

## Parsing Trump

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During the election, it was frequently observed that Trump's supporters took him seriously but not literally, while Trump's opponents took him literally but not seriously. Now that the candidate has become the President, we should recognize that Trump presents an epistemological challenge. He forces us to ask, "how do we know what is true? How and where do we draw the line between fact and opinion?" He requires us to ask such questions because of his truly masterful use of the media – especially the social medium of Twitter – to mold public opinion and to frame our national debates. Trump has upended conventional political discourse and we need to understand this new reality.

"Reality" is the Word of the moment. That is because, with Trump, reality TV has become our national reality. Many of the norms of that medium of discourse seem to have become norms of our political discourse. We have story lines following reality TV arcs. There are fights! Trump v. Meryl Streep or Trump v. the case of Hamilton – and so on. There is suspense! Who will be chosen for this cabinet spot or that? Will GM move its plant to Mexico? The new gravitational pull is into narratives that are often very personal and dominated by larger-than-life personalities. This personal touch is relate-able. It is compelling and gets great ratings.

Of course, the notion of ratings-driven politics is not new at all. Beyond his ability to capture the attention of traditional media, it's Trump's use of Twitter that is shifting the very nature of our discourse. He has over 20 million followers. 20 million! 20 million folks that he can communicate directly to, entirely avoiding the "elite media". On this platform, he engages in speech that many of us in "elite" institutions like colleges or law schools would characterize as misleading or even false. Yet dismissing Twitter claims without recognizing that they present an epistemological challenge would be, in my view, a mistake.

Let's consider a couple of examples. Consider themes that Trump has returned to repeatedly in last week or so -- "jobs" and "fake news".

One of Trump's most successful rhetorical postures is presenting himself as a savvy businessman who can make great deals for America. He got rich and knows how the system works. He can use inside knowledge and his acute judgment to make things happen. He is about action.

On Twitter he promotes this. Yesterday said: *"With all of the jobs I am bringing back into the U.S. (even before taking office), with all of the new auto plants coming back into our..... country and with the massive cost reductions I have negotiated on military purchases and more, I believe the people are seeing "big stuff."* Then later, *"Thank you to General Motors and Walmart for starting the big jobs push back into the U.S.!"* and again *"Bayer AG has pledged to add U.S. jobs and investments after meeting with President-elect Donald Trump, the latest in a string..."* [@WSJ](#)

Note the personal touch of naming specific companies. Note also the lack of specifics or numbers. These are very general claims that are hard to refute or confirm. Bayer made a promise. Promises can be kept or broken. Trump has negotiated about keeping costs down on Air Force 1. This is hardly the same as a top-to-bottom cost savings or cut of the military budget. So, while one can't say Trump is wrong, the problem is potentially misleading implications. But when folks in elite discourse try to call attention to this potential problem, Trump attacks. This leads me to second theme around fake news.

On Twitter yesterday Trump also said, *"Totally biased @NBCNews went out of its way to say that the big announcement from Ford, G.M., Lockheed & others that jobs are coming back... to the U.S., but had nothing to do with TRUMP, is more FAKE NEWS. Ask top CEO's of those companies for real facts. Came back because of me!"* Then: *"No wonder the Today Show on biased @nbc is doing so badly compared to its glorious past. Little credibility!"*

Here Trump urges his Twitter followers to simply disregard elite claims to truth. More than this though, he suggests that simply asking the CEOs of the companies in question will confirm his position. As proof of NBC's lack of credibility, he points to declining Today Show ratings. Now there are many problems here. First, how is an average Twitter user going to corroborate with a CEO? Second, there is no necessary relationship between Today Show ratings and credibility. Third and most importantly, his use of "fake news" is pure equivocation. NBC's story was based on reporting of sources. It was not made-up from whole cloth as "true" fake news is. Trump is changing the meaning of fake news.

Still, his rhetorical strategy is effective. He presents his claims as ones that *can* be verified by folks truly in the know. He appeals to the "wisdom of the crowd" in thinking about ratings. And he appropriates a phrase – "fake news" – that is very current and of great concern and applies it to justify his view. This move once again frames him as an insider deal-maker who is in tune with popular opinion. He signals to his Twitter followers that they should be conned by the haters who have constantly doubted him at their peril.

What is our role as academics in responding to this? I hope we can collectively discuss, but I will suggest initially that a specifically legal framework can promote understanding. Among the key concepts we teach new lawyers is the difference between evidence and argument. Lawyers also learn to distinguish between normative and empirical claims. Empirical claims can be defeated by evidence, whereas normative claims require appeal to values. A legal framework can help sort out the statements Trump makes and suggest the kinds of responses that will meaningfully engage with his rhetoric.

My point is this: simply engaging in the exercise of classifying the claims advanced by Trump in his tweets and public pronouncements opens up the possibility of enriching the debate. Sometimes we need to debate values, sometimes we need to debate facts, sometimes we need to debate implications. My hope is that, even in an age of Reality TV politics, applying a legal lens on argument can make the debates more honest and transparent.