; Carson, 2016; Stokke & Fallis, 2017; Sarajlic, 2018; Svendsen, 2022). Indeed, scholars agree that a lie need not necessarily be a false statement nor involve an intention to deceive a listener, though the intention to deceive is present in many lies (Stokke, 2013b; Shiffrin, 2014; Svendsen, 2022).

For example, Shiffrin proposes the following definition: “a lie is an assertion that the speaker knows she does not believe, but nevertheless deliberately asserts, in a context that, objectively interpreted, represents that assertion as to be taken by the listener as true and as believed by the speaker” (Shiffrin, 2014, 116). In this sense, what makes a lie a lie is that the speaker does not believe that the statement that she is uttering is true in a context where the listener reasonably expects the speaker to tell what she believes is the truth. Stokke and Fallis characterize this as providing with something other than what is believed to be true in a context where several persons are discussing an issue relevant for everyone. They refer to this as a question under discussion (QUD) (Stokke & Fallis, 2017).

Lying is clearly not merely a false statement. In some cases, lies may even be true statements that the speaker believed to be false when she uttered them. A lie is a statement that a speaker utters while she does not believe it to be true, in a context of communication where it can reasonably be expected that both the speaker and the listener seek to obtain the truth about an

issue. This does not require that the speaker has the intention to deceive the listener. Thus, I do not use the traditional definition, where a lying includes the intention to deceive. The reason for this choice is that there are cases in which the liar has interests other than deceiving the immediate listener, the so called flat-out lies.

A variation of the case presented to defend this idea is the following (Stokke & Fallis, 2017; Svendsen, 2022). Imagine that Sophie has stolen her classmate's Thea lunch. Both Sophie and her teacher, Peter, believe it to be a true statement that Sophie has stolen Thea's lunch. Sophie additionally believes that Peter is convinced that she has stolen the lunch and thus cannot deceive him, and thus does not intend to deceive him. However, she knows that the rules of the school are designed in such a way that it keeps in mind that humans can be fallible or biased, and the sanction will either not occur or be milder the accused person claims her innocence throughout the whole process. Sophie wishes to avoid the sanctions associated to stealing Thea's lunch. Therefore, she chooses to lie to Peter and claim that she did not steal the lunch, a statement which she does not believe to be the truth about the question under discussion. Here it must be highlighted that her intention is not to deceive Peter and make him believe that she was not the one who did it. Her intention is to avoid the sanction.

It may be true that Sophie is somehow deceiving or "cheating" the system because, she indeed is guilty and intends to escape a sanction by claiming her innocence. What makes this claim of innocence a lie is not the fact that she wants to deceive Peter. What makes her statement a lie is the fact that she believes is to be false that she did not do it, but still claims it to be the truth when she is questioned about it and expected to tell the truth. Lying is a phenomenon that goes beyond the potential interest that a liar may have in deceiving a listener. The wrong of lying lies, on the other hand, on that the speaker is abusing the mechanism which allows speakers to rely on each other's testimony (Stokke, 2013b; Shiffrin, 2014; Svendsen, 2022). It may be the case that for Sophie it is irrelevant to deceive Peter, and that her sole interest is to avoid the sanction. Additionally, in this case, Peter is not deceived by Sophie. However, the wrong that is committed here is that Peter will not be able to trust Sophie when he has witnessed her lying in this manner. Whether or not we are deceived by liars, and whether or not they attempt to deceive us, the wrong of breaking the trust in a community remains. Deception can make the wrong of lying even worse, but it is not the characteristic wrong of the phenomenon of lying.

While the traditional account of lying was limited in explaining flat-out lies where the speaker can have interests other than deceiving the immediate listener, this conception of lying works

conceptually because it can explain them. Additionally, it allows to avoid the characterization of irony or jokes as lies. The speaker may utter a statement she believes to be false when being in a stand-up comedy show, but she is not expected here to contribute to the truth about a question under discussion but to make others laugh. In irony and comedy, the context is different, and the speaker should provide with some form of expression (for example, with non-verbal language) to show that she does not mean what she is saying. Furthermore, the speaker will clarify the joke if the listener does not understand that it was not a statement to be taken literally. The liar, as opposed to the comedian, intentionally utters something she believes to be false while she is in a context where she is expected to contribute with the truth.

As opposed to lying, Harry Frankfurt defines bullshit as “short of lying” (Frankfurt, 2005, 19). This means that bullshitting does not necessarily involve that the speaker says something that she believes to be false when expected to tell the truth; a bullshitter is indifferent regarding the truth or falsity of her statement. And as opposed to the liar, the bullshitter does not intend to deceive, but wishes to represent herself in a certain way to her audience. What is said does not matter as much as the image she intends to portray before the listeners.

The bullshitter is, then, indifferent towards the cooperative project of reaching truth in a communicative context. This does not necessarily mean that she is completely unconcerned with the truth (Carson, 2016), or that she cannot lie and bullshit at the same time (Stokke & Fallis, 2017; Carson, 2016). A bullshitter may care about the truth value of her statements, but she remains a bullshitter because of her motivation. If a bullshitter wants to provide an image of herself as an honest person, she may avoid uttering statements she believes to be false because she knows that what she says may be subjected to fact-checking. She does not care about the collective pursuit of the truth, but about giving an impression about herself. In this same way, a bullshitter may utter a statement she believes to be false in a context where she is expected to tell the truth. In this strict sense, she is lying. However, she remains a bullshitter because the lie is not told to deprive others from accessing the truth, but because she wants to mislead others in what they should think of her.

Bullshit and lying are not incompatible phenomena, on the contrary, they can happen at the same time (cf. Carson, 2016; Stokke & Fallis, 2017). This does not entail that all lies are bullshit or that all bullshit are lies. Lies and bullshit are related phenomena which differ in the objective of the speaker in communicative contexts where it could normally be expected that both speaker and listeners wish to approximate the truth.

For example: was President Jair Bolsonaro lying or bullshitting when he claimed that the vaccines against COVID-19 could turn people into alligators? It is most likely that he was bullshitting. He later clarified that he did not actually *mean* that people could turn into alligators. He wanted to joke about the fact that there had not been, according to his alleged beliefs, enough time to know the medium and long-term consequences of the vaccine. Under this understanding, being turned into an alligator by the vaccine was not impossible, because we do not know the consequences of the use of the vaccine. It is a clear example of bullshitting because he did not care about the truth value of the statement “the vaccine against COVID-19 will turn people into alligators”, but had an interest in presenting himself as someone who did not believe that the pandemic was a major threat to the health of people, or in persuading others into not taking the vaccine.

In conclusion, we lie when we say something that we do not believe to be true in a context where we are reasonably expected to say what we believe to be true, and we have an interest in the truth-value of the statement, specifically, we have an interest in saying something we do not believe to be true. On the other hand, we bullshit when we do not have a particular interest in whether we believe that what we say is true or false, but we have an interest to create an image about ourselves or our position with respect to a topic, without adding anything to the question under discussion.

For example, let us imagine that the speaker is interested in showing herself as someone who does not believe that COVID-19 has caused a pandemic. It does not matter to her whether she actually believes this to be true or not, but that others believe that she is critical of official media and information. She is not interested in actually addressing the question under discussion, that is, whether the COVID-19 pandemic exists or not, but to appeal to sympathizers who actually do not believe it is real. When asked about the COVID-19 pandemic, she says “I have not seen anyone get sick. I have not met anyone who has had the virus or heard of anyone who has died”. Even if confronted with facts, she will remain repeating this same statement so long as it is in her interest to portray herself in this way. She does not care about the facts, she may even know herself about people who have been sick or died, but this is irrelevant for her communicative goal.

On the other hand, misleading is a broader phenomenon than lying and bullshitting. Both lies and bullshit can take part in misleading someone. Misleading is a conversational implicature which expects the listener to deduce something other than what the speaker believes to be the

truth. In that sense, misleading is closely related to lying (Stokke, 2013a). Misleading shares with lying the goal of driving the listener away from the truth in the context where the listener reasonably expected a shared pursuit of the truth between her and the speaker. What is different is that the liar utters something other than what she believes to be true, while the misleader expects the listener to draw a conclusion from the limited information that she provides that is different from what she actually believes to be the truth.

A natural question is whether lying and bullshit are both forms of misleading. Or, if they are not, can one and the same expression involve bullshitting, lying and misleading at the same time? As previously claimed, misleading is defined as a particularized conversational implicature (Stokke, 2013a). To illustrate this, imagine that Sara, Tara and Rose live together. Sara has eaten all the ice-cream that was left in the freezer before Rose comes home. When Rose asks Sara if she has eaten all the ice-cream, Sara does not want Rose to know that she took it. Here she can choose between lying, and saying “No, it wasn’t me”, and misleading, by saying “I’m lactose intolerant”. When she says the latter, she expects to mislead Rose into thinking that it was Tara or someone else who ate it, because she would not take it if she were lactose intolerant.

Now, let us imagine some variations of this example which include lying, bullshitting, or both. First, we can add that it is a lie that Sara is lactose intolerant. In this communicative context, Rose wants to know if it was Sara who ate the ice-cream. It is important for Rose to know the truth-value regarding Sara being the one who performed the action. In this scenario, the truth about the question under discussion is also important to Sara. Rose genuinely wants to know, and reasonably expects Sara to tell the truth. But Sara has her own interests. In this case, Sara thinks that it will benefit her to lie about being lactose intolerant, because this contributes to the question under discussion with the idea that she was not the one who ate it. In the action of misleading, the speaker wants the listener to deduce something other than what the speaker believes to be true, and to do this, she can lie as well. Here, Sara is uttering a lie while misleading Rose into thinking that someone other than Sara stole the ice-cream. In conclusion, both lying and misleading can occur within the same communicative context.

