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Toxic emotions in the new public sphere: media controversies and hate discourse

Emociones tóxicas en la nueva esfera pública: controversias mediáticas y discurso del odio

Abstract

In recent years, criminal punishment for hate discourse has become widespread in Spain: one of the arguments for denying it an enhanced protection of freedom of expression derives from its irrational nature, which means it cannot be denoted as a discourse. To discuss this concept, an interdisciplinary approach linking the legal principles of freedom of expression with the centrality of public sphere deliberation in democratic societies is offered, with a review of how the discourse establishes a mediation space between emotion and action. We argue that a diverse public sphere where offensive discourses are allowed needs media mediation. The role of the media would concentrate on reconfiguration of their position within the public sphere offering participatory models and recovering their position as communities' places of encounters and conversation.

Keywords

Public sphere; hate speech; mediation; criminal law; emotion

Resumen

El castigo penal a los discursos de odio se ha generalizado en España en los últimos años: uno de los argumentos para negarle la protección reforzada de la libertad de expresión es que, por su carácter irracional, no merece la calificación de discurso. Para discutir esta idea, ofrecemos una aproximación interdisciplinaria que conecta los principios jurídicos de la libertad de expresión con la centralidad de la deliberación en la esfera pública en las sociedades democráticas a través de una revisión de cómo el discurso ofrece un espacio de mediación entre las emociones y la acción. Defendemos que una esfera pública diversa en la que se permitan incluso los discursos ofensivos necesita de la mediación de los medios de comunicación en tanto estos sean capaces de reconfigurar su lugar en la esfera pública ofreciendo modelos participativos y recuperen su lugar como espacios de encuentro y conversación de las comunidades.

Palabras clave

Esfera pública; discurso del odio; mediación; derecho penal; emociones

1. Introduction: emotions in court

On 17 February 2020, Spanish actor Willy Toledo sat before Madrid's 26th Criminal Court, accused of offending religious sentiments by insulting God and the Virgin Mary in comments he posted on Facebook back in 2017. It was "a comment that directly attacked Christians by making a mockery of their dogmas", according to the Spanish Association of Christian Lawyers, which filed the court case against Toledo.

This association also filed court cases again several women who participated in "the Insubordinate Pussy" procession through the streets of Seville, on 1 May 2014. Toledo's message criticised a Sevillian judge's decision to initiate an oral trial against these women for offending religious sentiments and hate crimes.

Evidently, some Catholics were offended enough by such expressive acts as to bring the case to court, invoking a Criminal Code that protects the feelings of the members of a religious confession (article 525 CP) and other emotional states linked to patriotic symbols such as emblems and flags (article 543), and accordingly sets out monetary fines for those who publicly disparage religious dogmas, beliefs or ceremonies.

Shifting the ideological spectrum, another sector of the Spanish population was also offended by the actions of *Hazte Oír* ("Make yourself Heard"), an organisation that toured various cities on a charted bus that displayed the message "Boys have penises, girls have vaginas". The bus tour was cautiously cancelled in several capital cities after being the subject of various complaints that invoked the feelings and rights of LGTBI people.

In recent years, Spaniards have witnessed a trend to restrict public expression. As part of what may end up shifting the socio-political model of the country, public deliberation seems to cease to be understood as *prius* of democracy to become merely a focus of conflict and disagreement. Instead taking an active role in public matters, citizens of the so called "snowflake generation" (Fox, 2016: 57 and subsequent pages) increasingly act as victims of speech, as vulnerable and hypersensitive patients who need speech-free spaces where they can feel safe, and demand governmental protection against those who think different. Meanwhile, the government, which is always reactive to the headlines and open to short-term initiatives, is welcoming these demands for protection and acting as if there is only one solution: interpreting all critical, dissident or offensive speeches as threats that must be silenced. In this crusade, consensus is total and independent of political affiliations. Just like demagoguery, the left promises to abolish gag laws and legislation protecting religious sentiment, but also agrees to make the exaltation of Francoism a crime. On the other hand, the right, outraged by this eternal return to the past and now flying the flag of freedom of expression, seems to forget that when it had the opportunity it increased exponentially the penalties for free-expression-related crimes in the 2015 reform to the Spanish Criminal Code.

This phenomenon is multifaceted and very complex. However, some of its causes can be identified. The first one is the axiological relevance assigned to subjective emotions and feelings, and the consequent attribution of an unlawful nature to offensive or distasteful words and acts. In this climate of conformity and political correctness, subjective feelings are treated as personal interests and turned into purported rights, so that any offense to such feelings is axiologically equated to harm to an individual's personal dignity and honour. This gives way to a new "right": the right to not be offended. In doing so, the traditional liberal conception of free expression –whose only limit should be not to cause harm to others, according to Stuart Mill's classic dictum– is cut at its base: the right to offend, as a necessary condition for ensuring intense and uninhibited debate on public affairs, is transformed into the duty to not offend, which in turn becomes the obligation to moderate the form and substance of speech.

