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## Venice Summer School – “Free Speech, its Primacy, and Challenges”

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#### The Nuances of a non-Neutral Free Speech: defining Hate and Offence in the Social Media Era

##### **Introduction.**

*“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.* That is the textual citation of the Universal Declaration of Human Rights. The latter, in Article 19, safeguards, ensures, and protects the freedom of expression of any individual without distinction. A right recognised as inalienable and due to everyone from birth. Besides, partially reformulated, the same freedom is ensured and protected by Article 11 (Freedom of expression and information) of the Charter of Fundamental Rights of the European Union. In their preambles, they both declare that every state subscribing to and ratifying these declarations undertakes to respect every right and freedom contained therein. Indeed, these articles represent a common standard of achievement to secure their universal recognition among every human being. Furthermore, freedom of expression and thought is preceded by a specification about freedom of worship, a profession of faith, and religious affiliation. It is no coincidence that religion has been, and still is, the cause of major verbal clashes that often result in hate speech. That is because religious faith and belief are associated with various cultural practices to the extent of generating what can be called "cultural racism". Although not the main topic of this paper, religious discourse can produce hate speech or be the subject of satire, as in the famous case of Charlie Hebdo, being offensive to many. Returning to the articles above-mentioned, it would appear that there are no objections to be made, either in the written wording of the recognition of freedom of thought or to the principle underlying it. However, although we have a general definition of what freedom is, it becomes subjective according to the contexts in which it is exercised and the different situations in which it may be banned or restricted. Take, for example, the text of the First Amendment of the US constitution. It states: *"Congress shall make no law respecting an establishment of religion, or*

*prohibiting the free exercise thereof, or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances".* Freedom of expression is not and should not be regulated by law as an inalienable right. A right, universally recognised, to be exercised without any interference precisely in the complete freedom of everyone. So, I can say whatever I want just because I am exercising this kind of right in my liberty to do so. But what happens when to protect this freedom, we fail to protect human dignity and equality, the principle of non-discrimination, and the recognition of diversity in its equal dignity to exist and be manifested? Besides, inalienable rights. That is the point where the need to restrict or at least regulate freedom of speech is argued. Moreover, it departs totally from the alleged threat of political correctness. Indeed, that is nothing more than an excuse to perpetrate hate speech. This paper will answer these questions based on the author's studies and stimulating research conducted by experts on the main topic.

### **Justifying Freedom of Speech.**

If we consider freedom of speech as an independent principle this will require justifications of its own (Badamchi, 2014). Analysing and understanding the principles underlying freedom of speech is not easy, especially since some different theories and justifications often start from various premises. Given that freedom of speech has been defended as peculiar liberty, and often used to measure the degree of democracy within a country, it is crucial to compare different theories to understand which one may be the most effective.

The most widespread justification and the most liberal of all is that put forward by John Stuart Mill. He argues that freedom of speech is dedicated to the attainment of truth. Consequently, all discourse serves this goal and deserves to be expressed, heard, and never censored or restricted. That is one of the leading liberal principles and assumes that we only gain confidence in our views if we are allowed to defend ourselves against contrary prospects, especially false ones. Like all consequentialist views, one justifies a means to an end by not considering that this means is valuable in itself. Freedom of speech is not only valid if it is devoted to the search for truth but is intrinsically so in its definition. In this regard, Mill was not exempt from criticism: accused of over-intellectualism, he did not see the fact that not all discourses are intended to arrive at absolute truth, nor does he justify why truth is given priority. If consequences count for Mill, it must be explained why truth is prioritised over other possible effects of free speech as the harm and peril caused by hate speech (Bonotti & Seglow). Moreover, where the truth is valued, like in newspaper articles or academic publications, speech becomes highly regulated. Indeed, contrary to the theory of the free "marketplace of ideas", in which

false news must also circulate, authors will never write pieces of information that are not true and verified. In addition, consequentialist theory is based on the idea that the free circulation of ideas and information, whether true or false, can contribute to the evolution of the human being, and the development of reasoning abilities.

Although incomplete, one perspective that comes closest to a clear justification for freedom of speech is autonomy. The latter, however, must be a listener-based view instead of a speaker-based view. The former will base its restrictions on free speech based on an external viewpoint that might deny the individual's freedom to choose what to express to the other. On the other hand, the second focuses on the individual's sovereignty to decide what to believe based on what they hear and read. A common criticism of this argument is that many discourses, such as fake news and hate speech, do not have suitable propositional content for rational judgement. Moreover, assigning value to things in an individual way promotes a sectarian view that is rejected in liberal political terms. If the same things have different values from different points of view, then universal rights and freedoms also relatively have different values (Bonotti & Seglow).