Second, we can imagine that Sara does not really care about the truth or falsity of who has eaten the ice-cream, but that she wants to present herself as someone who follows a “healthy lifestyle” free of snacks like ice-cream. It may be true that she generally is someone who follows a “healthy lifestyle” and does not eat “unhealthy” snacks, but this is irrelevant. When Rose asks

the question, Sara answers “You know the only sweet that I eat is dark chocolate”. Her objective is not to contribute to the question under discussion, but to represent herself as one who lives a “healthy” life. The primary action that she is performing is bullshitting because her objective is to represent herself in this way. But, at the same time, it so happens that Rose is misled into thinking that it was Tara or someone else who ate the ice-cream and that it is false that Sara did it. Does this mean that Sara is misleading and bullshitting at the same time? According to all that has been said, the answer is no because Sara does not care about the question under discussion. She is only involved with the impression that Rose has of her. It is a side effect of Sara’s bullshitting that Rose gets misled, and it happens because Rose actually cares about the question under discussion.

As a consequence, we can say that the “proper” or “pure” bullshitter, liar and/or misleader are so in regard to the context and their intentions. But listeners who care about the truth or falsity of something can be misled by bullshitters, even if the bullshitter herself does not care about the truth or falsity of the question under discussion. Thus, a bullshitter can unintentionally mislead. But on the contrary, someone cannot intentionally bullshit and mislead in the strict sense at the same time in regard to a question under discussion, because a person cannot care and not care at the same time about it. Having said that, if the representation of herself that the bullshitter aims to put forward for the listener is something different than reality, say, that the speaker is someone who follows a “healthy lifestyle” when in reality she does not, then the bullshitter is, in a broader sense, actively misleading the listener. She misleads not because she cares about the question under discussion, in this case, if Sara ate the ice-cream, but because she misled the listener into believing something about her which she does not believe to be true. I call this a broader sense of misleading because whether or not Sara is someone who follows a “healthy lifestyle” was not originally the question under discussion for Rose, but the bullshitter wants it, perhaps implicitly, to be.

Finally, as concluded in the previous section, lying and bullshitting are compatible phenomena. We can thus imagine a scenario where Sara is a bullshitter and uses a lie to convince the listener about a certain representation of herself. For instance, we can imagine that it is a lie that the only sweet thing that Sara usually eats is dark chocolate, and she tells this lie because it serves to her bullshitting purposes. In this example, Sara is lying, bullshitting, and misleading –in the broad sense– at the same time.

First, she is lying about the sub-question under discussion that she does not eat any other sweet than dark chocolate. I call it a sub-question under discussion because it is not the most relevant question which is under discussion in this communicative context, but she is interested in contributing to it because it serves her bullshitting purposes. Secondly, she is bullshitting because she does not care about whether or not the participants of the communicative context find out the truth about the question under discussion (if it was her who ate the ice-cream) but wants to put forward an image of herself, that is, that she is someone who follows a “healthy lifestyle”. Additionally, in this case, it is not true that she does. As a result, Rose is misled about two matters. First, because Rose cares about the question under discussion, she is misled into not believing that it is true that Sara ate the ice-cream (and this is true). However, it is not the case that Sara misled her in the strict sense because she does not care about the truth-value of the question under discussion but, rather wants to put forward an image of herself. Secondly, Rose is misled about the kind of person Sara is, where she believes that Sara is someone who follows a “healthy lifestyle” when she really does not. This may become, implicitly, a relevant question under discussion for Rose, whereas for Sara it is not important that it is true but that others believe it.

The purpose of this example is to show how complex communicative situations may be when misleading, lying and bullshitting are happening at the same time. In such a case it was still possible to differentiate between these three categories. On the other hand, to make sense out of complex communicative situations like the ones illustrated by the example and its variations, it was required to add a conceptual tool to the analysis. This was the difference between a strict and broad sense of misleading.

Hereinafter, I say that a speaker is misleading a listener in the strict sense when the speaker intends that the listener infers something other than what the speaker believes to be the truth about the question under discussion. On the contrary, misleading in the broad sense occurs when the listener infers something other than what the speaker believes to be the truth about the question under discussion without the speaker having a particular interest in the listener doing so.

Listeners are misled in the broad sense because they care about the question under discussion and reasonably expect the speaker to contribute to the shared enterprise to seek the truth about it. Additionally, these listeners are not aware that the speaker is a bullshitter who is neither involved with the truth-value of the question under discussion, nor with the communicative

context that has as its goal to collectively seek the truth. Furthermore, listeners are led to believe something other than what the bullshitter believes to be the truth about the question under discussion. The listeners are involved with the truth and reasonably expect the bullshitter to be involved with as well.

#### 4.2. *What is wrong with lying, bullshitting and misleading?*

Pure lying, misleading and bullshitting are wrong primarily because they go against a communicative ideal in situations where the interlocutors can reasonably expect that all the parties in the interaction wish to pursue the truth about a particular question under discussion. For the purposes of this work, the focus will be on public communicative contexts –in the sense of publicly relevant, and not necessarily where the public is directly addressed. Under this consideration, we can assume that all communication that is publicly relevant –i.e. that involves decisions or actions that affect the majority– is, in principle, a context where all the interlocutors can reasonably expect that all the parts involved are concerned with approximating the truth about a question under discussion.

The only exceptions to this claim are: i) Cases in which avoiding expressing that which one believes to be true avoids a greater evil. Such matters would be the only acceptable issues worthy of state secrecy. ii) When the speaker is forced to speak what she believes to be true about a question under discussion through violent means such as torture or coercive manipulation. Regardless of the importance of a question under discussion for the public, a speaker may generally be morally excused from not contributing to the pursuit of the truth about the question under discussion when she is being forced to it. iii) When the question under discussion belongs to the private life of a public person and is irrelevant to the life of the majority –nothing of importance changes for the life of the many whether they acquire or not this information. iv) If the context allows for it, (i.e. the listeners are fully aware that the person is being ironic or appealing to humor) the speaker is excused to tell something other than what she believes to be true.

Since in the public communicative context a listener can reasonably expect that a speaker will contribute to the pursuit of the truth regarding a question under discussion, it is wrong, in principle, that a speaker in this context misleads, lies or bullshits to the listener, because it breaks the trust in the communication (Shiffrin, 2014; Svendsen, 2022), and damages the legitimacy of the public sphere as a place where we are supposed to search for the truth together,



as described by Mill (Mill, 2015a). In other words, “Lying and bullshitting are both ways of subverting the process of sharing true information, and hence such modes of discourse are disruptive to our ways of acquiring knowledge from the testimony of others” (Stokke & Fallis, 2017, 307).

The way in which the liar disrupts our ways of acquiring knowledge from the testimony of others is by contributing to the question under discussion, but with something other than what she believes to be true. The bullshitter, on the other hand, subverts the communicative process of sharing true information about a question under discussion not necessarily because she contributes with something which is different than what she believes to be true; in fact she may not contribute to it at all. Indeed, she is not interested in directly addressing the question under discussion, because she is not interested in this particular question. Her intention is thus to shift the attention of the listeners from the question under discussion –or what they believe to be the question under discussion– to the question that the bullshitter is interested in discussing. The bullshitter wants to contribute to the question of what kind of person she is, so that the listeners acquire a certain image of her.

The wrong of lying and misleading, in Shiffrin’s words, does not lie in that they have a deceptive effect on the listener (if they do), but “in their abuse of the mechanism by which we provide reliable testimonial warrants, a mechanism we must safeguard if we are to understand and cooperate with one another and to achieve (our mandatory) moral ends” (Shiffrin, 2014, 116). In contrast, the wrong of bullshitting lies in that the bullshitter takes away the attention from a relevant question under discussion which is of interest to the public because it involves public matters, to a question which may only benefit the bullshitter, that is, that others believe that she is a particular kind of person. As a result, the relevant question under discussion remains unattended in the public context, with the consequences that this may involve.

An additional point is that it has been thought that lying is morally worse than ‘merely’ misleading (Stokke, 2013a). However, we have no reason to believe that misleading is morally better than lying. For example, in the ice-cream example used in section 4.2., Sara would be equally guilty of deceiving the listener whether she chose to lie or to mislead, and she would be equally abusing the mechanism by which the listener can reasonably expect to receive reliable testimonial warrants. Hence, there is no significant moral difference between lying and misleading.

Finally, a speaker may be excused if she contributes to a question under discussion with a statement that she believes to be true but turns out to be false. The reason is that the wrong of lying, bullshitting and misleading is not the fact that they express false statements, if they do at all, but their disruption of the communicative context and the ideal of exchange of testimony among speakers and listeners when addressing a question under discussion. Whether or not the speaker is excused for uttering a false statement when she believed it to be true depends on how acceptable it is for her not to be informed about the issue she is contributing with<sup>26</sup>.

#### 4.3. *Freedom of speech and lying, bullshitting and misleading*

As explored in Chapter 3, one of the traditional Millian arguments offered in the defense of free speech is the contribution to the common pursuit of truth. The reason why it is generally accepted to restrict the protection of an utterance as free speech is the harm or potential harm produced to others. Given the nature of lying, misleading and bullshitting, “as subverting the process of sharing true information, and hence such modes of discourse are disruptive to our ways of acquiring knowledge from the testimony of others” (Stokke & Fallis, 2017, 307), it is reasonable to explore the question of whether or not it would be justified to provide them with free speech protection.

First, if lying, misleading and bullshitting intentionally disrupt the common pursuit of the truth about a question under discussion, then they are phenomena which go against the purpose of the free speech principle. Free speech has an epistemic justification, that is, to facilitate the growth and diffusion of knowledge within a community which should lead to greater human development (cf. Halliday & McCabe, 2018, 71). Lying, bullshitting and misleading are thus incompatible with the ideal that underlies a free speech principle.

Second, if lying and misleading harm the mechanism which allows individuals to provide and receive testimonial warrants which can be trusted, then they are harmful forms of speech. Not necessarily because they harm individuals per se –although they also might–, but because they harm a crucial mechanism that we need to successfully cooperate in society. It is mandatory to have a reasonably high level of trust among individuals for a society to make progress in aspects that are crucial for the well-being of the majority.

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<sup>26</sup> I expand on this in Section 4.5. and in Chapter 5. In Section 4.5. I address the wrong of candidates or state authorities lying, misleading and bullshitting. In Chapter 5 I address the special duty that authorities have regarding communication to the public.

