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**The Jury of Millions: Exploring Cancel Culture and Free speech**

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**ABSTRACT:**

Cancel culture has emerged as a powerful, yet controversial force in the current times, largely shaping the media and communication. This essay delves into the intricates of the cancel culture and how it intersects with free speech, influencing social cues. It illustrates the impact of cancel culture on society and individuals, studying the shift from healthy criticism and accountability to relentless denunciation. The essay also analyzes the Depp v. Heard case to show the extent of the influence of collective judgement and assumptions prevalent in the media. Moreover, the essay also emphasizes the need to think critically and rationally without stifling and opposing the diversity of thought. By fostering a culture that values diverse perspectives, the society can drastically shift from a binary view of justice to one that cultivates a positive discourse in the media.

**I. INTRODUCTION:**

It is the 21<sup>st</sup> Century, the digital age, where the court of public opinion stands as the harbinger of justice and peace, aiming towards eradicating every and all ideas that contradict its notion of a just society. In this era, where information travels in the blink of an eye, the power of collective voice has never been this fierce. But this fierceness comes with a price. Often, these digital discourses circulating in the realm of the internet metamorphose into forms that are least anticipated. Amidst this, the line between healthy criticism and relentless denunciation is often violated, which leaves little to no room for embracing multiple perspectives--the idea that essentially forms the very core of mass media.

The term 'Cancel Culture' has gradually secured its place in the contemporary lexicon—a dreaded term, association with which, for any public figure could prove career-ending. In the modern age, it is trial held by social media, with unflinching judges, and speedy verdicts that carry with it the ever-lasting stamp of being 'cancelled'. Philosopher Jürgen Habermas conceptualized the public sphere, as one, open to debate and discussion for the general public. According to him this was a way to broaden the discourse around matters of governance and polity. Such an approach for him was a way to ensure a legitimate democracy, where logic and

rationale were the key factors that made up the arguments of the public; it allowed the public opinion to keep the actions of the government in check<sup>1</sup>. But a noteworthy question arises here— Does Habermas’ argument hold a firm ground even in this digital epoch? And if it does, where do we draw the line between rationality and outright ostracizing? With the drastic transformation of media since its inception, communication has come a long way. Though empowering the ideals of diversity, it has escalated into something more than mere inclusion. The temporal and swift nature of media, and the normalizing of “cancel culture”, thus raises important questions about free speech, privacy and its impact on the society at large. Does cancel culture actually hold a substantial value or is it just another mob propaganda? This essay explores the consequences of cancel culture and its intersection with free speech, examined through different facets and the rise in mob mentality that follows it.

## II. The Court of Hashtags

Before delving into the never-ending saga of loopholes associated with ‘Cancel Culture’, it is important to understand what the term clearly stands for, and the cultural nuances that have garnered the term its position in the society today. Cancel culture is a modern-day phenomenon, that has come into being as a result of the expansion and development of media channels and social media in general. The term ‘cancel culture’ came into force around 2017, with the growing disregard of the populace towards celebrities and influential figures they deemed as “problematic”, or “offensive”<sup>2</sup>. The term has been in the public domain since the late 1990s; initially used in a derogatory sense, it eventually gained more attention in 2014 with the varying pop-culture references in the United States. What initially was a part of slang vocabulary was soon turned into an internet meme, having a huge level of influence on the societal perspective of right and wrong<sup>3</sup>. The concept of being ‘cancelled’ though isn’t clearly defined, essentially means being subject to the harsh criticism and public shaming due to publicly voicing the opinions or ideologies that some might find offensive or problematic. The cancel culture has also been observed to have certain pre-existing digital footprints; it is often used synonymously

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<sup>1</sup> Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* 1-4 (Thomas Burger trans., 1989).

<sup>2</sup> Cobourn, R. (2024) Opinion: Cancel culture is debatably seen as a means of ‘social activism’, *The Channels*. (May. 27, 2024, 7:19 AM)<https://www.thechannels.org/opinion/2024/02/14/opinion-cancel-culture-is-debatably-seen-as-a-means-of-social-activism/>

<sup>3</sup> D. Clark, M. (2020) ‘Drag them: A brief etymology of so-called “cancel culture”’, *Communication and the Public*, 5(3–4), pp. 88–92. doi:10.1177/2057047320961562.

with the ‘call-out’ culture, in which people utilize social media to draw attention and ‘call-out’ behaviors that aren’t deemed to be up to the morality standard. Dragging was another term meaning collectivized bashing of a particular individual, that was used very much in a similar sense<sup>4</sup>. These broadly characterized terms are often collectively referred to as “outrage culture”. Here, it is evident that whatever the term might be, the core features that form its basis are ideally the same. George Orwell in his book ‘Animal Farm’ wrote “If liberty means anything at all, it means the right to tell people what they do not want to hear.”<sup>5</sup> Under the banner of liberty and free speech, cancel culture is just masquerading as the flag bearer of social activism, all while operating under falsehood.