One could integrate autonomy with democratic participation as a second possible justification for free speech to overcome this apparent paradox. In doing so, it is possible to adopt a non-consequentialist approach. Autonomy is considered in both its forms and represents an essential element of our human capacity. It should also be based on an egalitarian dimension meaning that the state should show respect to the equal autonomous status of all conceptions of good. The state should refrain from judging, banning, or censoring opinions solely based on a different conception of the good (Badamchi, 2014). Moreover, political participation is fundamental as one of the basic principles of any democracy.

*"It is a right of a citizen to participate in democratic political processes, so government censorship violates that right to political participation. A non-consequentialist, rights-based justification as long as it recognizes the free speech as a constitutive element for political participation and democracy, rather than just a means to achieve them"* (Badamchi, 2014). The double-grounded non-consequentialist theory does not claim to be conclusive but sees autonomy and political participation as complementary justifications. Without the right to free speech there can be no autonomy, and similarly, without freedom of speech, there can be no democratic participation. Consequently, freedom of speech is a value and a right, an essential prerequisite for autonomy and democratic participation.

## **Offensive Expression and Hate Speech: Whether and by Whom to be Regulated.**

The debate on hate speech is still open today, especially since the recent increase in online hate with the advent of social media. What we are witnessing is a simultaneous, immediate confrontation that travels at high speed, spreads, and often comes from anonymous sources. One post, one-click can generate media storms. The discussion has also become increasingly urgent as censorship of free speech is practised by many corporations. Hate speech denigrates and defames people based on their identity: ethnicity, religion, sexual orientation, gender, and so on. It tends to increase stereotypes and prejudices, and the underlying concept is to attack the position of the other by exploiting their already marginal and vulnerable status. Not only is it an unequal confrontation, because of the different power positions and material possibilities in responding to provocations, but also a one-sided debate that does not lead to the construction of a real dialogue. This definition also helps to understand why hatred directed towards the more privileged members of society is generally not hate speech. Furthermore, it is also possible to make the distinction between offensive and hate speech. While the former is directed at a person's beliefs, the latter is directed at their identity, who they are, or who they choose to be (Bonotti & Seglow).

Faced with this, what to do? Would it then be necessary to restrict freedom of speech? If we rely on the consequences of our discourses everything should be censored because there will always be someone who will be offended by our words. On the contrary, hate speech contributes to unconditional discrimination and infringes on universally recognised fundamental human rights.

However, some scholars also oppose the censorship of hate speech: about the practitioner and to the level of consequences that might occur. Robert Dworkin argues that the state should not intervene in any way concerning this regulation or restriction through its coercion unless it is exercised in a way that respects the status of everyone as a free member. In his view, an equitable democracy, requires that each citizen has not only a vote but also a voice to decide. We can and must, in his opinion, adopt laws to protect people from the specific and harmful consequences of racism and other forms of intolerance. racism and other forms of intolerance. However, we should not seek to interfere further upstream by banning any expression of the attitudes or prejudices that are considered to fuel such injustice and inequality. If we arbitrate prematurely, we remove the only democratic justification for demanding respect for all for these laws. Contrary to Dworkin's assertion, Jeremy Waldron argues that the legitimacy of any given law is itself a matter of degree and that, therefore, the enforcement of hate laws diminishes the legitimacy of other anti-discriminatory laws without eliminating it altogether (Weinstein, 2017).

If we exclude considering law and government as agents in the possible restriction and regulation of free speech, we need to rethink self-censorship through social norms. In the United States, precisely based on the First Amendment, which does not provide laws for the regulation of free speech, social norms play a crucial role. While concerns about the biases of elites in deciding whether and what to censor are legitimate, the norms restricting speech in the US often seem to reflect a special sensitivity to marginalised social groups (Macedo). Another fundamental social norm that would help regulation and fair and respectful exchange of ideas would be to take seriously and fully understand the grievances of the community target of satire and humour. A norm of deferring to the group that is the object of satire could lead us to applaud the willingness of relatively powerful communities to take a joke. Norms are nothing more than the social result of decentralized individual expressions and actions, amplified through various media. Since the norms of speech are dynamic, they need to be constantly updated, adapted to new groups, and improved. When these rules become overly binding or misleading, they must be objected to and rejected (Macedo).

