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

Consider the following hypothetical. A person wakes up one morning to learn that an office employee at their favourite biscuit company was caught on tape giving a sexist opinion at a house party. After reflecting on this, the person makes several social-media posts expressing their disgust and condemning both the employee and the biscuit company. They then email and phone the company, stating that they will no longer buy its products unless the employee is dismissed and the company issues a statement addressing sexism in its offices.

Our hypothetical person has publicly boycotted, withdrawn support, and ostracised the unfortunate employee and biscuit company. They go further by directly communicating to the company threatening to withdraw their business unless their demands are met. Multiply our hypothetical person by hundreds or thousands and you have a 'cancel-culture mob' whose collective actions may pressure the biscuit company to sack the employee and to cause serious distress to them. Yet no unlawful activity has occurred. It is entirely lawful for an individual "to publicly boycott, ostracize, or withdraw support from (a person, institution, etc.) thought to be promoting culturally unacceptable ideas[1]" particularly where the alleged conduct is substantially true[2]. Each member's actions fall squarely within their lawful freedom of expression.

Of course, there are undeniably instances of 'cancelling' slipping into illegality. Harassment, stalking, threats, defamation, and other activities are directed at targets of cancellation. There are also instances of institutions with statutory obligations to promote freedom of speech (such as universities)

[1] https://www.oed.com/dictionary/cancel_v
[2] Defamation Act 2013.

which have failed to uphold those obligations. In these cases, there are indeed criminal and civil legal protections for targeted individuals[3] and punishments for institutions, as in the case of the University of Sussex[4]. However, these blatantly unlawful actions cannot be conflated with cancel-culture the same way that unlawful speech cannot be conflated with lawful freedom of expression. The vast majority of 'cancelling' happens completely lawfully.

Most discussions of cancel-culture, an environment where cancelling is commonplace, are from the perspective of the cancelled-person. The prospect of public mass-ostracization in response to an expression of honestly held opinion is genuinely terrifying. There is also the prospect of damaged reputation, economic loss, and psychiatric harm from the experience. As the dismissal of Teaching Assistant Mel Curth shows, people are cancelled all across the political spectrum by liberals and conservatives alike[5]. A person may reasonably feel that they must self-censor lawful freedom of expression because of the real danger posed by cancel-culture. Faced with these de facto constraints, existing protections for lawful freedom of expression from state interference feel like a formality.

However, what can the law actually do to prevent the chilling effect on speech of cancel-culture which it does not already do? Defamation laws in the UK already provide protections for a person or institution's reputation to a standard that satisfies Article 10 of the European Convention of Human Rights (ECHR)[6]. In fact, the European Court of Human Rights believes that it is the rights of those making allegedly defamatory statements that are not adequately protected in the UK[7]. Since truth is a complete defense against defamation, condemning or ostracising someone for something actually said or done falls completely within the right of the critic. Employees also have a legal right

[3] Defamation Act 2013, Public Order Act 1986, Equality Act 2010.
[4] https://www.bbc.co.uk/news/articles/cn9vr4vjzgqo
[5] https://www.independent.co.uk/news/world/americas/oklahoma-university-fired-bible-essay-b2889594.html
[6] *Steel and Morris v. United Kingdom* (2005) 41 EHRR 22.
[7] Ibid.

not to be unfairly dismissed[8]. Pre-existing contracts cannot be cancelled except through a breach of the conditions or innominate terms of the contract[9]. Bar the widespread issuing of injunctions against defamatory statements, there are already civil remedies against most consequences of being cancelled.

Further, it seems unjust and counterintuitive to place legal restrictions on the individual actions of critics engaged in cancelling. Returning to the definition of cancelling, it would be ludicrous to restrict a legal right to publicly condemn, to ostracise, or withdraw support from a person or institution, especially if these actions reflect the critic's honest convictions. To express displeasure, criticism, or even make calls for mass action (that remain lawful) are themselves critical components of lawful freedom of expression. Are we seriously suggesting that, in the context of our hypothetical situation, our critic should have restrictions placed on the right to voice their honest opinion about the sexist statement, make public their personally held views on the employee and company in question, and how they spend their money? To do so would harm public discourse more than cancel-culture itself through attaching de jure and not de facto restrictions on expressions of genuinely held opinion.

Thus, somewhat counterintuitively, we must conclude that cancel-culture is a vital part of lawful freedom of expression. When considering cancel-culture, it is too easy to hyperfixate on the experience of the cancelled person and forget the lawful rights exercised by the numerous individuals doing the cancelling. Cancel-culture arises from the lawful exercise of freedom of some in society in response to the lawful freedom of expression of others.

Therefore, rather than viewing cancel-culture as the widespread use of social condemnation to silence debate, it should instead be seen as a form of participation in public debate itself. Social condemnation is subject to further condemnation and debate, as evidenced even by this competition.

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[8] Employment Rights Act 1996.

[9] Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd [1962] 2 QB 26, CA.

Social condemnation is a natural aspect of social regulation which has always existed. Further, rarely, if ever, has something or someone being cancelled deprived another of their right to respond. Deplatforming or other expressions of cancel-culture does not bar third-party commentary on the cancelled person or thing.

Although the prospects of being cancelled for lawful freedom of expression is deeply unsettling, this discomfort must be situated within the broader framework of rights that all citizens are entitled to in a civilised society. The typical condemnation of cancel-culture as incompatible with lawful freedom of expression must be balanced against the recognition that all the constituent components of cancel-culture are integral aspects of lawful freedom of expression. Paraphrasing Voltaire's apocryphal quote, even if we disapprove of cancel-culture, we should defend the right to cancel if we are truly committed to lawful freedom of expression.

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