



The Liberty of Every Man's Invention. Rhetoric and Freedom of Speech.

Fee-Alexandra Haase

Comparative Studies of a Rhetorical Concept
Historical Case Studies from the *Oratio Libera* to the Contemporary Genre of 'Free Speech'

This article is interested in the historical dimension of the idea of 'free speech', a term predominantly used in the 20th century and following time in Western culture. For our argumentation we will compare several Historical case studies from writings focusing on the idea of freedom of speech in order to trace back the beginnings of the contemporary genre of 'free speech' to the discipline of rhetoric. In other words: Our investigation asks the question: In how far is the modern term 'free speech' related to the ancient concept of rhetoric and its genres of speech, especially the *genus demonstrativum* and the *genus deliberativum*? In how far can we trace the term back to the achievements of the Enlightenment in Europe? We have former documents in culture history giving us impressions about the state of free speech in ancient Greek and Roman cultures and the later cultural heritage of the ancient education in European culture, from where it spread to other countries. Important is here the time of Enlightenment. Rhetoric serves as the place where speech issues were placed in the academic system. When we read Kant's *An Answer to the Question: What is Enlightenment?* we find in the often as anti-rhetorical considered philosophy of the Enlightenment a testimonial for the sovereign individual person based upon a reasoning and *ability to speak for himself/herself*. In this article, I shall claim that Kant is one of the first, if not the first, to identify the relation between liberty and rhetorical speech from the standpoint of a philosopher. To address the importance of the discipline rhetoric as a tool for free speech, I argue for a reading of historical documents as a comparative approach towards this Western mind concept.

Free Speech and Kant's Rhetoric of 'Mündigkeit'

When Kant in 1784 wrote his essay *An Answer to the Question: What is Enlightenment?* he used a German term *Unmündigkeit*. If we read the German original text, we understand the rhetorical impact of a thinker considered anti-rhetorical: 'Selbst verschuldete *Unmündigkeit*', literally the inability to speak due to one's own failure (literally: self-indebted un-ability to speak), that is the point where the process of emancipation through enlightenment starts. Kant notices in his essay that a high number of persons prefer to live not in freedom. Kant's *An Answer to the Question: What is Enlightenment?* (1784) begins with the following definition:

Enlightenment is the exit of the human being from his/her self-caused inability to speak for himself/herself. Inability to speak for oneself is the inability to practice reasoning without using the help of another person. This inability to speak for himself/herself is self-indebted, if the cause is not because of the lack of the understanding, but the resolution and the courage to use it without the help of another person. Sapere aude! Be encouraged to use your own reasoning! is thus the guideline of the Enlightenment. Putridness and cowardice are the causes why such a large number of humans after they remain in natural freedom (more naturaliter maiorennas)

nevertheless gladly stay in servile inability to speak for oneself.

Königsberg in Prussia, 30 September 1784

In original German:

Beantwortung der Frage: Was ist Aufklärung?

Immanuel Kant

Aufklärung ist der Ausgang des Menschen aus seiner selbst verschuldeten Unmündigkeit. Unmündigkeit ist das Unvermögen, sich seines Verstandes ohne Leitung eines anderen zu bedienen. Selbstverschuldet ist diese Unmündigkeit, wenn die Ursache derselben nicht am Mangel des Verstandes, sondern der Entschließung und des Mutes liegt, sich seiner ohne Leitung eines anderen zu bedienen. Sapere aude! Habe Mut dich deines eigenen Verstandes zu bedienen! ist also der Wahlspruch der Aufklärung.

*Faulheit und Feigheit sind die Ursachen, warum ein so großer Teil der Menschen, nachdem sie die Natur längst von fremder Leitung frei gesprochen (naturaliter maiorennnes), dennoch gerne zeitlebens unmündig bleiben;*¹

‚Mündigkeit‘ is a derivate from ‚Mund‘ (mouth) and meant in its primary meaning the ability to speak and have the responsibility for this speech. Today, also a juridical, political and philosophical term ‚Mündigkeit‘ exists. Following his *The Critique of Judgment* rhetoric as the art of persuasion or *ars oratoria* is for Kant in opposite to eloquence and style a dialectic. Oratory was for Kant not respected.² Kant’s thesis on Enlightenment developed from the ground of his studies of critical methods. Kant showed in his writings *Kritik der reinen Vernunft*, *Kritik der Urteilskraft*, and *Über eine Entdeckung, nach der alle neue Kritik der reinen Vernunft durch eine ältere entbehrlich gemacht werden soll* that the critical method is a field of philosophy. About the idea and organization of a special science under the concept of a ‘criticism of the pure reason’ Kant speaks in *Kritik der reinen Vernunft* in detail analyzing the methods of reasoning.³ Kant uses the term *Kritizismus* for a distinction between dogmatism and scepticism. *Kritik der reinen Vernunft* (*Critique of Pure Reason*) is the major work by Kant that was first published 1781 followed by a second edition in 1787. The form *critique* is used as an attempt to establish the capabilities and limits of ‘pure reason’. *Pure reason* therefore is to be used to create synthetically a priori-knowledge. Key terms used in the *Kritik der reinen Vernunft* (*Critique of Pure Reason*) include ‘conception’ as the ‘the power of cognizing by means of the representations’, which are received using the faculty of intuition. Like intuition conception can be pure or empirical. A pure conception contains ‘only the form of the thought of an object’. Empirical conception requires the presence of an actual object. Kant is known for his theory that there is a moral obligation, which he called the ‘Categorical Imperative’. Kant thought that the moral law is a principle of reason itself. It is not based on contingent facts about the world (*Critique of Pure Reason*, A806/B834). For Kant a moral obligation applies to all and only rational agents. His ‘Categorical Imperative’ is an unconditional obligation. In *Groundwork of the Metaphysics of Morals* (1785) Kant enumerated three formulations of

¹ Kant, Immanuel. *Beantwortung der Frage: Was ist Aufklärung?* (1784). University Potsdam. June 6. 2006. <http://www.uni-potsdam.de/u/philosophie/texte/kant/aufklaer.htm>
English translation by the author F.-A.Haase.

² Kant, Immanuel. *The Critique of Judgement*. Part 1. Critique of Aesthetic Judgement. Section 53. Translated by J. Meredith. Oxford 1988. P. 192.

³ Kant, Immanuel. *Kants gesammelte Schriften. Kritik der reinen Vernunft*. Herausgegeben von der Königlich Preussischen Akademie der Wissenschaften. Berlin 1787. Vol. 3. P. 23.

the categorical imperative which he believed to be roughly equivalent.

During the first half of the 18th century in Germany rhetoric established as a method of training for the leaders of society who developed the foundations for democracy.⁴ The literary paradoxes were explored by early German romantics such as Johann Georg Hamann and Johann Gottfried von Herder. In his *Letter to Christian Jacob Kraus* Hamann used the term *Unmündigkeit* and reflects Kant's writing from September 1784. Hamann writes here that he prefers to get explanation of Enlightenment more from an esthetical standpoint than from a didactical one by the allegory of the 'inability to speak', even then this is no explanation, but an extended interpretation. The original German text is as follows:

Königsberg, 18. Dezember 1784.

Clarissime Domine Politice!

Einen Profeßor der Logik u Kritiker der reinen Vernunft an die Regeln der Erklärung zu erinnern, wäre beynahe Hochverrath; da Sie mir überdem Ihren Hutchinson fortgenommen ohne seine Moral widererstattet zu haben; besitze ich kein anderweitiges Organon in meinem armseel. Büchervorrath. Eben so wenig bin ich imstande den Zufall jüdischer und christlicher Einstimmigkeit in vormundschaftlicher Denkungsfreiheit mir aufzuklären, weil der königl. Bibliothekar den zweiten Jahrgang auf eine höchst unbarmherzige Art und Weise mir vorenthalten; so sehr ich auch aus allen meinen Kräften zur Geburtshülfe des kosmopolitischplatonischen Chiliasmus durch Wünsche, Erinnerungen, Vorbitte und Danksagung beygetragen.