What is perhaps more worrying, because it really shows that this change of model has come to stay, is that the censorship of offensive expression is not only imposed by public authorities, but is also demanded and exercised by citizens, who are increasingly sensitive and less tolerant of irreverence, satire and lewd criticism. As Mick Hume (2016:33) points out, in this era of reverse Voltaires:

> people are perceived and often perceive themselves as vulnerable, capable of being harmed or being incited to harm others only by virtue of words. Humanity's image as vulnerable, thin-skinned, and ultra-sensitive makes freedom of expression appear a dangerous activity.

This fallacious identification between feelings and rights is reflected very clearly in another one of the causes that explains the decline of free speech: the demands for the protection of cultural identities. The demands of some sectors of multiculturalism regarding differences and particularisms of certain cultural groups have also become a strong dyke to the fluidity of political speech, by considering any manifestation of rejection or contempt of the traits, traditions and symbols that make up and unite the identity of a group as harmful to the dignity of its members. These "identity policies" (Taylor, 2003) demand significant restrictions on freedom of expression because, from the perspective of identity groups, any offense to the traditions,

symbols and traits that shape the identity of the group will be understood as an attack on the dignity of the members of the group, just like any criticism of those traditions will be described as hate, racist or discriminatory speech, which is strongly punished by the Spanish Criminal Code (art. 510 CP).

The third cause of the current trend to restrict free speech plays an essential role in the exponential increase in the suppression of satirical speech on the grounds of its exaltation of terrorism or humiliation of victims of terrorist crimes (art. 578 CP), which has led to an unusual escalation in the condemnation of rappers, Twitter users and puppeteers. This third factor is precisely the exaltation of the victim as a reverential icon, against whom any critical or satirical speech acquires the status of blasphemy. The laudable care for victims of violent crime has, at the same time, created various socio-political perversions. On the one hand, victims have been placed as leading actors in decision-making regarding what and how much should be punished, with the consequent detriment of punitive rationality. On the other hand, the feelings and emotional demands of the victims have become one of the priority guides of action for public authorities, so that any speech that minimises or satirises their privileged social status will be considered worthy of reproach.

The combination of the aforementioned factors –the need to protect feelings, the rise of cultural identity as worthy of protection, and the quasi-sacred role of the victim- has produced an interesting phenomenon in which victims –generic, abstract, unspecified– have become an identity-based social group, and consequently any shameful, contemptuous or even comic comment regarding a particular victim –living or dead– becomes a harm to the dignity of all the victims ("We all are Carrero Blanco"). Conversely, the members of minority social groups become perpetual victims, so that any hostile message to identity traits is equated with individual harm. This also has an important effect on the application of the Criminal Code: the perspective of the victim is based exclusively on the criterion of interpretation of the conduct, their hurt feelings –anger and indignation– are quasi-irrefutable evidence of the harm of the words expressed and of the harmful purpose that guided the author of the message. As Claire Fox (2016:26) has stated, "claiming to be a victim gives people a perverse authority (...) Victim status can purchase special privileges and gives the green light to brand opposing views or even mild criticisms as tantamount to hate speech". Faced with the axiological cusp on which victims –or the Victim as an archetypal category– have been placed, freedom of expression will always remain on the lighter side of the scale.

The legal framework that has exuded from this new social scenario is the criminal punishment of hostile and offensive expression. As mentioned, the Spanish Criminal Code protects feelings and strongly sanctions the so-called "hate speech". This figure (art. 510 CP) criminalises the expression of certain ideas when they are directed against a group based on the common trait of its members, which could be their real or perceived race, nationality or ethnic origin, language, skin colour, religion, sex, age, intellectual or physical disability, sexual orientation and other similar factors.

Through this type of crimes, a set of emotions is introduced normatively into the public sphere, as a modulating factor for free speech and as the basis for the orientation of public deliberation. The intention to offend a group is punishable, but if this intent cannot be demonstrated (as in the case of the feminist parade in Seville), there is no crime to punish.

Based on the previous situation, this article questions the place of feelings of offense in public speech and explores how their centrality is one of the factors that is transforming the public sphere. Should everyone or just certain vulnerable minorities be protected from encountering offensive ideas? How does the quality of a democracy is affected by restrictions on the free expression of certain offensive ideas and their concurrence in the marketplace of ideas? To what extent has the structural transformation of the public sphere –the erosion of the role of the media as gatekeepers and the emergence of social media– placed emotions linked to hate speech in such a central position that now state intervention via criminal sanctions is required?

