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## Is the Public Moral Instigation Against Inappropriate Free Speech Moral? Two Arguments Against the Cancel Culture

DORINA PĂTRUNSU

*Associate Professor of Philosophy*

*Faculty of Philosophy, University of Bucharest (Romania)*

✉ dorina.patrunsu@filosofie.unibuc.ro

### ABSTRACT

My aim in this article is to show that cancel culture is self-contradictory, being defeated by the very stakes behind it. The fundamental objection is that the prohibition of hate speech parasitizes free speech and political freedom, contributing to the extension of the state's discretionary power over individuals by blocking any free and reciprocal interaction between individuals, not just the aggressive or potentially conflicting one through public discourse. The first argument against cancel culture is called the functionalist argument. Through this argument, the aim is to identify the problems of functionality, and the crux of objection is the *low probability of diminishing hate and aggressive thoughts among individuals*. The second argument against cancel culture is called the legitimacy argument. The crucial objection here is the very assumption that *democracy could be more than something that hopes for “reconciling divergent interests” or expanding “environmental acceptability.”* This assumption is false, even if it is attractive; therefore, cancel culture is not only dysfunctional but also illegitimate. In conclusion, in light of the above arguments, the activation of cancel culture through various operationalizations comports high risks endangering not only democratic pluralism but even the possibility of being free.

**Keywords:** cancel culture, democracy, freedom of expression, hate speech, value-pluralism

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## 1. Introduction

It is almost unanimously accepted that freedom of expression is not only an inalienable individual right but one that is indispensable for liberal democracy and the rule of law.<sup>1</sup> On the other hand, this inalienability is not by default respected. Many individuals in democratic societies are abused by others' free speech and discriminated for their own freedom of expression. Hate speech and conflict are not absent from democratic society.

Moreover, there is the idea that democracy rather fails in fulfilling democratic ideals (Sandel, 1998; Crouch, 2004; Brennan, 2016). The voting system, legal system, constitutional courts, political activism, and lobbyism are by default dysfunctional, and often ideological. These mechanisms are not sufficiently effective to provide political accountability or to diminish discrimination in society, obtaining on the contrary dissatisfaction and even greater distrust among people. Free speech *de facto* is very unequally distributed in a democratic society (Strossen, 2018; Howard, 2018). Various powerful political groups in society monopolize speech and reduce the extent of democratic dialogue (Tsesis, 2009; Floridi, 2015; Sorabji, 2021). As such, diminishing abuses of freedom of expression is not only necessary in ensuring a pluralistic framework appropriate to a democratic and liberal society but is fully legitimate (Brown, 2004; Cohen-Almagor, 2001, 2006).

The main assumption implied here is that as soon as we start to think seriously about what democracy and its institutions mean, and what the relationship is between the democratic idea(l) and democratic reality, we discover that common sense is quite an inadequate guide (Arblaster, 1994). In this regard, free public discourse has lost almost all credibility, finding itself in an even worse situation, being full of confusions and errors of judgment,

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<sup>1</sup> See in this order Meiklejohn (1948), Kelsen (1955), Heinze (2016), Strossen (2018), Howard (2018), etc., who consider free speech even more, namely, as an intrinsic constituent of democracy; free speech is not linked empirically but rather substantially/conceptually to democracy, so that, to talk about democracy and oppression or prohibition free speech means a contradiction, some conceptual fallacy.

exaggerations, and lacking empathy, consideration, and trust or good faith (Sorabji, 2021). It is also in a paradoxical situation, its censorship being considered in contemporary democracies as a way to protect the freedom of individuals and democracy itself. It might be said that public discourse and free speech, once the proper basis of democracy (Kelsen, 1955; Hyland, 1995; Barendt, 2007; Weber, 2009; Heinze, 2016; Howard, 2018), seem to become the enemies of democracies and their citizens (Delgado and Stefancic, 1992; Matsuda, 1993; Gould, 2005; Cohen-Almagor, 2006; Waldron, 2012).

It follows undoubtedly that stronger institutions and mechanisms<sup>2</sup> are needed to make democratic desiderata efficacious and social cooperation workable. Because all these rights are fundamental elements of a democratic society, reconciling the right to freedom of expression with other rights, such as the right to freedom of thought, conscience, and religion or the right to be free from discrimination can become a source of problems. “Finally, there is the risk of conflict between freedom of expression and the interdiction of all forms of discrimination in those cases where exercising this freedom is used to incite hatred and shows the characteristics of hate speech” (Weber, 2009, 3).

Miklos Haraszti (2012) observes that legally speaking it isn’t easy to work with the limitations of free speech:

The painful reality is that we do not have a universally applicable agreement that could guide legitimate speech limitations. Article 19

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<sup>2</sup> European Court of Human Rights (ECtHR) and other jurisdictions such as the Human Rights Committee (HRC) or EUCJ etc. are the most known of them. Anne Weber’s *Manual on Hate Speech* (2009) is very helpful, presenting all these legal mechanisms and instruments but also in clarifying the concept of hate speech and guiding policymakers, experts, and society as a whole on the criteria followed by the ECtHR in its case law relating to the right to freedom of expression. Help in understanding “whether and under what circumstances legal prohibitions of religious hate speech violate the right to freedom of expression” can be found in Erika Howard’s book *Freedom of Expression and Religious Hate Speech in Europe* (2018), displaying an overarching and complex perspective on various issues and incompatibilities freedom of expression raised across all over Europe. Regulating social media and various Internet platforms, as Sorabji (2021) mentions, raise new institutional demands, targeting deceptive and manipulative messages circulating in virtual media. Berggruen Institute Report (2020), Perrin (2020), are only a few examples of proposing new legislation and new methods of enforcement against such misuse of speech.

of the Universal Declaration of Human Rights (UDHR)<sup>3</sup> gave an unreserved promise of a universal right to free speech; after twenty years of consensus labour, it has been balanced out by, among other concessions to state regulation, Article 20 of the International Covenant on Civil and Political Rights (ICCPR)<sup>4</sup>, which expressly prescribes legal restrictions on hateful incitement. As a matter of principle, and of logic, it has always been inescapable that any universal standard reconciling Article 19 with Article 20 would have to tend toward the minimal intrusion principle. If a universal standard allowed individual governments to define punishable hate speech or incitement as they pleased, it would be either not universal or not a free speech standard. (2012, xv)

However, imposing penalties for some form of expression because of its hatred content, most of Western democracies consider it is a matter of value pluralism, expecting their legislatures and courts to limit the democratic freedoms of some citizens in order to safeguard the interests of other citizens.<sup>5</sup> Moreover, many defenders of these penalties consider all these formal institutions insufficient. Public discourse needs to be revisited by the public itself. Bigotry and bigots are the main source of hate speech and tolerating this kind of free speech manifestations contributes to intolerance.<sup>6</sup> To be sure, Gould noticed,

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<sup>3</sup> “Article 19 provides: ‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (*apud* Haraszti, 2012, xv)” (original note).

<sup>4</sup> “Article 20(2) specifically states: Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law (*ibidem*)” (original note).

<sup>5</sup> See in this order Heinze (2016, 3).

<sup>6</sup> Karl Popper in his book *The Open Society and His Enemies* discussed this paradox of tolerance, making strong remarks regarding tolerating the intolerants. He considered, that “if we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them” (Popper 2013, 581).

institutions form the building blocks – being either a formal instigator of legal meaning or serving as a vehicle to introduce new ideas about law and rights – but ultimately we miss the true power of rights construction if we focus so narrowly on government and especially the courts” (Gould, 2005, 9).

The cancellation and boycott of undesirable public speeches and those who promote them, once democratically unjustified and contested, are now the tools considered both moral and effective in rejecting all deviations from that common sense that any public discourse should have.

All these are very confusing because free public discourse was always deemed as something that could be dangerous, and democracy was always claimed as a space and a way for defending this common public opinion. As Heinze rightly remarked,

We face a complicated dialectic. With each step, our reasoning strays ever further from democratic foundations. At one remove from democratic processes, the right of free expression protects unpopular speakers by limiting the ability of legislatures or judges to silence them. The right carves out an exception to the rule of democratic processes in order to safeguard democracy itself. At a second remove, however, hate speech bans place limits *upon* those limits. That second step equally aims to protect vulnerable citizens, and so to preserve democracy. But then at a third remove, those hate speech bans must face limits of their own. Legislatures and courts must determine how far they extend. They must therefore place *limits on the limits on the limits* imposed upon democracy. (Heinze, 2016, 4)

According to this kind of dialectic, less democracy means more democracy (Heinze, 2016, 73). Protecting individuals from free public speech becomes the new deal of democratic political management, the new standard of being democratically involved, and the new logic of citizenship (Borgmann, 1992;

Weinberg, 2020; Vallor, 2021). More protective involvement and cancelation of immoral or misuse of free speech would mean more in the prevention of all forms of expression which spread, incite, promote, or justify hatred, and more social egalitarianism.

