

HATE LANGUAGE AND FREEDOM OF SPEECH - ANALYSIS OF SOME PHILOSOPHICAL CONCEPTS OF MILL, HABERMAS AND FOUCAULT

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‘Human being’ is the only one among all living beings, who possess the ability to speak, even though predominantly the ability to think is considered as its distinguishing feature. However, the opinion of the individual largely depends on the language he has learned, because by learning a language either in the beginning of his life or in the following years, in fact a new structure of thinking is absorbed in order to enable him to respond to the opinion of the interlocutor.

Thus, the ability to speak, is expressed only in the context of a language and this in is a barrier for all humanity, because the differences between languages represent the differences that exist between societies but not the genetic differences between living organisms.

“There is no known genetic predisposition, to speak one language and not another, it all depends on the environment: child learns the language or languages from the society in which he lives in. While, between people there are evident biological differences such as: the color of the skin, which sometimes we call them using a linguistic term such as race but without a doubt there are no linguistic races.” (Belon & Minjo, 2004, p.34).

The spoken word is paramount, so viewed through the historical lens is far older than the written word, which is a relatively new form of expression, which somehow not all languages were fortunate enough to experience it. But unlike the spoken words which have transitory nature, the written words were created exactly to save the orders.

De Saussure was right when he draws a distinction between observable linguistic behavior, what he called parole (speaking), and the underlying language system, what he called langue (language). The concept of language was the object of linguistic investigation, thus he stated: “The unique object of linguistics is then language studied in and for itself” (Saussure, 1916, p.317).

Notwithstanding, he will be remembered for the determination to define the language as a language unit, or language signs (Saussure’s term is *signelinguistique*) even though he had proposed plenty of explicit formulas

regarding this issue: “In a sign system, with signs we should understand that we are not talking about all of the possible signs but only for those that can be memorized by users, which are in limited numbers”. (Belon & Minjo, 2004, p.37)

On the other side of the coin, Chomsky in his essays insisted and argued that the language must be understood as an infinite set of sentences and judgments which can be used by the speaker (Belon & Minjo, 2004, p. 37), knowing that the number of different sentences that is allowed in a language is limited, in fact it is not quite clear how an infinite community can be assimilated by the human brain, which is composed of large but nevertheless limited number of cells.

Hate speech as a phenomenon is closely related with freedom of speech, widely known as the one of the most important postulates in the functioning of a democratic society, notably it is constituted in liberal societies as the only route towards the organization of contemporary societies. Even why, some political philosophers consider that human freedom can only be crippled by physical barriers, nevertheless choices become impossible although certain sanctions are attached.

The rationale for the restriction of freedom of speech, often times lies in the logic of protection from defamation or behaviors that can incite other damages. In this regard although John Stuart Mill advocated for absolute freedom of speech on the grounds that it is inalienable to enable everyone to have their arguments and that will lead to a logical conclusion regardless of moral restrictions of society, that will undoubtedly lead us to the principle of limiting freedom of speech because that can cause harm to other people. There is an ongoing challenge to define this phenomenon, so the debate about restriction of freedom of speech continues to generate controversy even today, because the hate speech in democratic societies is indeed a phenomenon that needs to be regulated, although it is hard to think that it can be completely limited, in essence this topic is quite sensitive concerning its adjustment.

The liberals claimed that personal freedom is substantial so in this regard the state should not interfere and is absolutely banned to deal with it, even though such states are founded on justice still they are tempted from time to time to intervene in some areas where personal freedom is considered sacred. The liberal tradition as political doctrine focus mainly is the legal institutionalization and seeks to protect private persons in their social

environments who follow their own personal plans. "According to liberal conceptions, political rights give citizens possibility to highlight their own private interests with vote, with the creation of parliamentary corporations and during the constitution of the government they can become an important political factor." (Habermas, 2011, p.149). Thus, Mill along with most other liberal thinkers started from the premise that there should be a minimum space of individual freedom and this should under no circumstances be violated because for he would not be able to develop the qualities that nature has endowed him, to conceive of those purposes which were regarded as good, just, and sacred - consequently, it is necessary to draw a borderline between the private sphere and the sphere of public authority.