A foreseeable objection to this point is to ask whether or not the mechanism is harmed if the liar or misleader is never caught. To lie and to mislead are to tell a listener or lead a listener to believe something other than that which the speaker believes to be true. In this sense, if the listeners never find out that the liar has lied, the mechanism could be considered to not result harmed because the listeners were not aware that the mechanism has been violated in the first place, and they remain trustful of it. However, whether the listener is aware or not that the mechanism has been violated, it has in fact been violated. The fact is that the liars are abusing the trust of the well-intentioned listeners who expect the speaker to truthfully contribute to a question under discussion. When the listener becomes aware, the harm is only greater because then she learns that she cannot always trust speakers, and thus trust among individuals is undermined.

On the other hand, bullshitting does not necessarily harm the mechanism itself, because pure bullshitting –when it completely ignores the truth about the question under discussion– does not contribute to the question under discussion. Therefore, bullshitting does not break the trust in the mechanism which ensures that listeners will obtain reliable testimonial warrants because no relevant testimonial warrant has been provided. However, bullshitters do subvert the process of sharing true information in a different way than lying and misleading.

Thus, if there is harm in bullshitting, it lies in the fact that it draws the attention away from the question under discussion, which remains, for the time being, unattended. As a result, the process by which a community seeks the truth –or the most correct thing to do– about a question under discussion is either slowed down or even halted. In this way, bullshitting harms the ideal of the process of sharing true information or relevant testimonial warrants by abruptly disturbing it. Additionally, some questions under discussion are time sensitive. In these cases, the harm that bullshitters cause by shifting the attention elsewhere may be fatal for the progress towards the truth by the community, or to the decisions that will prevent harm or bring well-being for the many. Alternatively, in especially time-sensitive matters, the result can be harm. For instance, delaying the response to a pandemic by shifting the attention to whether or not someone is a patriot by claiming that a virus comes from a Chinese laboratory.

Hence, both because lying, bullshitting and misleading go against the ideal behind the justification of free speech, which is central for democracies, and because they cause harm to the communicative ideal between individuals, it is reasonable to restrict the protection of such phenomena by a free speech principle. This does not mean that lying, bullshitting and misleading should be strictly and always prohibited. It means that speakers have a negative duty

to avoid lying<sup>27</sup>, bullshitting, and misleading, in the public context when discussing publicly relevant questions in liberal democracies to protect democratic cooperation and the search for the common good. The positive duty of telling the truth about a question under discussion is too demanding for casual speakers –i.e. plain citizens– who should have the option to omit referring to a question under discussion as they –generally– do not have special powers in the decision-making process.

Furthermore, we should not necessarily aspire to a penal prosecution and sanctioning of lying, bullshitting, and misleading in the public context, specially not for casual speakers. These questions of whether or not casual speakers should be sanctioned for lying, bullshitting or misleading, and if so, how should they be sanctioned, are complex and deserving of attention, but this is not my task here. The problem at hand in this thesis is not the speech of casual speakers, but of speakers who have special powers in a liberal democratic State; more specifically, state authorities. Under this consideration, I argue that because they have special powers, these speakers have special –and stricter– duties regarding how they communicate in the public context.

#### 4.4. *When state authorities lie, bullshit, or mislead about matters of public interest*

When state authorities face the public, they do so as state authorities and not private individuals, and thus we expect them to truthfully contribute to the question under discussion. Nevertheless, that authorities lie, bullshit and mislead when they address the public in the public context is sadly a well-known fact in our times<sup>28</sup>. As a result, fact-checking services are becoming more and more popular (Juneström, 2021), and even institutions such as the World Health Organization (WHO) have developed their own services of communication to fight against disinformation in the media during the COVID-19 pandemic (Horton, 2020).

Lying, bullshitting and misleading are used widely to obtain approval from citizens or to distract the attention from something that is inconvenient for the interests of a state representative. A

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<sup>27</sup> Except in the cases discussed in Section 4.4., where a speaker may be excused for not expressing what she believes to be the truth about a question under discussion.

<sup>28</sup> For example, during the campaign that took place during the last Norwegian parliamentary election in 2021, a sign stood in front of Oslo’s central station with propaganda of a conservative party named “Demokratene”, stating “Det finnes INGEN klimakrise”. The sign stood in one of the most transited places of Norway’s capital for several weeks, even though there is now a greater than 99% consensus on human caused climate change in the peer-reviewed scientific literature (Lynas, Houlton & Perry, 2021). Though this party does not have any representatives in Stortinget, cases like these are worth paying attention. In Chapter 2 I accounted for some of the claims of actual state authorities that exemplify this point.

further problem involved is that by doing this, they knowingly or unknowingly take advantage of the fact that people's political beliefs are rather affective- and identity-based, in addition to not stable and consistent, instead of cognitive- and evidence-based (Hannon & de Ridder, 2021).

However, it may not be completely clear whether candidates and state representatives are lying, misleading or bullshitting with regard to a question under discussion, or if they "just" honestly hold false beliefs. For this reason, we can only be sure that a candidate is lying, misleading, bullshitting, or, on the other hand, that she is inexcusably ignorant, when it comes to matters about which there is substantial scientific evidence that without a doubt gives us a reasonable amount of certainty regarding the truth<sup>29</sup> of a question under discussion.

#### 4.5. *Lying, bullshitting and misleading about matters where there is enough scientific evidence*

When state authorities speak in the public context about a question under discussion that is of public interest, and, moreover, when there is strong scientific evidence about this particular matter, it is difficult to believe that they are excusably unaware of it. For example, we cannot require state authorities to know the detail of the mechanisms behind the technologies in vaccines, but we can reasonably expect that they do not believe that they can turn people into alligators if there has not been one scientifically recorded case in history in which a human being has turned into an alligator, or any other animal for that matter, or that a vaccine has transformed a human being or any other species into a different species. We can also expect them to have heard about the potential severity of a public health risk that has been the center of attention worldwide for months at least once<sup>30</sup>, and that reports concerning the possibility of pandemic outbreaks have been common since the 2000s<sup>31</sup>.

Therefore, if state authorities, who are making decisions about matters which not only have a robust amount of scientific evidence behind them, but also are a matter of life and death for the

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<sup>29</sup> Here truth means approximation to the truth or what our best scientific studies, theories or models believe to be the truth about something.

<sup>30</sup> On March 16<sup>th</sup> of 2020, ex-president Donald Trump said, "We have a problem that a month ago nobody ever thought about" (Kessler, Rizzo & Kelly, 2020, 256). COVID-19 had been at the center of public attention since December 2019.

<sup>31</sup> i.e., for example, Commission of the European Communities, 2004; WHO, 2009; DHSSPS, 2011; Sundhedsstyrelsen, 2013; Ministério da Saúde, 2014; FHI, 2014; Folkhälsomyndigheten, 2019.

people who will suffer the consequences of the decisions taken by these decision-makers, lie, mislead or bullshit, or even are ignorant about these matters, they are committing serious harm. Let us just remember the case of Bolsonaro and the “irony” of the alligators. When the vaccines against COVID-19 were ready to be massively distributed, the pandemic had been around for a while. It was clear for the world of science that there was a virus different than the virus that causes the flu, that the disease had a different symptomatology, and that it had a higher mortality rate (cf. Alizadehsani, 2021). But scientists can only make recommendations; it is state authorities who make decisions. Here, the harm done by bullshitting is clear. The attention was withdrawn from the question under discussion –what to do about the pandemic, or if taking a vaccine against the virus is beneficial– and shifted to Bolsonaro being a strong man who wants the best for Brazil, and who believes that the pandemic is not real or that it is not as bad as the scientists say it is.

The president of a country making such important decisions ought not bullshit, lie or mislead about a question under discussion where there is a reasonable amount of evidence pointing to how this particular matter is. For example, because of his influence, there is a risk that many would be led to believe that the disease caused by COVID-19 was no more than a little flu at the beginning of the pandemic, because they have been misled into believing that Bolsonaro is a strong man who will protect the country, and thus that he would not expose the population to serious risk. Furthermore, when a state authority or candidate does not get involved with the question under discussion, or is involved with it but only to contribute with something other than what she believes to be the truth<sup>32</sup>, she is harming the trust in the mechanism which allows individuals to provide and receive testimonial warrants which can be trusted more than a casual speaker would.

Certainly, state authorities have a special power and position in the state that involves a certain commitment that they will protect and look after the interests of the people. This means that they make a commitment to be involved with the issues that affect the people; these are the questions under discussion that they vowed to make progress on, which will help to make the decisions that makes the lives of the citizens better, or at least not bad, and at the very least not

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<sup>32</sup> There are two themes that can be raised regarding this point. First, how well informed should a state authority be about an issue? Can someone be guilty for not knowing the truth –in the sense previously stated– about something? I address these question in Chapter 5. Second, how much can we trust the scientific results of researchers? Who are the experts that candidates and state authorities should listen to? I will not address these problems in this work, but see, for example, (Lane, 2014; Gundersen & Holst, 2022; Gundersen et al., 2022), who deal with these questions.

harm anyone under their government with their actions. If citizens cannot trust that the people who have the power to make decisions over their lives will be honestly involved with solving the issues that affect them –the questions under discussion that they should be involved with–, the democratic system itself is harmed.

#### 4.6. *Conclusion: the harm of lying, bullshitting and misleading and speech limitations*

In this chapter I have first explored the concepts of lying, bullshitting and misleading, their differences and what they entail. Afterwards, I have discussed the wrong associated with them and concluded, in accordance to current literature (cf. Shiffrin, 2014; Stokke & Fallis, 2017; Svendsen, 2022), that the wrong does not lie only in their potential deceptive nature, but in the damage to the mechanism through which we reasonably expect a speaker to contribute to a question under discussion with reliable testimonial warrants, or with what they believe to be the truth about the matter.

After concluding that lying, misleading and bullshitting can cause harm, I have assessed whether or not they merit free speech protection in the public context about matters of public relevance, before concluding that they do not. However, I have also argued that casual speakers should not be sanctioned for communicating in such a manner, and that it is speakers who additionally have special powers in the public context who should be sanctioned.

