Free Speech and Truth

Introduction

Just three months after the 2016 presidential election made “fake news” a featured member of American English, I stood in front of 40 college students, the newly-defined words shouted into my face. As incoming editor of a student newspaper, I was visiting the men’s group to speak when I found myself locking eyes with a smirking 20-year old as he chanted “Fake news! Fake news!”, spittle landing on my cheek. I continued speaking, both of our voices rising until he was finally hushed by his frantic club president. It was a small but symbolic interaction — for the next year I would watch as the newspaper’s work was often maligned and attacked online as “fake news” from critics who seemed to exist in a factless world. I began to question what my purpose was as an editor, if reporting so often failed to further truth.

When Oxford Dictionaries declared “post-truth” its 2016 international word of the year, it provided sweeping affirmation that ours is a society which relegates facts and evidence to a role of secondary importance in favor of emotional appeals. Indeed, a post-truth society calls to question the very existence of facts — one need look no further than Facebook to recognize that different groups of people can and do operate under entirely distinct sets of “facts” with no method of evaluating which “facts” are actually true. These conditions have several key implications for free speech. Primarily, I will argue that society cannot depend on the traditional “marketplace of ideas” approach of valuing free speech. I will then suggest that a world with no knowable “truths” begets an understanding of free speech’s intrinsic value. Ultimately, I will illustrate that the intrinsic value of free speech is best proven when we accept that no “truths” are knowable.
Beyond the marketplace

From the writings of Milton to Mill, the idea that freedom of speech derives its value from the ability to seek truth is one of the most prominent arguments for freedom of speech. Justice Oliver Wendell Holmes Jr. popularized this idea in his dissenting opinion of the 1919 Abrams vs. United States case, writing:¹

"the best test of truth is the power of the thought to get itself accepted in the competition of the market."

This description has an enduring intuitive appeal — surely if free speech gives exposure to all ideas, audiences will work out what has value as truth, just as in a competitive free market many players will settle on a price (value) for a good. However, today’s post-truth era fundamentally alters the assumptions of this claim. If the mechanisms of analysis and proof that Holmes presupposes are abandoned instead for an emotion-led division between “your facts” and “my facts,” then the “market” is at best inefficient, at worst, impossibly broken.

Therefore, the first major implication of the post-truth society in which we live is that, contrary to several popular free speech theories, free speech cannot find its value in relation primarily to truth, as proponents of a marketplace theory generally hold. As Martin Redish argued his hallmark work, “The Value of Free Speech,” if we are looking to define the intrinsic value of free speech independent of the intrinsic value of truth, the “marketplace of ideas” argument is not a complete one.² Free speech and truth are two independent concepts, but Holmes ties the concepts together as a relational strategy.³ Free speech is good insofar as it is capable of leading a person closer to truth, just as a knife is good insofar as it is able to cut

things. But what good would a knife be if there was nothing to cut? By tying the value of free speech to its ability to result in truth, the “marketplace of ideas” approach implies that free speech becomes valueless if there is no objective truth to which free speech can lead. The pursuit of truth benefits from free speech but is not a sufficient reason to value free speech.

The idea of religious speech helps to elucidate this point. It is reasonable to assume that at no point in time there has ever been full, unanimous consensus on the purpose, meaning, doctrine, and teachings of any given religion. Indeed, it is likely that there have not been two individuals to ever hold the exact same religious views. Nor is consensus likely to arrive soon — nothing short of simultaneous complete divine intervention (or, in the case of atheism, complete refutation of the divine) could bring all of humanity to the same page on the purpose of religion, or even a general direction. With no definitive way of “fact-checking,” we can assume that we will not be able to determine religious “truth” in any practical meaning of the word. If we are to value free speech primarily as a means of achieving/knowing truth, we should therefore be indifferent to whether free speech about religion is permitted or not — they are logically equivalent. Yet even in the absence of a knowable truth, freedom of speech in the service of religion is a dearly-held tenet of society and widely considered a human right, one we all practice in some capacity. If we in fact recognize religious speech as a worthy activity, free speech must have some additional value.

The example of religious freedom offers an entrance into a broader discussion of freedom of speech in the absence of truth, as is the condition in today’s “post-truth” society. A generalization can be written as:

Person A, having exposure to a set of “factual” statements B, decides the truth of a given subject to be C.

Person X, having exposure to a set of “factual” statements Y\(^4\), decides the truth of a given subject to be Z.

\(^4\) (which may or may not overlap with set B)
If there can be assumed to be no absolute, final decision-maker of truth, then A and X need not come to any consensus — one, both, or neither of conclusions C and Z may be “true.”