Daher laß ich es mir gern gefallen die Aufklärung mehr ästhetisch als dialectisch, durch das Gleichnis der Unmündigkeit u Vormundschaft, zwar nicht erklärt doch wenigstens erläutert und erweitert zu sehen. Nur liegt mir das prwton YeudoV (ein sehr bedeutendes Kunstwort, das sich kaum unflegelhaft in unsere deutsche Muttersprache übersetzen läßt,) in dem vermaledeyten adiecto oder Beywort selbstverschuldet.

Unvermögen ist eigentlich keine Schuld, wie unser Plato selbst erkennt, und wird nur zur Schuld durch den Willen und deßelben Mängel an Entschließung und Muth - oder als Folge vorgemachter Schulden.

Wer ist aber der unbestimmte andere, der zweymal anonymisch vorkommt. Sehen Sie hier, Domine Politice wie ungern die Metaphysiker ihre Personen bey ihrem rechten Namen nennen, und wie die Katzen um den heißen Brei herumgehen; doch ich sehe die Aufklärung unsers Jahrhunderts nicht mit Katzen- sondern reinen und gesunden Menschaugen, die freylich durch Jahre und Lucubrationen und Näschereyen etwas stumpf geworden, mir aber zehnmal lieber sind als die bey Mondschein aufgeklärten Augen einer Athnh glaukwpiV.⁵

The critical method of philosophy used by Descartes was later modified by Kant to admit sensual experience as a factor of rational knowledge followed by Georg Wilhelm Hegel (1770-1831). Kant developed the ideas of to link 'beauty' with the finite and the 'sublime' with the infinite twice in 1766 and in 1790. Taste according to the

⁴ Cf.: Wilbanks, Charles Lionel. *Filosofia de la Elocuencia. A Rhetoric of the Spanish Enlightenment*. Ann Arbor 1988. Pp. 23-29.

⁵ Letter of Hamann to Christian Jacob Kraus. Brief Hamanns an Christian Jacob Kraus. September 12, 2006.

http://www.google.com/search?q=cache:x38Htx_rsg0J:members.aol.com/agrudolph/kraus.html+selbst+verschuldete+unmuendigkeit&hl=tr&gl=de&ct=clnk&cd=3

Critique of Judgment (1790) is individual, but it claims universality and appeals to common sense. Kant writes in the preface of the *Critique of Judgement* in 1790:

*The faculty of knowledge from a priori principles may be called pure reason, and the general investigation into its possibility and bounds the Critique of Pure Reason. This is permissible although "pure reason," as was the case with the same use of terms in our first work, is only intended to denote reason in its theoretical employment, and although there is no desire to bring under review its faculty as practical reason and its special principles as such. That Critique is, then, an investigation addressed simply to our faculty of knowing things a priori. Hence it makes our cognitive faculties its sole concern, to the exclusion of the feeling of pleasure or displeasure and the faculty of desire; and among the cognitive faculties it confines its attention to understanding and its a priori principles, to the exclusion of judgement and reason, (faculties that also belong to theoretical cognition,) because it turns out in the sequel that there is no cognitive faculty other than understanding capable of affording constitutive a priori principles of knowledge. Accordingly the critique which sifts these faculties one and all, so as to try the possible claims of each of the other faculties to a share in the clear possession of knowledge from roots of its own, retains nothing but what understanding prescribes a priori as a law for nature as the complex of phenomena-the form of these being similarly furnished a priori. All other pure concepts it relegates to the rank of ideas, which for our faculty of theoretical cognition are transcendent;*⁶

The connection between knowledge, reason, and the ability to speak for oneself is in general developed in the Enlightenment, even though at this time and place we find still the political concept of 'feudalism' and 'monarchy' in Europe. Already in 1644 *Areopagitica* was a pamphlet by the poet John Milton that argued against restrictions of freedom of the press. 'He who destroys a good book, kills reason itself.' In 1689 the *Bill of Rights* grants 'freedom of speech in Parliament' after James II is overthrown and William and Mary installed as co-rulers. William Shakespeare in *Measure for Measure* (act 1, scene 1, line 77ff.) writes a dialogue where a person is addressed to 'have a free speech' with the speaker:

*Escal. I shall desire you, sir, to give me leave
To have free speech with you; and it concerns me
To look into the bottom of my place:
A power I have, but of what strength and nature
I am not yet instructed.*⁷

Jacob Masen in his *Familiarum Argutiarum Fontes* writes chapter IV with the title *Mordax dicendi libertas in argute et jocose dictis est devitanda*:

CAPUT IV. Mordax dicendi libertas in argute et jocose dictis est devitanda.

Mordacitas in hac quoque argute dicendi ratione cavenda est, ne, dum oblectare volueris, laedas, dum prodesse, noceas, dum placere, displiceas. Quanquam nonnunquam eveniat, ut, quo multis places, pluribus etiam displiceas; aur quo nonnullos recreas, occulto alios vulnere saucies, quod tanto profundius figitur, quanto

⁶ Kant, Immanuel. *The critique of judgement*. Transl. with analyt. indexes by James Creed Meredith. Reprint from sheets of the 1. ed. of *The critique of esthetic judgement and the The critique of teleological judgement* (1928). Oxford 1989. Preface.

⁷ Shakespeare, William. *Measure for Measure*. Bartleby. June 12, 2006. <http://www.bartleby.com/70/1411.html>

*argutius jacitur, aut majorem auditoribus risum excutit. Jucundum.*⁸

The deliberative speech contains elements of public speech. Erasmus of Roterodam writes in *Brevissima Conficiendarum Epistolarum Formula* that letters use the *deliberativum genus*:

*Nunc ad deliberativum genus transeundum, quod multas species complectitur epistolarum, nam et suasoriae sunt epistolae et dissuasoriae, hortatoriae et dehortatoriae, petitoriae, monitoriae, amatoriae, de quibus postea suo ordine dicitur. In primis vero notandum, deliberativum genus, quod suasorium dici potest, utilitate ac honestate definiri. Quamquam cum utile dicimus, honestum etiam volumus intelligi, quando nihil utile dici potest, quod idem honestum non sit. Quare in hoc genere spectanda maxime ea est utilitas, quae honestati coniuncta sit, neque suadere, persuadere, dissuadere, hortari, dehortari, petere, monere possumus, nisi ad supradictum scopum omnes (ut ita dixerim) stili sagittas collineaverimus.*⁹

Erasmus in his *Epistolarum formula* names –following Cicero– the duties of the *genus demonstrativum* as honor (*laus*) and vituperation (*vituperatio*). These aims include the ability to make a judgment and imply free speaking. Erasmus wrote:

*Demonstrativum est, quod tribuitur in alicuius certae personae laudem aut vituperationem; deliberativum, quod positum in disceptatione civili habet in se sententiae dictionem; iudiciale, quod positum in iudicio habet in se accusationem et defensionem aut petitionem et recusationem." Quintilianus, Institutio oratoria i.a. II, 21,23: "Aristoteles tris faciendo partes orationis, iudicalem deliberativam demonstrativam, paene et ipse oratori subiecit omnia: nihil enim non in haec cadit."*¹⁰

Talaeus in his *Rhetorica* gives a definition of the trope *communicatio* as *deliberatio* citing Quintilian:

Communicatio (...) est deliberatio cum aliis. pro Quint. "Ego pro te nunc hoc consulo, post tempus in aliqua re, quod tu in tua re, cum tempus erat, consulere oblitus es. Quaero abs te C. Aquili, L. Luculle, P. Quinctili, M. Marcelle, Vadimonium mihi non obiit quidam socius & affinis meus, quicum mihi necessitudo vetus, controversia de re pecuniaria recens intercedit: postulone a Praetore, ut ejus bona mihi possidere liceat? jam cum Romae domus eius, uxor, liberi sint, domum potius denuntiem? quid est quod hac tandem de re vobis possit videri? Profecto si recte vestram bonitatem atque prudentiam cognovi, non multum me fallit, si consulamini, quid sitis responsuri: primum expectare, deinde si latitare ac diutius ludificare videatur, amicos convenire, quaerere quis procurator sit, domum denuntiare: dici vix potest, quam multa sint, quae respondeatis ante fieri oportere, quam ad hanc rationem extremam necessariam devenire."