I have argued that because state representatives make a commitment to be involved with the issues that affect citizens, they are more susceptible to sanctions following lying, bullshitting and misleading. Indeed, they make a commitment to be involved with these questions under discussion to make progress in the search for the truth about the matter in liberal democracies. This would help to provide clarity to which approaches are best to make the lives of the citizens better or at least not bad, and at the very least not cause them harm. When state authorities lie, bullshit or mislead, they can cause great harm, either because they fail to attend important questions under discussion or because they actively go against the effort to pursue the truth. An example is the case of the pandemic caused by COVID-19 and the increased death-toll associated to the negligence of attending to the issue. In addition, state representatives can produce greater harm to the mechanism that allow individuals to trust each other in society. The reason is that they have special commitments which citizens trust them to fulfill. As a result, they harm the democratic system itself, which relies on this trust.

I also argued that the relevant cases to look at are those that have sufficient scientific evidence behind them so that we have a clear idea of what the truth about the question under discussion is, which helps us see whether the speaker is lying, misleading, bullshitting, or if she is ignorant about the matter. I suggested that it is possible that some speakers are not excusably ignorant, and that those who make a commitment to be involved with particular questions under discussion are an example. In what follows, I will propose a special duty for authorities when addressing and communicating matters of public relevance.



## **5. A special duty of state authorities to inform properly and communicate truthfully**

The purpose of this chapter is to put forward a special duty regarding speech and communication for state authorities. I present what such a duty entails and how it is justified. In the previous chapter, I discussed whether or not it is acceptable to lie, mislead or bullshit with regard to the right to free speech. The conclusion was that, because these phenomena harm the communicative mechanisms which we need to cooperate in a functioning democracy, they fall outside of free speech protection.

However, I claimed that this does not mean that consequences, i.e., sanctions, should follow for casual speakers. Instead I argued that such consequences should follow when the speaker is a person with special powers in a society, and in particular, state authorities. The reason is that state authorities, as a part of their position in liberal democracies, make a commitment to involve themselves with certain issues, namely, those which affect the life of citizens. Thus, lying, misleading or bullshitting not only do they harm the communicative mechanism crucial for cooperation, but also, they further harm the democratic system itself. When state authorities lie, mislead or bullshit, they fail to fulfill their commitment to look out for the best interests of the people, unless they are doing so for a good reason<sup>33</sup>.

The special duty for state authorities regarding communication that I propose can be formulated thus: state authorities ought to communicate with the public as truthfully as they reasonably can. This applies to matters of public relevance in a public context. In other words, state authorities ought to speak truthfully, expressing what they believe to be the truth about the matter and not shifting to a different question. This should be done when making decisions about the issues that they committed to be involved with as a part of their program while in campaign, about any topic that they address to which they have some responsibility as a consequence of the position that they hold in the democratic system (for example, how the public health system works and its current state in the event of a health crisis), or any other topic that they refer to that is of public importance.

There are two components to this duty: an epistemic one and an informative one. First, the epistemic requirement demands that authorities be informed about matters of public importance. Speaking truthfully about something means saying what one believes to be true

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<sup>33</sup> As argued earlier, the only reason that makes lying or misleading excusable is the reasonable expectation that greater harm would follow telling what one believes to be the truth about the matter.

about the question under discussion. However, because state authorities make a commitment to be involved with the matters that affect those they govern, they have to make a greater effort than causal speakers to approximate the truth about the matter. State authorities neglect their position when they are not involved with the truth of the questions under discussion. Therefore, the formulation “as they reasonably can” involves not only that they should say what they believe to be the truth about a matter, but that they should seek to approximate the truth about the question under discussion before making contributions to the discussion.

Secondly, the informative requirement refers to the manner in which state authorities ought to communicate to citizens. To determine the sort of matters that state authorities are required to inform citizens about, I will draw from the idea of a right to know (Watson, 2021). The right to know entails that people have a right to be informed about the issues that affect or concern them. Let us imagine that Mari, possesses information that concerns Knut. It would be unfair and wrong of Mari to keep that information to herself, because Knut can make better decisions with that information. The case that Watson explores is one where, here, Mari knows that a medicine that Knut, a doctor, will prescribe to his patients, has an addictive component. She does not provide Knut with this information. Further, she lies and says that the medicine is not addictive. As a result, Knut prescribes the medicine believing that it is safe because he believes what Mari said was the truth.

As it is clear that citizens are affected by the decisions that state authorities make, and it follows that, if we accept that people have this right, then citizens have a right to be informed about them. Additionally, state authorities should communicate with citizens in such a manner that the communicative ideals are respected. This means that authorities should contribute to the questions under discussion with what they believe to be the truth about the matter, and not shift the attention to a different question.

The main reasons why I think it is important to precisely conceptualize this special duty that state authorities have are first, for State authorities to have a clearer picture of the manner in which they should inform citizens about matters of public concern in the public context. At the same time, and for the sake of good communication, this duty indicates how they should relate to the knowledge that is required to communicate truthfully. Secondly, it has been established how they ought to inform citizens –in a truthful manner–, and how they should relate to the knowledge regarding the relevant question under discussion –they should seek to obtain the

best available knowledge—. As a result, it will be possible to hold them accountable for their shortcomings in these areas.

With this, I believe that citizens in democratic societies will be in a better position to avoid having state authorities continuing to escape moral and possibly legal judgement appealing to their right to freedom of speech, even when caught in a lie or when they have generated a situation of great danger for citizens. In conclusion, the goal of this special duty is to contribute to the actual realization of the democratic State’s duty to make life good enough for everyone, or at least, not bad for anyone, and more importantly, and at the very least to not harm individuals through state acts (in this case, speech acts).

### *5.1. The epistemic requirement*

It has been shown through the events that occurred during the COVID-19 pandemic that when politicians make decisions without regard for the best available knowledge, terrible consequences can follow. Where some States followed the advice provided by the WHO and their own experts, others systematically chose to ignore it and justified their choices by denying, making up “facts” or repeated unjustified claims such as, questioning the existence of the virus itself, how deadly it was or the “true” nature of facemasks and/or vaccines. The approach taken had an impact on the number of cases, deaths and hospital admissions, where States led by leaders with these attitudes were among the most affected in terms of loss of lives and cases, as long as they maintained these positions<sup>34</sup>. It is thus crucial that state authorities be required to both be informed and inform about matters of public importance when communicating with the public.

As explained in Chapter 4, speaking truthfully about something only means saying what one believes to be true about the question under discussion. On the other hand, one lies if one expresses something other than what one believes to be the truth about the issue. Neither lying nor speaking truthfully requires that the speaker be aware of the actual truth about the matter. Further, it has been argued that lying damages the communicative mechanism which allows us

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<sup>34</sup> The US and Brazil, as showed in the Introduction. As long as both ex-president Donald Trump and president Jair Bolsonaro insisted that the disease was not so serious, that it was not necessary to wear facemasks or even suggesting “alternative methods” like consuming disinfectant or not to take vaccines due to the risk of becoming an alligator, the US and Brazil are the countries with most deaths worldwide associated to the pandemic of COVID-19, with 1035847 and 668177 respectively as of June 2022 (Statista, 2020).

to trust one another, and thus, enables cooperation which is fundamental for human societies. Therefore, lying is morally wrong.

However, the speaker can be mistaken about the truth about something. If the requirement is limited to that the speaker should express what she believes to be the truth, in principle, she is not committing any moral wrong by being mistaken. A duty that only demands state authorities to speak truthfully is no guarantee that they will make informed decisions that minimally do not harm anyone, and ideally improve the life of everyone who is affected by them, or at least does not make these lives bad. I think that honest ignorance poses a challenge to my proposal. Thus, the following question emerges: is it true that because a speaker is saying what she believes to be the truth about an issue, she is not tempering with the mechanism which allows us to trust each other?

The problematic hypothesis is the following: in order for the mechanism which allows us to trust each other to work, we cannot lie to each other. However, it is acceptable that one tells another what they believe to be the truth about something without any regard for what the truth actually is. Let us imagine a scenario where there is a person, Valery, who has a disease that could be treated and healed with the means of modern medicine. However, Valery does not trust modern medicine, so she goes to visit Celia. Celia also does not believe in modern medicine but believes it to be true that by using a compound that she makes out of some herbs that she finds in the forest, she will be able to heal Valery. For this reason, and because she thinks that it is important to tell the truth, she tells Valery that her compound will save her. Thus, they agree to use Celia's compound on Valery for several months. However, this compound does not work and even though Valery could have received a treatment that would have saved her life in a hospital, she dies.

The first question here is, does the mechanism remain intact? In other words, can we continue to rely on the principle that we can trust each other, just because both parts were honest in their disbelief for modern medicine? I think there is a piece missing. Though, as seen in Chapter 3, the liberal ideal entails that people will believe the truth when confronted with it (Mill, 2015a), individuals are not always rational when it comes to belief (for example, Bardon, 2019; Hannon & de Ridder, 2021). In order for the mechanism which allows us to trust each other to function properly, a further requirement is necessary. This requirement is that people should make a commitment to seek to inform themselves about questions under discussion, while keeping an open epistemic attitude which allows them to see when they are mistaken.

This is not something new in the philosophical literature. There have been many works and philosophical projects that point out the details of what the proper epistemic attitude should be (for example, Russell, 1958; Popper, 1968; 2002; Bunge, 2006). This is not the topic that I will discuss in this thesis. Nevertheless, I think the key to the problem at hand is to characterize this epistemic attitude –which broadly can be understood as being open to criticism as opposed to being dogmatic and using the best available methods and sources– as a commitment that individuals can take on directly or indirectly.

So long as individuals reject to take on this commitment, we cannot completely trust testimonial warrants, even if none of the speakers ever lied. Furthermore, we cannot always and in principle hold someone accountable for genuinely believing and continuing to believe something that is false if they genuinely accept this as the truth, no matter how flawed their epistemic methods to reach the conclusion have been. The moral difference that allows us to hold speakers accountable, even if they speak truthfully, is that they have directly or indirectly taken on the epistemic commitment to have the correct epistemic attitude regarding the question under discussion. When an individual has taken on this commitment, they can be held accountable for breaking it.