2. The centrality of emotions in the new public sphere

When Habermas (2002) defined the concept of public sphere, it influenced its rational and discursive nature. The public sphere was conceived as a rational deliberation space in which citizens discussed matters concerning the common government, arbitrated by the media. Journalism was conceived as a mechanism to show citizens the two possible sides of an issue in a distanced manner, they were able to choose the best option based on their sympathies and interests (Rosen, 1997: 193). Objectivity, identification of sources, and obligation to give voice to all parties involved in a conflict are the weapons that journalism uses to generate the space that enables that rational discussion.

This view of the public sphere presupposes the existence of a rational and ideal citizen, able to put their passions and affections aside to make decisions based not on selfishness but on the interest of the community (in the form of John Rawls' veil of ignorance or Apel's ideal speech situation). Along with this conception of the citizen, Habermas argues that the public sphere was based on "unlikely" cultural and social assumptions and a threatened cultural infrastructure, which depends mainly on:

> the existence of socially aware journalism, with important mass media and press organisations capable of directing the interest of the vast majority of citizens towards issues that are relevant to the formation of political opinion. And also on the existence of a reading population that is interested in politics, has a good education level, is accustomed to the conflicting process of public opinion formation, and takes time to read independent quality press (Habermas in Hermoso, 2018).

Different authors have pointed out that the conception of citizen on which Habermas's definition of public sphere is based is exclusionary, particularly towards women and the popular classes (Fraser, 1993). Importantly, Habermas himself has recognised this problem and has also admitted that the conditions for the bourgeois public sphere no longer exist.

The emergence of the Internet, first blogs and then social networks, has radically changed the dynamics of the public sphere. However, while digital media provide the conditions for a more open and participatory public deliberation (Jarvis, 2015; Dahlberg, 2007), the shift from the flow of mass information that characterised the media to the virality that characterises social networks (Rodríguez, 2013) has radically fragmented the public sphere: there is no longer a single public sphere but a set of separate spheres (Sampedro, 2000). In contrast to the idea of a public plaza where we can all participate, the digital world has generated a set of narrow spaces characterised by echo chambers and filter bubbles (Pariser, 2017; Sunstein 2003).

In addition to this closure around communities, the new diversified and fragmented public sphere is characterised by the centrality of emotions, discussing the rational nature of Habermas' conception, which is also shared by democratic republican theorists (see Sunstein, 1993). As Maiz (2010) points out, the "feat of reason" was to exclude emotions from ordinary life and political experience. In fact, democracy and the state are conceived, by such authors as Hamilton (as cited in Maiz, 2010), as instruments to tame emotions. For Maiz, enlightened hyper-rationalism leads to overestimation of consensus and neglect of collective identities.

The shift from a deliberative and rationalist view of the public sphere to a more emotional dimension runs parallel to other shifts in political theory, which moves from liberalism and republicanism to communitarian democracy, whose views encourage new populisms. Faced with an estranged conception of political participation, communitarianism theorists defend the need for democracy to actively protect the most oppressed groups, even at the cost of restricting the right of others to express their views and emotions. Freedom of expression, which for many is a constituent element of democracy (Carey, 1997), has been reduced by the consideration that, in the new public sphere, there is a widespread of hate speech that undermines the possibilities of certain groups to participate normally in democracy (Taylor, 2003; Parekh, 2012).

3. Public deliberation, conflict and offense

How should a democracy treat speech that openly argues that immigrant, gay or black, Catholic or pro-Franco people are despicable and deserve to be stripped off certain rights? This question is not rhetorical or restricted to certain political positions: just as the Christian lawyers filled a court case against Willy Toledo and the Insubordinate Pussy Procession, the newly appointed government has proposed a reform of the Criminal Code to penalise apology and exaltation of the Franco's dictatorship (Marcos, 2020)

This situation makes us wonder about the limits of freedom of expression and the role it plays in the formation of a democratic society and the inherent aspiration to strike a balance between maximising this freedom for each of its members and ensuring equality of access to public spaces and resources for all individuals and social groups. This article is particularly interested on the role of sanctioning Law as an instance of mediation in the public sphere that determines whether certain ideas and their spokespersons can have a place in the deliberative forum. There are voices calling for restricting the access of hate speech to the public sphere and those who promote tolerance for intolerant people as a fundamental element in a deliberative democracy. And there are in fact laws that regulate this access.

The analysis focuses on how this political and legal discussion is articulated with the communicative dynamics in which a society defines its public issues. As Peñamarín points out (2017: 14), "what the public sphere does, what it builds, is a connection, a mediation, between citizens, the world and its

representatives, which involves, among other actors, the media". It is this communicative space that enables the construction of public issues, which are "not given in nature" but are present and relevant in the public scene thanks to the practical activities and interactions of the actors and the media that promote and develop them. In doing so, they constitute the public sphere (Gustfield, 2003: 74).