"That principle is, that the sole end for which mankind is warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign."(Mill, 1859, p. 13)

What this principle is designed to preclude is that according to Mill the protection of individual freedom was sacred because one should be able to live his/her life the way he/she want to, on the contrary the civilization might stop progressing, the truth would never come to light, while spontaneity, originality, geniuses, intellectual energy and moral courage would never flourish.

"Society will be crushed by the weight of 'collective mediocrity'. Whatever is rich and diversified will be crushed by the weight of custom, by men's constant tendency to conformity, which breeds only 'withered capacities', 'pinched and hidebound', 'cramped and warped' human beings". (Berlin, 1996, p.230)

John Stuart Mill believed strongly and opened a lengthy discussion on the complexity of the subject arguing for what I call doctrine of liberty claiming that there should exist a substantial sphere and a set of freedoms which no one has the right to interfere with, because when one's actions were self - centered without harming anyone other than the person committing them, no one has the right to intervene not even State. According to Mill, this principle would

restrict the freedom of speech and thought and would limit the individual freedom to live as he wants:

“There is no reason at all’ he says ‘that human existence should be constructed on someone or some small number of patterns. If a person possesses any tolerable amount of common sense and experience, his own mode of laying out of his existence is best, not because it is the best in itself, but because it is his own mode. Human beings are not like sheep; and even sheep are not indistinguishably alike” (Mill, 1895, p.63).

But is it possible to undertake actions that do not cause harm to others except only to the one who commits them? In fact, Mill was aware that some might be offended by some behaviors as he defined as extravagant focused on self-dressing, unusual sexual behaviors and theism, but he also claimed that that was considered completely different from the violation.

“Violation has to do with being attacked or threatened, it has also to do with the destruction of personal property, or the deterioration of the economic position, and this is determined objectively. On the contrary, insult depends on the personal beliefs and attitudes of the one who remains insulted.” (Miller, 82).

Therefore, Mill believed that it would be entirely right for all those who would remain offended by the behavior of others to avoid insulting, and try to convince others to change the direction; however, what was forbidden for the offenders was to obstruct legally or to use other means.

Freedom is not necessarily unique to democratic regimes, but democracy guarantees the protection of civil freedoms than any other regime, and that is why liberals have always supported it.

Even for Mill, democracy was the best form of government, but he warned that the will of the people means the will of the majority, which means that somehow minority is always oppressed by the majority. There is also the danger from the tyranny of opinions, which according to him that was worse than oppression, and it is even more than necessary to place guards against the forces that want to deny you the freedom and development.

“The answer to the question "Who governs me?" is logically distinct from the question "How far does government interfere with me?" “Exactly in these questions the tension between negative and positive freedom is embedded in the liberal discourse.” (Berlin, 1996, p.233)

Mill formulated in general terms the rejection of state interference in public life he was against the extension of the scope of political authority since he suspected that this might involve the use of compulsory powers, according to Mill no government can interfere on its subjects, when actions can best be carried out by private persons when although the government can perform actions better than private persons, it is desirable for individuals to accept that for their development and education.

Consequently, the desire to be self-sovereign it is as deep as the desire to possess a free space of action, I would say even older, these two aspirations have brought the greatest ideological conflict of our time.

Mill's writing and thought is influential across the political philosophy, his influence in politics remain evergreen, surpassing at the same time the earliest apologies of individualism and tolerance, from those of Milton and Lock to Montesquieu and Voltaire, despite the fact that it relied on obsolete psychological theory, the rationale behind it was weak, this work still remains the classic apology of the individual's freedom. (Berlin, 1996, p. 292). The issues in which he devoted himself, both through his writings and through his intellectual activity, mainly dealt with the expansion of the individual's freedom, and in particular with the freedom of expression.