My aim in this article is to show that cancel culture is self-contradictory, being defeated by the very stakes behind it. The fundamental objection is that the prohibition of hate or offensive or bad-faith speech or immoral behaviour parasitizes free speech and political freedom, contributing to the extension of the state's discretionary power over individuals. Firstly, I review the most recent and important advocacies in favour of cancel culture, emphasizing those that argue that various forms of censorship of free expression will not only broaden and enhance the framework of inclusiveness but also strengthen, although indirectly, pluralist democracy and trust in it. There are two arguments in favour of cancel culture that, I consider, prevail in the ethics of public democratic attitude towards the manifestation of free speech. *Making democracy accountable* and *silencing hate* are the most attractive benefits behind them. Because they are legitimate expectations and democratic requirements, they would also represent strong normative arguments in favour of cancel culture.

Secondly, I will develop two normative arguments against cancel culture. The first argument is called the functionalist argument. My aim here is to identify the problems of functionality, and the crux of objection is the *low probability of diminishing hate and aggressive thoughts among individuals*. This objection is, in fact, sufficient to reject the cancel culture in connection with claims to increase pluralism and cooperation. The second argument is called the legitimacy argument. To completely reject cancel culture, we must not only show that it is dysfunctional but also provide reasons that it is illegitimate. The objection here regards the very assumption that *democracy could be more than something that hopes for “reconciling divergent interests” or “expanding acceptability.”* Even if it is attractive, this assumption is false.

An important disclaimer is that democracy is not reducible to efficiency. Majoritarian, representative, or deliberative procedures simplify the decision-making process and may lead to more coherent approaches to political issues, and the results might, in fact, justify sacrificing alternatives or unanimity for the sake of efficiency. However, the best democratic procedures don't preclude injustice. So, equally important is what we lose or sacrifice not only what we gain by using improved or more efficient procedures (Hyland, 1995, 100). Thus, cancel culture, even if it would improve functionality, could not be coercively imposed without a significant loss of freedom and democracy, *i.e.*, legitimacy. To have a voice in expressing intolerant issues is necessary but not necessarily legitimate.

Another disclaimer is that democracy is not without dangers. However, the closer a community comes to realizing the democratic ideal of self-governing, the greater the extent of citizen participation in government becomes, and the more the conventional distinction between government and governed is dissolved. In such circumstances, categorizing democracy simply as a method of providing benefits or satisfactory decisions for all is misleading. The alternatives to democracy, however, are better than democracy. But if we compare democracy with the dictatorship of an individual (however benevolent or egalitarianist it may be) or the domination of a minority (however competent it may be) democracy is the least evil. In the absence of democracy, more would suffer from injustices. Knowing all these about democracy, the issue of the institutional restructuring of democracy remains open (to prevent it from generating the dangers it is supposed to protect us from). So, any improvement of democracy outcome should not be considered the best outcome – once the optimum is assumed, there would be no room for opposition or contestation claims<sup>7</sup>, which is contradictory to democracy.

It follows that irrespective of what the justificatory limits of democracy are they cannot dismiss or ignore the autonomy of individuals. Therefore, any

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<sup>7</sup> The best outcome or efficiency, says D. Friedman (1997, 211), "is the attainment of a state of affairs in which any other improvements are no longer possible".

conflict between moral and social which needs to be solved in practice, as Dahrendorf pointed out (1997, 73), is not without individual values' costs. More specifically, the issue is whether the legitimate liberal procedural democracy "can provide a justification for democracy to individuals whose fundamental values lose out in the democratic process" (Talisse, 2009, 27).

*Or*, just because the outcome provided is possibly the best ever, the democratic authority can only be, unquestionably, justified, demanding full compliance to individuals to consume the outcome legitimately provided (Raz, 1987). For individual autonomy reasons, promoting cancel culture can generate high risks that endanger diversity and democratic pluralism, that is exactly what it promises to entail and improve.<sup>8</sup>

## 2. The Case for Cancel Culture

A legitimate democracy is not necessarily a just democracy (Talisse, 2009; Weale, 2013 and 2019; Somin, 2016; Brennan, 2016). This idea is attracting more attention nowadays, the accountability of democratic institutional framework being one of the biggest problems in justifying the legitimacy of democracy.<sup>9</sup> This means that even if cooperation problems are diminished more than ever, and marginalized minorities have unexpected opportunities to voice their concerns in the political process, "there still remain, however, the situations, particularly that of the permanent minority, in which these considerations seem to fail to reconcile democracy and justice" (Hyland, 1995, 93).

However, the idea of limiting democracy in order to strengthen it is not a new one. *De-democratizing* democracy is a way to protect the individuals

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<sup>8</sup> "This demand for the autonomy of oppressed groups attempts to avoid two extremes, as Fisk observes. On the one hand, if each group pursued its own interests in isolation, there could be no combination that would defeat its oppressors. On the other hand, a combination that required some of the groups to modify their interests so drastically that they lost their identity would make a mockery of autonomy" (Fisk, 1992, 480).

<sup>9</sup> For this reason, epistocracy, lottocracy, technocracy, scholocracy, or justocracy are increasingly deemed reliable alternatives to it.

who constitute democracy (Heinze, 2016, 3). That is why in a society of free and responsible individuals, the word *constitution* must come before the word *democracy* (Pejowich, 2000, 7). Individual rights must be protected by *the rule of law* against the majority rule or dominant public opinion in any decent democratic society. The main ethical and normative concern is the respect for the autonomy of each individual in the conditions of the cooperation problem, *i.e.*, in those conditions in which promises of freedom and equality for all are kept (Hayek, 1960; Fisk, 1992; Sunstein, 1993; Barro, 2000).

The point here is that any defence of democracy is grounded negatively, following that it will always be based on the greater shortcomings of alternative political systems (Znaniecki, 1940, 189; Toulmin, 1950, 67) or on the confidence, not entirely reasonable, that there will be a next democracy better than the last (Talisse, 2019). Consequently, it means to admit that the hope for better results (Sowell, 1981) is not costless. On the contrary, it is costly for individuals (Buchanan and Tullock, 1962) and also for the institutional framework to be changed accordingly (Coase, 1988; North, 1990).<sup>10</sup> All these imply that finding conditions for feasible democracy does not make democracy accountable.

Democratic accountability is proved by enhancing the political situation of individuals, and, if possible, of the most vulnerable of them, not in improving democracy. So, the reason and the purpose of *making democracy accountable* is the protection of individuals. The political vulnerability of individuals reflects the vulnerability of democracy (Heinze, 2016). For instance, how democratic, van Mill (2017) wondered, is the society that allows or prohibits speech that identifies specific individuals and groups as less than equal? How

<sup>10</sup> These costs are known as *social interdependence costs* (Buchanan and Tullock 1962). These costs comprise two different types of costs (internal and external), as various economic approaches of democracy mention. The internal are costs of the decision-making process, that is, *opportunity and transaction costs* (Coase, 1937) and *rule change costs* or *path dependency costs* (North 1990, 93, 94). External costs are costs of the effects of the decision-making process, that is, the “costs that individual expects to endure as a result of the actions of others over which he has no direct control” (Buchanan and Tullock 1962, 28) or disadvantages of different kinds that hit the individual as a consequence of a decision the individual is not supporting.

to democratically react to bigotry, racism, homophobia, misogynies, and other hateful manifestations? Stanley Fish not only tries to warn us about this rising rate of hate in public free speech but also he is convinced “that at the present moment, right now, the risk of not attending to hate speech is greater than the risk that by regulating it we will deprive ourselves of valuable voices and insights or slide down the slippery slope towards tyranny” (Fish, 1994, 115). According to Fish, a strategy to increase accountability is to make efficient hate speech ban (or free expression censorship) rather than blame it.

