Mary Darko – TLA 2026 3rd place

The anxieties surrounding cancel culture rest upon a fundamental misapprehension: that expression is a monologue rather than a dialogue. Yet from its philosophical foundations to its historical struggles, freedom of expression has always encompassed two inseparable dimensions: the right to speak and the right to respond. To treat cancel culture as antithetical to lawful freedom of expression is to privilege one voice over another, sacrificing the very pluralism Article 10 seeks to protect.[1] Far from being irreconcilable, these concepts are kindred spirits, both manifestations of expression's double-bounded nature.

Consider first the theoretical architecture. Justice Holmes' marketplace of ideas, now constitutional orthodoxy, presupposes active engagement, not passive consumption.[2] When Holmes wrote that "*the best test of truth is the power of the thought to get itself accepted in the competition of the market,"* he described commerce, not theft. Critique, dissent, condemnation; these are the marketplace's currency. As Post observes, truth-seeking requires "*an important set of shared social practices: the capacity to listen and to engage in self-evaluation, as well as a commitment to the convention of reason."*[3] The marketplace metaphor, properly understood, contains its own inherent logic: If expression is a marketplace, then withholding patronage, warning others of faulty goods, even calling for a boycott, remains expression, not suppression. Cancel culture, when it manifests as public accountability rather than unlawful harassment, operates within these bounds. To silence response would require

[1] European Convention on Human Rights, art 10, as incorporated by the Human Rights Act 1998
[2] Abrams v United States 250 U.S. 616 (1919) (Holmes J, dissenting); see Robert Post, 'Reconciling Theory and Doctrine in First Amendment Jurisprudence' (2000) 88 California Law Review 2353, 2359-60
[3] Robert Post, 'Reconciling Theory and Doctrine in First Amendment Jurisprudence' (2000) 88 California Law Review 2353, 2358 (quoting John Dewey, 'Creative Democracy - The Task Before Us' in Max H. Fisch (ed), Classic American Philsophers (Appleton-Century-Crofts 1951) 389, 393).

a hierarchy of voices, violating the democratic principle protecting responses that "*offend, shock, or disturb."*[4]

History illuminates what theory suggests. Expression laws emerged not to shield speakers from disagreement but to protect dissent against power. Medieval systems were "*designed to suppress dissenting voices,"* with excommunication cutting accused heretics from communion and community alike.[5] The liturgy was theatre - bells rung, candles extinguished, the accused severed from "*eating or drinking, in buying or selling, in prayer or greeting."*[6] Modern expression protections arose in reaction to such state-sanctioned silencing: the inability to question the Church, challenge the monarchy, or dissent from fascism. Article 10's post-fascist lineage confirms this: it protects the dissident and the responder alike - refusing a linear narrative of discourse. To expand Article 10 to criminalise cancel culture would invert its historical mission, transforming a shield against state censorship into a sword against judgment.

Nonetheless, the legal impossibility of regulating cancel culture becomes apparent upon examination: Article 10 regulates vertical relationships between state and individual, not horizontal relationships between private actors.[7] Article 10(1) protects expression "*without interference by public authority"*[8]*.* Cancel culture involves no state interference - it is purely a private response. As *Farrakhan confirms*, Article 10 is engaged when state authorities refuse entry "*solely to prevent his expressing opinions."*[9] More pernicious still, even setting aside the public/private divide, who would be the addressee of this new tort - the first tweeter? The mob?

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[4] Handyside v United Kingdom (1976) 1 EHRR 737 [49]
[5] Oliver Bramley, 'A Very Short History of Freedom of Speech' (The Constitution Society, 26 November 2025) <https://consoc.org.uk/very-short-history-of-freedom-of-speech/> accessed 3 January 2026
[6] ibid
[7] Human Rights Act 1998, s6; Alastair Mowbray, 'Cases, Materials, and Commentary on the European Convention on Human Rights' (4th edn, OUP 2018) ch 3
[8] Ibid (n 1); Eric Barendt, 'Freedom of Expression in the United Kingdom Under the Human Rights Act 1998' (2009) 84 Indiana Law Journal 851, 855-56
[9] R (Farrakhan) v Secretary of the Home Department [2002] QB 1391 [71]