The Habermasian idea of public sphere means that society is engaged in critical public debate through reasoning and critical thinking, this model includes these principles: 1. Egalitarian approach- participation open for all; 2. Rational- critical public debate and 3. Sovereignty- systematic control of the government.

The development media and primarily internet had a great impact in the process of constituting the public sphere in the contemporary society, based on core concepts and definitions of deliberation provided by Habermas and his ideal project. According to Habermas the use of internet has led to the expansion and fragmentation of the context in communication and this is the reason why the internet has subversive impact on the intellectual circles in authoritarian regimes.

“The rise of millions of fragmented *chat rooms* and *issue public* across the world, tend instead to lead to the fragmentation of large but politically focused mass audiences into a huge number of isolated issue publics. In this way national public opinions lose their relevance, and the Web provides a hardware

for the deterritorialization of the dense and accelerated communication, but it cannot oppose the centrifugal tendency.” (Habermas, 2011, p. 169)

In fact, he continuously criticizes the Internet as an egalitarian medium that creates opportunities for an anonymous access and at the same time decentralized approach, which is not regulated so this results in losing the importance of intellectuals who have the power to shape the focus of public opinion. He also warns about the lack of rational communication, mainly a lack of a principle which would direct the communication towards common understanding.

“The public opinion contributes to the democratic legitimacy of state activity choosing political objects with decisive relevance, in the formulation of the problem along with informational approaches create competing public opinions.” (Habermas, 2011, p.142)

According to Habermas, the public communication stimulates and guides the will of the citizens, also it contributes in more transparency when it comes to political systems which somehow the state attempts to defend the public good, and this is indeed a pragmatic way to achieve the best outcome.

He considered that the independent public political opinion as one of the three constituent elements of the institutional framework of modern democracies, which would serve to link the state and civil society; alongside the private autonomy of citizens and democratic citizenship, where the first relates to the right to live a life of one's own, while the second to free and equal involvement in the political community. (Habermas, 2011, p. 147)

Likewise, the views of the postmodern philosopher Michel Foucault on discourse can be considered as a relevant framework for understanding and analyzing the content of communication which could potentially be considered as hate speech. The discourse analysis comes up with a picture in terms of the system of how a particular speech is created, the ideas, attitudes, beliefs it shapes, as well as the mechanisms of action and influences of certain individuals, groups or the society. Despite the usual meaning of formal discourse in front of a public, that also implies a linguistic message. “Someone who writes or transmits linguistic messages means that discourse has at its disposal words with a strict status, such as substitute elements, in the first person.” (Belon & Minjo, 2004, p.79)

Foucault considers that power is present, it creates and controls truth, and that discourse is the tool by which the power relations produce speaking subjects.

According to him, power is always exercised through discourse and thus discourse analysis becomes the central notion on understanding the relationship between power and knowledge. “If someone thinks that discourse means only words, it is useful to recall that the French notions that best describe Foucault's position are *pouvoir*, *voir*, *savoir*, meaning (to be able, to see, to know). In other words, what is considered as universally accepted attracts the attention of critics, given that the word ‘*evidence*’ derived from the Latin word *evidere*, which means transparency.” (Probyn, 1997).

Hate speech can play a strategic role in creating new discourses or in changing the existing ones, this can change the power relationships in society. Foucault seeks to point out three principles when analyzing discourses: first, to seek the formation of discourse, in particular the rules that guide its course; the second one has to do with the study of the transformation of the discourse the circumstances that must be placed identically in order so that to take into account certain objects, concepts and theories; the third, the study of the interrelationships between groups (institutional, social, economic and political) and the contexts in which they are used. (Foucault, 1991).

He insists that discursive relations are not created within the discourse because they don't connect within themselves the notions or words, also in between sentences or views they do not place deductive or architectural rhetoric even though they are not relations of external discourse, which at a certain extent would limit or force a definite form or say something in certain circumstances (Foucault, 2010).