Here we find the idea that communication serves as an expression of the opinion (*opinio*):

⁸ Masen, Jacob. *Familiarum Argutiarum Fontes*. Colonia Agrippina. 1709. June 12, 2006. <http://www.uni-mannheim.de/mateo/camena/masen5/masenfontes-toc.html>

⁹ Erasmus Roterodamus. *Brevissima Conficiendarum Epistolarum Formula*. Grexlat. [2.2.2007] <http://www.grexlat.com/biblio/brevissima/textus.html>

¹⁰ Desiderius Erasmus Roterodamus. *Brevissima conficiendarum epistolarum formula*. Grexlat. [2.2.2007] <http://www.grexlat.com/biblio/brevissima/index.html>

Communicationi affinis est sustentatio (quae Ciceroni dicitur) cum diutius suspenditur animus auditoris, & tandem supra opinionem & expectationem aliquid affertur, ut de impudente iudiciorum nundinatione. Verr. 7. "In Tricalino (quem locum fugitivi jam ante tenuerunt) Leonidae ejusdem Siculi familia in suspicionem vocata est conjurationis: res delata est ad istum: statim (ut par fuit) jussu ejus, homines qui nominati erant, comprehensi sunt, adductique Lilybaeum: domino denuntiatum est, ut adesset: caussa dicta damnati sunt. Quid deinde? quid censetis? furtum fortasse aut praedam expectatis aliquam. nolite usquequaque eadem quaerere. in metu belli, furandi quis locus potest esse?"¹¹*

The Heritage of the Artes Liberales for Freedom of Speech in the 18th Century

Freedom of speech as a part of a nation's constitution is an invention of modern times. But also prominent cases against it we find in ancient history. Regarding the case of Socrates we find the punishment of a public speaker not fitting into the belief system of his time. In the Roman Empire the edicts of the censors are documents limiting the power and practice of the sophists, wandering speakers teaching in public for money regarding a variety of fields.¹² In Marcus Tullius Cicero's *De Partitio Oratione* we find the term *oratio libera*:

[6] C.F. Quomodo igitur duo genera ista dividis? C.P. Quae sine arte putantur, ea remota appello, ut testimonia. C.F. Quid insita? C.P. Quae inhaerent in ipsa re. C.F. Testimoniorum quae sunt genera? C.P. Divinum et humanum: divinum, ut oracula, ut auspicia, ut vaticinationes, ut responsa sacerdotum, haruspicum, coniectorum, humanum, quod spectatur ex auctoritate et ex voluntate et ex oratione aut libera aut expressa: in quo insunt scripta, pacta, promissa, iurata, quaesita.¹³

From antiquity to the present day rhetoric in Europe has always been transmitted by schooling. The European universities preserved the ancient tradition and are until today the place of rhetorical education. Within Renaissance humanist curricula, rhetoric had a central place. Rhetorical pedagogy has not always been consistent. Fundamental to rhetoric has been the idea that the observation of successful speaking or writing precedes and improves one's own speaking or writing. The European countries keep the heritage of ancient rhetoric in manuals, handbooks and teaching advices. On the other hand there was a need for speeches in public life. Alexander Gottlieb Baumgarten in his *Metaphysica* explained the term *deliberans*:

Deliberans quatenus mathematicam cognitionem intendit, rationes subducit) (calculat), dum considerat, quot bona, quot mala utrimque speranda sint, causas numerat**), quas ponderat***), dum quanta bona, quanta mala speranda sint iudicat, dum perpendit, quid sit melius, unum alteri praefert).*

¹¹ Avdomari Talaei Rhetoricae Libri Duo. IPA. [2.2.2007]

<http://www.ipa.net/~magreyn2/talaeus.html>

¹² Cf. Saxonhouse, Arlene W. *Free Speech and Democracy in Ancient Athens*. Cambridge: Cambridge Univ. Press, 2006. Pp. 12ff.

Free Speech in Classical Antiquity. Second Penn-Leiden Colloquium on Ancient Values, held in June 2002 at the University of Pennsylvania. Ed. by Ineke Sluiter. Penn-Leiden Colloquium on Ancient Values. 2, 2002, Philadelphia, Pa. Leiden :Brill, 2004

¹³ Cicero, Marcus Tullius. *De Partitio Oratione*. Latin Library. September 12, 2007.

¡Error!Marcador no definido.

[...]

*Si praelatum decernat, elegitb). Si deliberans decernit aliquid, ut hoc experiatur, an vires suae, quantaequae ad illud actuandum sufficiant, tentat c). Si singulas ponderanti maiores visas causas impulsivas pro tot minimis habeat deliberans, quot magnitudinis singularum gradus cognoscit, et sic singulas comparet, causas impulsivas connumerat d).*¹⁴

In Kant's 18th century in Europe the conditions of communications were limited to the literary and oral media for the delivery of information. The beginning of the democratic ideas leads to the change of the needs of public rhetoric. Even the traditional hierarchy of the rhetoric system based on the Virgilian Circle and more or less on the system of monarchy or ancient hierarchical societies. Oral tradition in Europe is reduced to the areas of local ethnic groups and locally limited areas. Here orality exists in oral mouth to mouth communication and the literary versions of this mostly anonymously transferred communication in myths, legends and other narratives as the heritage of a culture.

The age of Enlightenment refers to either the 18th century in European philosophy, or the longer period including the 17th century and the Age of Reason. The historical intellectual movement The Enlightenment advocated reason as a means to establishing an authoritative system of aesthetics, ethics, and logic, which was supposed to allow human beings to obtain objective truth about the universe. Emboldened by the revolution in physics Enlightenment thinkers argued that the same kind of systematic thinking could apply to all forms of human activity. In terms of rhetoric, the Enlightenment was conservative: Speech and its production process followed ancient guidelines. The stylistic pattern concerned the study of tropes and figures. The formulary pattern was the study of models for imitation. Classical Ciceronian rhetoric aimed to communicate truths to a popular audience. Enlightenment was influenced by the rise of modern science and by the aftermath of the long religious conflict that followed the Reformation. The new rhetoric of the 17th and 18th century claimed to be a general theory of communication. In the early 16th century rhetorical study had three patterns.

Starting in France the philosophers thought that science could reveal nature as it truly is and show how it could be controlled and manipulated. This belief provided an incentive to extend scientific methods into every field of inquiry, laying the groundwork for the development of the modern social sciences. Descartes introduced pre-Enlightenment ideas into philosophy.¹⁵ Its lasting heritage was the contribution to the literature of human freedom and some institutions in which ethical values have been embodied. Included in the latter are many facets of modern governmental, education and philanthropy.¹⁶ *L' Eloquence Du Corps* of Joseph A. Dinouart was published in Paris in the year 1761. *L' Eloquence Du Temps* written by Joseph Leven de Templerly was publicized in Paris and Liege in the year 1707.¹⁷ Though based largely on the

¹⁴ Baumgarten, Alexander Gottlieb. *Metaphysica*. Halle 1757. University Bonn. [2.2.2007]. <http://www.ikp.uni-bonn.de/Kant/agb-metaphysica/II3Ba.html#696>

¹⁵ Cf.: Descartes, Rene. *Discourse on Method and Meditations on First Philosophy*, trans., Laurence J. Lafleur (Indianapolis, Indiana: The Bobbs-Merrill Co., Inc., 1960).

Saussure, Ferdinand de. *Course in General Linguistics*, Wade Baskin, trans. London 1974. Pp. 68-75.

¹⁶ Cf.: Semsch, Klaus. *Abstand von der Rhetorik. Strukturen und Funktionen ästhetischer Distanznahme von der ‚ars rhetorica‘ bei den französischen Enzyklopädisten*. 1999. Pp. 25-28.