Therefore, to make *democracy accountable* means to promote the silence of hate as a reliable public interest, and to *silence hate* means to have contributions in making democracy accountable. This type of reasoning creates the case for cancel culture.<sup>11</sup> Consequently, this means not only broadening and enhancing the framework of inclusiveness but also strengthening, although indirectly, pluralist democracy and trust in it.

### **3. Is Cancel Culture Adequate, Morally and Functionally, to Restore the Basic Constitutional Democracy?**

This question has recently captured the attention of journalists, political scientists, politicians, and philosophers. Many of them claim that it is necessary to have a voice in society and that it is equally necessary that what you say is not offensive or hate-producing. The arguments are a mixture of

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<sup>11</sup> The key paper which sparked contemporary interest in the topic is “A letter on Justice and Open Debate”, published in *Harper’s Magazine* (2020), signed by 153 public figures arguing against “an intolerance of opposing views, a vogue for public shaming and ostracism, and the tendency to dissolve complex policy issues in a blinding moral certainty”. This letter was followed by a second one, “A More Specific Letter on Justice and Open Debate”, organized by lecturer Arionne Nettles, signed by over 160 people in academia and media, criticizing *Harper’s* letter as a plea intended to further silence already marginalized people and protect bigotry. See for this Schuessler (2020), Roberts (2020), etc. There are academic analyses considering that cancel culture is a phenomenon that should not be ignored, as Norris (2021) recently tries to argue. Others believe that the concept of cancel culture should be improved, as Bright and Gambrell (2017) propose, to be transformed from “calling-out” to “calling-in” in order to make accountability issues more “humane, humble, and bridge-building”. See also for a better understanding of what cancel culture means Clark (2020).

principle and political calculation, reflecting the idea that cancel culture is morally right and that it will prove beneficial. The arguments pros and cons I try to build cast a sceptical eye on both claims, by emphasizing how complex political morality and democratic strategy can be. Hence, I try to suggest that, while there are good reasons to worry about hate propaganda and harmful discriminating speech in established democracies, the case for cancel culture is implausible and unpersuasive.

I will start in this section with some conceptual points about what is broadly meant by cancel culture, before presenting the arguments in its favour. The principled arguments for cancel culture rely on the claim that cancelling hate speech is morally justified as a way to silence hate and to make democracy accountable. Such hate propaganda and the failure of the courts to diminish and penalized it, it is claimed, is an unjustified exploitation of free speech right – an inalienable democratic right – and, unless curbed, are likely to undermine it and also to undermine the trust in democratic institutions and law mechanisms. The pragmatic arguments are that cancel culture is necessary not only to combat discrimination and bigotry in democratic societies but also to restore the source of constitutional power in participative civil society. Bringing politicians and jurisdictions closer to the communities and more aware of their duties in public policies and, also, to assure that those who provide and profit from hateful behaviour are never tolerated in democratic societies is the main reason behind them. I will then evaluate the strengths and weaknesses of these claims, concluding with their implications for democracy.

The term “cancel culture” is not easy to work with, especially in democracies. On the one hand, as Howard notices, given that the right to freedom of expression is not an absolute right, restrictions under certain circumstances are permitted, “one of the reasons this right can be restricted is when this is necessary for the protection of the rights of others” (Howard, 2018, 1). This kind of protective reasons makes Cohen-Almagor critically observe that:

the claim that citizens have rights that the state or the government is obligated to guarantee does not mean that the state may not, under certain circumstances, override these rights. Citizens have a right to freedom of expression, but the state can limit that right in order to prevent a threat to public order, the security of the state, or third parties in need of protection (such as children) (Cohen-Almagor, 2006, 5).

Rights equally protected in established democracies compete each other, Weber remarks, such that “in some circumstances, freedom of expression can be a threat to the right to respect of privacy”. It can be followed that “the right to freedom of expression can thus be limited by the right to freedom of thought, conscience or religion” (Weber, 2009, 3). But these observations show rather the opposite: because this right is absolute any curbing or cancelation of it, needs to be carefully examined. It follows that grounding the cancelation on the premises that this right of free speech is not absolute or competing with other rights is rather misleading. In fact, we should have strong justificatory arguments for curbing or cancelation this right in a democratic society.<sup>12</sup>

Some philosophers consider that rejecting or cancelling the right to freedom of expression because it offends or expresses an outdated mentality creates room for paternalistic claims and domination (Harasztí, Chomsky, Walzer, Strossen, etc.). In this respect, Malik points out that “it is meaningless to defend the right to freedom of expression for people with whose views we agree. The right to free speech only has political bite when we are forced to defend the rights of people with whose views we profoundly disagree” (Molnar and Malik, 2012, 84). It is more than reasonable to admit that “free

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<sup>12</sup> This conflict the freedom of expression has with other rights constantly gives troubles to courts and legislatures to balance them. For instance, European Courts of Human Rights states: “Freedom of expression is vital in a democratic society. It is in everyone’s interests that it should be upheld, provided that this is not at the expense of other important rights. All rights, however, carry responsibilities, especially when those exercising them have the potential to affect other people’s lives” (apud Cohen-Almagor 2001, 2).

speech for everyone except bigots is not free speech at all" (Molnar and Malik, 2012, 84). Holmes, earlier, pointed out that "every idea is an incitement" (1919) but "if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought – not free thought for those who agree with us but freedom for the thought that we hate" (Supreme Court Justice Oliver Wendell Holmes, 1929, apud Strossen 2018, 7).<sup>13</sup>

The concept of cancel culture can be understood in the following ways that, at least, highlight its presumed connections to democratic theory and practice. Firstly, cancel culture represents the new concept of expressing the reconciliation failure given accountability issues. It seems to be the promise of enhancing this undesirable state of affairs; its emergence is derived from the short supply of social justice and the inefficiency of hate speech prohibition. It is also seen as the real hope in forever stopping various evils threatening democratic society: hate speeches and their voices (hatemongers), racist or discriminatory behaviours, or various imbalanced powers and political rights. Some argue that:

to many people, this process of publicly calling for accountability, and boycotting if nothing else seems to work, has become an important tool of social justice – a way of combatting, through collective action, some of the huge power imbalances that often exist between public figures with far-reaching platforms and audiences, and the people and communities their words and actions may harm (Romano, 2020).

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<sup>13</sup> See *United States v. Schwimmer*, 279 U.S. 644, 654-55 (1929). According to Molnar and Malik (2012, 84), this proposal represents a classic statement in Anglo-American jurisprudence. In this respect, Strossen (2018, 7) considers that Justice Holmes did not mean by this statement that government may therefore suppress every idea, but rather the opposite: that government may suppress speech only when it directly causes specific, imminent, and serious harm.

Secondly, cancel culture involves public shaming as a way to limit the probability of a misconduct emergency.<sup>14</sup> It has an educational-civic purpose, showing the people in an exemplary style how to behave in a civilized and decent society, as any liberal and democratic society claims to be. Once “these offenders were identified and their personal details exposed online, they were hounded, verbally flogged and effectively expelled from the community” (Mishan, 2020), which is considered a definite improvement in justice and citizenship. Cancel culture is seen as an “emergent phenomenon of online collective judgment as performing a vital function of moral and political levelling, one in which social media enable the natural ethical consequences of an agent’s speech and acts to at last be imposed upon the powerful, not merely the vulnerable and marginalized” (Vallor, 2021). The highest moral virtue in this educational civic project is self-cancellation or voluntary self-restraint (Sorabji, 2021). Finally, hatred can be truly silenced, creating space for an open and authentic debate.

Thirdly, cancel culture is not about free speech but rather about the fuzzy limitations of free speech. So, there is an intrinsic difficulty in grasping the “real” sense of this generally employed confusion. For this reason, it is a controversial concept either in the debates about free speech and freedom of expression or in practice, being many times used ideologically and instigative. As Beauchamp (2020) noticed:

Cancel culture, the target in so many of the free speech jeremiads, is a notoriously fuzzy concept. It is often taken to refer to all of the following things at once: allegedly widespread self-censorship in elite intellectual institutions, a rise in vicious social media mobbing, and the firing of non-public figures for allegedly racist or bigoted behaviour.

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<sup>14</sup> As Velasco (2020) pointed out, “cancel culture is a form of public shaming initiated on social media to deprive someone of their usual clout or attention with the aim of making public discourse more diffused and less monopolized by those in positions of privilege.”