Individuals take on this commitment when they engage in certain activities or when they make certain claims. For example, looking back at the situation that I described, it is likely that Celia will be morally prosecuted because Valery died. Undoubtedly, Valery died as a result of Celia's faulty methods: the compound did not have any healing powers over Valery's disease. Even though Celia truly and genuinely believed that her compound would heal Valery, she is blameworthy and can be held morally accountable because either she promised Valery that her methods would heal her, or because she presented herself to the community as a healer.

When a speaker communicates in a context and a manner so that listeners have no reason to believe that the speaker is not telling them what she believes to be the truth about the question under discussion, and she claims that she has the special knowledge required for certain activities (i.e. healing, teaching, and any other activity that requires special knowledge), she is indirectly committing herself to being involved with the truth about the relevant questions under discussion for the task that she has claimed to be an expert about. Moreover, when an individual is involved with the truth about some questions under discussion, she should face them with the proper epistemic attitude. This does not necessarily mean that the individual will approach any

and every question under discussion with the proper epistemic attitude, but that she will do so at least in regard to those particular questions that are relevant for her.

Thus, when Celia told Valery that her compound would heal her, she engaged with the question under discussion: what Valery should do to heal. However, she did not just contribute to the discussion as a casual speaker, she contributed to it as someone who knows how to heal Valery's disease. She is guilty of not engaging the question with the proper epistemic attitude, which would have showed her that the compound indeed did not help with Valery's disease and that she should seek professional help.

After establishing this point, there is a second question to raise regarding that scenario that connects directly with the question under discussion in this work. What if Celia was a state authority and was telling citizens that instead of going to a hospital, they should use this compound? This state authority is not a doctor, and she is not claiming to be a healer. However, the problem worsens, because even though she might not have claimed special authority on the matter –she is not telling citizens that she knows how to make the compound or how it works, but that they should visit those who can– state authorities are not casual speakers.

As a result, when I enunciated the special duty as “State authorities ought to communicate with the public as truthfully as they reasonably can”, the formulation “as they reasonably can” makes reference to the fact that State authorities have both limited time and limited cognitive resources when they ought to make important decisions in short periods. Indeed, not only should they say what they believe to be the truth about a matter, but they should seek to approximate the truth about the question under discussion before speaking publicly about it. However, sometimes there is just not enough time to learn about the best available knowledge regarding one question. Here decisions have to be made without complete information. This does not mean that it is acceptable to make decisions without at least seeking to gather the most relevant points with the help of advisors and experts<sup>35</sup>.

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<sup>35</sup> Who these experts and advisors should be, how they should be recruited, to which extent they should be trusted given scientific uncertainty and such other questions are a matter for another inquiry. Here I will just claim that experts are persons who have the required special knowledge about the question under discussion at hand, but this question needs to be exhaustively examined in future works. Some current research going in this direction is the research project at UiO led by Cathrine Holst “Eksperters innflytelse på nordisk politikk”. For example, (Gundersen & Holst, 2022; Gundersen et al., 2022).

While it is desirable that casual speakers be informed, we cannot demand that everyone be informed in the way that state authorities have a special duty to be. If citizens have a duty to inform themselves, it comes from the fact that they have some power in democracies, given that they can vote and thus elect authorities. However, this duty is not as demanding as it is for state authorities. Whereas, in elections, citizens are concerned with the question of who would be the best person or party to lead the State in one or another position of power, state authorities commit themselves to the questions that affect citizens directly. That makes a significant moral difference and requires a different level of involvement.

### 5.2. *The informative requirement*

Now that it has been established why state authorities ought to inform themselves, I will argue that they also ought to communicate to the public about these matters. In this way, transparency becomes mandatory in the democratic State. The informative requirement can be understood as the duty of authorities to become properly informed if they are to fulfill their duty to inform truthfully and properly.

The liberal democratic State is an institution designed, in principle, to protect the interests of the individuals who live under its government. For this reason, State authorities in liberal democracies pledge to protect the rights of those who are under their authority. Among the rights that state authorities ought to protect<sup>36</sup>, the recent work of Lani Watson has provided vigorous reasons to include epistemic rights, or rights to know (Watson, 2021). My argument is that if there is such a thing as epistemic rights, then State authorities in liberal democracies have a special duty to guarantee and protect the epistemic rights of citizens.

Epistemic rights are introduced to “protect and govern the quality, distribution and accessibility of epistemic goods” (Watson, 2021, 23). This means that epistemic rights are there to make sure that i) there is good knowledge<sup>37</sup>, ii) that this good knowledge is distributed among people affected by what this knowledge entails, and iii) that people can access it without issues. In short, the main reason to defend the right to know is that knowing matters. As it has been argued throughout this thesis, information and misinformation are not simply harmless utterances without consequences. Quite the opposite in fact, knowing and not knowing can make the

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<sup>36</sup> At least human rights, and any right established in the country’s constitution.

<sup>37</sup> Knowledge that has been obtained following the proper epistemic attitude.

difference between life and death, and between knowing that one's rights are being violated and being unaware of it.

To make her case for epistemic rights, Watson uses the case of OxyContin in the US. The pharmaceutical company, Purdue Pharma, not only neglected to inform doctors of the addictive potential that this medicine had but claimed that the addiction risk was lower than any other similar product in the market. This led to an "addiction epidemic" in the country. In Section 5.1. I argued that when someone claims to possess the knowledge about something that affects someone else, the speaker indirectly makes a commitment to engaging the issue with the proper epistemic attitude. In the book, Watson shows that Purdue Pharma was aware that the drug was addictive, and yet still had salespersons tell doctors that it was not. For this reason, it is not enough that the speaker engages a question under discussion with the proper epistemic attitude, as the scientists in Purdue Pharma did when they concluded that the drug was addictive.

Additionally, in order for a person's right to know to be respected, the speaker must also tell what she believes to be the truth about the matter, and not hide it when it is good for the interests of the speaker, especially when it is crucial for the listener's wellbeing. If the speaker has engaged the question with the "proper" epistemic attitude, what she believes to be the truth about the matter, will be in fact as close to the truth as it reasonably can be<sup>38</sup>.

Following what was argued in Section 5.1., we can conclude that, as a result of citizens' right to know about the things that concern them, state authorities have a special duty to inform citizens about the decisions that they make and the reasoning behind them. Certainly, state authorities are involved with the matters that directly involve citizens. For the same reason, they have a duty not only to gather this good information, but to thoroughly inform themselves.

### 5.3. *Violations to the right to know*

The purpose of this section is to explore how citizens' right to know can be violated as a result of what state authorities communicate. If what I have argued throughout this thesis is correct, then epistemic injuries translate directly into collective disadvantages and, even worse, harms (cf. Watson, 2021). As it is, we have a right to know about the matters that concern us in order to be able to make informed decisions. I assume that informed decisions are better than

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<sup>38</sup> Given the time or epistemic resources limitations.



uninformed decisions because then the decision-makers have a clear picture of what is at stake and choose an option that avoids harm or at least does not cause harm directly. Therefore, if we are to make decisions with flawed information, we will not be able to accurately choose the best decision, or the least bad.

Because authorities have to answer to citizens' right to know, among other rights, they must refrain from utterances which violate this right. Therefore, they have a negative duty not to lie or mislead. Lying and misleading, as has been shown, cause a harm to the communicative mechanism which allows us to rely on each other and cooperate. If state authorities lie or mislead, they harm the trust in the democratic system, and neglect citizens' right to know. In addition, they have a negative duty not to bullshit, because bullshitting takes away the attention from the relevant question under discussion and thus deprives citizens of the relevant epistemic goods they are entitled to. Because of these negative duties, it should not be within their right to freedom of speech to lie, bullshit and mislead citizens with regard to epistemic goods that they are entitled to.

Watson enumerates five different manners in which epistemic rights can be violated: 1) propagation of falsehoods, 2) propagation of misleading information, 3) withholding of accurate information, 4) unjustified disregard of a duty to gather information, and 5) abuse of perceived epistemic authority. (cf. Watson, 2021, 51). While points 2, 3 and 4 are self-explanatory with what has been said so far, points 1 and 5 need to be clarified.

Regarding point 1, the propagation of falsehoods can be understood in two manners. The first always entails a violation of epistemic rights, whereas the second can usually do so, but not always. The first occurs when a speaker who has a duty to provide a listener with the proper epistemic goods, utters something other than what she believes to be the truth about a question under discussion;<sup>39</sup> in other words, the speaker is lying. Lying to someone can clearly amount to a violation to someone's right to know. The right is violated when the person has a right to know the information that the speaker neglects to provide when lying. Not only is the person deprived of some epistemic goods that she has a right to, but additionally she is given faulty epistemic goods.

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<sup>39</sup> Addressed extensively in Chapter 4.

If a person has a right to epistemic goods which involve her in one or another way, and which she requires to make decisions, being lied to has as a consequence that the listener will not be able to make truly informed decisions. Additionally, if the listener is deceived by the lie and accepts the faulty epistemic goods, depending on the content of the information, the consequences can potentially be severe. But this need not be a consequence of being lied to because lying, as discussed earlier, does not necessarily entail deceiving.<sup>40</sup> The result is that, no matter what, a liar always violates the epistemic rights of a person. Even if the information she provides turns out to be true, the violation persists. The reason is that the speaker believed that the truth about the question under discussion was something else, and intentionally deprived the listener of it. Here the propagation of falsity amounts to the same violation of a person's epistemic rights than the withholding of accurate information, with the addition of the abuse of the communicative mechanism that lying entails.