In the article “*Réponse à une question*”, (Response to a question), he harshly criticized the reductionist view, according to which the discourse is something homogeneous, indifferent, unconstitutional and without autonomous law, thus not accepting the semantic and linguistic models for defining discursive formations.

“Discourse is not something that can be involved under the category of author, genre, style, idea or theme. “When such a psychological, linguistic or semantic classification is justified, then the discourse has only said something that was said before it.” (Foucault, 2001).

The epistemological view of Foucault does not signify that reality is reduced to discourse, it means that, if something is said, it is discursively structured and in this sense the introductory proposition of insurmountable diversity does

not imply any kind of idealism which reduces the reality into thought this also does not imply any kind of ontological relativism.

While, in *"The Archaeology of Knowledge"* he will write: "Of course, discourses are composed of signs; but what they do is more than use these signs to designate things. It is this more that renders them irreducible to words" (Foucault, 2010) following the *"On the ways of writing history"* about the distinction between language and structure he said: "the language is composed of structures, but discourses are units of function, so analyzing speech in all its inclusion means opposing that essential claim. To the extent what I'm trying to do, is to place in overall anonymity all the research that currently is revolving around the language, that is not only language that is allowed but discourses that have been spoken." (Foucault, 2001).

Even though the definitions and implications are countless, Foucault was interested in the limits and forms of what can be said at a given time, so his aim was to discover the grounds which allows something to be said or not.

"The right answer to such analyzes could be formulated in this way: how is that specific existence which emerges from what has been said and from nowhere else?" (Hannah, 1993).

Thus, to help clarify this enigma, I turn to Deleuze's insights into the notion of the discourse which according to him the discourse leads us to different formulation or group of formulations which will guide us to reality, as Deleuze a key figure in postmodern philosophy would say, "everything is real, and the whole reality is fulfilled" (Deleuze, 1988).

While on the other side, the relations within the individual discourses should be different from the relations between each other, as if the relations between the same and non-discursive discourses must change, because otherwise we would return to a holistic and monist understanding and most of the episteme.

Foucault didn't ignore these complicated combinations of notions but he rather used a notion-correlation respectively a kind of dependence, comprising all varieties of relations to a single one, although this in itself carries a variety of meanings ranging from hierarchical relationships, to relative equality and complementarity.

The complexity of the problem can be investigated from Foucault's elaboration of the discourse and of the political practice, thus he rejects the reductionist interpretation, denying the direct reflection of political practices

of the discourse itself, because the discourse is not a direct expression of any social relationship or economic situation, so under their influence may eventually change the rules but not the discourse itself. In each era, our fellows are locked within discourse as if within a transparent vase of glass, and not being conscious about the vases even though they exist.

“The consciousness is never present in the description of the discourse, so the discourses remain invisible, they are not the unconscious speech of the subject, but indeed they are imposed and enforced, so that the positive unconscious knowledge is a level that avoids the consciousness of the actor, and they have exploited it without being aware that it exists”. (Foucault, 2005)

So, the discourse is that invisible and unmindful part of the thought in which every historical event is singled out,

“If the statement is not invisible, by itself, it doesn’t mean that it is visible. The statement is neither visible nor hidden. He does not offer attention as an obvious bearer of its boundaries and its characteristics. It is more than necessary to shift the view so that can be understood. Perhaps, a dimension of the discourse continues to hide itself. Maybe that is very familiar that continuously hides or maybe it is something like an intimate of transparency.” (Foucault, 2010)

However, the discourse along with its institutional and social provisions, remains *status quo* and is imposed only when historical circumstances and human freedom cannot be substituted with another; we get off the temporary vase only when we feel that we are under the pressure of new events, or knowing that someone has invented a new discourse which has been widely accepted. The vase or discourse is above all what could be called *a priori* (theoretically) historical. (Foucault, 2001).