¹⁷ Cf.: Bernier, Marc André. *Libertinage et Figures du Savoir. Rhétorique et Roman Libertin dans*

notion of language as representation and persuasion, classical rhetoric, which prevailed generally through the 18th century, did show consideration of rhetorical elements of the writing process such as audience, purpose, and invention. In the 18th century a more classical conception of rhetoric recovered invention, arrangement, and audience.

In England during the 18th century many handbooks of rhetoric were made for academic purpose.¹⁸ The philosophers Adam Smith, Hugh Blair, and George Campbell were its chief proponents.¹⁹ Classical rhetoric and logic remained influential throughout the 18th century, though challenged by the new rhetoric and logic of science. Classical logic from Aristotle aimed to deduce new truths from those already known and to communicate them to a learned audience. Classical rhetoric consists of three kinds. Ciceronian rhetoric aimed to communicate with a popular audience. Stylistic rhetoric analyzed orations and literary works, and elocutionary rhetoric prescribed methods of delivery for public speaking.²⁰ Rhetoric claimed to be a general theory of communication for learned and popular purposes. Smith and Campbell were its chief proponents.²¹ The logic of the Enlightenment propounded by Bacon and Locke worked inductively, testing ideas against perceived reality. Locke wrote in *An Essay Concerning Human Understanding* (1689):

If we would speak of Things as they are, we must allow, that all the Art of Rhetorick, besides Order and Clearness, all the artificial and figurative application of Words Eloquence hath invented, are for nothing else but to insinuate wrong Ideas, move the Passions, and thereby mislead the Judgment; and so indeed are perfect cheats. (Book III, ch. 10, § 34).²²

For empiricists like the English philosophers Francis Bacon and Locke the main source of knowledge was experience. Bacon wrote in *The Advancement of Learning* about the ability to be a *profound interpreter or commentor*:

Other errors there are in the scope that men propound to themselves, whereunto they bend their endeavours; for, whereas the more constant and devote kind of professors of any science ought to propound to themselves to make some additions to their science, they convert their labours to aspire to certain second prizes: as to be a profound interpreter or commentor, to be a sharp champion or defender, to be a methodical compounder or abridger, and so the patrimony of knowledge cometh to be sometimes improved, but seldom augmented.

la France des Lumières. Sainte-Foy, Québec 2001. Pp. 87-91.

¹⁸ Cf.: A Member Incorporate. Public and Private Rhetoric in the Protestant Preface. In: Eighteenth-Century British and American Rhetorics and Rhetoricians. Critical Studies and Sources. Edited by Michael G. Moran. Pp. 19-18.

¹⁹ Cf.: Blair, Hugh. Sermons. In four volumes. Vol. IV. The third edition. Woodbridge 1794. Pp. 27-31.

Waterman, A. M. C. Economics as Theology. Adam Smith's Wealth of Nations. In: The Southern Economic Journal. Vol. 68 (2002), 4, S. 907-921. Pp. 57-62.

²⁰ Cf.: Communities in Early Modern England. Networks, Place, Rhetoric. Ed. by Alexandra Shepard and Phil Withington. Manchester 2000. Pp. 66-78.

²¹ Howell, Wilbur Samuel. Eighteenth-Century British Logic and Rhetoric. Princeton: Princeton Univ. Press, 1971. Pp. 12-18.

²² Locke, John. *An Essay Concerning Human Understanding*. Catholic University of Hongkong. June 9, 2005. **¡Error!Marcador no definido.**

Neither is the imagination simply and only a messenger; but is invested with, or at least wise usurpeth no small authority in itself, besides the duty of the message.

Bacon mentions *the liberty of every man's invention*:

*So, then, this art of judgment is but the reduction of propositions to principles in a middle term. The principles to be agreed by all and exempted from argument; the middle term to be elected at the liberty of every man's invention; the reduction to be of two kinds, direct and inverted: the one when the proposition is reduced to the principle, which they term a probation ostensive; the other, when the contradictory of the proposition is reduced to the contradictory of the principle, which is that which they call per incommodum, or pressing an absurdity; the number of middle terms to be as the proposition standeth degrees more or less removed from the principle.*²³

In the 18th century Kant tried to solve an argument between Locke and Hume.²⁴ Rhetoricians like George Campbell and Richard Whately rejected classical rhetoric's invention schemes. Also the *Philosophy of Rhetoric* (1776) written by the Scottish theologian Campbell and the *Elements of Rhetoric* (1828) by the British logician Whately were famous. There still existed at this time theorists of the ancient rhetorical system of Aristotle and Cicero. In the early 18th century, rhetoric declined in importance, although more on its theoretical than on its practical side. The political arena and the debating platform continued to furnish numerous opportunities for effective oratory. John Ward's system of oratory was composed for academic lectures at the Gresham College in the year 1759 and is a good example for the parts of the rhetorical system in the 18th century. Ward uses the word *demonstrative discourse* implying the argumentative structure of speech:

*Of the rise and progress of oratory*²⁵
*Of the nature of oratory*²⁶
*Of the division of oratory*²⁷
*Of invention in general, and particularly of common places*²⁸
*Of external topics*²⁹
*Of the state of controversy*³⁰
*Of arguments suited to demonstrative discourses*³¹
*Of arguments suited to judicial discourse*³²
*Of the character and address of the orator*³³
*Of the passions*³⁴

²³ Bacon, Francis. *The Advancement of Learning*. Project Gutenberg. [2.2.2007]
<<http://www.gutenberg.org/dirs/etext04/adlr10h.htm>>

²⁴ Cf.: Kennedy, George A. "David Hume". In: *Classical Rhetoric and its Christian and Secular Tradition from Ancient to Modern Times*. London 1980. Pp. 230.

Potkay, Adam. *The Fate of Eloquence in the Age of Hume*. Ithaca; London 1994.

²⁵ Ward. *A System of Oratory*. 1759. Pp. 1-15.

²⁶ Ward. *A System of Oratory*. 1759. Pp. 16-28.

²⁷ Ward. *A System of Oratory*. 1759. Pp. 29-42.

²⁸ Ward. *A System of Oratory*. 1759. Pp. 43-60.

²⁹ Ward. *A System of Oratory*. 1759. Pp. 61-76.

³⁰ Ward. *A System of Oratory*. 1759. Pp. 77-91.

³¹ Ward. *A System of Oratory*. 1759. Pp. 92-106.

³² Ward. *A System of Oratory*. 1759. Pp. 123-139.

³³ Ward. *A System of Oratory*. 1759. Pp. 140-154.

³⁴ Ward. *A System of Oratory*. 1759. Pp. 155-174.

*Of disposition in general, and particularly of the introduction*³⁵
*Of narration*³⁶
*Of the proposition*³⁷
*Of confirmation by syllogism*³⁸
*Of confirmation by induction and example*³⁹
*Of confutation*⁴⁰
*Of digression, transition, and amplification*⁴¹
*Of elocution in general, and particularly of Elegance and purity*⁴²
*Of perspicuity*⁴³
*Of composition, and particularly of period*⁴⁴
*Of order*⁴⁵
*Of dignity, and particularly of tropes*⁴⁶
*Of a metaphor*⁴⁷
*Of a metonymy*⁴⁸

From the 17th to the late 19th century, the main issue in epistemology was logic versus experience in obtaining knowledge. These ideas of Enlightenment brought a new culture to all European cultures. For the rationalists, such as the French philosopher Descartes, the Dutch philosopher Baruch Spinoza, and Gottfried von Leibniz, the main source of knowledge was deductive reasoning based on self-evident ideas. In handbook of this time the writer used the five classical canons of rhetoric in their work to gathering ideas, organize them, and writing an effective text. The author gave his text a form and style so he can present his ideas clearly to the audience. The author also used his judgment skills to write the paper. For example the rhetor decided his word choice, style, and form to use in his paper. *The Lectures on Rhetoric* (1783) by Hugh Blair achieved considerable popularity in the late 18th and early 19th centuries. John Walker mentions the difficulty of grammar in *A Rhetorical Grammar*, or course of lessons in elocution, which was in London in the year 1785 publicized, this way:

*The difficulty of finding out an easy and rational plan of introducing youth, in reading and speaking, has been one great cause of the neglect of this part of education [...] but reading and speaking, depending more on habit than science, are naturally not so susceptible of rules as the other arts, and consequently, the progress in them is neither so pleasant nor so perceptible.*⁴⁹

An influential book to come from Edinburgh was Blair's *Lectures on Rhetoric and Belles-Lettres* published in 1783. Blair's text was widely used in American colleges

³⁵ Ward. *A System of Oratory*. 1759. Pp. 175-191.

