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## Democratic Formation as the Response to a Growing Cancel Culture

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### ABSTRACT

There is an ongoing discussion among scholars as well as among the public about whether liberal democracies should have laws against hate speech. Proponents of hate speech laws argue that these laws play a crucial part in liberal democracies since they help ensure the protection of basic rights, such as every citizen being treated equally with respect. Opponents of hate speech laws, on the other hand, argue that hate speech laws are a threat to freedom of (political) speech and that, hence, these laws are illegitimate in a liberal democracy. I argue that hate speech laws can actually work *both* as a protection for minority groups, while at the same time *also* as a defence against unreasonable demands for restrictions on (political) speech. Further, I argue that laws against hate speech are an expression of democratic formation, meaning that the respect for, and protection of, minorities should be an inherent part of an enlightened and educated modern democracy. I present *an argument from democratic formation*, which builds on foundational pillars of democracy such as dignity, civility, equality, and critical thinking. I hold that phenomena like cancel culture and ‘extreme political correctness’ are a result of a tendency towards the decline of democratic formation in modern society in general – something, which springs from, inter alia, decades of a growing focus on technological development, while at the same time a decreasing focus on critical thinking in the educational system.

**Keywords:** democratic formation, liberal democracy, freedom of speech, hate speech, cancel culture, democratic principles

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## 1. Introduction

One of the most important components needed in order to uphold liberal democracy is an educational system that focuses on the democratic formation of its pupils and students, and the development of critical thinking is probably the most vital part of democratic formation. It is, indeed, what a liberal democracy – and hence self-governance – is built on, for where citizens are not able to criticize political decision-making and the passing of laws, there is, really, no self-governance. The possibility to criticize political decision making is not merely based on the lawfulness and right circumstances for this, but just as much – or even more – on the personal skills needed in order to be able to both think and express oneself critically. These skills do not develop independently and must therefore be an inherent part of the aim of our educational system.

There are, of course, other terms such as ‘democratic education’ and ‘civic education’ that cover some of these same aspects. However, I have chosen to use the term ‘democratic formation’ as it has a broader meaning than the other two – and as it explicitly focuses on other facets than merely the educational. Education is, indeed, also a broad term which not solely refers to the educational system, but also to a more general and overall ‘societal education’. Nevertheless, the connotations of the term ‘education’ are more specific than the ones of the term ‘formation’, and thus, the term formation opens up to something broader and less distinct than the term ‘education’.

In this paper, I argue that democratic formation, i.e. critical thinking and civility, strengthens democracy on two levels: on the one hand, it works as a defence against undemocratic tendencies such as cancel culture and demands for restrictions on speech, while on the other hand, it strengthens tolerance and respect for one’s fellow human beings, including people who are at risk of being disadvantaged, such as people belonging to minority groups.

While self-governance can be seen as the foundation of liberal democracy, critical thinking can be seen as the foundation of self-governance.

One recurring expression among democracy scholars, e.g. Meiklejohn (1960) and Habermas (1986) is *mutual recognition*, which they point to as being a necessary component in any democratic society. Habermas points to “structures of mutual recognition” in political discourse and emphasizes that mutual recognition is the very foundation for democratic rights (Heyman, 2008, 178).

Mutual recognition and mutual respect among citizens is something which is also born out of democratic formation. Respect and recognition are values which transcend religious and national backgrounds, political opinions, societal status, etc., and in liberal democracies, these values must, first and foremost, be learnt in the educational system, both as ideas, but just as importantly, as practical implementations of actions which make them tangible experiences.

In the first part of the paper, I present *an argument from democratic formation* and explain its position in the free speech discussion. In the second part, I discuss the contemporary challenges of cancel culture and the growing demands for restrictions on speech which have been on the rise during the last couple of decades. The third part is the conclusion.

## **2. The Argument from the Democratic Foundation**

There are a number of strong arguments in the free speech debate which defend laws against hate speech. Jeremy Waldron (2014) argues that laws against hate speech protect people’s right to be treated equally with respect and dignity as members of society. Stephen Heyman (2008) has developed the *liberal humanist approach* which recognizes human beings’ dignity as inviolable, and thus, sees protection against hate speech as a crucial component of any liberal democracy. Dignity is also mentioned in the preamble of the International Covenant on Civil and Political Rights:

[...] in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person [...]<sup>1</sup>.