Public problems are spaces of conflict and controversy. They are configured as such because some of their aspects are presented by certain actors as contrary to public interest (which questions the status quo) and because they require institutions to treat them as objects of intervention and demand changes and solutions (Gusfield, 2003: 69). This demand is articulated in different areas of the public sphere that are visible in both traditional and social media. These spaces become public arenas guided by different dynamics and protagonists (Cefaï, 2002) and articulate controversies (Venturini, 2010) that have certain specificity in comparison to other types of discursive social conflicts. They occur in a context of shared uncertainty and with the expectation of a possible agreement towards which each party guides their aspirations.

Understanding the public sphere as a public communication space for common issues, where citizens can have some power, involves addressing the problems of interaction and translation between political actors and citizens, as well as the fact that citizens depend on this space to acquire knowledge, experience and memory of the world (Peñamarín, 2017).

For a social issue to become a public problem, it is necessary to have a public that is not directly affected by the issue but still feels appealed by it because it is part of the same world and, thus, deserves its attention and participation. In Dewey's classic idea (2004: 75), the public consists "of all those who are directly and seriously affected" by common issues.

This idea is central to deliberative democracy: free public discussion is, above voting, the source of legitimacy of laws and institutions (Sunstein, 1993). Public deliberation involves ensuring the circulation of as much as possible information on ideological options, which necessarily implies the inclusion of offensive demonstrations. Even a speech that proposes to limit the rights of certain groups should have a place in the space of deliberation, since, no matter how much it can be rejected by a majority of citizens, intolerant speech is projected on matters that concern us all and puts forward a political proposal on certain social conflicts (Sunstein, 1993). Public deliberation must tolerate immoderation, irrationality, and even hatred and intolerance.

However, this broad conception of freedom of expression that is shared by liberalism and republicanism is rejected by other models of democracy, which deem community the central element of social life, in contrast to the centrality of the individual in liberal conceptions. This conception rejects the classic principle of the neutrality of the state, on the grounds that the blindness of the liberal state towards cultural particularities prevents the establishment of a policy aimed at rebalancing the disadvantages of minority groups and protecting minority cultures. For Taylor (1993), the politics of universal dignity fought for forms of non-discrimination that were blind to differences, while the politics of difference redefined non-discrimination as requiring that we make these distinctions the basis of differential treatment.

Freedom of expression would then set the limit on the offense to minority groups and their feelings. Any hostile or discriminatory speech against cultural practices or traditions will be understood as an aggression to the very dignity of the group (Pinto, 2010), since symbols and beliefs are understood as extensions of personal reputation and dignity. For Kahan (1988), liberalism ignores the seriousness of the damage that hostile speech against a group entails for both the group and society as a whole.

Therein lies the damage inherent in hate speech, according to these voices critical of the liberal paradigm. For Parekh (2012), hate speech undermines the dignity of the group members by stigmatising them. By denying their ability to live as responsible members of society and ignoring their individuality, hate speech reduces these members to generic specimens of the group, dehumanises them, and symbolically excludes them from society as full citizens.

In the face of this view, some voices claim that the essence of democracy is deliberation and, therefore, dissent, even when it is offensive to one of the parties. "If freedom means anything, it means the right to tell people what they do not want to hear (Orwell, as cited in Hume, 2016: 15). Offense culture is a barrier to the fluidity of public speech. According to Dworkin (1996), in democracy there is no right to suppress manifestations that may offend some people. In a social context characterised by closed communicative environments, such as social media, more and more voices claim that in order to recover public deliberation we need to assume that citizens must tolerate ideas they have not voluntarily chosen and which, eventually, may question their beliefs and even be offensive to them (Sunstein, 2003; Pariser, 2017).

4. The place of emotions in speech

Paradoxically, while some try to reject the argument that hate speech has a true discursive character, there is a wide spreading demand to include emotions as part of the analysis of speech (some even talk about an affective shift in the social sciences, see Lara and Enciso, 2013) and public deliberation (Krause, 2008), moving away from an overly rationalistic dimension. To defend this position, it is argued that public deliberation requires a certain degree of rationality and that hatred and intolerance are irrational per se, or that at least some ways of manifesting such intolerance, for the purposes of confrontation rather than persuasion, do not deserve to be considered rational speech (Vives Antón, 2015).

This point of view aims to undo the progress made so far in this area, as Austin pointed out in 1955, when he recalled that a first step in rethinking the nature of speech was to rethink the very nature of statement (of fact) and extend it beyond factual findings, to ask "whether many apparent pseudo-statements really set out to be 'statements' at all". It has been argued that "many utterances that look like statements are either not intended at all or only intended in part, to record or impart straightforward information about the facts. For example, 'ethical propositions' are perhaps intended, solely or partly, to evidence emotion or to prescribe conduct or to influence it in special ways" (Austin, 1990: 43).