While various strategies aiming to increase open expression can create more individualistic societies, it can also sometimes take the form of vigilante justice, which seemingly aims to do good, but yields no substantial results in the end. Cancel culture is one such prime example of this. This culture is heavily reliant on the notion of the public, and what they deem to be valuable and true, rather than what is. This results in a precarious state where subjective perceptions and fury often undermine the importance of objective reality and rationality. Canceling has a great amount of social force, partially due to the accessibility and reduced accountability on social media platforms. This significant influence can not only prove detrimental to the ones getting cancelled but for the general populace at large. Individuals out of the fear of getting cancelled may hold back from expressing unpopular opinions or engage in refined debates; this pattern followed over a period of time might as well lead to the demise of logic, critical thinking and over all individuality of thought.<sup>6</sup> A similar pattern can be observed amongst those who advocate to uphold cancel culture to extract greater accountability from public figures. These pioneers have one thing in common —The need to be part of a herd. This ‘herd instinct’ as highlighted by Nietzsche sits at the top as a defining characteristic for this whole culture and is clearly evident in all actions taken by the so-called cancellers. The gradual withering of diversity of thought and critical reasoning is a price that the public must pay to persist in this culture, where dissenting opinions are shunned, and public discourse is barely reduced as a matter of right and wrong. Such patterns often sacrifice facts and

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<sup>4</sup> Bridges, K.M. (2022) ‘Language on the Move: “Cancel Culture,” “Critical Race Theory,” and the Digital Public Sphere’, *The Yale Law Journal*, 131(3-). doi: <https://www.yalelawjournal.org/forum/language-on-the-move> .

<sup>5</sup> George Orwell, *Animal Farm: A Fairy Story* xlv (Penguin Books 2000) (1945).

<sup>6</sup><https://race-and-social-justice-review.law.miami.edu/how-legal-formalism-cancel-culture-and-mob-mentality-all-play-a-role-in-the-death-of-critical-thinking-in-law/>, (last visited Mar. 6, 2024).

information, driven by the need for immediacy and being completely overridden by individual emotions. This is especially the case when it comes to siding with certain celebrities and public figures, while defaming others. Cancel culture when coupled with the one-sided parasocial relationships people have with public figures, can cause a lot of setbacks if taken to a far extent. Especially since the entirety and driving force of this culture is based on assumptions about the characters of individuals due to their misrepresentation in the media.<sup>7</sup> The public feels undermined by popular opinion, which isolates them in a corner of their mind, further undermining their ability to form an opinion about anything based on facts and evidence.

A case that distinctly stands out when talking about assumptions and is completely drenched in the spirit of cancel culture is Depp V. Heard (2022). This high-profile defamation suit can be quoted as a great example of the sheer extent and dominance held by cancel culture, not just in U.S. but at a global stage. Depp sued Heard for defamation following an Op-ed published by Heard in the *Washington Post*, using the #MeToo movement to give her voice a platform and making claims about Depp being a domestic abuser. This unsurprisingly proved to be disastrous to Depp's career and image; with the court of public opinion immediately turned against him and being asked to resign from the Warner Bros. Production for the movie series *Fantastic Beasts*, Depp was vilified all across social media platforms.<sup>8</sup>

With the Onset of the defamation trial, several intimate details about the couple's lives came into light for the public to witness so casually. What initially started as a mere suit soon turned into a reality show telecasted for the whole internet to view. It detailed the intricacies of their troubled marriage, ranging from a series of abusive texts to photographs, testimonies and videos. The public was in fact so deeply engrossed in the particulars of the case that the hashtag 'Depp V. Heard' held a dominant position on platforms like Twitter, Instagram and TikTok for several weeks at a stretch. The painstaking details of the case, being easily accessible for the world beyond the courtroom, became a form of entertainment for the public. Just like before, the public was quick to pick sides on who they deem to be a better person. Shockingly, this time all the fingers were pointed in Amber Heard's direction, with her arguments not being regarded and her statements turned into memes. The 180-degree turn from 'cancelling' Depp to vilifying Heard was viewed with the eyes of normalcy, as though this was an expected