The second manner in which we can understand the propagation of falsehoods occurs when a speaker with duties to provide proper epistemic goods utters something other than what the truth about a question actually is, regardless of her beliefs. However, even with our best methods, we have a limited access to the truth about most questions, which is why a responsible speaker with such duties would refrain from claiming to know the truth about a matter which is under dispute. On the other hand, there are many questions about which we are beyond reasonable doubt, such as anthropogenic climate change or that COVID-19 is a different and more deadly virus than the common flu. Therefore, someone's epistemic rights are violated when the duty bearer provides epistemic goods but has not examined it with the proper epistemic attitude.<sup>41</sup>

If the speaker has examined a disputed question under discussion with the proper epistemic attitude and believes that there is some certainty regarding the truth about it, then she is not blameworthy by communicating what she believes to be the truth to the right holders, in this case, the citizens, even if it turns out to be false. This means that in such a situation there is no violation to a person's right to know, regardless of the truth or the falsity of the utterance. We cannot judge someone for being wrong if they have honestly and reasonably tried to access the

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<sup>40</sup> Addressed extensively in Chapter 4, Section 4.1.

<sup>41</sup> Erik Conway and Naomi Oreskes show examples of how some state authorities have neglected people's epistemic duties. Instead of relying on independent scientists involved with the question under discussion with the proper epistemic attitude, they have appointed scientists to raise doubt to protect their own interests over citizen's right to know (Conway & Oreskes, 2010).

truth through the best methods available at the moment. But we can judge someone who has made a commitment to seek the truth about a question under discussion for not being aware of the best available knowledge about it, when there is a very high degree of certainty that things indeed are that way.

That the speaker has engaged with the question under discussion applying the proper epistemic attitude means, in this case, that she has good reason to believe that the truth about the matter is what she believes it to be. However, if a speaker has the duty to fulfill someone's right to know, and she does not examine the question with the proper epistemic attitude, then she is violating the person's right to know by propagating a falsehood. Here the propagation of falsity amounts to the same violation of a person's right to know as when the speaker unjustifiably disregards the duty to gather information.

Moving on to point 5 above, I will now explore this problem by paying attention to state authorities. State authorities' epistemic authority is a special case. Though state authorities can be experts about some matters, they cannot be experts about every matter that they engage with. It is not even necessary for them to be experts about any matter at all. This is opposed to other more straightforward cases such as a doctor's epistemic authority regarding the health of a patient, or a teacher's epistemic authority regarding the matter that she teaches. Both doctors and teachers require an education to perform these tasks. However, this is not a requirement to become a state authority.

Thus, state authorities' epistemic authority comes not from the expectation that they already have some knowledge, such as doctors and teachers, but from the implicit commitment to be involved with the questions under discussion that affect the lives of citizens. Because of this commitment, they are expected to acquire relevant knowledge about the publicly important questions under discussion from the moment they become state authorities. Their epistemic authority begins then as well.<sup>42</sup> Nevertheless, state authorities deal with many different topics

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<sup>42</sup> However, it cannot be reasonably expected that a person with no knowledge about the publicly relevant issues can reach the position of state authority. Perhaps it could be suggested that both the campaign period, and specially the period between being elected/appointed and assuming the power should be time where state authorities-to-be have a duty obtain the relevant knowledge that makes it possible for them to satisfy citizens' right to know.

at once, and matters can become urgent out of the blue. Therefore, it is a clear that state authorities require expert help if they are to fulfill their duties.<sup>43</sup>

Doctors, nurses, lawyers, teachers and so on can abuse their perceived epistemic authority<sup>44</sup> when they make claims about topics that are beyond their area of expertise. For example, when a nurse utters “You shouldn’t take the vaccine against COVID-19. I am a nurse and I tell people not to get it because we don’t know the ingredients in it, it is toxic and bad for you” she is abusing her perceived epistemic authority. Though health is her area of expertise, it does not mean that she is an expert regarding the mechanisms and components of vaccines. Perhaps both some listeners and she herself mistakenly perceive herself as an expert in everything that has to do with health instead of assuming the limitations of her knowledge. In that case, she is abusing her perceived epistemic authority. It is fairly easy to know when people in such positions abuse their perceived epistemic authorities, because it is fairly easy to know where their expertise lies<sup>45</sup>. However, it is more difficult to know when state authorities abuse their epistemic authority.

When do state authorities abuse their perceived epistemic authorities, if the publicly relevant questions under discussion are so wide and involve almost any topic that a person can refer to? How can we know whether an authority is or is not abusing her perceived epistemic authority? I suggest that it would mainly be related to the proper epistemic attitude. If it is possible to trace that she has indeed informed herself and gathered epistemic goods regarding the question under discussion, then she is not abusing her perceived epistemic authority, because she actually has epistemic authority. However, if it is clear that she has not engaged with the question under discussion with the proper epistemic attitude, then she is abusing her perceived epistemic authority. An example of this is when ex-president Donald Trump suggested that citizens use disinfectant injections against COVID-19 (Clark, 2020, April 24). Clearly the evidence showed

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<sup>43</sup> This, again, is a matter for a different work which studies the sort of help that state authorities require, how they can be chosen and what kind of requirements they should meet. Here I will just assume that the experts and assistants provide state authorities with the epistemic resources that are necessary for them to perform their task, being aware of the limitations and difficulties that it raises.

<sup>44</sup> One has epistemic authority over matters regarding which one has certain expertise. The perceived epistemic authority, on the other hand, refers to matters that are somehow related to the area of expertise but that one is not really an expert on. Without expertise, there is no real epistemic authority, only perceived.

<sup>45</sup> For example, a nurse in Germany injected patients with saline instead of using the vaccines against COVID-19. Though it has not been established, she had posted on social media that she was skeptical with regard to these vaccines. (DW, August 18).

at that point that first, disinfectant injections would be ineffective against an infection by COVID-19, and additionally, that these products have undesirable effects on humans.

A possible objection to holding state authorities accountable for what they say regarding epistemic goods that citizens have a right to, is the idea of equality before the law. Therefore, they should not be sanctioned more severely because of their position for the same wrong. However, the point is not that they should be sanctioned more because they are state authorities, but that because they are state authorities, they have special duties with regards to the manner in which they communicate and inform that casual speakers do not. The same occurs when a doctor, while not on duty, witnesses an accident. Casual witnesses do not have the same obligation to attend to the wounded people as a doctor has. Failing to do so has consequences for a doctor that are not the same for the casual witnesses.

While casual speakers can make claims without major consequences about vaccines, diseases, war, and so on<sup>46</sup>, state authorities cannot. As I have argued, these special duties involve that they must inform themselves about the relevant questions under discussion, and secondly that they have to communicate this information to citizens with transparency. State authorities cannot lie or withhold information without reasonable justification. As a result, they are not being treated unequally before the law, and if anything, they are answering for violating their duties towards citizens and for violating citizens' rights, in particular, for violating the right to know.

#### 5.4. *Conclusion: a special duty to communicate truthfully and inform properly*

In this chapter I have argued for a special duty that state authorities ought to have when communicating matters of public relevance: the duty to communicate truthfully and inform properly. I have formulated this special duty as “State authorities ought to communicate with the public as truthfully as they reasonably can”. I claimed that there is an informative and an epistemic component to it.

First, and because it is necessary to have knowledge about a question in order to inform others about it, I explored the epistemic dimension. I concluded that state authorities must approach the publicly relevant questions under discussion with a proper epistemic attitude. This means

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<sup>46</sup> If and only if these utterances are harmless. It might be different if, for example, the claim is racist and attacks a group of individuals.

that they must use the resources available to acquire information and do so in such a way that they are not dogmatic but are open to being wrong and learning from their mistakes. I also claimed that though it is desirable that all citizens in liberal democracies be informed, state authorities have a special duty to be informed because they commit to being involved with the questions that affect citizens' lives to make their lives better, or at least not bad and, as a minimum requirement, not to cause citizens harm.

Secondly, I explored the informative element of this duty. State authorities ought to inform citizens about the decisions that they are making because citizens have a right to know about the things that concern them. State authorities in liberal democratic States make a commitment to protect the rights of the persons under the State's authority. Therefore, they have a duty to fulfill their right to know by providing them with the relevant epistemic goods about the questions under discussion. Furthermore, they have a duty to communicate truthfully, which means that they ought to refrain from lying, misleading and bullshitting when communicating in the public context. Additionally, this duty to communicate truthfully reinforces the duty to inform properly, because, otherwise, citizens are subject to being misinformed about epistemic goods they have a right to.

Afterwards, I revised the manners in which the right to know can be violated to understand how state authorities can neglect their special duty to communicate. Here I examined how falsehood can in certain cases be excused from violating the right to know. These cases are those in which the proper epistemic attitude was employed, and those in which there is doubt about the truth of a question under discussion in our best available knowledge. However, falsehood is not excusable, even if honestly believed, when the truth about the question is beyond reasonable doubt. The reason is that when a question is beyond reasonable doubt, state authorities as people who have made a commitment to be involved with a particular question should know about it because it is the answer they will find when they implement the proper epistemic attitude.

Additionally, I discussed what it means to abuse the perceived epistemic authority and concluded that it is harder to know in the case of state authorities, because their epistemic authority comes from their commitment to being involved with the publicly relevant issues rather than from their previous knowledge. However, it can be clear in some cases that they have not engaged with a question under discussion with the proper epistemic attitude, and especially so when the truth about it is beyond reasonable doubt. The matters which are beyond reasonable doubt are those for which the best available evidence shows that things are or will

be in a certain way and not in another. It is a question for the experts to make advances in these matters, and for authorities to follow their guidance.

Finally, I considered an objection which could be raised, namely that state authorities would receive an unfair treatment and lose their right to equality before the law. I argued that they would not lose this right, but that if anything, they would be judged for violating the rights of citizens. State authorities have a special duty to protect the rights of citizens, and for this reason they may be judged differently for performing the same action –for example, for suggesting that we should get disinfectant injections. When a state authority is judged differently for the same action, she is not being treated unfairly. She is being treated fairly and sanctioned accordingly to the breach or neglect of the special duty that she had as authority of a liberal democratic State.

## **6. Conclusion: a special duty to inform properly and communicate truthfully to navigate moral storms; remaining problems and what to do**

In the introduction of this work I mentioned the concept of moral storms (Gardiner, 2006). Through the development of this work, I have shown the manner in which the careless speech of state authorities contributes to the difficulty in navigating these moral storms, and how the special duty I propose is required if we are to have a better chance at doing so. A special duty to communicate truthfully and inform properly is required for the proper functioning of liberal democracies. There are certain points that are to be highlighted to correctly understand what this duty means.