As Austin demonstrates, it is important to emphasise that speech has different dimensions depending on its relation to the extradiscursive context. Austin is a pioneer in the definition of the performative dimension of certain sentences or utterances: performative utterances and sentences are those in which "to utter the sentence... is not to describe my doing of what I should be said in so uttering to be doing: it is to do it" (1990: 46). Verbs such as swear, baptise, bet, and bequeath do not refer to something external to speech, but are actions in themselves.

Faced with these illocutionary acts, every speech has a perlocutionary dimension, what we bring about or achieve by saying something. In other words, it is established that the linguistic act has consequences in the real world in which it is expressed. This dimension of signs to transform the environment –which is implicit in any discussion about freedom of expression and its dangers– had been already examined by Peirce: the sign, determined by its object, produces an interpretant, an "equivalent or more developed" sign, since it expresses the object under different aspects (Castañares, 2019: 142). However, it is often forgotten that, in addition to the logical interpretant, who allows an idea to develop through a process of unlimited semiosis, Peirce also contemplates the existence of an energetic interpretant, an effect of the sign that involves an effort (runners launching off the starting line in a race when hearing the gunshot). The existence of this energetic effect requires a "firstness"; the first meaning of a sign is the feeling it produces (Peirce, CP 5.475). The mediation of the feeling is necessary for the sign to produce "any further proper significant effect" (ibid). In this sense, we are not too far from Damasio's position (as cited in Saiz Echezarreta, 2016: 115), who argues that agreements on social norms rest well on an affective bond: we act on what matters to us.

For Peirce, action is an effect of belief. "Our beliefs guide our desires and shape our actions" (Peirce [1],1988: 14). "The feeling of believing is an indication of there being established in our nature some habit which will determine our actions" (ibid.)

> It is certainly best for us that our beliefs should be such as may truly guide our actions so as to satisfy our desires: and this reflection will make us reject every belief which does not seem to have been so formed as to insure this result (Peirce, 1988: 18).

Peirce considered that we maintain our beliefs because they generate a state of "calm and satisfaction" while doubt causes "irritation" (Peirce,1988: 17), "unease and dissatisfaction" (Peirce,1988: 15): but it is precisely this discomfort that allows "inquiry", an inferential process that allows us to reach the unknown from what we know (Peirce,1988: 8) and whose ultimate object is the establishment of opinion (Peirce,1988: 20).

Peirce recognises that one of the ways of fixing belief is the method of tenacity, which equates to the ostrich's tactic of hiding its head in the face of danger (Peirce, 1988: 20). However, Pierce points out that the man who adopts this method at some point will be prone to think that the opinions of others are as quite as good as his own. This conception, that another man's thoughts or sentiments may be equivalent to one's own, is a distinctly new step and a highly important one.

Since we necessarily influence each other's opinions, the problem of fixing belief moves from the individual to the social dimension. At this point, Peirce unleashes his contempt for all those ways of fixing opinion through social pressure and not through inquiry into facts, in a brutal paragraph that anticipates much of the history of the West in the 20th century:

> Let the will of the state act, then, instead of that of the individual. Let an institution be created which shall have for its object to keep correct doctrines before the attention of the people, to reiterate

them perpetually, and teach them to the youth; having at the same time power to prevent contrary doctrines from being taught, advocated, or expressed... Let their passions be enlisted, so that they may regard private and unusual opinions with hatred ad horror. Then, let all men who reject the established belief be terrified into silence. Let people turn out and tar-and-feather such men... when complete agreement could not otherwise be reached, a general massacre of all who have not thought in a certain way has proved a very effective means of settling opinion in a country (Peirce,1988: 22).

In the last part of the paragraph, Peirce describes a situation similar to the one addressed in this article:

If the power to do this be wanting, let a list of opinions be drawn up, to which no man of the least independence of thought can assent, and let the faithful be required to accept all these propositions, in order to segregate them as radically as possible from the influence of the rest of the world.

In the face of this state of control on the part of power, Peirce defends the need to be educated in the ability to draw inferences (Peirce,1988: 2) "for it is not so much a natural gift as a long and difficult art", since "that which determines us, from given premises, to draw one inference rather than another, is some habit of the mind" (Peirce, 1988: 10). And now, once again, we witness a tendency to hold postulates that guarantee our comfort more than those postulates that are true and empirically verified and proven. Peirce's contempt for authority-based methods and his defence of discursive rationality allow us to analyse the semiotic qualities of hate speech and its connection to communicative, social, and legal practices.