³⁶ Ward. *A System of Oratory*. 1759. Pp. 192-207.

³⁷ Ward. *A System of Oratory*. 1759. Pp. 208-223.

³⁸ Ward. *A System of Oratory*. 1759. Pp. 223-237.

³⁹ Ward. *A System of Oratory*. 1759. Pp. 238-251.

⁴⁰ Ward. *A System of Oratory*. 1759. Pp. 252-268.

⁴¹ Ward. *A System of Oratory*. 1759. Pp. 283-302.

⁴² Ward. *A System of Oratory*. 1759. Pp. 302-318.

⁴³ Ward. *A System of Oratory*. 1759. Pp. 319-335.

⁴⁴ Ward. *A System of Oratory*. 1759. Pp. 336-353.

⁴⁵ Ward. *A System of Oratory*. 1759. Pp. 354-367.

⁴⁶ Ward. *A System of Oratory*. 1759. Pp. 383-397.

⁴⁷ Ward. *A System of Oratory*. 1759. Pp. 398-411.

⁴⁸ Ward. *A System of Oratory*. 1759. Pp. 412-413.

⁴⁹ Walker, John. *A Rhetorical Grammar, or Course of Lessons in Elocution*. London 1785. P. 1.

and secondary schools until the end of the 19th century. Americans found Blair's emphasis on the moral qualities of belletristic taste particularly important.⁵⁰ In John Walker's *A Rhetorical Grammar, or Course of Lessons in Elocution* publicised in the year 1785 shows the different terms of rhetorical tropes.

*Metaphor*⁵¹
*Allegory*⁵²
*Metonymy*⁵³
*Synechdoche*⁵⁴
*Hyperbole*⁵⁵
*Catachresis*⁵⁶
*Ekphrasis*⁵⁷
*Erotesis*⁵⁸
*Aparihmesis*⁵⁹
*Epanaphora*⁶⁰
*Prolepsis*⁶¹
*Syncoresis*⁶²
*Epanorthosis*⁶³
*Anastrophe*⁶⁴
*Apostrophe*⁶⁵
*Asyndethon and Polisyndeton*⁶⁶
*Enatiosis*⁶⁷
*Paraclepsis*⁶⁸
*Anacoenosis*⁶⁹
*Hypotyposis*⁷⁰
*Vision*⁷¹

The Lectures on Rhetoric written in the year 1783 by Blair achieved

⁵⁰ Cf.: Kenshur, Oscar. *Dilemmas of Enlightenment. Studies in the Rhetoric and Logic of Ideology*. Berkeley 1993. Pp. 81-85.

Robinson, Ian. *Establishment of Modern English Prose in the Reformation and the Enlightenment*. Cambridge 1998. Pp. 47-53.

⁵¹ Walker. *A Rhetorical Grammar*. 1785. P. 137.

⁵² Walker. *A Rhetorical Grammar*. 1785. P. 138.

⁵³ Walker. *A Rhetorical Grammar*. 1785. P. 139.

⁵⁴ Walker. *A Rhetorical Grammar*. 1785. P. 140.

⁵⁵ Walker. *A Rhetorical Grammar*. 1785. P. 140.

⁵⁶ Walker. *A Rhetorical Grammar*. 1785. P. 141.

⁵⁷ Walker. *A Rhetorical Grammar*. 1785. P. 144.

⁵⁸ Walker. *A Rhetorical Grammar*. 1785. P. 148.

⁵⁹ Walker. *A Rhetorical Grammar*. 1785. P. 149.

⁶⁰ Walker. *A Rhetorical Grammar*. 1785. P. 153.

⁶¹ Walker. *A Rhetorical Grammar*. 1785. P. 157.

⁶² Walker. *A Rhetorical Grammar*. 1785. P. 160.

⁶³ Walker. *A Rhetorical Grammar*. 1785. P. 162.

⁶⁴ Walker. *A Rhetorical Grammar*. 1785. P. 164.

⁶⁵ Walker. *A Rhetorical Grammar*. 1785. P. 166.

⁶⁶ Walker. *A Rhetorical Grammar*. 1785. P. 168.

⁶⁷ Walker. *A Rhetorical Grammar*. 1785. P. 171.

⁶⁸ Walker. *A Rhetorical Grammar*. 1785. P. 175.

⁶⁹ Walker. *A Rhetorical Grammar*. 1785. P. 177.

⁷⁰ Walker. *A Rhetorical Grammar*. 1785. P. 179.

⁷¹ Walker. *A Rhetorical Grammar*. 1785. P. 191.

considerable popularity in the late 18th and early 19th centuries. Also the *Philosophy of Rhetoric* (1776) by the theologian George Campbell and the *Elements of Rhetoric* (1828) written by the logician Richard Whately were successful. Lectures concerning oratory are published by John Lawson in Dublin in the year 1759. *Cicero Redivivus* is publicised by John Twells in London in the year 1688. Some instructions concerning the art of oratory are published by Obadiah Walker in London in the year 1659. The alliance of music, poetry and oratory was publicised in London in the year 1789 by Anselm Bayly. Joseph Priestley wrote *The Rudiments of English Grammar. A Course of Lectures on the Theory of Language, Universal Grammar and On Oratory and Criticism* in 1817. The teachings of the 17th-century Locke are a foundation on which the study of elocution in English speaking countries could be built. For Locke words are the signs of ideas, tones the signs of passions. A new, virtually irrevocable split had apparently occurred between spoken language and printed or written discourse. Pathetic appeals could simply become, as in Hugh Blair's *Lectures on Rhetoric and Belles Lettres* (1783). Besides Blair's, the most important rhetorical treatises of the period were Campbell's *Philosophy of Rhetoric* (1776) and Whately's *Elements of Rhetoric* (1828). John Stuart Mill (1806-1873) in 1859 introduced a small treatise named *On Liberty* mentioning the opinion (*opinio*) and *the liberty of expressing and publishing opinions*:

The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion.

*The liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people; but, being almost of as much importance as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable from it. Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow; without impediment from our fellow-creatures, so long as what we do does not harm them even though they should think our conduct foolish, perverse, or wrong.*⁷²

The Idea of Freedom of Speech in the 19th Century

A later rhetorician in the Scottish tradition was Alexander Bain, who showed the importance of psychology for achieving goals of persuasion in *English Composition and Rhetoric. A Manual* (1866) Bain argued that persuasive discourse is organized by associating ideas in a way that produces the desired emotion in the audience.⁷³ Thus, these handbooks were formalized collections of rhetorical means, and the question of freedom of speech was in no way discussed. Important for modern English rhetoric was Campbell, whose *Philosophy of Rhetoric* was written in 1776 validating its principles by relating them to the working of the human mind. Current-traditional rhetoric until recently the dominant approach in American schools was developed in the late 18th and 19th centuries when rhetoricians like Campbell and Whately rejected classical rhetoric's invention schemes. Campbell in 1776 gives as definition for rhetoric

⁷² Mill, John Stuart. *On Liberty*. Barleby. [2.2.2007] ¡Error!Marcador no definido.

⁷³ A basic work is: *Eighteenth-century British and American Rhetorics and Rhetoricians. Critical Studies and Sources*. Edited by Michael G. Moran. Westport, Conn.; London 1994.