With no way of determining which truth prevails, any speech involved with persons A and X’s search for truth would be worthless under a “marketplace of ideas” understanding of free speech. A “post-truth” society creates conditions wherein multiple persons have multiple exposures of “factual” statements and can make multiple conclusions concerning the same subject, each of which are held to be true.

Legal scholar Frederick Schauer expands the above ideas to challenge the idea of free speech furthering collective knowledge. He provides the more generous assumption that an idea P can be confirmed to be true. When members of a group can either believe idea P, mistakenly believe not-P, or have no opinion on idea P, it becomes much more difficult to determine when society as a whole has actually achieved truth. Is it when all N people believe in P? None in not-P? When there are more of the former than the latter? Written in 2017, Schauer’s analysis is particularly timely as it addresses the multitude of human elements that affect an individual’s uptake of “facts.” Emotions inevitably accompany the delivery of facts, restricting our ability to arrive at objective truth at both the individual and group levels. In a post-truth society, this effect is even more pronounced. The “marketplace of ideas” rational for free speech hopes that the more speech is allowed, the more society will be able to access and adopt the truth. Fake news and a “post-truth” society offer a damning counterexample this view.

Lastly, it is worth noting that there is significant philosophical doubt on whether any truths are “knowable” at all. Though less accessible than examples of religious understanding and the political bubbles of Facebook timelines, concepts such as Fitch’s paradox of knowability

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and Hume’s problem from induction cast doubt on whether truth is even a valid concept. Fitch’s paradox essentially asserts that we cannot know whether an unknown truth exists, the contrapositive of which implies that if all truths are knowable, all truths are already known.\(^6\) Hume’s problem from induction is a significant issue within the philosophy of science. Hume challenges the seemingly infallibility of science as fact by pointing out that science very good at detecting patterns in nature, but that doesn’t mean science knows with certainty what will happen next.\(^7\) These examples are critical to recognize because they help to temper the modern views that science or public sentiment can definitively solve all unanswered questions. These two philosophical problems provide a sort of final nail in the coffin for the idea that free speech finds its value from truth. Under this understanding, a “post-truth” society isn’t a new phenomenon, but the only society we can ever hope to live in.

*An intrinsic approach*

At first, the idea that free speech doesn’t have value in its relation to truth feels pessimistic, depressing even. But by accepting that no truths are knowable, we are better able to identify an intrinsic value of free speech. To do this, we can analyze our most lauded examples of free speech — peaceful protest, philosophical debates, human rights activism — and see that they are rarely focused on finding “truth” alone. If they were, the publication of a well-proven scientific paper or philosophical proof would be much more deserving of praise. Instead, we think of examples such as the ability of Vietnam protesters, Malala Yousafzai’s speech to the United Nations, or the Women’s March as response to the 2016 presidential election. Each of

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these examples gave voice to the voiceless and provided an outlet for individuals pursuing a cause. This deserves to be celebrated in and of itself.

The concept of “self-realization” as representing one option for as to how free speech’s intrinsic value derives its legitimacy from the very idea that no “truths” are knowable. The general idea of an intrinsically-motivated definition was proposed by Martin Redish in his hallmark 1982 work, “The Value of Free Speech.” In this work, he proposes that the most common defenses of free speech on the grounds of truth, democratic participation, or other values are simply extensions of an argument for speech’s inherent value which he called self-realization, an expression of individual reason. This view points to a primary value of free speech that still allows for the pursuit of truth, democratic values, etc. but not as a means to an end. Ultimately, this argument illustrates that free speech is an end unto itself, as our intuitions about “good” free speech allow.

Conclusion

The idea of a “post-truth” society is daunting. The concept of freedom of speech seems increasingly discussed in terms of potential harms and misuse, not of its intrinsic value. An environment of online hoaxes and conspiracy theories creates a need to assess whether we can tether free speech to ideas of truth, or to also make space for its inherent value. “Fake news” may make it harder to promote vaccinations and prevent climate change but living in a society where facts take a backseat can actually provide a valuable tool in narrowing our analysis of the value of free speech. When truth loses its relevance, we can better understand free speech’s intrinsic value as a form of self-realization.

As a newspaper editor, I began my term doubting whether free speech still had value in a post-truth society. Beginning my work with a student shouting “Fake News!” into my face did not leave me much hope that facts would have an impact. But as I worked with reporters and columnists, moderated debates, and wrote my own editorials, I came to see that the work of furthering free speech had intrinsic value, whether or not that one student ever considered what my newspaper’s stories to be “facts.” When a department published their first piece written in Spanish to expand access for the largely Spanish-speaking readership, or a conservative student shyly told me they appreciated the chance to submit a column, I saw how the very act of speech and writing added value to an individual and to a community, and how this was made even more precious by a seeming non-appreciation for truth.