First, freedom of speech is not arbitrarily restricted, it is only when restricted the speech results in harm or can reasonably be expected to cause harm. Second, the focus has been on the speech of authorities, acknowledging that they are in a position of power from which they can produce a great deal of harm. Third, there is more reason to restrict the harmful speech of state authorities in liberal democracies, because they have a special duty to make the life of everyone better, or at least no one's life bad. Specially, they have a duty not to harm their governed. Fourth, not only do they have a special duty to communicate truthfully, but they must also be reasonably well-informed to make decisions. If they fail to do so, they are subject to sanctions which follow a principle of fairness and are in accordance to the harm that has been done.

The manner in which acknowledging and implementing this special duty to inform properly and communicate truthfully in liberal democracies contributes to the navigation of moral storms is that it binds those who make decisions to a correct epistemic attitude. Being bound to this epistemic attitude contributes to the collective search for the truth and the well-being of the community, by excluding any active effort against it. This does not mean that error is prohibited. On the contrary, error is acceptable when it occurs due to human limitations while having implemented the proper epistemic attitude. It is only excluded when it is deliberate, or when the correct epistemic attitude is ignored to prioritize the persecution of selfish interests. State authorities should not be selfish, they have special duties to serve the people that elected them and to use their power to improve everyone's lives.

That state authorities have this special duty to communicate truthfully does not guarantee that the navigation through the moral storm will be successful. Indeed, human beings are limited creatures who make mistakes. However, this duty is necessary so that state authorities can be



held accountable when they lie, mislead, bullshit or are inexcusably ignorant with regard to the matters of public relevance. I assume that in order for us, as humans, to approach a good life, we need to know, and use our best methods to understand the world that surrounds us. For this reason, I believe that those who make decisions must implement the correct epistemic attitude and avoid harming the mechanism that allows us to trust in democracy.

In what remains, I will briefly touch upon suggestions on how to implement my proposal in the real world, some potential challenges to my position, and what remains to be done in future research.

*6.1. Implementing the duty to inform properly and communicate truthfully in the real world*

The objective of this thesis is to propose a special duty for state authorities which is coherent with the values of liberal democracies and compatible with the right to free speech, and not to design the legal aspect to implement it. However, an important question which remains after making the case for a special duty for state authorities to inform properly communicate truthfully is how to implement it in the liberal democracies of the real world.<sup>47</sup> I think that, because the implementation of this duty is crucial for the survival of liberal democracies, the answer is through legislation. In this way, state authorities would be legally bound to act in such a way that respect the special duty.

If state authorities were to violate the duty to inform properly and communicate truthfully, then they would be subject to being trialed and sanctioned in accordance to the law in proportionality to the violation committed. However, it must be clarified that the implementation of this duty is not limited to acting in a retroactive way, that is, by sanctioning state authorities after they have caused harm to those they govern. On the contrary, the legal establishment of this duty mandates state authorities to respect it. This would mean, in practice, that authorities should avoid dangerous speech in the same way that they should avoid other dangerous behaviors.

I think there are two main legislative paths for this:

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<sup>47</sup> The duty to inform properly and communicate truthfully could potentially be extended to other positions in society which involve knowledge and information as argued in chapter 5, but that is a matter for another work.

- i. The internal path. This would involve processes in which individual States each introduce changes in their constitutions, and/or any other legal codes which regulate the roles, rights and duties of state authorities.
- ii. The path offered by international law, that is, the proposal of treaty or convention which can be signed and ratified by States. The convention should secure an international commitment between the signing States to informing citizens properly and communicating truthfully.

It could be thought that because the problem is discourse of state authorities, the problem is itself within a State, and thus it would be preferable to handle it internally. Additionally, in this way, each State would modify its own constitution and/or laws in such a way that it was coherent with its reality and political and judicial system. However, I argue that the path of international law is preferable.

I think there are good reasons why an international convention would be better than a series of individual processes. First, an international convention makes the process more feasible than individually modifying the constitutions and/or laws in every liberal democratic State. As it is, constitutions are very difficult to modify, and some have never been modified at all because of tradition. This does not mean that it is easy to elaborate and implement international conventions, but the process is different. In particular, what makes it more feasible is the fact that the process is parallel for all the participating States, rather than expecting all individual States to do the same on their own.

It could be the case that the duty could be implemented through other laws which are potentially easier to approve and implement than international conventions. However, it is hard to expect all liberal democratic States to do the same individually. Even if possible, it might be better to have a common framework which facilitates the cooperation between States in ensuring that the duty is implemented.

Second, the harm that state authorities can cause by violating the duty to inform properly and communicate truthfully is not necessarily limited to the borders of the State. On the contrary, in a globalized world, misinformation is an international problem. State authorities can communicate directly with the audience through social media, and this audience is not limited to citizens of their own State. State authorities can have followers anywhere and for that reason they can influence and cause harm beyond their own borders. Thus, an international convention

which includes mechanisms to sanction state authorities who have caused damage to people outside their national borders has an advantage beyond any internal legislation.

Third, were the process done individually by every liberal democratic State, it is unlikely that the results in legislation would be equivalent. Furthermore, the rhythms of the implementation of the resulting legislation would be different, which would most likely interrupt the efforts of the faster States. For example, if one State approved the legislation which guarantees the implementation of the duty, but others did not, then the citizens and the democracy of the first State would still be exposed to being harmed by foreign state authorities. This would undermine the expected results of the legislation.

Fourth, an international convention would have more power to regulate social media than individual efforts. As it is, the bigger social media sites are international companies, which means that they have resources to not generally implement regulations required by individual States. As a result of an international convention, the power to administer speech in social media would be removed from CEO's and private boards who do not account to the public and turned into a public matter. The legislation would also consider speech emitted on social media. Furthermore, reducing the power that private companies have over public discourse is beneficial for the quality of the public debate. For example, the right to know could have something to say on how algorithms should be implemented. It has been reported that the Twitter algorithms are biased in favor of right-wing content and politicians (Twitter, 2021, October 21; Huszár, Ktena, & O'Brien, 2021).

An objection to reducing the power of the private companies and conferring it to States and their judicial systems, is that it could be more inefficient to wait for a legal procedure to determine that the sanction that a person should receive is to lose access or possibility to post for a short period, instead of an internal process within the company. The details and technicalities of the legislation are beyond the scope of this work, but this is something to keep in mind when legislating.

Because the duty to inform properly and communicate truthfully is a counterpart to citizens' right to know about things that concern them, I suggest that this right should be secured in the constitution of the different States or in an international convention. For the international case, the solution could be for the right to know to obtain the status of a human right or to be interpreted as a necessary right that precedes human rights because it is required to have

information to be able to exercise the rights at all. This could be limited to the potential interpretation of the Universal Declaration of Human Rights.<sup>48</sup>

Other criticisms to an international convention could be, first, that the autonomy and freedom of individual States would be violated, but this is not true as it is up to the States to ratify it or not. Second, States might disagree in what is the truth about a question under discussion, however, it is not up to States to decide what the truth about something is. There might be disagreements between matters that are under dispute, but the rule is to accept disagreements so long as the parts have implemented the proper epistemic attitude. It is only in matters beyond reasonable doubt that there is little or no room to propose something else. Not because of dogmatism; alternatives that come from the application of the proper epistemic attitude are always positively valued. However, manipulating the facts to say something else, is not acceptable. Third, that the prosecution in international courts can be inefficient, so it would be better to leave this legislation as an internal matter within States. This criticism might be fair but not sufficient to prevent international legislation. Additionally, not all cases will necessarily involve international courts as not all cases will involve foreign state authorities. What can be handled internally, should be handled internally in accordance to the judicial system of the State in question.

In addition to these suggestions, I think that the process of legislation and implementation should be supported by other measures that facilitate the cultural change. These could include, for example, education programs for citizens that focus on civic life in the liberal democratic system, including the importance of good information and a proper epistemic attitude. Another suggestion is that journalists in the traditional media also are required to implement the proper epistemic attitude and being strict with journalistic ethics.

In the midst of war, pandemic, environmental, economic and energetic crises it seems hard that any political organization will fight for the elaboration and implementation of this regulation. Furthermore, it must be considered that in this context, there are heavily polarized societies where actors who would potentially be against the regulation defended here have a lot of influence. These facts may make the implementation of the duty to inform properly and

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<sup>48</sup> For example, article 9, which requires States to inform about the reason why one is being deprived of one's freedom of movement (UN, 1948).

communicate truthfully difficult. However, for the sake of the liberal democracies in the world, it is necessary to at least try.

## 6.2. *Epistocracy: why not*

It is reasonable to wonder why I did not consider epistocracy as an alternative, if it is a political system where political power is distributed in proportion to knowledge or competence (cf. Brennan, 2016, 208). If part of the concern present throughout the development of this work is how authorities relate to the knowledge concerning the relevant questions under discussion, it would seem logical to opt for a version of epistocracy. However, here I briefly address why I do not consider it to be the correct answer to navigate the moral storms addressed in this thesis.

It has been suggested that epistocracies may outperform democracies, because, in accordance to research from the social sciences, voters are ignorant, misinformed, biased and irrational (Brennan, 2016; 2018; 2021). The premise is that it is unjust to be ruled by the incompetent, and specially so when they are elected by others who make poor decisions, because we have a right to a competent government that makes good decisions (Brennan, 2016). In other words:

the idea is that a minimal condition of a political decision being authoritative and legitimate is that it must be made by a reliable/competent body or decision-making process, in a competent way, and in good faith. (Brennan, 2021, 379)

Epistocracy can be formulated in different ways, i.e., i) restricting suffrage by excluding citizens from voting or running for office who cannot prove to be competent or sufficiently well-informed, ii) allowing well-informed citizens to give more votes than non-informed citizens, iii) eliminating the ‘a priori’ right to vote and letting a lottery determine which citizens can vote, and then the citizens that prove to be competent can vote, iv) introducing an epistocratic body with restricted membership and veto power over democratic rules, v) weighting citizens’ votes in accordance to their political knowledge (Brennan, 2018, 97-98). Another more recent formulation implies that voters with determined preferences would vote in a particular way were they rational. After participating in polls, citizens’ vote is thus “corrected” accordingly to what they would have voted with these preferences had they been rational, following a well-established method (Brennan, 2021).

