

Hate crimes and deceitful justification of violence by Amnesty International

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Summary: Amnesty International (AI) has widened its scope from just defending certain people from violence to proposing new laws that help defend some people from violence, but which implicitly request (legal) violence against others. AI generally justifies their legal proposals but in doing so they are at risk of deceitfully justifying (legal) violence. In this paper I show that AI (1) proposes, in some cases, deceitful justifications for violence and (2) makes proposals contrary to the Universal Declaration of Human Rights. Finally, I offer a reflection on the origin of hate towards those who are different, and offer a more rational response to it.

Keywords: hate crimes, deceptive justification of violence, Amnesty International, Universal Declaration of Human Rights.

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*He that is without sin among you, let him first cast a stone at her.
(John 8: 7)*

1 Introduction

Legal violence, as with illegal violence, has many diverse causes which often act concomitantly; many of these causes are not publicly defensible¹. When a person or NGO defends a law they risk supporting violence with weakly defensible motivations.

AI usually justifies its legal proposals but in doing so they are at risk of justifying (legal) violence deceitfully. I have found misleading justifications for violence in documents published by AI. In this essay I analyze one of them, entitled “Because of who I am. Homophobia, transphobia and hate crimes in Europe”², and propose what I consider a more rational treatment for the behaviors branded as “hate crimes” by AI and others.

2 AI proposes deceitful justifications for violence

In AI’s document “Because of who I am. Homophobia, transphobia and hate crimes in Europe”, AI proposes punishing what they call “hate crimes,” or the application of extra punishment for crimes motivated by hatred. In fact, it proposes (implicitly; p. 7), for example, that if a person punches someone in the face while saying “Oh, you’re a faggot!” they should receive a harsher punishment than a person who punches someone without saying anything. I have identified several deceitful elements in the justification of this extra violence, and this justification appears throughout the document. I take “justification” to mean the dissemination of information with the aim, seemingly, of achieving greater approval of the justified conduct. (The deceitful element of a justification, or of any affirmation or conduct, is not necessarily a result of a *conscious* decision).

¹ Cortizo Amaro (2014, 2016a, 2016b, 2016c).

² Amnesty International (2013).

According to the document (p. 3): “Hate crimes are criminal offences targeting persons or properties because of their real or perceived association with a group defined by a protected characteristic such as ethnic origin, religion, sexual orientation or gender identity.” However, in the rest of the document it says and implies that what defines hate crimes is that they are motivated by hatred.

Here is where I find the first misleading elements. First, it is misleading and childish to believe that every action is due to one sole motive, even less so when that motive can be explained in a few words, e.g. “for being Jewish”, or just one word, such as “hate.” Every action is the result of a complex set of causes and the words “because of hatred” are a *label* rather than an explanation. Second, defining the same type of crime in two different ways implies an assertion that the two definitions are equivalent. Therefore, AI is claiming that the motive of hatred is exclusive to crimes committed against people of certain groups, and that crimes committed against members of certain groups can only be motivated by hatred. It is clear that both claims are false. For example, in many of the aggressions committed against Jews in Nazi Germany and other territories there was, among other possible motivations, an obvious economic one: to get hold of goods belonging to Jews³. Equivalating “crimes against people of certain groups” and “crimes committed because of hatred” seems, therefore, to be a deceitful maneuver that allows the very pejorative label “hatred” to be attached to certain actions but not to others, as a means of gaining support for the proposed legal violence by appealing to emotions rather than by using deliberation and reasoning.

Finally, there is an important and implicit misleading element: as one of the main defining elements of AI is the defense of the rights set forth in the Universal Declaration of Human Rights (UDHR; see, for example, the first paragraph of the AI Statute), a superficial reading of the document will likely lead one to think that the proposal of extra punishment is, at the very least, compatible with the UDHR; the truth, however, is that it is not, as I explain below.

3 AI has made proposals contrary to the UDHR

One of the most important principles which appears to inspire the UDHR is that people should be judged only on what they are known to have done, if this violates a prior and clearly specified law. Punishment should not be based on what kind of person they are known or thought to be, nor on what it is thought they are likely to do in the future. I believe that the application of this principle precludes abuses of power by the most powerful groups to the detriment of less powerful groups and diminishes arbitrariness in the application of justice, diminishing the defenselessness of individuals before the powers that be.

From this principle comes, firstly, the defense of freedom of conscience and freedom of expression (arts. 18 and 19 of the UDHR). It is easy to see that it also leads to the defense of *freedom of opinion*, though this one is not mentioned in the UDHR, possibly because this defense seemed obvious to the signatories. It would clearly be opposite to the spirit of the UDHR to tell someone: “You are free to believe or say whatever you want and we will not punish you for it. But we can infer from what you say that you hate or feel homophobia, and for hating or feeling homophobia we can certainly punish you.”

³ Aly (2006).