Fourthly, cancel culture means freeing from the “leash of the rule of law” not only governmental power but also that of the multitude, creating room for increasing the discretionary power of the state and the domination of individuals. The problem, as Strossen argues, is that “hate speech laws are more problematic than speech regulations that are constitutionally permissible”; authorizing government or public opinion “to enact ‘hate speech’ laws or rules would unleash public’s power to suppress any speech whose message is disfavoured, disturbing, or feared” (Strossen, 2018, 37). All these are symptoms of intolerance and illiberalism.<sup>15</sup>

Fifthly, cancel culture is an accident. It comes from the unlikeliest place: a joke (Romano 2020); a game from Black culture (Dudenhoefer '17 2020); a spontaneous phenomenon but fully explainable and, also, justified as any form of protest in democracy:

Cancelling is a way to acknowledge that you don't have to have the power to change structural inequality. You don't even have to have the power to change all of the public sentiment. But as an individual, you can still have power beyond measure (Anne Charity Hudley, *apud* Dudenhoefer '17 2020).

Sixthly, cancel culture is the by-product of the failure of hate speech censorship to be effective (as many philosophers and social scientists consider; see Braun, 2004; Gould, 2005; Baker, 2012; Strossen, 2018), a way to boycott political decisions or public opinions of some people considered defamatory. Its spontaneous emergence reflects the social need to restore democratic practices and social justice that the defensible hate censorships promised to provide but failed.

These conceptual issues have ethical implications. And, intentionally or not, they contribute to the case for cancel culture. It starts with and is based on the justifications involved in hate speech prohibitions, the main assumption being linked to deep scepticism that hate speech prohibition

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<sup>15</sup> See note 10.

works and that the public defamation attitude decreases. *Making democracy accountable* and *silencing hate* are the most attractive benefits the cancel culture promises. They also are considered both legitimate expectations and democratic exigencies which need and should be fulfilled.

For these reasons, I consider that two arguments in favour of cancel culture can be constructed in the ethics of public democratic attitude or citizenship towards the manifestation of free speech. These arguments purport to show that cancel culture is both necessary and justified and compatible with democratic requirements.

#### **4. Two Arguments for Cancel Culture**

In this section, I will try to show that the case for cancel culture is supported by at least two arguments. The strategy I follow is to use the most prominent arguments in favour of limitations of freedom of expression and the censorship of hate speech and identify a logic of the rational and moral justification of cancel culture which overlaps with what democratic culture represents.<sup>16</sup> The first argument I will develop is the silencing-hate-based argument in favour of cancel culture (A); the second is the making democracy accountable-based argument in favour of cancel culture (B).

##### *4.1 A) The Silencing-Hate-Based Argument in Favour of Cancel Culture*

P1. Modern democracies fail to protect the interests of vulnerable groups. (Delgado and Stefancic, 1999 and 2003; Pareck, 2012; Matsuda, 1993).

P2. Liberal rights are universal and equal only in the abstract, while, in practice, they are systemically used to favour dominant interests, thereby undermining equal citizenship and equal treatment of unequal/divergent interests (Heinze, 2016).

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<sup>16</sup> See in this respect Mendes, Ringrose, and Keller (2018), who consider cancellation or calling-out as a way to restore justice in society by exposing the silent abusers, hidden by their public image or power; also, see Reddy and Andrews (2021), whose pros argument consists in recovering accountability in a democratic society, etc.

P3. Freedom of expression counts equally for any citizen in democratic societies, but the interests of those affected by hateful speech should count even more.

Therefore,

C1. According to those who promote cancel culture, the expectation that legislatures and courts “limit the democratic freedoms of some citizens in order to safeguard the interests of other citizens” (Malanczuk, 1997) is entirely reasonable and fully legitimate.

C2. Limiting hate speech in a democratic society is a matter of moral and civic responsibility.

But,

P4. These limitations are not always visible and effective (Gould, 2005; Howard, 2018).

Therefore,

C3. People in a democratic society want “public guarantees” (Waldron, 2010) that offensive conduct is diminished (Romano, 2020; Reddy and Andrews, 2021).

P5. These guarantees are “provided in part by the government; presumably, this being a justification for laws prohibiting at least some hate speech” (Baker, 2010, 61), but it is not enough.

C4. Cancel culture aims to silence hate, to cancel the voice of the hatemongers in society, thus contributing to defeating hate propaganda and diminishing democratic vulnerability (Ng, 2020; Bromwich, 2018; Velasco, 2020; Sorabji, 2021).

C5. Cancel culture is necessary and legitimate.

#### *4.2 B) The Making Democracy Accountable-Based Argument*

P1. Hate propaganda aims to undermine the credibility of hate censorship (Braun, 2004; Rauch, 2014), of the idea that hate speech is unacceptable (Pareck, 2012), and of the court’s decisions and punishments for the offenders or hatemongers (Baker, 2012; Strossen, 2018).

P2. The promoters of cancel culture claim, contrary to all those who suspect other things, that what is in focus is not the Harm-Principle but rather the very definition of harm: the Millian idea of “harm as damage to interests” is very suggestive here because hate propaganda unquestionably damages individual interest, private or public and hate speech censorships protects them.

P2. What is at stake is the legitimacy of rules limiting free speech: whose rules are the rules of free speech? *Mutatis mutandis*, whose interests are affected or protected? It seems that cancel culture is about the rules of free speech and the authority of those rules.<sup>17</sup>

P3. Most of them are deemed to be responses to democratic accountability deficit – hate speech censorship protects individuals and their interests – known either as *the “no one being harmed again” rule* or *the “never happen again” rule*.

P3’. The rules of hate speech censorship based on these cautions are rules based on prudential arguments.

A1. The driving assumption of hate speech censorship arguments is that harm can be prevented if and only if we do not forget what we all know about racism, sexism, homophobia, bigotry, etc., in terms of the impossibility of quantifying the deep and various sufferings that the individuals had to endure. The results of empirical studies might be epistemically redundant but not necessarily irrelevant. We can admit that they can only reveal what we already know, that is, hatred is destructive, but we cannot say we are fully aware of this phenomenon. Hatred destroys human lives and sometimes entire communities. We are invited not to be hypocrites: no matter how philosophically controversial the concept of harm is and no matter how conjunctural hatred is, we cannot deny that hatred is evil, or that suffering is not evil.

The assumption mentioned above is coherent with the other two:

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<sup>17</sup> I will not present here all the arguments behind hate censorship.

- that of democratic unanimity (which implies formal autonomy) according to which all individuals, *de facto* not only *de iure*, are entitled to the same consideration and dignity, and

- that of democratic inclusiveness (which implies equality), according to which the interests of every individual *de facto*, not only *de iure*, private or public, are as important as anyone in a democratic institutional framework irrespective the sexual orientation, skin colour, performance, or religious beliefs.

A2. Any offensive or hateful remarks regarding these matters are intolerable. They should be punished by law or by public opinion: the colour of skin, sex, sexual orientation, and religious beliefs come from the private sphere and are intangibles or taboos for the rest of the public. They are considered immutable characteristics.

A1 and A2 show no inconsistency between cancel culture and democratic-liberal culture.

Therefore,

C1. It follows that the target of cancel culture is to promote those rules and institutions considered reliable for *not damaging interests* in a democratic society.<sup>18</sup>

C2. Cancel culture is a normative system of rules which can adjust more naturally the Constitution to day-to-day life.<sup>19</sup>

*Mutatis mutandis,*

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<sup>18</sup> Fisk considers that this kind of democratic society requires relative autonomy rights, not strong autonomy rights: “These rights channel the efforts of oppressed groups in ways that take account of the fact that these groups are working within a common social framework where isolated challenges to oppression have little chance of success. So, with a right to relative autonomy, democracy is not so limited that it will fail to reduce oppression” (1992, 482).

<sup>19</sup> Constitutionalism, Gould argues (2005), is often dependent on formal, governmental constructions of the Constitution to create public understanding. Cancel culture shows that the bounds of a constitutional right may be reinterpreted without the courts or governmental institutions giving their blessing. This supposition suggests other strategies for those who seek to bring about legal or social change. Rather than relying on legal mobilization to influence the courts or political organizing to change legislation, there is power in co-opting other institutions within civil society to spread one’s view of mass constitutionalism.