The Fixation of Belief presents a defence of the scientific method as a way of studying reality, but as Castañares (2019b: 224) points out, for Peirce, "logic and semiotics largely coincide", generating "the expansion of logic from the realm of theory towards practice, from the realm of strict demonstration to that of argumentation. This expansion is justified on the grounds that the logical strength of reasoning is not theoretical but depends on the effects it produces on reality". It is necessary to remember here that, already since classical rhetoric, "the fundamental core of the argument is evidence" (Castañares, 2019b: 219). It is through evidence that necessary or plausible conclusions are reached. According to Aristotle, "the thing whose existence or production carries in itself the existence of something else, whether before or after, is what is called evidence, for it indicates that something else has happened or exists" (as cited in Castañares, 2019b: 221). For Peirce, "no factual assertion can be made without resorting to indices" (Castañares, 2019b: 237). And it is, as we have seen, through the habit generated by practice how we get to realise the inferences that establish the relationship between cause and effect that characterises the index. The defence of the inferential method is not only a defence of the scientific method but also of deliberation as a way of reaching a shared belief.

In short, Peirce flatly rejects the fixation of ideas through authority and makes a defence of rationality, which in our case is a defence of the argumentative model: belief is fixed at the social level through habits generated by shared efforts. He also recognises in his theory of signs that emotion is what originates semiosis and what drives action and, in a third step, when rationalised, is what produces laws and norms.

To consider that hate speech does not exist because irrationality prevents it from attaining this status is to consider the other -the irrational, the dissenting, the offender- as a barbarian who does not deserve equal consideration and who must be expelled beyond borders, the way the Romans set limes that separated men from beasts, also ignoring the fact that it is precisely on the border (Lotman, 1996) where every universe of meaning (semiosphere) is confronted with its own limits and, in that reflective process, where the great moments of social creativity are generated

To deny hate speech its discursive nature is to adopt the ostrich's tactic. To wait for the authorities to remove it, from our social environment, via the law, is to appeal to oppression and control, to deny the reality of the ideological and cultural conflict inherent in the diversity of our societies. According to the American Supreme Court, this inherent complexity of modernity requires a "broad, robust and uninhibited" debate (New York Times vs. Sullivan, 376 U.S. 254 [1964]) and therefore public deliberation must tolerate considerable doses "not only of immoderation but even of irrationality in speech" (Alcácer, in press: 193).

As we have seen, emotions are at the basis of signifying practices. The fact that the most elaborate phase of this process occurs with the application of rationalisation processes through abstract laws and principles does not imply that the emotional elements that are at the origin of the semiosis chain are maintained in the speech. Hate can be irrational, but it is still speech (Alcácer, in press: 193). Therefore, from a communicative point of view, the question is how feelings relate to the rational propositions of speech, and how is it possible to connect emotions, actions, and rationalisation processes in public deliberation.

For Krause (as cited in Saiz Echezarreta, 2016: 115), attention to the feelings of others improves the processes of democratic deliberation. The presence of others, anticipating their reaction and responsiveness, was considered in Bakhtin's dialogical conception of language, which promotes dialogue as the model of any communicative process.

> The word in the living conversation is directly, blatantly, oriented toward a future answer-word: it provokes an answer, anticipates it and structures itself in the answer's direction. Forming itself in an atmosphere of the already spoken, the word is at the same time determined by that which has not yet been said but which is needed and in fact anticipated by the answering word. Such is the situation in any living dialogue (Bakhtin, 1989: 97).

This incorporation of hypotheses on the receiver is not only a mechanism that improves communication, but also has an ethical principle. The supremacy of the answer in the Bakhtinian model "creates a fertile ground for understanding, makes it active and interesting" (Bakhtin, 1989: 97). Dialogue presupposes the existence of a common space, an expectation of understanding: "the speaker breaks through the alien horizon of the listener, constructs his own utterance on alien territory" (Bakhtin, 1989: 99).

However, that shared horizon can also be a terrain of conflict. The use of the alien word, a matter that interested Bakhtin, is modulated according to the identification or distance effect that the speaker wants to produce. Often, the use of the alien word, its categories, topics of interest, accents, or idioms "is clearly opportunistic and other times is provocatively controversial" (Bakhtin, 1989: 99100). We build our speech on alien territory to refract our points of view, so that this language is unmasked and destroyed as false, hypocritical, biased, limited, and unsuitable to reality (Bakhtin, 1989: 129). In short, the incorporation of the other into our speech does not necessarily take place in constructive terms but is also a mechanism of criticism and divergence. While dialogue may seek understanding, it also leaves room for offense and contempt. The rationality of expression is not at odds with the emotionality of ideas: the balance between the two elements is precisely the necessary habit that is built in public deliberation. Accepting offense and repelling it in expressive terms is part of the skills needed to live in a complex, cosmopolitan democratic society and to interact in a polyphonic and diverse public sphere.

Mismanagement of the balance between emotions and facts seriously damages the quality of public debate. In their analysis of threats to freedom of expression on American universities, Lukianoff and Haidt (2015) point out that "by almost any definition, critical thinking requires grounding one's beliefs in evidence rather than emotion or desire". However, for a generation raised in safe environments and with a speech that depicts the outside world as a threat (the snowflake generation), the one that now occupies university campuses, any challenge to the status quo is perceived as a disruptive threat. This fear of facing a conflicted outside world incites emotional reasoning, which assumes "that your negative emotions necessarily reflect the way things really are: I feel it, therefore it must be true" (Lukianoff and Haidt, 2015).