According to hate speech laws in European (and other) countries, hate speech is, in general, defined as *coarsely degrading and generalizing speech which targets members of minorities, based on specific external characteristics such as religion, skin colour, ethnicity, or sexual orientation*. The laws vary a little in their formulations among the different countries, but the basic lines are in general the same.<sup>2</sup>

The argument from democratic formation builds on existing arguments proposing for laws against hate speech, but unifies aspects of these arguments, such as dignity, equality and the right to be met with respect with other interrelational and societal factors such as civility and tolerance. Hence, this argument covers a broader spectrum than (most of) the older arguments that defend laws against hate speech, e.g. Waldron's argument (2014) about the right to be treated equally with respect.

The argument from democratic formation is predominantly born out of the challenges that a cancel culture, and growing demands for restrictions on speech at universities and other institutions, have presented.

Cancel culture has been on the rise during the last couple of decades. It started in the US but later also expanded to other countries. Cancel culture covers the phenomenon where one or several (often prominent) people have been invited to a University or another institution to give a talk, but then become 'cancelled' shortly before they are supposed to come. This is usually

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<sup>1</sup>Retrieved February 01 2023: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>2</sup> See e.g. Retrieved May 08 2023: <https://futurefreespeech.com/global-handbook-on-hate-speech-laws/>

due to someone, often a student, discovering that the person invited has expressed a controversial opinion, e.g. on his/her private social media platforms.<sup>3</sup> The consequences of the ‘cancellation’ often reach much further than the one, specific cancellation and can sometimes shut the respective victims of cancel culture out of other social settings and events for months or years. A thorough report (Kaufmann 2021), which concludes that cancel culture is a growing phenomenon both in the US and in Europe (only with a delay), was published in 2021.

The argument from democratic formation is based on the premise that in order to maintain liberal democracy and the principles that uphold it, citizens of any democratic society must be democratically formed – first and foremost through the educational system, but also more generally in society. The responsibility that the educational system carries is, indeed, reflected in educational laws and curricula.

Democratic formation covers the ‘personal integration’ of democratic principles and ideas – most importantly of critical thinking – but also of tolerance and acceptance of others, both in terms of their identity (national and religious origin, skin colour, sexual orientation, etc.) as well as in terms of their views and perspectives on general (political) matters. It is the integration of a civilized orientation, i.e., an orientation which reflects respect for and recognition of one’s fellow citizens. The integration of these principles and values is what maintains a liberal democracy in balance, while the absence of them will lead to a decline of democracy. One could also say that democratic formation is a premise for reaching a society dominated by public reason.<sup>4</sup>

I hold that in order to maintain a balanced democracy, where the above-mentioned principles and values are in place, laws against hate speech must

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<sup>3</sup> It could also be that someone (e.g. a student) finds an old quotation from this person, which they find problematic. The quotation could be years – even decades – old. There are, of course, a number of other circumstances that can lead to a person being ‘cancelled’.

<sup>4</sup> Here understood as a broad term maintaining that moral and political rules in society can only be justified by taking into account all the citizens of a given society. Habermas (1986) is one of several contemporary scholars who is advocating this.

be implemented since accepting hate speech is also accepting the violation of core democratic principles. From the principle of respect for, and recognition of, one's fellow citizens follows the responsibility to protect the members of minority groups who are in danger of being victims of hateful and degrading speech. What characterizes the argument from democratic formation is its standpoint, which rejects cancel culture and (unreasonable) demands for restrictions on speech in, e.g., universities, *while at the same time*, defending laws against hate speech.

One crucial component in relation to having hate speech laws in place is the symbolic message that it manifests, namely that hate speech is unacceptable, and that consequences will follow when hate speech is expressed. This is an important point, because some scholars, e.g., Eric Heinze (2016), stress that in countries with implemented hate speech laws, both hate speech and hate crimes are widely spread, and thus, the laws do not make a significant difference. I hold that the above mentioned symbolic purpose of the law is of utter importance, since it first expresses the non-tolerance of any violation of peoples' dignity, and second, it *does* follow up with tangible consequences, when people are convicted of hate speech – and hence, the victims can regain their dignity and achieve a form of vindication.

While it is common to hear critique of cancel culture and 'extreme political correctness' from the same scholars who oppose hate speech legislation, the standpoint of the argument from democratic formation presents a more nuanced perspective in the free speech debate. The argument holds that:

- 1) When democratic principles and values, first and foremost critical thinking, are an integrated part of one's person, this leads to the rejection of cancel culture as well as of the growing demands for restrictions on speech (i.e., speech which would fall outside what is considered hate speech according to functioning hate speech laws). At its core, critical thinking, and other democratic principles such as tolerance for differing political opinions, do not align with the demands to limit people's political (and perhaps controversial) expressions. Restricting people's views on political or societal

matters is contradictory to the very idea of critical thinking. First, critical thinking is, by nature, what will often be interpreted as controversial thinking (and, hence, what is in danger of being restricted). Second, the premise for one's own freedom of critical thinking is, indeed, that others enjoy the same. Further, critical thinking and freedom of expression is a premise for self-governance, which, in turn, is what liberal democracy is founded on. This leads to the standpoint that if the core democratic principles are integrated as a result of democratic formation, one will, indeed, oppose cancel culture and the demands for restrictions on (controversial) political speech.