P4. Those who are prosecuted and condemned for their offensive or hateful speech are, after due process, victimized by society and making their hate inoffensive and non-relevant for the accountability of democratic institutions. For instance, as Braun suggests, “presumptions of innocence, burdens of proof, legal defences, and rules of evidence are all central in a criminal trial. Due process is as important as the substantive merits of the case. The hatemonger is turned into the ‘accused’ – the oppressor transformed into the oppressed” (Braun, 2004, 146).

It follows that:

C3. Democratic and institutional rules do not manage to prevent individuals' harm and their interests damage (for instance, “in error-prone, if not error-driven, criminal trials, an aura of social legitimization may embellish the message of the defendant. If the defendant is granted a retrial because of defects in the first trial, he will claim moral victory and persecution. The message of hate is turned into the message of the ‘hated’”, as Braun (2004, 147) proves. Also, as he continues, “through various procedures, vices, and errors of trials, the hatemonger is carefully groomed, his message rehearsed, and his meaning sanitized of its more unpleasant warts. Legal packaging dresses up the messenger and his meaning, putting the wolf into sheep’s clothing” (Braun, 2004, 147).

Therefore,

C4. Public opinion can intervene if the trial of a hatemonger fails in order to restore the real aim behind the due process and the real message for what he is being prosecuted. According to Mill, this conclusion is consistent with the Harm Principle or Liberty Principle – “Some rules of conduct, therefore, must be imposed, by law in the first place, and by opinion on many things which are not fit subjects for the operation of law” (2015, 9) – and also that each person “should be bound to observe a certain line of conduct towards the rest. This conduct consists ....in not injuring the interest of one another; or rather certain interests which, either by an express legal provision or by tacit understanding ought to be considered rights” (Mill, 2015, 73).

C5. Cancel culture makes the effect predicted by hatemongers' trials happen so that regardless of the court decision, their hate message not being distorted by a favourable court decision, and their voices stopped even if they won the process. In the case of hate speech regulation, as Gould remarks, opponents did not simply criticize public institutions for violating the First Amendment, they denounced all who would limit open discourse, making the argument of hate censorship a failure, and the prosecuted hatemongers victorious (see Gould, 2005, 8).

C6. Cancel culture efficiently silences hate, defeating *de facto* hate propaganda and eradicating vulnerability.

C7. Cancel culture is a technical/functional system of norms/rules.

C8. Cancel culture is covering an institutional deficit, making democracy accountable.

In conclusion,

C8'. Cancel culture is efficient and justified, being consistent with *Liberty Principle* and enhancing democracy exigencies.

These arguments try to show that cancel culture is not a danger to democracy but rather required by democracy itself<sup>20</sup>, being obsolete, losing trust among citizens, and creating circumstances for conflict and hatred rather than cooperation and solidarity, which contributes to its continued delegitimization. Even if it seems bizarre, this happens not because of a deficit but because of excess. Democracy is overdone, says Tallise, being marked by "two closely related social phenomena that are ascendant and seemingly accelerating in many modern democracies, namely *political saturation* and *belief polarization*" (2019, 35). This means that there are too many politics and too many irreconcilable beliefs around democratic society. Less

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<sup>20</sup> According to Nwaevu (2019), cancel culture is not the problem of democracy but democratic culture itself: "The power to cancel is nothing compared to the power to establish what is and is not a cultural crisis. And that power remains with opinion leaders who are, at this point, skilled hands at distending their own cultural anxieties into panics that – time and time and time again – smother history, fact, and common sense into irrelevance. Cancel culture is only their latest phantom. And it's a joke". See also Manavis (2020), who considers that cancel culture does not exist.

democracy is a better democracy or should be “less democracy for the sake of more democracy” (and this is not just a way of mocking the improvement of democracy!).

It is necessary to be outlined, Gould argues, that “courts are only a starting point in establishing the meaning of rights and law, for the concept of free speech is by far one of the most socially constructed notions (at least in American law and culture)” (Gould, 2005, 7). He adds further that constitutional construction occurs in civil society among other influential yet non-governmental institutions and also that we need to distinguish between Constitution and mass constitutionalism in order to better grasp the idea that “the essential arbiter for legal meaning is civil society and its institutions, which themselves construct constitutional law” (Gould, 2005, 8).

A strategy for doing this, Talisse (2019) suggests, is “to put politics in its place”. This does not mean reducing popular political power, or that of the common individuals, for their supposed political ignorance or public irrationality. The accountability of democracy resides in each individual’s political action and power in trying “to reverse the saturation of social life by politics, in trying to shrink somewhat the footprint of democratic politics on our shared social environment” (Talisse, 2019, 32). Technically or practically, all we have to do is to take attitude, a direct and firm public attitude, to all offensive, hateful, or inadequate speech or behaviour. Prohibitions and punishments for the injuries provided by freedom of expression seem rational and justified. But are they?

Summarizing, the case for cancel culture consists, firstly, in that it is a necessary means to combat the twin evils of hate propaganda and democratic vulnerability and to do so with no significant costs. Cancellation has no significant costs because it is not about the right of freedom of expression but about the limitations of free speech and the conditions of these limitations to be effective. The real debate here, as Beauchamp emphasizes, is not about the principle of free speech or the value of liberalism, because liberalism requires

placing some boundaries on acceptable speech to function. Instead, this is a debate *within* liberalism over who gets to define the boundaries of speech.<sup>21</sup>

Secondly, the case for cancel culture is meant to be democratic in two ways: it diminishes vulnerability and increases accountability. These aspects of the case for cancel culture make it attractive even to those who disagree with any minimal infringement of individual autonomy. Nonetheless, I will argue that the democratic case for cancelling hateful free speech has not been made, contrary to those who believe the opposite. The value of civic participation is very important in a democratic society, but no society will be democratic if this participation disregards reciprocity and equality in creating rules. So, I will show that even on the most benign interpretations cancel culture is at odds with democracy and its principles.

## 5. Why Not Cancel Culture? A Case Against it

In this section, I try to build a case against cancel culture, offering two normative arguments. The first argument is about functional legitimacy, which aims to show that cancel culture does not satisfy the promises made. The critical objection is the low probability of reducing hate and aggressive thoughts among individuals. The second argument is about moral legitimacy. It aims to reveal the tacit and false presuppositions behind the cancel culture idea and the unintended ethical consequences. One of these tacit, but false presupposition cancel culture employs is that democracy *could be more than a hope* for “reconciling divergent interests” or “expanding acceptability” etc.

These arguments are not based on empirical data, but they are not without empiric predictability. Finding errors in politically attractive ideas is an effective means of not promoting and reinforcing them in the real world (Dahrendorf 1997). They are neither slippery-slope arguments; the reason behind them is not to predict an inevitable slide into censorship and tyranny but rather to show that cancel culture although an ethical proposal is not by

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<sup>21</sup> See Beauchamp (2020).

itself ethical. On the other hand, the logical possibility of censorship and tyranny, even improbable, cannot be ignored. This has a fundamental implication: legitimacy is a necessary condition for gaining justice in society, but this only means that it is possible that legitimate institutions can create injustice in society. This injustice is necessary to be taken into account. Therefore, formally, even if cancel culture might represent a legitimate system of rules, it does not mean that its outcomes will always be in accord with its presumable justice.

## 6. Is Cancel Culture Functional?

Regarding the functional argument, hate speech censorship represents the particular way in which conceptual antagonisms and speech conflicts can be instrumentalized without diversity being dissolved in any way. Whether at the level of arguments or talking about institutional designs, the call for democracy in any rule or law derives from the individuals' need to express their opinions, to discuss and make decisions. Even if they do not understand each other and do not think alike, they are equally entitled to say their point of view, persuade, argue, negotiate, or overbid to get what is deemed as being just, correct, or desirable.

As Braun (2004, 145) emphasizes:

Politics contextualizes the dilemma of hate repression. Politics is about the “how” of silencing hate. However, the “how” of silencing hate is more than just politics. It is also a practical question. It is about not just what is or might be but also what can and cannot be. Defensible hate censorship needs to do two things. First, it must be *effective*. Second, it must be *successful*.