### **Free Speech on Social Media.**

Social media are a powerful tool at our disposal nowadays to communicate quickly, instantly, overcoming distances, and learning to know each other better. Some work with the media, some make money, some use them to make activism, some to stay in touch with friends and relatives, some to get information daily. The advent of social media and these new technological platforms has brought with it innovation. They also produce a series of new problems for which we may not have been ready. New platforms are developed all the time that differ in the type of posts to be shared. They pre-set a sharing model to which each kind of content must adapt. That is often limiting not only because the medium affects the content itself but also because of the inability of many users to be able to use these tools. It is no coincidence that we talk about digital illiteracy. In our claim to keep up with the times and use everything at once, we forget to understand how specific tools work. In that way, we could use them in the best and safest way possible. Thus, on social networks, we can find a variety of members and content without any precise regulation.

*“The media is to be defined as a natural or legal person gathering and disseminating to a mass audience information and ideas pertaining to matters of public interest on a periodical basis and according to certain standards of conduct governing the newsgathering and editorial process” (Oster, 2013).*

The use of social media, according to a utilitarian, consequentialist, and functional understanding of freedom of expression should be judged and defined by the function it performs. We should not consider the person or institution making a statement or the medium through which the information or idea is communicated. The media platform's role is to contribute regularly to issues of general interest with information and ideas that have been collected and edited according to specific standards of diligent conduct. All those not dedicated to matters of collective interest can still invoke freedom of expression for their publications, but not the certain guarantees of media freedom. Regulation will take over as each media outlet, and its users adapt to these standards of diligence (Oster, 2013).

Unfortunately, not everyone is dedicated to sharing information of collective interest. The freedom of expression on social networks is amplified by distance, the boundary that a computer screen or a telephone generates, and the possibility of remaining anonymous. In this sense, it must be regulated, where hate speech creates an endless spiral. In this regard, one should focus not only on who is spreading the news, writing, or publishing but also on how platforms have come to interfere with free speech on the side of the public. Algorithms now organise discourse on social media intending to increase user engagement and marketability for targeted advertising. The result is that the audience of the discourse is now algorithmically decided, a phenomenon called “algorithmic audiencing”. Interference with free speech distorts discourse, amplifying or suppressing the reach of messages based on logic outside that discourse. Thus, there is an urgent need to rethink and extend our established understanding of free speech. Otherwise, this interference will go unnoticed, and regulation that only focuses on content moderation will further cement the status quo and implicitly legitimise it (Riemer & Peter, 2021).

For instance, Facebook's algorithm provides for the censorship of several keywords that can be linked to hate speech or discrimination. However, there is still no secure social media that can guarantee complete protection from insults or that can limit the spread of hate or fake news, as these precautions are easily circumvented. Fake news runs faster than the truth, two sentences are enough to create an army of people ready to denigrate a social group. There is a passive use of certain platforms that lead people to believe the first alarmist headline, or the first piece of news told in a grandiose and partial way.

## **Conclusion.**

Freedom of speech, as an inalienable right, must be recognized and guaranteed without any distinction. It needs specific justification as it differs from the definition of freedom in a broader sense. However, in its application, it must not harm other universally recognized freedoms and fundamental rights of the human being such as human dignity and non-discrimination. We have seen how possible justifications for freedom of speech can be found in the complementarity of autonomy and democratic participation. While this is still not entirely sufficient, it represents an important starting point from which to continue the debate on the possible limitation or regulation of free speech.

One of the possible reasons for which one could intervene to limit freedom of speech is hate speech. These differ from offenses in that they are aimed at denigrating and targeting a person's specific identity, rather than his or her personal beliefs. We have seen how hate speech should be analyzed based on the context, the concrete possibilities of the individual parties to participate in the debate, and above all, from the different positions of power. Public discourse and free speech, in general, should not be restricted or regulated by the state entity or the government. He would do this according to his interests, his own beliefs and would be the expression of an elite. Rather, social norms have been proposed as an active agent in regulation. Self-censorship is based on solidarity and equality.

To conclude, social media leads to rethinking the regulation of free speech as the discourse is articulated through a new medium and the possibility of accessing much more content. As long as we remain passive users on the one hand and producers of hatred and contempt on the other, we will only feed this system.

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