'the art or talent by which discourse is adapted to its end'. In order to get the response he desires, the rhetor should be aware of sentiments, passions and human dispositions.⁷⁴ Campbell wrote in *The Philosophy of Rhetoric*:

In speaking there is always some end proposed, or some effect which the speaker intends to produce on the hearer. The word eloquence in its greatest latitude denotes, that art of talent by which the discourse is adapted to its end; (Quintilian). (Book I, ch. 1)

George Campbell wrote in *The Philosophy of Rhetoric* about the speaker's aim to be understood:

When a speaker addresseth himself to the understanding, he proposes the instruction of his hearers, and that, either by explaining some doctrine unknown, or not distinctly comprehended by them, or by proving some position disbelieved or doubted by them.-In other words, he proposes either to dispel ignorance or to vanquish error. In the one, his aim is their information; in the other, their conviction. Accordingly the predominant quality of the former is perspicuity; of the latter, argument. By that we are made to know, by this to believe.

In matters of criticism, as in the abstract sciences, it is of the utmost consequence to ascertain, with precision, the meanings of words, and, as nearly as the genius of the language in which one writes will permit, to make them correspond to the boundaries assigned by Nature to the things signified. That the lofty and the vehement, though still distinguishable, are sometimes combined, and act with united force, is not to be denied.⁷⁵

Campbell described in *The Philosophy of Rhetoric* the different kinds of public speaking and the *difference in character that subsists between the judge and the pleader*:

The different kinds of public speaking in use among the moderns compared, with a view to their different advantages in respect of eloquence.

The principal sorts of discourses which here demand our notice, and on which I intend to make some observations, are the three following: orations delivered at the bar, those pronounced in the senate, and those spoken from the pulpit. I do not make a separate article of the speeches delivered by judges to their colleagues on the bench; because, though there be something peculiar here, arising from the difference in character that subsists between the judge and the pleader, in all the other material circumstances, the persons addressed, the subject, the occasion, and the purpose in speaking, there is in these two sorts a perfect coincidence.⁷⁶

Their exercises in writing and speech called *progymnasmata* provided the rhetorical link to the humanities throughout much of Western history, and this comprehensive notion of rhetoric is perhaps most succinctly articulated by Campbell in

⁷⁴ Cf.: Kennedy, George A. "George Campbell". In: *Classical Rhetoric and its Christian and Secular Tradition from Ancient to Modern Times*. London 1980. Pp. 232-233.

⁷⁵ Campbell, George. *The Philosophy of Rhetoric*. De Pauw University. [2.2.2007]

¡Error! Marcador no definido.

⁷⁶ Campbell, George. *The Philosophy of Rhetoric*. De Pauw University. [2.2.2007]

¡Error! Marcador no definido.

the 18th century.⁷⁷ Rhetoricians from the University of Edinburgh sought to stop this trend by arguing that the study of correct and persuasive style produced competent public speakers and virtuous people. The Edinburgh rhetoricians connected the study of persuasion with the more prestigious scientific discipline of psychology. And these rhetoricians adapted ornamentation from Cicero to correct the emphasis on plain style. The Enlightenment's rhetoricians used as well rhetorical invention as a new knowledge by discovery and also as a heuristic method to improve and shape knowledge.⁷⁸ Criticism was an often used method in combination with rhetoric.⁷⁹ Kant is the most important scholar for this method. Kant gave the definition of rhetoric as the art of deluding by means of a concept like *ars oratoria*, and not merely excellence of speech, is a dialectic, which borrows from poetry only as much as is necessary to win over men's minds to the side of the speaker before they have weighed the matter, and to rob their verdict of its freedom. For Kant oratory (*ars oratoria*) is the art of playing for one's own purpose upon the weaknesses of men merits no respect whatever. Kant also considers rhetoric a major source of error that if allowed to pollute the public sphere will subvert our capacity to reach autonomous judgment. The 18th and 19th centuries were vibrant periods for rhetorical education and practice in England and America. At the end of 18th century in Europe the Enlightening provoked criticism as a scientific method.⁸⁰ The rhetorical literature became available as well in traditional neo Latin language and in contemporary local languages.⁸¹

In the 19th century rhetorical literature was written in local national languages. Traditional philosophy arrived at the important admission if rational language cannot reach 'passions'. What is 'true' language? The model provided by German romantic thought recognizes an essentially literary character. For Novalis language is a game, not used for the determination of beings. An object has its own destiny and at the same time it doesn't in that each appears in its merry through the code which is revealed in the history. By the late 18th century the Aristotelian world view had been replaced by a Newtonian one, and a new scientific rhetoric was required as adaptation of new scientific views. In 18th century rhetoric, invention was replaced by scientific observation. Romantic rhetoric did not challenge 18th-century rhetoric's dominance until the end of the 19th century, but it has recently inspired some of the most cogent critiques of current-traditional rhetoric. In the 18th century a conception based upon classical scholarship of rhetoric recovered invention, arrangement and audience for written literature and spoken word. English became the contemporary language of formal academic disputation. The idea of mental faculties developed in the 18th century and found a solid place in the discipline of rhetoric, in theoretical treatises as well as textbooks. Oratory related to legal matters is called forensic oratory and had a definite structure asking for the states of an issue influencing the way in which many speeches were presented. Thomas Wilson in *The Arte of Rhetorique* mentions the *kinde Deliberatiue*:

⁷⁷ Wibur, Samuel Howell. *Eighteenth-Century British Logic and Rhetoric*. Princeton 1971. Pp. 41-47.

⁷⁸ Petrus, Klaus. *Genese und Analyse. Logik, Rhetorik und Hermeneutik im 17. und 18. Jahrhundert*. Berlin; New York 1997. Pp. 18-23.

⁷⁹ Cf.: Sinemus, Volker. *Poetik und Rhetorik im frühmodernen deutschen Staat. Sozialgeschichtliche Bedingungen des Normenwandels im 17. Jahrhundert*. In: Palaestra. Bd. 269. Göttingen 1978. Pp. 37-41.

⁸⁰ Riedl, Peter Philipp. *Öffentliche Rede in der Zeitenwende. Deutsche Literatur und Geschichte um 1800*. Tübingen 1997. Pp. 11-16.

⁸¹ Campe, Rüdiger. *Affekt und Ausdruck. Zur Umwandlung der literarischen Rede im 17. und 18. Jahrhundert*. Tübingen 1990. Pp. 60-67.

For, neither against all men that offende, nor yet against all matters, Narration in praying

and counsell giuing. should the wittie alwaies vse iesting. And now, for those that shall tel their minde, in the other kindes of Oratorie, as in the kinde Demonstratiue, Deliberatiue, in exhorting or perswading:the learned haue thought meet that they must also call the whole somme of their matter to one point, that the rather the hearers may better perceiue, whereat they leuell all Preachers what order they vse. their reasons.⁸²

Edmund Burke can be regarded as the best example of an 18th century political orator. Burke's psychology bases on the senses, imagination, and judgment. Taste is developed through natural sensibility, knowledge, and training. The emotions, joined to the senses, produce sublimity. Beauty has as its object love according to its traits like size, smoothness, variation, delicacy, colour, physiognomy, clarity. Words can arouse the emotions even more than pictures and nature itself. For Alexander Gerard taste is powers of the imagination by reduction and association. Charles Rollin's concerns are methods of teaching and studying the *belles lettres* by taking up the combination of grammar, poetry, rhetoric, history, philosophy, and educational administration.⁸³ 18th-century theorists of rhetoric such as Adam Smith and Hugh Blair made these gendered distinctions into pedagogical commonplaces. Brody tracks them into 19th-century American composition texts and into the work of 20th-century composition scholar Peter Elbow. *Enlightenment* is a name given by historians to an intellectual movement that was predominant in the Western world during the 18th century. Influenced by the rise of modern science the thinkers of the Enlightenment were committed to secular views based on reason or human understanding and essential categories for humanity standing in the tradition of Bacon, Galileo, Descartes, Leibniz, Isaac Newton, and Locke.⁸⁴ These philosophers thought that science could explore nature with scientific methods into every field of inquiry. The writers of the Enlightenment extended rationalistic, republican, and natural-law theories. Their work showed that although all peoples shared a common human nature, each nation and every age also had distinctive characteristics that made it unique. The methods they use were interchangeable and discourses were open in the European *lingua franca* Latin.