Unfortunately, it fails in both of them. The philosophical problem here is not that the interests of an individual cannot be modified but rather that no

modification is necessary, justified/legitimate because of its anticipated benefits. In political practice, it should be essential to realize that any public interest has opportunity costs and is not legitimately enforceable by default. This also means that:

the impossible and the inevitable do not come pre-labelled in our social and political world. We can never know what really was possible, except in a trivial sense that whatever actually happened must *ipso facto* have fallen within a feasible set. Without some understanding of what might have been, however, we are incapable of evaluating social order as it is. (Goodin, 1982, 125)

The aforementioned passage helps us to jump to another truth the political philosophy reveals and a problem for the empirical world: political and social problems are formally without solution, compatibility between political ideas being impossible, in principle. This means that in political reality or the decisional process, however democratic it may be, any solution to a practical or social problem could not be definitive, irrevocable, or self-enforceable. Any political decision should be a voluntary compromise between aspirations, values, attachments, and ways of individuals' lives – which for sure might be considered stable and functional once made but just contingently, any voluntary consent regarding a political decision not being necessarily accepted or respected. The presupposition of freedom itself gives the dilemma. Braun (2004, 142) says this dilemma is not a problem of lack of social or political will to silence intolerance. It resides in the very nature and limitations of hate censorship.

The arguments developed by Strossen (2018), Baker (2012), Braun (2004), etc., are strong arguments against the efficacy of hate speech censorship. They are enough to show, not necessarily to convince, that hate will not be silenced but somehow increased.

As Braun (2004, 164) remarks:

hate censors, particularly progressive hate censors, lament the lack of political will to make hate censorship socially more effective. However, they do not fully appreciate the dilemma of censorial success. Hate censorship is not unsuccessful because it is ineffective. It is unsuccessful because it represses. The more it represses, the more unsuccessful it becomes. Success by silencing is self-contradictory because effectiveness in silencing is self-defeating.

Baker considers that the prohibition of hate speech is counterproductive and leads to even worse results:

There are at least six reasons for this: (1) allowing and then combating hate speech discursively is the only real way to keep alive the understanding of the evil of racial hatred; (2) forcing hate speech underground obscures the extent and location of the problem to which society must respond; (3) suppression of hate speech is likely to increase racists' sense of oppression and their willingness to express their views violently; (4) suppression is likely to reduce the societal self-understanding that democracy means not eliminating conflict through suppression – what Justice Jackson described as the unanimity of the graveyard – but rather moving conflict from the plane of violence to the plane of politics; (5) legal prohibition and enforcement of laws against hate speech are likely to divert political energies away from more effective and meaningful responses, especially those directed at changing material conditions in which racism festers, material conditions of both the purveyors and targets of hate; and (6) the principle justifying prohibitions and the specific laws prohibiting hate speech are likely to be abused, creating a slippery slope to results contrary to the needs of victims of racial hatred (including jailing the subjects of racial hatred for their verbal responses) and to the needs of other marginalized groups. (2012, 77)

Similarly, Strossen considers that there is a lack of correlation between “hate speech” laws and reduced discrimination or violence, which is not surprising in light of several features of such laws, which make them ineffective in reducing hateful speech and thus in reducing the harms that such speech is feared to cause (2018, 139).

Let us imagine that all I want to say is forced by a strict moral norm of speech. Is the result of what I will say a result of free expression? More than this, if I were forced to refrain from saying things that hurt or offend but in which I believe, does that mean I would have different feelings towards those I would like to address? *Mutatis mutandis*, if I were forced to apologize to those whose dignity I injured through my freedom of expression without believing in the respective apologies, does it mean that I have contributed to the restoration of my dignity and theirs? Moreover, should I not have the freedom to speak if I harm by what I speak, being convinced that what I am doing is good? Because for me to apologize for the “evil” I have caused without being convinced is not a sign that I have changed my way of thinking. If I am a good person, whatever this might mean, does it follow that I am a good thinker or that I think well? I will learn something from this censorship, but not what followed through the imposition or obligation to choose or retract my words. For instance, the freedom to speak depends on the power others have over me and the right to speak is based on power and abilities. I learn what I should not learn in a democratic society, namely that power is the source of law and individual rights and not that the law is the source of power. Also, I learn that some of us are more tangible than others, which is what hate censorship wants to prevent. The hate will still be there and even more intense. In practice, you cannot reduce or eliminate bigotry simply by banning it, says Molnar and Malik (2008).

In an economic language, we would say that freedom of expression has visible costs from the very moment when the decision either no longer depends entirely on the individual who decides or creates positive or negative externalities (this does not mean that if the decision belongs to you, it will not

cost – its cost is given by the very thing you sacrifice when you choose, namely another choice you would have made if you had not chosen the one you just chose). At the same time, we derive from this a criterion of legitimacy (or a meta-rule): any content of a right or an interdiction, therefore also that of freedom of thought and expression, must be negotiable. Otherwise, any content not only risks being arbitrary, but it is also arbitrary. So, any issue of freedom of thought and free speech reflects an issue of unanimity. Morally speaking, you cannot justify the content of freedom (autonomous actions) without the presumption of unanimity – it is enough for a single goal to counterbalance the other for the decision to become complicated. Going further, it is enough for a single individual to oppose this content for this desire to lose its functionality; the legitimacy of the content of freedom will be maintained as long as unanimity on it is not the result of a voluntary compromise. Although the compromise is most often invoked in the appeal to the legitimacy of a decision-making content or another, it does not represent a functional meta-rule. A legitimate meta-rule is the rule of cooperation. It does not assume that the individual would not be cooperative but rather that the possibility of disagreement should be considered, even if its probability could be small or remote or eliminated from the discussion.

The mistake implied here is to think that the conditions that increase the probability of penalizing hate speech also increase the probability of silencing hatred and improving the democratic environment. In other words, it is enough to find out under what conditions hate speech will be reduced so that their imposition is not problematic for reducing hatred. Or, the constraints imposed to limit the language of hate will decrease the probability of the occurrence of hate.

Nevertheless, the best conditions under which an individual regularly conforms are not the same as those under which an individual should conform: the highest probability of silencing hate, for instance, does not exclude the possibility of doing the opposite of what is most likely, *i.e.*, to hate. What I claim is not that individuals would be unwilling because they

would be unable to make their commitments “fungible items” or transactional (Talisse 2009, 21) but that it is questionable that their willingness should be based on this. Even if we accept a moral obligation to comply with civil responsibility, it does not immediately follow that compliance should always be legally enforced.<sup>22</sup> However, most will agree that it does not automatically follow that the democratic state should penalize this “non-conform behaviour” and coercively makes compliance effective due to other values which might be legitimately violated by these authoritative/punitive measures.

Hatred and its expression by no means disappear, and we need to face this reality, not because it would not be morally necessary or technically impossible, but rather because it is something inconceivable. Given this conceivability limitation, as Heinze – and others before him (Baker 2012; Braun 2004) – says:

a sufficiently (which does not mean ‘fully’, as that would be a more elusive idea) democratized society turns hate speech into a different type of phenomenon. Prejudice continues to work its way through society, but in tandem with multilateral counterforces, both official and informal, which can be more effectively harnessed against hatred without the state needing to diminish citizens’ speech prerogatives within public discourse nor to ‘cancel’ them from the democratic agora (2016, 72).

Therefore, keeping the hate speech under cancelation dictate is not by default uncoercive. Freedom of expression will be the first parasitized by cancel culture.<sup>23</sup> And, this phenomenon, as Norris (2021) argues, is not a

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<sup>22</sup> A line of criticism could be opened here, civil (moral) responsibility and political obligation being the cases that might be enlightening for the issue (Pareck, 1993; Lyons, 2013). The idea is that not all the promises made should be kept, and not all those promises that have not been kept should be penalized or coercively enforced, even if both promises are made in absolute autonomy and self-deliberation.