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<sup>7</sup> Brockbank, M. (2022) Analysis: The johnny depp-amber heard defamation trial shows the dangers of fan culture, Brighter World. (May. 27, 2024, 7:19 AM), <https://brighterworld.mcmaster.ca/articles/analysis-the-johnny-depp-amber-heard-defamation-trial-shows-the-dangers-of-fan-culture/#:~:text=Depp%20says%20that%20by%20presenting,in%20coverage%20of%20the%20trial.>

<sup>8</sup> *Depp v. Heard*, No. CL-2019-2911, 2022 Va. Cir. LEXIS 23 (Va. Cir. Ct. June 1, 2022).

outcome, and as though the public knew when they were going to switch their stances. Following Depp's victory, his fan base all over the world was stronger than ever, and while this victory significantly lowered the weight of the backlash he faced before, this time it was Amber Heard, whose career was on stake. The dominating force of cancel culture in this case highlights the power of collective judgement and how its impact persists in the society for a long duration, hampering an individual's career opportunities, self-esteem and overall public image.

### III. Justice or Overreach?

The cancel culture essentially operates on certain principles that are believed to be non-negotiable for anyone engaging in public discourse related to the same. First and foremost, the most abundant principle observed in its sphere is 'the presumption of guilt' or phrased more correctly 'guilty until proven innocent'. The justice provider stance that it has been working on for the past few years, doesn't really hold water anymore. It is not always clear as to what the promoters of this idea aim to achieve—they've completely, in their digital courts, shunned apologies by public figures as insincere and preposterous. Vengeance, condemnation, and out casting are few of the many terms prevalent in the dictionary of cancel culture, thereby making the phrase 'guilty until proven innocent' a driving force in their beliefs. The spirit of being 'woke', a term often used to describe advocates of the political left, often invokes the need for formulating an opinion about each and every statement made by others and examining it through a critical eye.<sup>9</sup> Sure, such vigilance can induce greater responsibility and accountability amongst influential people, but when it takes on a radical form, operating merely for the need to cause havoc and distress, it becomes almost paradoxical. This is comparable to the dramatic revolutionist rallies brandishing slogans and banners, arguing for change, but eventually trampled and quietened by the existing social order, and at last being reduced to yet another public spectacle.

Another major and actually harmful feature of this culture is the epidemic of misinformation. It is the age of dopamine, and the hunger for content after content breeds grounds for the occurrence of such actions. Fueled by this hunger for content, information and statements travel at the speed of light, and thus misinformation as a product of cancel culture is almost inevitable.

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<sup>9</sup> Mishan, L. (2020) The long and tortured history of cancel culture, The New York Times. (May. 27, 2024, 7:19 AM), <https://www.nytimes.com/2020/12/03/t-magazine/cancel-culture-history.html?searchResultPosition=4>

This sparks a fierce debate on what is constituted as problematic, and who decides it? Given the past observations, it is evident that in recent times cancelling is more a matter of difference of opinions than it is of actual offensive and problematic behavior, so it often becomes effortless for people to mischaracterize certain statements to fit their side of the argument. The lines between fact and fiction are repeatedly blurred as public opinion seemingly values dissent more than rationale, with the emotion-heavy approach being the usual wrench in the works. Such a case is often observed with commentators and stand-up comics, and how susceptible they are to being publicly shamed in light of these arguments. Generation-Z is more likely to be influenced by this culture than any others, as it is always easy to consume fewer challenging snippets of a piece information than the in-depth analysis of any situation. The media has a very clever role here, as it plays on the problem of short-attention spans to evoke a need for immediacy and pushing out information in bulk, no matter how inaccurate. Social media algorithms work on similar lines too, they deliberately work to push such discussions and conflicts on the very forefront of our news feeds. This strategic placement ensures engagement and the public's involvement in specific issues, allowing the platforms and media houses to increase their profits.<sup>10</sup>

Furthermore, the perpetuation of the cancel culture extends beyond an individual scale to enclose broader societal implications, leading to a weakened social cohesion. This skeptic eye often erodes people's reliance and trust in authorities, which, though very far away can lead to societal ramifications, that can weaken a very fundamental pillar of the civil state—social cohesion.