Nonetheless, the common world is built precisely on dissent and conflict. The reality "of the public realm lies in the simultaneous presence of innumerable perspectives and aspects in which the common world presents itself and for which no measure or common denominator needs to be created (...). The end of the common world has come when it is seen only under one aspect and is permitted to present itself in only one perspective" (Arendt 1993: 66-67). In the context of the aforementioned discussions between the democracy models, Iris Marion Young (as cited in Saiz Echezarreta, 2016: 115) argues that an emancipatory policy should foster a conception of the public realm that in principle does not exclude any person, any aspect of people's lives, nor any topic of discussion, and encourages both aesthetic and discursive expressions. In this conception of the public, the end may not always be consensus and shared criteria, but the recognition and presence of differences, in the context of power struggle.

This would be a model of agonistic democracy (Mouffe, as cited in Saiz Echezarreta, 2016: 115), in which conflict is not only inevitable but offers, in the search for its solution, an inclusive potential (Engelken, 2010). However, as we have seen, the appeal to the recognition of communitarianism is one of the foundations for calling for the criminalisation of hate speech, assuming that these racist, homophobic or discriminatory speeches harm the dignity of each member of the communities attacked, and also assuming a continuity between words and actions, which challenges the idea behind the children's song that goes "sticks and stones may break my bones, but words will never hurt me". As Hume points out, this song "captured the attitude that most adults wanted to encourage in their children: to grow up in a free society you have to learn to face the rough and rumble of words and opinions of others without shedding too many tears" (2018: 63).

Incorporating the feelings of the potential receiver into public speech does not necessarily mean that these feelings must be positive. While it is true that empathy, affability, and good humour contribute to creating an environment of understanding, it is also true that dissent is a structural necessity of both democracy and the public sphere. And a criminalisation of hate speech expels, by virtue of emotional harm, positions that

have the right to be defended in public space, precisely because they violate certain consensuses and remind us that there are "others" behind the border of our consensual bubble, some "barbarians" with other values and views. It is worth recalling Lotman's idea that it is precisely at the border, as a place of conflict between two worlds of meaning, two semiospheres, where novelties are generated, where the guarantees of the old systems are transformed into new propositions.

Faced with the snowflake model that seeks to isolate citizens in safe environments, oblivious to the noise and fury of a conflicted and rough outside world, it is convenient to claim Sunstein's idea (1993) that in a democratic society and in a sound public space, the citizen must face other people's ideas, which have not been voluntarily chosen. In the face of criminalisation or exclusion strategies (deplatforming politics that seek to exclude certain speakers from spaces such as universities, see Fouce, 2016), a vigorous strategy of discursive opposition will establish a frontier from which to reconstruct the arguments and conditions of a more lively democracy.

5. The role of the media in the new public sphere

Accepting that the basic condition of democracy is dissent is to assume that public discussion can sometimes offend the feelings of participants. Moreover, while Peirce points out that emotions are at the basis of the creation of meaning of speech, he also defends the need for facts and inductions generated through speech to be the ones to guide the construction of shared belief.

The defence of the inductive method requires training in the skills of inference and deliberation and assuming the values of dissent. This public deliberation that allows defining public problems, proposing solutions, and accepting contingent solutions, requires a public sphere to which all voices and positions have access, no matter how conflicting they may be. The media, involved in a process of necessary reinvention to weather the many crises that are taking place today, have begun to propose models that will enable them to become mediating agents of the public sphere (Jarvis, 2015). This mediation can no longer appeal to the old connection between the media and the political elites and their role as gate keepers. Instead, the media should aim to configure meeting points that provide communication solutions to the communities they serve.

In fact, one wonders whether the media crisis was, at least partially, caused by their inability to fulfil their responsibilities, to offer their audience tools to maintain democracy: "the press no longer serves to cultivate certain vital habits: the ability to follow an argument, understand the point of view of others, expand the frontiers of knowledge, decide which of the proposed alternatives should be chosen" (Carey, 1997: 220).

Carey (1997: 209), in line with Habermas (as cited in Hermoso, 2019), points out that the way the American Constitution recognised freedom of expression –a landmark for subsequent legislation in the West– assumes a set of personal provisions and the existence of certain social conditions that are undoubtedly in dispute in the face of the crisis of legitimacy of liberal democracies (Levitsky and Ziblatt, 2019) and the communicative dynamics of social media (Rodríguez, 2013). The need to create a political space that was radically different from the imperial power and capable of connecting a community that was not united by historical ties promoted a Constitution that defended freedom of expression and assembly as defining instruments of national identity. The stabilisation of democracies mentioned by Heinze (2016) has led to a process of stagnation; citizens have lost the enthusiasm and energy needed to keep democracy in operation as a social system and have allowed the democratic system to be identified merely by its procedures and institutions and not by its civic practices.