<sup>23</sup> In this respect, Pope Francis warns us that “cancel culture is rewriting the past,” is “a form of ideological colonization, one that leaves no room for freedom of expression,” saying that it “ends up cancelling all sense of identity”. See in this order Kington (2022).

matter of imagination. Two combined factors are involved. One is the *spiral of silence*,<sup>24</sup> which “describes situations where, for fear of social isolation or loss of status, people are hesitant to express authentic opinions contrary to prevalent social norms” (Norris, 2020, 16). Cancelation, this way, is a contributing factor as to why people are hesitant to voice their own minority views on social media sites in fear that their views and opinions, specifically political opinions, will be chastised because their views violate the majority group’s norms and understanding. The second is the *cultural backlash*,<sup>25</sup> which shows that “socially conservative values usually continue to prevail as the majority view in many developing countries”. An unintended consequence is that “the more that individuals feel that their opinion reflects majority opinion, however, the more willing they become to voice it in public discourse” (Norris, 2020, 16). Cancel culture, unintentionally, can create polarization and domination.<sup>26</sup>

The misleading is clear: the best rules/rulers and the best common outcome make obedience look self-evident or not coercive. However, as natural as it is to seek the truth, so unnatural is to obey it. The truth, in other words, no matter how compelling it may be, is not self-constraining; it cannot have a causal efficacy of its own. We need to accept the endogeneity of truth: knowing what to say or ought to say is not something you would do or must do, regardless of your circumstances. Circumstances matter, they usually activate freedom of expression and choice, not conformity to rules.

The most invoked and justificatory presupposition in accepting functionalism is that no matter how legitimate an institutional framework is

<sup>24</sup> According to Noelle-Newman, who created the theory of the spiral of silence, “individuals’ willingness to express his or her opinion was a function of how he or she perceived public opinion” (1984, 3). See also Glynn, Ostman, and McDonald (1995), Scheufle and Moy (2000), Hampton et al. (2014) etc.

<sup>25</sup> For details regarding this concept’s development, see Norris and Inglehart (2019).

<sup>26</sup> See in this order Schulte (2021), Manchester (2021). They state that cancel culture is worrying as a social and political phenomenon, making people feel unsecured and threatened for what they publicly say and feel. Also, the cancel culture increases anxiety, primarily by lacking affordances for forgiveness and mercy, not for judgment and personal accountability” (Vallor, 2021). For these reasons, Bright and other academics consider that cancel culture should be improved, proposing alternatives to it. See Bright and Gambrell (2017).

it is impossible to satisfy all the individuals' needs in justice. But, even if we consider this to be uncontroversial true, it does not mean that it is something just as the unsatisfied people to swallow their dissatisfactions in justice. So, as Baker points out, given these alternative empirical possibilities, the debate is not between idealistic but uncaring "liberal" defenders of free speech and fierce opponents of the worst forms of racism. Instead, the pragmatic debate is about different empirical predictions concerning the most effective strategy for opposing racism (Baker, 2012, 71), which by default are insufficient even necessary. The reason for what they agree on their suboptimal well-being situation is precisely the chance they have in the democratic framework to change their situation – to identify it, to voice it publicly, and to demand by improving it. The reason implied in this demand is as reasonable as that prudential above: not paying the political cost of taking into account this possibility, even that the probability of the effective change is pretty diminished, means paying high costs in institutions' trust and individual accountability and civil obligation. It is a risk any workable and functional democratic society should take into account because its accountability counts.

## 7. Is Cancel Culture Legitimate?

Rules, institutions, and laws matter. They influence the mentalities and actions of individuals in a society, but individuals matter more. This is also what pros cancel culture try to preserve. This entails that no matter how necessary, efficient, or democratic institutions are, they cannot follow the role they have to fulfil beyond individuals' evaluations, irrespective of their morality or speech. The implicit assumption when discussing fair or unfair rules is that they must be evaluated according to the results they produce. The results matter, but if we accept this assumption, the effect is sometimes downright absurd.

Regarding the moral legitimacy of cancel culture, the requirements to be achieved should be the same as any desirable system of rules should fulfil. Accordingly, they should:

1. reconcile divergent interests (Buchanan and Tullock, 1962);
2. diminish uncertainty and create predictability (Hayek, 1960; North, 1990);
3. diminish oppression, enfranchising individuals who cannot use *de facto* their “deontic powers” to express their interests (Fisk, 1992; Searle, 2005);
4. increase acceptability environment and mutual respect (Cohen and Rogers, 1983; March and Olsen, 1989; Estlund, 2008);
5. constraint and enable opportunities (Hodgson, 2006).

My purpose in this section is to show that cancel culture contradicts all these requirements.

The main presupposition in the arguments for cancel culture is that free speech and freedom of expression are not absolute values even though they may be the most valuable in a liberal democratic society. So, although free speech is an important value, it is not the only one. Therefore:

values can be and often are in competition, and the resolution of a conflict between them will involve calculations of probability (*If we do this, what risks do we incur?*) and the weighing of the costs of choosing one over another (*If we go with value X, how much of value Y will we sacrifice?*). The name for this weighing is ‘balancing’,

says Fish (2019, 22), and the decision to favour one value or another is a matter of compromise and negotiations based on empirical facts. All these decisions are not only rational but also reasonable. They refer to real forms of life, concrete individuals, and trustworthiness norms for living standards. According to Fish, the boundaries of free speech cannot be set in stone by philosophical principles (van Mill, 2017). The world of politics decides what we can and cannot say, not abstract philosophy. Given this, he suggests, that there is no Principle of Free Speech; free speech is about political victories and defeats: for instance, the First Amendment, he says, is a participant in the

partisan battle, a prize in the political wars, and not an apolitical oasis of principle (Fish, 2019, 8).

All these make van Mill (2017) to say, that the very guidelines for marking off protected from unprotected speech are the result of this battle rather than truths in their own right. That is why “no such thing as free (non-ideologically constrained) speech; no such thing as a public forum purged of ideological pressures of exclusion” (Fish, 1994, 116). It follows that speech always occurs in an environment of convictions, assumptions, and perceptions, *i.e.*, within the confines of a structured world. This is the way it is, and this is an indisputable fact. The thing to do, according to Fish, is to get out there and argue for one’s position. To conform to this fact is not only rationally opportunistic but also morally. It is a matter of being responsible and solidary. Also, Pareck tries to convince us that accepting free speech as an important value means accepting others’ no less important: “Human dignity, equality, freedom to live without harassment and intimidation, social harmony, mutual respect, and protection of one’s good name and honour are also central to the good life and deserve to be safeguarded. Because these values conflict, either inherently or in particular contexts, they need to be balanced” (2012, 43).

The dilemma is obvious: the aim of political freedom is not to dismantle value conflict issues, and precisely in this, the inviolability of the Liberty Principle consists. In other words, political freedom (*e.g.*, free speech, freedom of expression and action, etc.) is feasible as long as any deemed resolution of the conflict between values is not necessary but contingent. It follows that the infringement of this principle is produced if and only if the conflict among values is diluted, that is, whenever it is assumed that some political value is or should be epistemically and morally objective and *ipso facto* predominant in society. So, there is a battle, as Fish says, but no objectivity is implied here, only a manifestation of political power, arbitrary, and not a manifestation of individual political freedom. The plea for individual freedom is not to dilute value pluralism. However, on the contrary, individual freedom presupposes that every value is as objective as any other,

and this objective status that every value has brings interests hierarchy conflict or value conflict. There is no absolute scale of these values/interests because everyone's value/interest is absolute.<sup>27</sup> Making objective differences between values means making objective differences between individuals, the actual holders of values. The normative constraint is also obvious. We cannot reduce a value to another because we cannot legitimately reduce an individual to another. So, the autonomy and its prospect, and not the power of one against the other, is the legitimate outcome any political battle should legitimately have.

*Mutatis mutandis*, to be politically or economically vulnerable, even in a liberal democratic society, is nothing new. There are a lot of institutional mechanisms trying to diminish this vulnerability or, even better, to eradicate it: the presumptions of equal freedom for all and equal treatment irrespective of the contingent inequalities are the principled normative features of the democratic institutional framework. This normative principle makes *de iure* any individual invulnerable in a democratic society, even if *de facto* any individual is vulnerable to various degrees. On the other side, to declare, that *de iure* some are more vulnerable than others, means to create a pass for dependency and subordination, that is, for paternalistic claims and domination of the most vulnerable upon those less or invulnerable. The more vulnerable people are, the more attention, care, and specific rights/powers are needed but also interventions and regulations. If the rules keep being revised after seeing the result, then even respect for the rules no longer makes sense. The rule of law is suppressed. However, vulnerability is not necessarily a disability, but it will definitely become one once the vulnerability is institutionalized and it has to be morally and legally compensated. Furthermore, if we can get something from this vulnerability, it becomes rational to play the vulnerability game, on the principle that if one gains, all

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<sup>27</sup> Value-pluralism assumes that any value is as objective and absolute as another, that is why there is no intrinsic, absolute, or objective hierarchy. The ideas of value pluralism, the objectivity of values, and their irreconcilability are remarkably analysed by authors such as Berlin, Raz, Gray, and so forth.

should gain. The moral exigence of solidarity will be transformed into a coercion and arbitrary instrument. The proofs of reciprocity and fair equal results can become something that is always invoked and never obtained, creating a kind of spiral of vulnerability, according to which, using the analogy with the spiral of silence, a person will mistakenly understand that she will be protected only if she is vulnerable. Playing the vulnerability game or hiding the real preferences become moral standards. But this means justifying an irrational and unjust society.