2) On the other hand, these same democratic principles will also lead to the standpoint that hate speech, i.e., coarse degrading and generalizing speech targeted towards members of (minority) groups, is unacceptable in liberal democracy, and hence, it should be prohibited by law. Just as it is unacceptable to limit people's freedom to express (controversial) political opinions, it is unacceptable to tolerate hate speech in liberal democracy. As much as the freedom to express one's own political views is a premise for liberal democracy, respect for every citizen, i.e., *not* de-humanizing and coarsely degrading members of minority groups, is also a premise for liberal democracy.

The argument from democratic formation hence argues that one needs to strike a balance in the free speech discussion – a balance between tolerating controversial political expressions while at the same time *not* tolerating generalizing, dehumanizing, and coarsely degrading speech.

Further, the argument points to a link between democratic formation, the passing of hate speech laws, and the dismissal of cancel culture. The passing of hate speech laws are of crucial importance in this connection since they are what creates the tangible balance between the defence of freedom of political speech (when one can point to the limits that hate speech laws set, one can dismiss the demands for setting limits on 'controversial' opinions, i.e., one can dismiss cancel culture) and the respect for human beings' dignity (one does not tolerate hate speech against minorities). If democratic formation

does *not* lead to the passing of hate speech laws, it might, with time, bend towards compromising the rights of minorities in the name of freedom of political speech. On the other hand, a society with *democratically uneducated citizens* might bend towards compromising freedom of political speech in the name of minority rights.

I hold that the US society reflects both of these tendencies. First, by being a liberal democracy which takes pride in its democratic values such as freedom of speech, and second, by having an educational system which has declined in democratic formation during the last couple of decades, as a result of the ever dominating focus on technological development. Hence, there is a paradox in the American society which is at the very root of the development of cancel culture: the American view of their own identity is that of being ‘true’ liberal democrats, ever upholding democratic values, whilst the reality is that democratic formation is declining and, hence, that they are faced with cancel culture and ‘extreme political correctness’.

### 3. Hate Speech Laws and Political Expressions

Hate speech laws have been passed in all Western countries, apart from the US (Sumner, 2015). Most of these hate speech laws were passed during or shortly after World War II, as a reaction to the degrading and humiliating speech, which Jews were victims of. Later, the laws have developed to also include other minority groups who have been, or are, the targets of hate speech.

To give a couple of examples, the ‘British Public Order Act 1986’ prohibits (by its part three) “expressions of racial hatred, which is defined as hatred against a group of persons by reason of the group’s colour, race, nationality (including citizenship) or ethnic or national origins”.<sup>5</sup>

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<sup>5</sup> This is the first – and most foundational – part of the Act. For further details, see Retrieved December 21, 2022, the official UK legislation webpage: <https://www.legislation.gov.uk/ukpga/1986/64#:~:text=An%20Act%20to%20abolish%20the,provide%20for%20the%20exclusion%20of>

In Danish Criminal Law, §266b is usually referred to as ‘The Racist Law’ (‘Racismeloven’):

Those who publicly or intentionally spread a message through a verbal or other kind of expression by which a group of people are threatened, ridiculed, or degraded because of their race, colour of skin, national or ethnical origin, religion, or sexual orientation, will be punished with a fine or imprisonment of up to two years.<sup>6</sup>

By comparison, the abovementioned British Act can give up to seven years of prison. (Most hate speech laws, however, have a sentence of up to somewhere between two and five years.)

As seen in these two examples, hate speech laws protect groups in general which means that the targeted groups do not necessarily need to represent minorities. The best example of this is probably hate speech targeted against women. However, in most cases hate speech *is* targeted against minority groups (Waldron 2014), even though the law also does protect majority groups. The principle of ‘equality before the law’ must, obviously, be upheld, also in cases of hate speech.

Hate speech laws are narrowly defined and are, really, a protection against what one used to call *group defamation* or *group libel* (Waldron, 2014). The laws protect – as do defamation laws on an individual basis – people’s rights to dignity, autonomy, and a reputation. The difference is that where defamation laws protect specific named individuals, hate speech laws protect unnamed individuals, who belong to specific minority groups.