> We act as if democracy is perpetuated automatically by simply obeying the law and rights. But the law is also a narrative: a set of stories that tell us who we are and where we come from and where we want to go (Carey, 1997: 209).

The media have been largely complicit in this process by increasingly eliminating, in the search for profit, street journalism (Davies, 2008) and increasingly accommodating subsidised news, produced by the centres of power. As Carey (1997), Gillmore (2006) and Jarvis (2015) propose, the media will recover their legitimacy when they put themselves at the service of their communities and provide the services that their audiences actually need, in a bottom-up dynamic. One of these services should be providing meeting places for those interested audiences advocated by Dewey (2004). "The interrelation between meeting, talking and writing... shows that the First Amendment is a mandate to create a conversational society, a society of people who talk to each other... A society of discussion, dispute and debate" (Carey, 1997: 217).

The role of the media in a conversational society requires the media to think about their role in new ways. Now, the public is the one who informs the press and not the other way around. "The object of journalism is the conversation that the public is having with themselves" (Carey, as cited in Rosen, 1997: 192). Only if

the media succeed in becoming relevant spaces of civic debate, they will be able to amplify and guide those habits necessary to connect causes and effects, to draw the inferences that Peirce sees as necessary to reach the state of tranquillity that accompanies belief. However, the media will also be able to channel the irritation and unease generated by the challenges to the status quo: only a public that is trained in the art of discussion can fight hate speech with the weapons of deliberation.

In a deliberative space, inhabited by citizens willing to accept its nature as a "noisy place" (Carey, 1997: 219), emotions have their space. We have the right to be offended, outraged or irritated. But we also have the right to express an irritating and offensive speech. Not only do positive emotions have a place in the public conversation: even people we consider despicable should have the opportunity to express their opinions no matter how abhorrent they may seem to us. It is in the formation of the habit of argumentation where emotions, including those that initiate the signifying process that gives meaning to the world around us, are shaped.

6. Conclusion: the public sphere as a mediation space for emotions

The public space, therefore, performs a mediating work (Simondon, as cited in Peñamarín, 2017) and translates emotions into discursive elements and speech into a tool for community action: it is through public and controversial speech (Dewey, 2004) that public problems materialise and are resolved through the laws and norms that oversee everyday life (Gustfield, 1981). Hate speech can be fought through political measures of various kinds, which include the empowerment of minority groups, ensuring their access to the media. As Todorov (2012: 133) states, "it is not enough to have the right to express yourself. You have to get a chance to do it. If you do not get it, that 'freedom' becomes an empty word". That fight should be fought with the communication policies and responsibility of the media, not with criminal punishment.

> If public debate requires a drawer to stand over as a court, one must have access to one. If a microphone is required, then a microphone is needed. If this is done by radio or television, one must have access to these media (Nino, 1997: 193).

However, these measures must be adopted as a result of the discussion on how hate speech impacts our common lives, affects different communities and damages democratic life. Countering hate speech in the public sphere ensures the legitimacy of political measures to combat it and creates a "safe space" where emotions must first be transformed into words, establishing a barrier against actions. Rather than artificially creating safe spaces from which harmful emotions and hurtful words are expelled, democracy requires the work of mediation in the public sphere to diminish or eliminate the destructive potential of hate speech.

A robust and uninhibited discussion has more capacity to contain hate speech than repressive legislation, which will only create martyrs among those who are denied the opportunity to talk in the name of freedom of expression, engendering a sense of repression that will fuel the amplification of that speech and which, without the mediation space of the public sphere to cushion it, will be directed towards direct action – violence– once the resources of speech are exhausted.

Assuming this deliberative view does not mean accepting the racist or sexist ideas of those who defend these positions or creating a public space where everything is allowed and where deliberation can be replaced by violence and threats. When words do act as sticks and stones, and are used to silence others through extortion, intimidation and direct incitement to violence, then we will have abandoned the scope of the public sphere (and the protection of the right to free expression), and the State will have full legitimacy to punish such conducts as crimes. The fine line that sometimes separates hostile and offensive speech from violent and threatening speech is not always easy to draw. However, without the mediation space of the public sphere to cushion the impact of hate speech, it heads towards direct action –violence– once the discursive resources have been exhausted.

7. Acknowledgement

8. References

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9. Notes

We used the Spanish version of *The Fixation of Belief* (translated as *La Fijación de la Creencia* by José Vericat), available in https://www.unav.es/gep/FixationBelief.html. The numbers indicate the section of the text where the quotation comes from.

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