#### **IV. Navigating the realm of Hashtag Activism**

The term 'Hashtag Activism' often comes into light when we discuss cancel culture. Since cancel culture pioneers are no less digital vigilantes, it is also no surprise that activism forms a very crucial part of their persona. Hashtag activism is used to describe the usage of hashtags as a way of directing more attention towards an event as a form of activism. By leveraging hashtags to mobilize support for various social and political causes, this activism has allowed for marginalized groups and identities to also be heard. Now, this can prove to effectual considering the wide network of influence that hashtags are spread out over, but that can only

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<sup>10</sup> Bridges, K.M., *supra* note 4, at 1472.

be the case when such an activism is backed by potent strategies and arguments that don't die down after a while due to inactivity.

Due to the ease of operation and association with these hashtag movements, this activism ultimately ends up staying at a very superficial stage, where people might engage with relevant content online for a brief period, then go on to take no meaningful actions in real life. This practice undermines the overall spirit of activism which demands constant efforts and sincere deliberation over the potential for change. Such an activism takes on a very reductionist approach to complex societal issues, which in the quest of virality and engagement often loses its depth and perpetuates social stereotypes. The ease of volunteering and public engagement often overlooks how a majority of activities on the internet are a result of the underlying capitalist institutions that profit from it.<sup>11</sup> Hashtag activism essentially creates an illusion of activism for an individual where they might believe themselves to be a proactive activist, but such activism never materializes for an individual.

Technology has created a limitless space, giving rise to a new form of vigilante justice, backed by anonymity and the expansive reach of social media. These vigilantes usually resort to public shaming as a tool to disregard certain individuals. However, it doesn't take too long for the call to accountability to turn into a relentless campaign for defamation, veering far from its original intent all while being fueled by the frenzy of the mob mentality. It is a stark irony how in the digital age despite a newfound sense of freedom, a newer means for repression has also been invoked alongside. The brand of vigilantism coupled with mob ideology raises some important questions about the efficacy and effectiveness of using repression and public shaming as a source of social justice. What essentially was intended as a means to uphold the diversity and varying social identities in the world has rendered the public hypersensitive to unpopular varying opinions. The ease of operating and freedom of expression have enabled people to share their voices more openly, but simultaneously it has also eroded the possibility of expression without fear.<sup>12</sup> If individuals must constantly tread with caution and filter every word, they say in order to appease the public standard, then what will safeguard the principle of freedom of expression, which forms the bedrock for media and communication to not be so easily compromised?

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<sup>11</sup> Frost, A.A. et al. (2020) The problem with Hashtag activism, Jacobin. (May. 27, 2024, 7:19 AM), <https://jacobin.com/2020/12/hashtag-activism-review-twitter-social-justice>

<sup>12</sup> Deflem, M. and Silva, D.M.D. (2021) 'Media and law: Between free speech and censorship', *Sociology of Crime, Law and Deviance* [Preprint]. doi:10.1108/s1521-6136202126.



Public criticism, though, might enhance accountability, can often extend beyond mere criticism. Doxing as a practice in the digital domain has become, yet again, another malicious practice in the arsenal of online vigilantism. This practice involves revealing personal and identifying information about an individual, without their consent, in an attempt to shun and intimidate the perceived wrongdoers and exposing them to potential harm. The consequences that follow it are devastating to say the least, ranging from psychological and emotional harm all the way to real-life threats. Despite its hostile nature, this practice is often defended as a way to obtain answers from influential figures. Guarded by the shield of anonymity, social media users often neglect the basic right to privacy and contribute to the outrage without fully considering the social and legal implications of their actions.

The ever-changing and fluid nature of the media makes it practically impossible to settle on rationale reasons to uphold this culture, instead it almost always comes down to dislike for a particular individual rather than the statements made by them. A multicultural society is bound to have individuals with differing ideas, and the same can also be said for the media. Social media platforms also act as a digital society where people have varying notions of morality, and cancel culture generally arises when these notions aren't upheld by others. As quoted by Plato "Opinion is the medium between knowledge and ignorance"<sup>13</sup>, and this ignorance and intolerance is what often drives hatred and opposition, creating the illusion of activism into the minds of the public. The famous Letter on Justice and Open Debate (2020) featured in Harper's Magazine highlighted how resistance against certain individuals and institutions shouldn't turn into its own brand of coercion. It detailed the rise of the coercive nature in the media and the spike in radicalization over differing opinions.<sup>14</sup> This system puts a lot of careers at stake—journalist bashed, actors defamed, writers neglected; the range for expression is drastically narrowed, and a society running with such a dominating system runs the risks of sacrificing too many valuable and revolutionary voices just due to the mere lack of a robust counter-arguments. It isn't entirely a matter of just professional lives, cancel culture extends way beyond that, largely impacting people's participation in the public discourse due to a negative outlook towards social media.