Discourses and false generalizations change over time but in each era they are taken as true, thus the truth is reduced to what is known as true, to be in line and in accordance with what is accepted as the truth, and what will be quoted/cited after a hundred years, maybe people will make fun of it. (Veyne, 2008).

By discourse he had found what historians and theorists of science found in the evolution of the natural sciences in the name of "*paradigm*" in Thomas S. Kuhn, or "*research programs*" in Imre Lakatos, "*styles of scientific thought*" by Alistair C. Crombie and Ian Hacking, who at the same time is a representative of constructivist theory of knowledge.

“What civilization more than this one has shown respect of the discourse? When in the trajectory of history, it was more relevant and uplifting than now? When it was this universal and radically liberated from the oppressors? However, it seems that beneath this favoritism of discourse, under this clear logophilia, is hidden a sense of fear. If obstacles, barriers, thresholds and limitations had been set out, as if to overcome, at least partially the great multiplications of discourses, to remove from their competence the dangers, and to organize the chaos so that what could be avoided at least can be controlled; as if we wanted to erase even the traces of the theft of discourse in thought and language.” (Veyne, 2008).

In his essay “*Discourse of language*”, he suggests the use of a new genealogical analysis in order to formulate an effective discourse, either at the limits of control or outside of it. Also his archaeological research must be implemented in relation to the will of knowledge and the effects of the power it creates. (Best&Kellner, 1996).

According to him, the discourse is the meeting point of knowledge and power; it is the form through which knowledge and power operate, because through knowledge, power becomes valid and operational. According to Foucault the discourse is defined as a linguistic unit or group of notions that constitute or frame a particular field of interest, in which some powerful rules established by powerful means try to distinguish truth and untruth. (Foucault, 1991).

In the other hand Foucault pretends to reconstruct the regularities which somehow emphasize the discursive formation or any anonymous historical rule which shapes the occurrence. The discursive practices, as Foucault names them as levels of regularity do not necessarily encounter with individual actions, even though they are manifested in individual action; they are even extensive and serve to regroup many of them. They also do not necessarily conform to science or discipline but they are a group of different sciences and disciplines. (Weeks, 1982).

However, the notion of discursive practices detaches with separation of linguistic from public. Foucault claims that discursive practices are embodied in technical processes, in institutions and in the models of the general behavior, thus the unity of discourse does not derive from the fact that it describes real objects, but from social practices which somehow form the objects on which discourse takes place, through which the practice itself is

created socially. The explanation of any discourse or discursive practice, lies in the interpretation of what people do or what they say, in the sense of what are their movements, their words or institutions, it is something that we do continuously and unconsciously every time and we understand each other. The Foucault's instrument the so-called *hermeneutics*, clarifies its meaning, it has to do with the everyday practice where skepticism is built which sinks the general ideas. (Veyne, 2008).

The intention of Foucault's method was to understand what the right meaning is and what the author of his time was trying to say, even though some of his students wanted to relativize this fact by saying that everything is result of interpretation.

His interpretation he pays great attention to the meaning, he never finds eternal Eros in ancient love, and how this Eros is contaminated by psychoanalysis or any philosophical anthropology.

With reference to this, in fact, a kind of positivist hermeneutic positivism is encountered: nothing can be known with certainty, about ourselves, the world and the good, but what is important is that we find understanding among each other, good or bad it doesn't matter at least, we understand.

"This is hermeneutics because of the *"principle of invincibility of thoughts"* meaning that the consciousness does not stand at the root of thoughts, "there is no experience which is not somehow a way of thinking." Historical facts may be independent from concrete definitions of social history "however one can enjoy those definitions only through thinking" (Veyne, 2008).

The hermeneutic method is like this: instead of starting from universals as a network of understanding the "concrete practices", it will start from those practices and the bizarre discourse of which they assume, "that in some way they will release the universals through the network of those actions", and then the truth (past) will reveal itself, therefore "universals do not exist" (Foucault, 2005).