Comparisons between the Ideas of the Enlightenment and the Contemporary Genre 'Free Speech' and Democracy

The most basic component of freedom of expression is the right of freedom of speech. The right of freedom of speech allows individuals to express themselves without interference or constraint by the government. The right to freedom of the press guaranteed in the *First Amendment* is not very different from the right to freedom of speech. It allows an individual to express themselves through publication and dissemination. It is part of the constitutional protection of freedom of expression. It does not afford members of the media any special rights or privileges not afforded to citizens in general. The idea of personality is known only in the Western world where the idea

⁸² Wilson, Thomas. *The Arte of Rhetorique*. University Oregon. [2.2.2007]
<http://darkwing.uoregon.edu/%7Erbear/arte/arte3.htm>

⁸³ Cf.: Bevilacqua, Vincent M. *Philosophical Influences in the Development of English. Rhetorical theory: 1748-1783*. In: *Proceedings of the Leeds Philosophical and Literary Society, Literary and Historical Section*, Vol. IXX, Part IV. Pp. 66-78.

⁸⁴ Cf.: France, Peter. *Rhetoric and Truth in France. Descartes to Diderot*. Oxford 1972. Pp. 75-76.

of the person (*persona*) is part of the ancient Greek and Roman world. Accordingly, other cultures do not see the demand of a free speech of the individual person. In other parts of the world there is no individualism or personality.⁸⁵

In 1789 *The Declaration of the Rights of Man* of the French Revolution provided freedom of speech. In 1791 *The First Amendment of the US Bill of Rights* guaranteed freedoms of religion, speech, the press and the right to assemble. The enlightened *literati* had an interest in popular education. The rhetoric of the 18th century was part of the scholarly system.⁸⁶ Adam Smith in *The Theory of Moral Sentiments* wrote about freedom of the nobleman:

*Do the great seem insensible of the easy price at which they may acquire the public admiration; or do they seem to imagine that to them, as to other men, it must be the purchase either of sweat or of blood? By what important accomplishments is the young nobleman instructed to support the dignity of his rank, and to render himself worthy of that superiority over his fellow-citizens, to which the virtue of his ancestors had raised them? Is it by knowledge, by industry, by patience, by self-denial, or by virtue of any kind? As all his words, as all his motions are attended to, he learns an habitual regard to every circumstance of ordinary behaviour, and studies to perform all those small duties with the most exact propriety. As he is conscious how much he is observed, and how much mankind are disposed to favour all his inclinations, he acts, upon the most indifferent occasions, with that freedom and elevation which the thought of this naturally inspires. His air, his manner, his deportment, all mark that elegant and graceful sense of his own superiority, which those who are born to inferior stations can hardly ever arrive at.*⁸⁷

Smith in *The Theory of Moral Sentiments* wrote about frankness and openness:

*Frankness and openness conciliate confidence. We trust the man who seems willing to trust us. We see clearly, we think, the road by which he means to conduct us, and we abandon ourselves with pleasure to his guidance and direction. Reserve and concealment, on the contrary, call forth diffidence. We are afraid to follow the man who is going we do not know where. The great pleasure of conversation and society, besides, arises from a certain correspondence of sentiments and opinions, from a certain harmony of minds, which like so many musical instruments coincide and keep time with one another. But this most delightful harmony cannot be obtained unless there is a free communication of sentiments and opinions.*⁸⁸

In the 20th century 'democratic' became the meaning of a political system set up so that people can participate with their own views, without being punished for expressing them or for organizing with like-minded citizens. Liberal democracy is a representative democracy along with the protection of minorities, the rule of law, a separation of powers, and protection of liberties of speech, assembly, religion, and property. The *United States Constitution* protected rights and liberties and was adopted

⁸⁵ Cf.: Conley, Thomas M. "Eighteenth-Century Rhetorics". In: Conley: Rhetoric in the European tradition. 1990. Pp. 188-193.

⁸⁶ Capaci, Bruno. *Il Giudice e l'Oratore. Trasformazione e Fortuna del Genere Epidittico nel Settecento*. Bologna 2000. Pp. 56-61.

⁸⁷ Smith, Adam. *The Theory of Moral Sentiments*. Econlib. [2.2.2007]
<http://www.econlib.org/library/Smith/smMS.html>

⁸⁸ Smith, Adam. *The Theory of Moral Sentiments*. Econlib. [2.2.2007]
<http://www.econlib.org/library/Smith/smMS.html>

in 1788. Already in the colonial period before 1776 most adult white men could vote. We must consider the term 'free speech' as a development of a recent debate concerning democracy in the Western world. We can classify it as a typical genre developed upon the thinking of the Western society, namely the U.S. American society. The concept of the liberal arts historically is related to the free Roman citizen able to study the free arts (*artes liberales*). The *Supreme Court* requires the government to provide substantial justification for the interference with the right of free speech where it attempts to regulate the content of the speech. A less stringent test is applied for content-neutral legislation. The *Supreme Court* has also recognized that the government may prohibit some speech that may cause a breach of the peace or cause violence. The right to free speech includes other mediums of expression that communicates a message. Other countries developed similar methods to ensure right for free speech.⁸⁹ The topic of 'free speech' is one of the most contentious issues in a liberal society. If liberty of expression is not valued, freedom of expression is simply curtailed in favor of other competing values. Free speech only becomes a volatile issue when it is highly valued. When freedom of speech is available a government cannot make it impossible to say certain things. But they have the option to punish for things people have said, written or published. Prior to this any prohibition would be censorship.⁹⁰ *Mündigkeit* in contemporary Austrian law means the right of a person accepting his/her ability to act reasonable. This right begins depending on the age and field of law in most cases with the age of 18 (§ 2 iVm § 106 BGB), but *Mündigkeit* for punishment begins with the 14th year (§ 19 StGB). Today democracy is often assumed to be liberal democracy, but there are many other varieties and the methods used to govern differ. While the term democracy is often used in the context of a political state, the principles are also applicable to other bodies, such as universities, labor unions, or civic organizations.

In the context of modern speech genres we can classify 'hate speech' as a genre which came up in the U.S. 'Hate speech' causes profound and personal offense. Some argue that speech can be limited for the sake of other liberal values, particularly the concern for democratic equality.⁹¹ Academic freedom is the freedom of teachers, students, and academic institutions to pursue knowledge wherever it may lead, without undue or unreasonable interference.⁹² Academic freedom involves the freedom to engage in the range of activities involved in the production of knowledge. Still, academic freedom has limits. In the United States, for example, according to the widely recognized *1940 Statement on Academic Freedom and Tenure* teachers should be careful to avoid controversial matter that is unrelated to the subject. When they speak or write in public, they are free to express their opinions without fear from institutional

⁸⁹ Coliver, Sandra. "Commentary to: The Johannesburg Principles on National Security, Freedom of Expression and Access to Information". In: *Human Rights Quarterly*. Volume 20, Number 1, February 1998. Pp. 12-80.

⁹⁰ Wasserman, Howard M. "If You Build It, They Will Speak. Public Stadiums, Public Forums, and Free Speech". In: *NINE. A Journal of Baseball History and Culture*. Volume 14, Number 2, Spring 2006. Pp. 15-26.

Craig, Nico Nolte. *Privacy and Free Speech in Germany and Canada. Lessons for an English privacy tort*. In: *European Human Rights Law Review*. 1998. 2, Pp. 162-180

⁹¹ See for these genres of speech also: Wolfson, Nicholas. *Hate Speech, Sex Speech, Free Speech*. Westport, Conn. 1997.

Fish wrote an ironically entitled book on free speech:

Fish, Stanley. *There's no such Thing as Free Speech and it's a Good Thing, too*. New York: Oxford Univ. Press, 1994.

⁹² Ackerman, Robert. "Restoring Free Speech and Liberty on Campus". In: *Journal of College Student Development*. Volume 47, Number 4, July/August 2006. Pp. 481-484.

ensorship or discipline. Teachers should show restraint and clearly indicate that they are not speaking for the institution. The concept of academic freedom as a right of faculty members ('Lehrfreiheit' in German) is an established part of German, English, French, and American culture with the right of a faculty member to pursue research and publish their findings without restraint. These countries differ in regard to the professor's freedom in a classroom situation. In the German tradition, professors are free to try to convert their students to their personal viewpoint and philosophical system. In the U.S. academic freedom is generally taken as the notion of academic freedom defined by the *1940 Statement of Principles on Academic Freedom and Tenure*, which was jointly authored by the *American Association of University Professors (AAUP)* and the *Association of American Colleges (AAC)*.