## V. Life Under the Digital Guillotine

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<sup>13</sup> Plato, *The Republic* bk. VI, 477, in *The Dialogues of Plato* 521 (Benjamin Jowett trans., 3d ed. 1892).

<sup>14</sup> harpers, <https://harpers.org/a-letter-on-justice-and-open-debate/>, (last visited Mar. 6, 2024).

When analyzed through a legal perspective, this perspective raises severe concerns about due process, morality and the freedom of speech and expression. The individuals targeted as an outcome of this culture aren't given much space for explanation, rather are ejected from the public eyes as soon as possible. Often this culture treats conjecture as a fact, which can prove to be a grave harm if the allegations turn out to be false. The concept of due process, which is a fundamental principle in legal systems all over the world, is often entirely neglected, for it proves to be a hindrance in the immediacy to cancel individuals. The public here supposedly takes on the roles of courts to decide who they deem as worthy of being protected in the public sphere and not, resulting in extrajudicial punishment, which online users have no authority to sanction. Legal systems around the globe have been designed to uphold the notions of fairness and justice, yet the court of public opinion is driven by an entirely different narrative, one that overshadows objective truth and rational judgement by emotional responses and a mob mentality.

A very interesting approach to this could be through the concept of tort liability. A civil tort mechanism fundamentally aims to deter offensive and wrong nature, while fairly compensating the victim with a reasonable compensation. Similarly, the cancel culture also works on such lines, so it is only correct to hold the 'cancellers' accountable for their misconduct online which leads to mental grievance and reputational harm to the person being cancelled.<sup>15</sup> By publicizing misleading and harmful information against another, thereby causing agony, the perpetrators should be liable to pay a decent compensation to the individual bearing all the harm, considering such conduct online can also prove to be detrimental to someone's career and reputation in the longer run.

Beyond the legal implications, cancel culture and mob mentality raise key questions about the ethics underpinning it. Yes, accountability amongst influential figures is a desirable trait, but it should be balanced with fairness, reason and the possibility of redemption, something that is not given much importance in today's age. The philosopher Hannah Arendt once remarked, "The ability to forgive is an expression of human freedom and essential for human relationships" and mere punishment as a goal, in turn creates more havoc than necessary, which further leaves little to no room for personal growth and development.

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<sup>15</sup> Carr, N.K. (2020) 'How Can We End #CancelCulture—Tort Liability or Thumper's Rule?', Catholic University Journal of Law and Technology, 28(2), pp. 133–135.A

One key factor to consider in this debate is the tension between free speech and hate speech. On one hand, freedom of speech forms the very basis of a democratic society, allowing citizens to engage in wider discourses and seek change and reform. But, on the other hand, with the expansion of technology hate speech is often masked as a person exercising their right to expression on numerous occasions. The cancel culture is heavily reliant on the need to deplatform or punish individuals for perceived hate speech. This calls for the need for uplifting the ideals of free speech, while weighing them against the greater need to protect individuals from unjust hate and malicious threats.

## **VI. CONCLUSION:**

In the digital age, where the public opinion wields substantial power, the spirit of cancel culture brings us at a crossroad where it is imperative to choose which path we must proceed on—the path of truth and good judgment, or the path of disproportionate punishment and suppression of diverse viewpoints. It therefore becomes essential to have a more nuanced approach when assessing controversial viewpoints, where it is important to analyze the background and context of any statement before jumping to immediate conclusions.

Additionally, it also becomes important for companies and platforms to ensure transparent content moderation policies, which emphasize free speech while also applying measures to curb hate speech and harassment. Ultimately, it also boils down to each individual and how they perceive the world around them. With the extreme amount hate in the world it becomes crucial for us to inculcate forgiving values, that foster a community for growth and redemption for other individuals. Drawing boundaries in the case of public discourses would also prove to be of great value as a binary viewpoint to judge any society or individual proves to be a of a greater harm than good. It is therefore time that we cancel the cancel culture and push towards creating a society built on positive values—one that values diverging opinions, is empathetic and forgiving, because the last thing we'd want in any society is for technology to cause more chaos and uncertainty than ease.