However, I think that there is a premise in the epistocratic formulation that is mistaken. Indeed, it determines whether or not citizens are ignorant, irrational, biased or poorly informed by

assessing whether or not they know the answers to specific questions. As a consequence, the different formulations of epistocracy require citizens to know certain things before they can vote, or ‘correct’ their vote in accordance to what the rational choice would be for someone who had certain preferences. This can be characterized in other terms as citizens having a duty to know certain things, that is, an epistemic duty, in order to being eligible to have any form of power.

The existence of epistemic duties is controversial. There is a consensus in the literature that, if there is such a thing as epistemic duties, they cannot exist in the form of an obligation to hold specific beliefs or to know about certain things (cf. Russell, 2001; Wrenn, 2007; Nelson, 2010; Stapleford, 2012). The main reasons are, first that we do not have voluntary control over what we believe after being exposed to a piece of evidence (Russell, 2001; Stapleford, 2012), and second, that evidence can potentially epistemically justify an infinitely large amount of different beliefs (Nelson, 2010).

The conclusion is that a duty to know certain things is too demanding because, first, we do not control our beliefs, and secondly, from a piece of evidence, many different conclusions can be drawn. The fact that someone does not pass a test to assess their knowledge about political matters need not mean that they are completely uninformed, irrational or ignorant about the decisions that they are making, in this case, electing one candidate rather than another. Brennan claims that “the major difference between epistocracy and democracy is that people do not, by default, have an equal right to vote or run for office” (Brennan, 2016, 208). Then, a risk of epistocracy is that people may be specifically engaged and have knowledge about a determined matter of public interest, and yet, still lose the right to vote for not having the general knowledge required to do so in the epistocratic system. The same applies for elected authorities. Authorities may have previous knowledge about some areas, but it is difficult to imagine that it is possible for a single person to have knowledge about any and every matter that can be relevant for governing. This may mean that very capable individuals lose the opportunity of becoming authorities because they could not pass a test to show knowledge.

The demand that authorities have the proper epistemic attitudes prevents this objection from applying to my proposal. If state authorities have a duty to inform properly and communicate truthfully, this does not require them to previously have the specific required knowledge to pass the test to show competence. What it requires from state authorities is that, once they have acquired the position by election, they ought to face the questions under discussion with the

proper epistemic attitude. In some cases, i.e. where there is an approximate truth beyond reasonable doubt about a question under discussion, the result of applying the proper epistemic attitude will indeed be to learn this approximate truth.

For example, when facing questions regarding climate change, someone who implements the proper epistemic attitude will reach the conclusion that climate change is anthropogenic. But requiring the proper epistemic attitude instead of specific knowledge has the benefit that capable individuals that do not have some specific previous knowledge can still reach positions of power and learn in order to make good decisions. Furthermore, dogmatism is avoided because maintaining the proper epistemic attitude instead of relying on acquired knowledge leads to updated knowledge, as opposed to relying on previous knowledge that may have been overcome.

A proposal to make these tests more democratic is to allow a representative amount of randomly chosen citizens to formulate the questions for a 40-question test (Brennan, 2021, 381). But this does not solve the problem. The right to vote cannot be dependent on a duty to know. I believe that my proposal, namely that state authorities have a special duty to communicate truthfully, is a better approach. First, it does not deny anyone access to voting or to being elected. What it demands is a certain attitude once the decision-making power is acquired by individuals. This demand implies that when state authorities fail to act in this way, they are subject to being sanctioned because they have failed to fulfill their duties. In this case, they have failed to inform themselves in accordance to the proper epistemic attitude and to communicate truthfully in the public context.

Secondly, my proposal does not demand of anyone to know something in specific, but emphasizes the proper epistemic attitude which makes the quality of information and communication better. Finally, if state authorities inform properly and communicate truthfully, citizens will obviously be better informed. If state authorities answer to citizens' right to know about matters that concern them, we can perhaps also expect that citizens will make better decisions and in general trust democracy more. This would in turn strengthen the liberal democratic institutions.

### 6.3. *The problem of determining harm*

One of the biggest remaining challenges of this thesis is to design a fair harm-assessing mechanism/procedure for utterances which answers to the principles of liberal democracies. As said earlier, this mechanism should be coherent with the justice system and, if dictating sanctions, should find a way to make them proportional for the harm inflicted. Additionally, this proposal suggests that we should be able to determine potential harms, to prevent them from occurring in the first place.

It is crucial that this mechanism is a part of the democratic state. When looking at recent cases in politics, if there have been any sanctions, such as the banning of ex-president Donald Trump from some social media platforms, they have been implemented mostly by the private sector. Determining whether or not some utterances harm democracy should be a matter for democratic States, and not for CEOs of companies to decide. Their decisions are not accountable before the citizens, as they have not been chosen (Sloss, 2022), and, in addition, they have private interests. These interests need not follow the same principle of liberal democracies, where authorities should seek to make life better, or at least not bad for anyone, and at the very least not cause citizens harm. Quite the contrary, they may be acting to make their own lives better and not minimally worse, regardless if that means that some lives must be bad.

### 6.4. *The problem of expertise*

The second biggest challenge remaining to implement the special duty to communicate truthfully is expertise. The questions of expertise, both who has it and how we can be sure that some knowledge is indeed the best available knowledge, need to be addressed to be able to hold state authorities accountable for this duty. I assume that there is such a thing as the best available knowledge and that we can determine with great certainty that some things are in a particular way. For example, that we can say with certainty that climate change is anthropogenic and that an extreme increment in the average temperatures would imply catastrophic consequences for many (Lynas, Houlton & Perry, 2021; IPCC, 2021).

The arguments of this thesis hold specially when state authorities refer to matters where there is great certainty. In disputed or uncertain matters, the special duty to communicate truthfully would imply that state authorities should also communicate the reasons that lead their



conclusions to be open to the plural discussion that helps the community of humanity to approximate the truth.

It is morally acceptable to be wrong when the correct epistemic attitude has been adopted and the mistakes come from human limitations.

### 6.5. *What to do*

There are many more issues that require attention in order to correctly implement the duty I have proposed. For example, in order for the discussion between political actors to be fair, parties should first have more equal resources at their disposition to communicate with citizens. A proposal in this direction can be found in (Cagé, 2020). Secondly, an important question is whether mass media should also be subject to a special duty to communicate truthfully. Some would claim that this would interfere with journalists' freedom of speech.

However, if the arguments that justify this special duty apply to mass media such as TV channels or newspapers –which I think they do– it would not negatively impact freedom of expression because only harmful speech would be subject to being sanctioned. This does not mean that certain content would be censored, but that it can be excluded in certain contexts. All said here refers to the context of liberal democracies. This line of reasoning can be dangerous in authoritarian States where the truth is established not necessarily in accordance to the proper epistemic attitude.

I think implementing a special duty for authorities to communicate truthfully in the liberal democracies around the world would not only substantially contribute to improving the quality of the public debate but protect the liberal democratic system itself. Whether it is preferable to do so through a ratified international treaty or by individually modifying the different constitutions of the liberal democratic States is a question for a different, perhaps future, work. I would lean towards an international treaty.

The manners in which the public debate would be benefited are, first, that excluding lying, bullshitting and misleading would have obvious benefits in that citizens could not be as easily manipulated. Second, acknowledging the commitment of being informed with regard to specific questions under discussion and implementing the proper epistemic attitude would, maybe, exclude the mistakes that occur through ignoring the evidence. Third, if authorities

communicate truthfully and inform better, citizens' right to know is fulfilled and they can thus make better, informed decisions too.

A special duty to inform properly and communicate truthfully is necessary to protect liberal democracies from within. This does not mean that the world will be saved from climate change, or that the world will have better results in a future pandemic with a new, different, virus. But it means that those who make decisions would be better informed and that they would inform citizens better too. I assume that this would have positive consequences, because good decisions require good information. I think that a special duty to communicate truthfully contributes to a more successful navigation through moral storms.

## 6.6. *Conclusion*

I began this thesis by examining the discourse of three world leaders to exemplify the problem addressed here, that is, how the speech of state authorities can cause severe harm to citizens in liberal democracies. Then, I assessed whether or not it is acceptable to limit a person's right to freedom of speech within the context of liberal democracy, where I concluded that it is not only acceptable but necessary to restrict speech when it results to harm or when we can reasonably expect it to cause harm. Afterwards, I examined in particular the cases of lying, misleading and bullshitting, to conclude that they are harmful or dangerous speech and thus can be excluded from the right to free speech. Finally, I proposed a special duty for state authorities to inform properly and communicate truthfully, sustained on citizens' right to know about things that concern them. In order for them to fulfill this duty, state authorities ought themselves to be informed. To be informed, they ought to apply the proper epistemic attitude to the issues of public importance.

I considered objections to the proposed duty and to its potential implementation in the real world, and an alternative solution: epistocracy. I concluded that a special duty to inform properly and communicate truthfully within liberal democracies is preferable to its alternative, namely changing the democratic system into an epistocracy.

I believe that the special duty that I propose is compatible with a strong right to freedom of speech, crucial for any democracy, and that it is necessary for democracies to function properly. That is, in accordance to the liberal principles. There are many difficulties and limitations that can be explored in future research, for example, the difficulty of assessing whether or not

someone is lying, when lying depends on the internal beliefs of the speaker, or whether or not an utterance amounts to harm or which experts are the experts that state authorities should listen to.

A liberal democracy functions properly, as said earlier, not only when there are periodical elections and citizens can exercise their right to vote. That is a necessary condition, but not sufficient. A liberal democracy requires also a constructive public debate and state authorities who at the very least do not cause citizens or democracy itself harm. This special duty would, if implemented in accordance to the proper epistemic attitude and to the values of liberal democracy, protect citizens and democracies from state authorities who harm by lying, misleading, bullshitting and being inexcusably ignorant.

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