Moral conflict and unlimited autonomy are the sources of cooperation problem. In addition, although the cooperation problem seems to involve functionality issues, the “solution” is guided neither by proper knowledge of what should be decided nor proper algorithms about how to be decided.

Let me explain. There is a pervasive idea that if individuals would respect each other, do their due diligence, and respect the rules of free speech, not only would they be good citizens or responsible people, but society, miraculously, would be one in which everyone wishes to live. Moreover, a world without hatred, crime, deficiencies, incompetence, and corruption, without eccentrics or mavericks, would be even better, the best world ever imagined. However, the puzzle emerges once these public interests/ideals of best societies are put on the table. This best-ever imagined world is also one in which everyone’s private or public life would be strictly regulated and censored. Liberty upsets patterns, Nozick said (1974, 160). So, what at first sight seems to be self-evidently true and praiseworthy, at a closer look, will highlight confusions or misjudgements as famous as they are dangerous.

On the one hand, many of the political alliances are endogenous to the social environment in which we were born and continue to live (Pareck, 1993; Murphy, 2003; Talisse, 2019). Therefore, many of the demands, we must fulfil, either are not ours, or we do not recognize them as such, or by recognizing them, we do not consider it necessary to fulfil them. So, we often speculate about the possibility of not being what we are and ought to express or be. Individuals choose goals, and there is no criterion for ordering them

and no particular device to fulfil them accordingly. Human relationships do not just produce compliance and harmony; they speculate on opportunities or other possibilities. Their choices create unintended consequences and conflict. The misleading is obvious: as natural as it is for individuals to live together, so unnatural is the harmony among them.

On the other hand, the problem of cooperation is not that individuals are not co-operators but rather that they are free and rational, meaning that the problem of cooperation could not be solved, reasonably speaking, without taking into account the costs of cooperative interactions. Considering that some good effects, *e.g.*, silencing hate, are produced because some efficient causes are involved, *e.g.*, cancel culture or other coercive institutions, means ignoring the actual mechanisms behind the cooperation process. A rationalized society is not necessarily a free society, so disregarding the real mechanisms behind the cooperation process means disregarding the cooperation problem, and finally disregarding the freedom of individuals and their claims in justice. To understand, describe, or explain cooperation in society means to differentiate between various levels of choice and different kinds of interests relative to those levels of choice (Vanberg and Buchanan, 1988, 140). Ignoring these cooperative costs means committing the “functionalist error” (Vanberg and Buchanan, 1988) or employing the “democratic fallacy” (Sowell, 1982). It means confusing the characteristics of the democratic process with the results of the democratic process. It also means confusing some sort of regularity in society, which is incidentally repetitive, based on habits and customs, creating social rules, intrinsically challengeable, with necessary or natural regularities, which are based on natural laws, impossible to be changed. Briefly, suppose the rate of hate in society decreases. In that case, the most probable cause is not the cancellation of hate speech but rather other institutions and rules: the reciprocity-based rules and coordination-based rules are probably the most responsible for bringing solidarity, *that is* silencing hate in society and increasing social cohesion.

Therefore, living in a strict moral society is not the most desirable thing, given that in this society keeping moral order and conformity to it is dominant and prior to any other public value. This also means that not even the best possible world is not necessarily less tyrannical than the worst world. Thus, cancel culture, even if it would generate an enhancement in functionality, could not be coercively imposed without a significant loss of freedom and democracy, *i.e.*, legitimacy.

In fact, cancel culture *desideratum* conceals a composition error/fallacy, which shows that difficulties in solving freedom of expression are not just technical or operational but substantial. The fundamental assumption here is that no institutional framework can ultimately reduce the distance between moral disagreement about substantive and freedom of choice, no matter how good or legitimate. The legitimacy calculus is not without remainder, and this remainder tends to be increased, and legitimacy decreases whenever the legitimacy mechanism requires absolute compliance with legitimate rules and institutions. The low probability of stable aggregation or solving cooperation problems is not a matter of individual responsibility or effective censorship. The low probability of stable agreement has an internal logic, given by this irreducible distance solicit.

Not dismantling value conflict “holds first, that each person’s human life is intrinsically and equally valuable and second, that each person has an inalienable personal responsibility for identifying and realizing value in his or her own life” (Dworkin, 2006, 160). Ignoring this intrinsic disharmony between interests and the means for them is not without normative consequences. The most undesirable one is creating a self-sufficient contingency based exclusively on the idea of reconciling *ad litteram* divergent interests. After various negotiations and bargaining, the best decisions can be made, and the best outcomes can be provided, which is of no particular interest to anyone, not even to those who negotiate. This misleading strategy creates unintended effects that must be imposed

regardless of the undesirable result. Enduring these effects equally is not exactly what everyone wants from this reconciliation.

The conclusion is that rules should not be evaluated only through their results but also through how they are decided and introduced. An accepted assumption when we talk about justice in a democratic society is that the rules should be introduced with the consent of the parties. Those who consider the legitimate rules beyond this contingent compromise and conformity to it make democracy vulnerable. Democratic vulnerability does not come from epistemic or moral incompetence. But from the mistaken idea that it could be more than a hope for the best results. We choose democracy because it does not pretend to provide the truth, the good, or the happiness. But, away the idea that democracy is simple. Although fragile, the equilibrium among various uncomfortable incompatibilities is the democracy stake. Cancel culture helps with nothing.

The main problem here is not the coercive effects cancel culture provides, but rather the arbitrary coercion any democratic institution should try to prevent and eradicate. Cancel culture is arbitrary; therefore, it is inconsistent with the stakes in legitimacy and efficiency it supposes to have and definitely in deep contradiction with democratic principles.

## 8. Conclusions

Cancel culture rather fails to satisfy the democratic requirements creating the opposite results, that is polarization, distrust, fear,<sup>28</sup> and arbitrariness. The freedom and duty of expressing in-tolerance differ from repressing intolerance and intolerants in a democratic society.

The freedom “to have a voice,” even if this voice is only one’s and all the rest is in opposition to it, is sufficient, as John Stuart Mill famously said, to

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<sup>28</sup> It is not necessary to empirically prove this fear. “Perceptions, by themselves, are important for the social construction of reality. If people say that they feel social pressures to confirm with predominant values, or that they self-censored their authentic words or actions to avoid ostracism, then we should take them at their word” (Norris, 2020, 17-18).

allow that person to speak and consequently any constraint against it is illegitimate. This is a fundamental ground in liberal democracy and an individual's fundamental right. It substantially defines individuals in interaction with other individuals and makes them equally invulnerable, even if this invulnerability contingently is never guaranteed or secured. But it is for sure valid, that enfranchising marginalized voices does not imply disenfranchising the more powerful voices, but the creation of a greater space of opportunity for all, which obviously will almost spontaneously change the balance point of these forces. The idea is not to cancel but to permit and include. Cancel culture is not able to fill the gap between having a voice and deliberating, "which requires the joint exercise of collective intentions, cooperation, and compromise as well as a shared sense of reality on which to act" (Vallor, 2021).

For this reason, the stake of institutions is not just to coerce individuals to make conformity and cooperation effective but rather to create conditions for a specific power type within interhuman relationships, that of "deontic power" (Searle, 2005). This power establishes what is permitted and what is forbidden between them, a power creating rights and recognition, civic obligations, rewards, and punishments, but besides all, it is a power that gives equality before and against the laws. Because individuals matter, they cannot be silenced, even if they are mischievous or immoral. Cancel culture is a culture of fear and suspicion and not one of cooperation and trust, and this unintended consequence is enough to be taken seriously as a real threat. It risks endangering diversity and democratic pluralism, and even the possibility of being free. A democratic society is not a society of cancelling. Cancelling the individual voices means cancelling individuals.

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