Secondly, articles 2 and 7, which ask, in principle, for all people to have the same rights, freedoms and legal protection, whatever their condition or characteristics, may be derived from the same principle. In the UDHR there are no “protected characteristics,” though several conditions are mentioned in art. 2 that should not be a reason for inequality in rights and freedoms, such as race, color and sex. This article states: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, *without distinction of any kind*, such as race... *or other status*” (emphasis added). Thus, the condition of homophobe is protected, as much as the conditions of homosexuality and “homophobia hater” though none of them are expressly mentioned. The UDHR asks for the homophobes to not receive extra punishment and for heterosexuals not to receive less protection than homosexuals. The UDHR does not oppose punishing those who hit others but it does oppose punishment of someone for *being* homosexual, homophobic or “homophobia hater.”⁴ The UDHR is even opposed to punishing someone for *being* a murderer, though it is not opposed, of course, to punishing them for their killings.

4 The origin of hatred towards those who are different and the rational response to hatred

Aggressiveness and hatred towards certain groups and, in general, aggressiveness and hatred towards individuals who are different have evolutionary roots. “Different” is understood to mean different in certain features which are psychologically significant in any place and time. This means that in our evolutionary past, rather than in the present, aggression against different individuals produced important enough benefits for the reproductive success for those genes which promote the aggression to be favored by natural selection. To a certain (possibly large) extent, the current human population has inherited these genes even though now they are less useful for reproductive success (especially in more civilized countries) as the populations’ gene pool changes much more slowly than the environmental conditions⁵. This implies an idea that is hard to accept for those who do not understand biological evolution: decisions we make nowadays are affected by events which occurred thousands of years ago, among other things.

This interference of “(partially) obsolete genes” worsens our decision making. Some people take steps aimed at replacing feelings – influenced by obsolete genes – with reasoning in the decision-making process; these steps are aimed at, for example, overcoming the primitive, childish, dangerous, and extremely frequent desire to hurt or destroy everything that displeases. The UDHR can be seen as one of those steps.

Like envy and hunger, hatred is an unpleasant feeling that can be a cause of socially undesirable violence. But it does not follow that it is socially desirable to punish those who are assumed to hate (or feel envy or feel hunger), nor that it is desirable to punish some hatred and not others, however psychologically pleasant it may be in the short term. It is even likely that punishing people who are thought to feel some kind of hatred fuels the fire and increases their hatred instead of diminishing it (see appendix). A more rational response could be to permit

⁴ In fact, the UDHR does not oppose it as much as it seems. Article 29-2 accepts that rights and freedoms may be limited by laws aimed at “meeting the just requirements of morality.” Therefore, in many countries with traditional moralities, homophobia may be better protected than homosexuality, while in others the opposite may be true. But it seems that this reference to morality was a concession made for the sake of the maximum consensus, and it does not harmonize well with the progressive spirit of the majority of the document.

⁵ Cortizo Amaro (2014, pp. 17-22).

more peaceful means of expression of hate (such as words) in order to be able to see and understand its distribution and features and thereby: (1) be better able to oppose the violence to which hate, along with other causes, can give rise and (2) be better able to create favorable environmental conditions for the reduction of hatred. In this way, we would also be helping those who hate to rid themselves of an unpleasant emotion and we would come closer to the fraternal behavior between one and another that art. 1 of the UDHR proposes.

5 Appendix: two common mistakes

Miguel Ángel Aguilar, coordinating prosecutor of the Hate Crimes And Discrimination Service in the province of Barcelona (Spain), believes that “criminal procedures are essential for the pursuance of speech that endanger the model of democratic coexistence and the dignity of people. (...) Certain hate discourses promote crimes, posing a danger to many collectives.” He also says: “Often, during the investigation of very serious violent crimes, when we access the suspect’s computers or mobiles we see that they had accessed large amounts of hate speech”⁶.

Assuming that Aguilar believes what he says, and that there is a statistical correlation between criminality and consumption of hate speech, he seems to be making two common mistakes:

1 Incorrect inference of causality

A positive statistical correlation between two behaviors, *a* and *b*, does not imply that *a* is a cause of *b*. There exist alternative explanations, such as both being consequence of the same cause or set of causes, or *b* being a cause of *a*.

2 Incorrect subject of analysis

It is irrational to decide whether or not to perform conduct *x* by weighing up the positive and negative consequences of performing conduct *y*, rather than *x*. If we substitute *x* with “punishment of *y*”, we can conclude that it is irrational to decide whether to punish a behavior by weighing up the positive and negative consequences of that behavior.

The positive or negative consequences of behavior *y* are only indirectly relevant, when it is known that punishing it causes a decrease *or an increase*⁷ in the frequency with which it occurs. This effect on punished behavior is only one among the many consequences of punishment⁸.

⁶ Gutiérrez Calvo (2017), my translations.

⁷ An increase can result from revenge or from so-called “psychological reactance.”

⁸ See, for example, my papers in which I identify 12 different material (I do not include the psychological) benefits of punishing or illegalizing heresies, 20 material benefits of prohibiting the sale and consumption of certain drugs, and 10 material benefits of prohibiting prostitution (Cortizo Amaro, 2016a, 2016b y 2016c).

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