

James Ma – TLA 2026 4th place joint runner up

“Are the concepts of cancel culture and lawful freedom of expression irreconcilable?”

Socrates famously likened himself to a gadfly - an irritant sent to sting a sluggish horse into wakefulness.¹ Athens and its people, he argued, needed to be questioned, unsettled, and criticised to avoid complacency. Yet it was precisely this persistent provocation that made him intolerable to his fellow citizens, and ultimately resulted in his sentence to death. The fate of the Athenian gadfly raises a question that remains strikingly relevant to our contemporary discourse on cancel culture: when, if ever, is it acceptable for society to cease to tolerate the discomfort of dissent, and instead seek to silence those who provoke it?

The core concept underlying cancel culture is that some ideas are so unacceptable as to justify the collective public ostracization of those who hold them.² Though its precise boundaries are debated, this ostracization has become increasingly intense, epitomised by the complete denial of access to public fora (‘deplatforming’).³ What was once a tool to empower marginalised voices, bring important issues to the forefront of public discourse, and stimulate meaningful change through collective accountability is now used to stifle and silence debate.

In this capacity, cancel culture is fundamentally incompatible with the frameworks that govern our lawful freedom of expression (‘FoE’) on two primary bases. Firstly, with respect to the *substantive content* of our speech, it replaces well-defined and rigorous legal tests with subjective standards of cultural acceptability that can sway with the winds of public opinion. Secondly, with respect to the *procedural protections* for our speech, it diverts

¹ Plato, *Apology of Socrates* (trans Jowett) 30e.

² Eve Ng, ‘Reflections on Cancel Culture and Digital Media Participation’ (2020) *Television & New Media*, 21(6), 621; Oxford English Dictionary, “cancel culture (n.)”

³ Robert Simpson and Amia Srinivasan, ‘No-Platforming’ in Jennifer Lackey (ed.), *Academic Freedom* (OUP 2018)

authority away from accountable and legitimate institutions into the hands of private actors. Both, it is argued, represent an undesirable and unacceptable diminishment of our FoE.

The reasoning that underpins legal frameworks such as the ECHR is that FoE is so vital to our democratic society that it can only be restricted when countervailing concerns outweigh it.⁴ This can be seen by the ECtHR's jurisprudence, which examines whether the restriction is prescribed by law, pursues a legitimate aim, and is necessary in a democratic society.⁵ Cancel culture undermines this exercise: instead of identifiable ex ante standards of proportionality, speech is judged against ever-shifting social norms and moral sensibilities. Substantively, by lowering the high bar of necessity to subjective, emotionally driven judgments about offence as sufficient to justify interferences with FoE, cancel culture elevates individual feelings of distress to decisive status.⁶ Because feelings are inherently personal and reactive, this approach lacks the predictability and consistency needed in order to act as a useful guide for behaviour.⁷ Thus, cancel culture substitutes law with sentiment, weakening the rule-based protection that the lawful FoE framework exists to provide.

Though the institutions responsible for ensuring FoE protection may be imperfect, they are structured around systematic procedural safeguards designed to secure legitimacy - safeguards that cancel culture conspicuously lacks.⁸ Under the existing legal framework, disagreements with government action against one's FoE may be contested through established legal processes such as appeal or judicial review. Cases such as *Liberty* demonstrate how even matters of national security are subject to this close scrutiny,⁹ while decisions like *Farrakhan*, where the court upheld the Home Secretary's refusal to grant entry

⁴ ECHR, Article 10(2)

⁵ See e.g. *Animal Defenders International v United Kingdom* (2013) 57 EHRR 21 [108]–[116]

⁶ See e.g. the 'reasonable' standard for harassment found in the Equality Act 2010, Section 26(4)(c)

⁷ Joseph Raz, 'The Rule of Law and Its Virtue' (1977) 93 *Law Quarterly Review* 195, 198

⁸ Notably, the requirement to know and contest the charges brought against you: ECHR, Article 6(3)(a)

⁹ *R (The National Council for Civil Liberties) v SoS for the Home Department* [2025] EWCA Civ 571 [42] - [52]

permission to an extremist speaker, illustrate that controversial outcomes remain anchored in articulated reasoning.¹⁰ By contrast, cancel culture operates without settled standards, neutral adjudicators, or avenues of appeal. Its judgments are unchallengeable, lacking the procedural protections that allow courts to command legitimacy.

Proponents of cancel culture argue that allowing public opinion, as primarily expressed in the online space, to guide the standards of acceptable speech is actually a better manifestation of democratic FoE principles than those found in more exclusive technocratic institutions such as courts.¹¹ There is some force in this view, particularly given the increasing concerns about whether a judiciary which is lacking in diversity can be truly said to adequately understand the population it serves.¹² However, the supposedly more democratic justification for online expression of FoE standards is undermined by the outsized power of those who control these platforms. When Elon Musk reinstated Trump to Twitter, he purported to mask his decision with a cloak of democratic legitimacy by using a public poll,¹³ but neglected to act against the bot farms that, by his own admission, impacted the results.¹⁴

Allowing cancel culture to proliferate and encroach into our freedom of expression is a slippery slope. As soon as we open the Pandora's box of inquiries into which viewpoints ought to be permitted based on prevailing cultural acceptability rather than rigorous legal standards, with enforcement powers concentrated in private actors rather than public institutions, we risk conflating our own moral positions with unchallengeable axiomatic fact. To paraphrase J.S. Mill, any silencing of discussion is an assumption of absolute correctness.¹⁵ We must resist such an action, and instead recall Socrates' enlightened insight

¹⁰ *Farrakhan v Secretary of State for the Home Department* [2002] EWCA Civ 606 [71] – [77]

¹¹ Pippa Norris, 'Cancel Culture: Myth or Reality?' (2021) 71 *Political Studies* 145

¹² Jennifer Barton-Crosby, Sarah Lynch-Huggins, Lana MacNaboe, Arjun Liddar and Jeffrey DeMarco, *Judicial diversity: Barriers and initiatives* (National Centre for Social Research 2023)

¹³ James Clayton, 'Musk reverses Trump's Twitter ban after poll' (BBC News World-US-Canada, 2022)

¹⁴ <https://x.com/elonmusk/status/1593952814534991873>

¹⁵ J.S. Mill, *On Liberty* (first published 1859, Penguin 2016)

that true wisdom requires accepting one's own fallibility.

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