"I begin from the decision which at the same time is theoretical and methodological, which says: we assume that universals do not exist", for example we assume that stupidity does not exist, or rather it is a false notion (even if that corresponds to the reality). Depending on that, what kind of story we can create taking into account different events and actions that at first

glance are regulated through something we assume to be stupid?" (Foucault, 2005).

Following the Nietzsche's example of genealogy of morals, asceticism, justice and punishment, Foucault later wrote the stories of marginalized discourses which were classified under some formalism; as well as disqualified and delegitimized from positivist science and Marxism.

"The problem with prison is local and marginal because no more than 100,000 people pass through prisons per year; in France in total there are approximately 300 or 400.000 persons which once have passed through prisons. This marginal problem shocked and hit the people. I was so surprised to see that, people which have never been in prison were eager and interested to know about the prison problem, I was also astonished to see how many people to whom the prison discourse was not destined, in the end heard that discourse. How can this be explained?" (Foucault, 2001).

In fact, Most of Foucault's major works can be read as genealogies, because somehow he continued the Nietzsche's masterpiece "*Genealogy of Morals*" he attempts to explain that each definition that we consider as eternal has its own history, it has been created by sources that its essence are not magnificent (Veyne, 2008).

His basic idea is that the discourses of madness, medicine, punishment, and sexuality have independent histories and cannot be transformed into macrophenomena similar to state and economy, which in fact is tyrannical and globalizing, discourses. Discourse phenomena are singular *per se*, in true sense of the word, and they don't fall into any generalization because each one of them is unique in its kind (Foucault, 2005).

But in order to separate them, we go back in history, when concrete practices of power, procedures and instruments started to occur then we can clarify a discourse-union of real practices-which took full shape in the eighteenth century.

Foucault defines it as governance, which is distinguished from the medieval discourse of the rule of law and as well as from the administrative state of the renaissance. In his famous book "*Discipline and Punish*" he had no doubt about the punitive continuity damages. (Veyne, 2008).

By discourse Foucault meant something very simple and clear, a precise description of a historical creature in its nudity, this is the ultimate revelation of individual diversity. Going further to the *differentia ultima* of a given

singularity in the demand of wise effort, is necessary that the eye-catching event trivializes and rationalizes it.

In his first book, his first heuristic implication was an explanation of the discourse of madness; while in following books he gave examples of skeptical philosophy by paying attention to the details which he himself had never exposed them, leaving room for different interpretations to occur.

Foucault wanted to incite a discourse of irrelevant detail that will be under the umbrella of anatomy or physiology but not the identity of individual; Long story short, about the details that we feel free to talk in bed or at the doctor: "Do we really need sex? Regarding these sensitive issues modern Western societies responded positively, they constantly brought up the question of "real sex" in an order of things in which it could be thought that only the reality of the bodies and the intensity of the pleasures were important.

Conclusions

On philosophical thought, hate speech as a phenomenon is closely related with freedom of speech, as one among the leading postulates of the functioning of a democratic society, and that was proved taking into account and elaborating the notions of Mill, Habermas and Foucault.

Exactly, the use of the notion of hate speech without a clear defining framework, forces us to examine and consider different theoretical approaches, but also to approach them from different perspectives in scientific and interdisciplinary aspects. This it also has to do with the complexity of the phenomenon and the inability of sanctioning, in order to achieve the absolute prohibition of it, because quite often and at a certain extent that is considered as restriction of human freedom.

Among many relevant elements that the paper has tackled, the relationship between hate speech and the principles of free speech was examined in details and it seen from many viewpoints, the need to preserve freedom of expression and the values of contemporary democratic societies were examined.

One of the main issues faces disagreement and controversy is whether it can negatively affect freedom of expression respectively the critical thinking, the different and non-unifying understanding of hate speech. However, the message it conveys is universal in essence, despite the fact that the character of the cultural and social affiliation is evident; it is easily penetrating the society.

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