Social media platforms? Each option flounders on principle. To target individual responders would privilege the original speaker's expression rights over the dissenters, breaching the neutrality Article 10 demands. As *Higgs v Farmor's School* articulates, "*an employer does not have carte blanche"* to silence employee beliefs, but "*nor, however, does the employee have carte blanche about what they can say in public*."[10] This mutual constraint recognises expression's double-bounded reality. Making platforms liable would require treating them as quasi-public authorities under HRA s6, regulating speech without democratic authorisation, privatising censorship. The precariousness of platform content policies is evident in Meta's 'free speech' pivot.[11] Even *Bank Mellat's* proportionality test fails, as silencing critics to shield speakers perverts Article 10.[12] As Butler warns, expanding state power over speech risks "*potentially empowering the state to invoke such precedents against the very social movements"* that sought protection.[13] Butler's further insight that "*speech is always in some ways out of our control"* captures the wager we face: we cannot control reception without stifling expression itself.[14]

Reality, too, betrays the cancel culture panic. The supposedly cancelled - Jeremy Clarkson, J.K. Rowling, Piers Morgan; all retain formidable platforms. Where genuine disproportionality occurs, existing law remedies it: Alison Bailey succeeded in her unfair dismissal claim; Richard Jewel secured settlements from the FBI and media that defamed him.[15] And while online cancellation inflicts genuine harm, we must give credence to the Lacanian bar, which reminds us that entrance into language always exacts a price: "*careless talk costs lives."*[16] Fifty-seven per cent of Britons self-censor "*for fear of judgment,"* yet this reflects not cancel culture's

[10] Higgs v Farmor's School [2025] EWCA Civ 109 [139]
[11] Polona Car and Beatrix Immenkamp, 'Hate speech: Comparing the US and EU approaches' (European Parliamentary Research Service, June 2025)
[12] Bank Mellat vs HM Treasury (No 2) [2013] UKSC 39 [20]
[13] Judith Butler, Excitable Speech: A Politics of the Performative (Routledge 1997) 77
[14] ibid
[15] Beatrix Oliveira, A Return to Public Square Trials? How Cancel Culture and Perp Walks May Undermine Trial Impartiality and Criminal Justice, (2021) 3 Columbia Undergraduate Law Review 1, 7-8
[16] Ibid (n 13)

tyranny but democracy's reality, that speech carries consequences, as it always has.[17] The marketplace requires responsible participation. We understand this instinctively: one cannot provide medical advice without a licence, nor misrepresent commercial claims, nor defame without impunity. Expression's freedom has never meant freedom from response. Yet, the cancel culture panic performs a more insidious deflection. As Williams distinguished shame from guilt, public condemnation focuses on the condemned rather than those harmed by their speech.[18] When we debate whether Rowling is cancelled, we ignore Potter fans who found solace in celebrating difference, now grappling with their favourite author's denial of their legitimacy. But perhaps the deepest disquiet is not cancel culture's existence but its democratisation. As Regina Rini notes, mass publics now possess "*unprecedented ability to influence and reshape"* social norms, "*a process that used to be the province of the elite."*[19] The mob has no face because democracy dissolves authorship into collective judgment. That may be the price of fire: we have emancipated ourselves from the tyranny of the throne, but now must accept that it both warms and burns.

Article 10 cannot save us from ourselves. Greater platform accountability and hate speech regulation may "civilise the vitriol", but these address unlawful content, not lawful critique masquerading as cancellation.[20] To treat cancel culture and freedom of expression as irreconcilable is to misunderstand both. To regulate would hinder liberalism's central premise: progress requires challenge. Those who critiqued oil drilling, eugenics, the Iraq War introduced ignored harms and new information society preferred to ignore. As such, the two concepts are

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[17] Matthew Smith, 'Cancel Culture: what views are Britons afraid to express? (YouGov, 22 December 2021) <https://yougov.co.uk/politics/articles/40111-cancel-culture-what-views-are-britons-afraid-expre> accessed 2 January 2026

[18] Stephen Bero and Aness Kim Webster, 'Shame and the Ethical in Williams' in Andras Szigeti and Matthew Talbert (eds), Morality and Agency: Themes from Bernard Williams (OUP 2022); see also Stephen Salkever, review of Bernard Williams, Shame and Necessity (1993) Bryn Mawr Classical Review

[19] Zack Beauchamp, The 'free speech debate' isn't really about free speech, Vox (22 July 2020) <https://www.vox.com/policy-and-politics/2020/7/22/21325942/free-speech-harpers-letter-bari-weiss-andrew-sullivan> accessed 2 January 2026

[20] Ibid 5

not antagonists. They are the dialogue without which democracy becomes a monologue. Irreconcilable? They never were!

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