iachss

9th International Academic Conference on
Humanities and Social Sciences

23 - 25 February 2024
Milan, Italy

Hate Speech: Militant Democracy at Crossroads

Efstathios-Rafail Pasgianos, LL.M. (Cantab.)

Doctoral Candidate, Law School, University of Athens

Abstract

Conventional wisdom suggests that eighty years after the horrors of WWII and with democracy well established across Europe, the need for a *militant democracy* in the sense that Loewenstein once outlined[1] has seized to exist. Yet whereas the basic elements of a democratic rule of law in the West are grosso modo in place, it is our understanding of democracy that seems to shift, in view of postmodernist approaches to the function of institutions, social structures and personal entitlements. Especially with regards to the latter, social individualism and the augmenting lack of common space and experience, have led the notion of *personal safety* to swell into a everbroadening ideal, encompassing even protection *from* speech that is purportedly harmful. If freedom from speech for the sake of safety is indeed a novel facet - or even a prerequisite - of the liberty of one's expression, then hate speech, the vilifying and divisive form thereof, must be outlawed for both individuals and, more importantly, political parties, in order to secure a true democratic polity that respects human rights to their fullest extent. In that case however we concede the government the power to proscribe speech as it sees fit, giving it a free hand to regulate a massive domain, according to nebulous standards. Questions emerge: Can speech be equated to a harmful act? What really is hate speech and should a government tolerate or ban it? Should, for the sake of substantive democracy, political parties be prohibited for disseminating such speech? Where should we draw the line?

Keywords: constitutional theory; democracy; human rights; hate speech; political parties

[1] Karl Loewenstein argued in a 1937 article in favour of a "*democracy that does not tolerate the intolerant*" and thus preserves itself through the active elimination of its enemies.