In the U.S. freedom of speech is guaranteed by the *First Amendment*, which states that the Congress shall make no law abridging the freedom of speech or of the press. Freedom of speech is the concept of being able to speak freely without censorship. It is often regarded as an integral concept in modern liberal democracies.⁹³ The right to freedom of speech is guaranteed under international law through numerous human rights instruments, notably under Article 19 of the *Universal Declaration of Human Rights* and Article 10 of the *European Convention on Human Rights*, although implementation remains lacking in many countries. The synonymous term 'freedom of expression' is sometimes preferred, since the right is not confined to verbal speech but is understood to protect any act of seeking, receiving and imparting information or ideas, regardless of the medium used. In 2001 in the wake of 9/11, the *Patriot Act* gave the U.S. government power to investigate individuals suspected of being a threat, raising fears for civil liberties.⁹⁴ "Liberty Rhetoric" was a tradition of speaking about the relationship between the state and the citizen in the U.S. Rhetoric in an open and democratic society with rights of free speech, free assembly keeps its terminology until recent times in related writings.

In the U.S. the *Federal Communications Commission (FCC)* receives numerous complaints that television and/or radio networks, stations or their employees or guests have broadcast extreme, incorrect, or improper political, economic or social statements. Often consumers complain that certain broadcast statements may endanger the U.S. or its people, or threaten the government, the economic system, or established institutions like family or marriage saying these attacks are 'un-American' and an abuse of freedom of speech. The *FCC* also receives complaints that some broadcast statements criticize, ridicule, 'stereotype' or demean individuals or groups because of the religion, race, nationality, gender or other characteristics of the group or individual. The *FCC's* responsibility is to protect communication rights. The *FCC* is barred by law from trying to prevent the broadcast of any point of view. The *Communications Act* prohibits the *FCC* from censoring broadcast material, in most cases, and from making any regulation that would interfere with freedom of speech. Expressions of views that do not involve a 'clear and present danger of serious substantive evil' come under the protection of the Constitution, which guarantees freedom of speech and freedom of the press. The *FCC* cannot suppress such

⁹³ Siegel, Stephen A. The First Amendment's New Standard History. In: *Reviews in American History*. Volume 26, Number 4, December 1998. Pp. 743-750.

⁹⁴ Cf. Craig, Carys J. "Putting the Community in Communication: Dissolving the Conflict Between Freedom of Expression and Copyright". In: *University of Toronto Law Journal*. Volume 56, Number 1, Winter 2006. Pp. 75-114.

Pinchevski, Amit. Freedom from Speech (or the Silent Demand). In: *Diacritics*. Volume 31, Number 2. Summer 2001. Pp. 71-84.

expressions. According to FCC opinion on this subject 'the public interest is best served by permitting free expression of views'. This principle ensures that the most diverse and opposing opinions will be expressed, even though some may be highly offensive. The commission does have enforcement responsibilities in certain limited instances.

These recent discussions we can face under the aspect of the opposite positions between cultures with liberal conceptions of democracy and free speech and societies with a low level of free speech interest. When tracing back the history of free speech, we find it connected with the idea of democracy, even though democracy is not a common term with equal meanings in past and present end among different democratic systems. Stanley Fish said in the interview *There is no such thing as free speech*:

Many discussions of free speech, especially by those whom I would call free speech ideologues, begin by assuming as normative the situation in which speech is offered for its own sake, just for the sake of expression.

[...]

The condition of speech being free is not only unrealizable, it is also undesirable. It would be a condition in which speech was offered for no reason whatsoever. Once speech is offered for a reason it is necessarily, if only silently, negating all of the other reasons for which one might have spoken. Therefore the only condition in which free speech would be realizable is if the speech didn't mean anything. Free speech is speech that doesn't mean anything.⁹⁵

Kenneth A. Strike in *Liberal Discourse and Ethical Pluralism. An Educational Agenda* gives a definition of liberalism as ethical discourse:

The account of liberal speech I shall sketch views liberalism as a language developed in history to talk about civic affairs.⁹⁶

Colin Farrelly in *An Introduction to Contemporary Political Theory* wrote regarding deliberative democracy:

To fully participate in the decision-making process, argue deliberative democrats, one must participate in authentic deliberation and not simply express one's preferences. Such deliberation requires that parties abandon the strategic behaviour characteristic of the aggregative model of democracy and strive instead to reach a consensus among free and equal participates. To participate in this discursive practice is very different from participating in the decision-making process of the aggregative model of democracy. Deliberative democrats characterize participation in the democratic process as a transformative process.⁹⁷

⁹⁵ "There is no such thing as free speech": An interview with Stanley Fish. Stanley Fish discusses his book. Latrobe University. Australian Humanities Review. [2.2.2007]

¡Error! Marcador no definido.

⁹⁶ Strike, Kenneth A. *Liberal Discourse and Ethical Pluralism. An Educational Agenda*. University of Illinois at Urbana-Champaign. [2.2.2007]

http://www.ed.uiuc.edu/EPS/PES-Yearbook/92_docs/Strike.htm

⁹⁷ Farrelly, Colin. *An Introduction to Contemporary Political Theory*. Sage Publications. 2004 Chapter Seven Deliberative Democracy. [2.2.2007]

<http://politicalscience.uwaterloo.ca/Farrelly/chapter7oftextbook.pdf>

Freedom of speech is the concept of the inherent human right to voice one's opinion publicly without fear of censorship or punishment. The first formal request for freedom of speech in recorded history was made by Sir Thomas More in front of the English Parliament. The *United Nations Universal Declaration of Human Rights* adopted in 1948 provides in Article 19 that everyone has the right to opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Freedom of speech is granted unambiguous protection in international law by the *International Covenant on Civil and Political Rights*, which is binding on around 150 nations. Article 19 provides that everyone shall have the right to hold opinions without interference and everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Deliberative oratory is also sometimes called 'legislative' oratory. Deliberative oratory originally had to do exclusively with that sort of speaking typical of political legislatures. But we can see a homogeneous culture of speech compared to societies using other political and social systems. The concept of democracy and liberal speech is in several cultures applied. Kant's essay, even though a philosophical writing, shows the direct dependency of the ability to speak and freedom and characterizes socially the conditions to human freedom in general and in his time. Free speech, which is a political concept, is based upon rhetoric and as a mode of rhetoric the *oratio libera* was part of the genre of political speech. Quintilian in his *Institutio Oratoria* (2,17) mentions the opinion (*opinio*). The 'licence' (*licentia*) is the liberty to do something, a derivative from Latin *licentia* 'freedom', 'liberty', 'license'.⁹⁸ Following Quintilian and the *Rhetorica ad Herennium* *licentia* occurs when confident speech takes place. Quintilian 9.2.26-9; Cicero, *Rhetorica* 4.13). In other words: The democratic constitution gives the license of speaking free according to the concept of freedom of speech. This way it is concerned with legal and political aspects like in ancient rhetoric standardized by the *genus deliberativum* and *genus iudicale*. The opposite idea is the censorship of speech, also a political concept. In other words: We can trace back the *idea* of free speech to several terms in the rhetorical system such as the *genus deliberativum*, the *oratio libera*, the *licentia* of the orator as opposed to censorship, and the freedom of opinion and speech. These terms in a process of translation from Latin to English and other languages became part of the writings of the Enlightenment and from there became parts of other disciplines, but also still were elements in political writings and deliberative writings related to law.

⁹⁸ Cf. also: Parkin-Speer, Diane. Freedom of Speech in Sixteenth Century English Rhetorics. In: *Sixteenth Century Journal*, Vol. 12, No. 3. Autumn (1981). Pp. 65-72