The narrow definitions of hate speech, according to functioning hate speech laws<sup>7</sup>, do not, indeed, include (most of) the forms of speech which are demanded censored at many universities and other institutions these days. This is one of the strengths of having formulated hate speech laws, which is

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<sup>6</sup>‘The Danish Criminal Law’, §266b. My translation. Retrieved December 21, 2022: <https://danskelove.dk/straffeloven/266b>

<sup>7</sup> ‘Functioning’ here simply means hate speech laws that are actively – and regularly – enforced in the countries that have implemented them.

rarely spoken about, namely that hate speech laws can work *both* as a protection of members of minority groups who are at risk of being targets of dehumanizing and degrading speech, while *at the same time*, they can work as a protection against unreasonable demands for prohibiting certain political expressions. When one has functioning hate speech laws to refer to, it is easier to reject cancel culture and the demands for limiting certain political (and perhaps controversial) speech. The balance between these two aspects of freedom of speech can also be regarded as a reflection of the necessary balance of principles in liberal democracy – a balance which seems to be missing in much of the contemporary discussion about democratic principles and ideas.

There is a tendency among scholars, as well as among the public, to *either* defend complete freedom of speech and thus argue against hate speech legislation *or* to defend hate speech legislation, including the defending of cancel culture and censorship of certain political speech at universities. I argue that democratic formation leads to a more balancing perspective which defends critical thinking while at the same time also defending members of targeted minority groups against hate speech. If one turns to older works, one finds related ideas, although differently perceived and expressed, of course, since ‘minority rights’ and similar contemporary concepts were non-existent at that time. In *A Letter Concerning Toleration*, John Locke expresses both: “The *Sum* at all we drive at is, *That every Man may enjoy the same Rights that are granted to others.*” (1983, 53), as well as:

It is not the Diversity of Opinions, (which cannot be avoided) but the refusal of Toleration to those that are of different Opinions, (which might have been granted) that have produced all the Bustles and Wars, that have been in the Christian World, upon account of Religion. (1983, 55)

As seen in these quotations, Locke mentions both the *equality of rights*: that all people shall have the same rights, as well as the *toleration of differing*

*opinions*. Locke's expressions do, indeed, reflect the foundation on which the argument from democratic formation is built. One sees some of the same ideas in Mill's *On Liberty* (1859), but unfortunately these thoughts (both Mill's and Locke's) have been simplified and turned into rigid forms of liberalism in most contemporary interpretations.

Political expression is founded on the ability to think critically. Without this ability, one will either reproduce other people's political opinions or not express any opinion at all. Thus, political expression is one of the key elements that democracy is built on – or as Alexander Meiklejohn (2000, 91) put it: “The unabridged freedom of public discussion is the rock on which our government stands.”

*The argument from political speech*, which is probably the most widespread argument among scholars who oppose laws against hate speech, generally covers what Meiklejohn expresses in this quotation. The argument from political speech is usually seen as standing in opposition to arguments that defend laws against hate speech such as Jeremy Waldron's (2014) argument about the right to be treated equally with respect as a citizen, and Stephen Heyman's (2008) *liberal humanist approach* which emphasizes people's right to being protected against the violation of their dignity. The argument from democratic formation seeks to combine these apparently different approaches.

The point is that functioning hate speech laws in Europe and other countries overall protect (minority) groups against hate speech without compromising freedom of political expression.<sup>8</sup> There are, of course, incidents where hate speech and political speech do ‘overlap’, and in these cases, the outcome depends on varying circumstances.<sup>9</sup> However, the

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<sup>8</sup> There are, however, examples of abuse of hate speech laws in some countries. What characterizes these countries is that they are typically non-European or European countries with weak democracies or ‘democracies’ with authoritarian governments, e.g., Turkey. They will use their hate speech law (article 216 of the Turkish penal code) to shut down voices who criticize the regime or the country's religion (Islam).

<sup>9</sup> These circumstances may be about how many people are affected by the speech, how important the political message is, etc. In the end, it will usually be up to the judge of the

important point is that the hate speech laws are, as earlier mentioned, narrowly formulated – something which ensures that they are not easily misused or overly extended, e.g., by politicians with certain political agendas. In cases where hate speech and political speech do overlap, and where the outcome is in favour of enforcing laws against hate speech, one can argue that the political message most often could have been formulated in ways which would not at the same time have expressed hate speech. It is important to emphasize, however, that sometimes the outcome should be in favour of the political speech, e.g. when the political message is of great societal importance.

There have been several complicated cases in different European courts regarding the overlap of hate speech and political speech, and sometimes the cases go all the way to the European Court of Human Rights. The reason that these cases find their way there is, indeed, a reflection of the dilemma whether there *can be* a balanced judgment between the right to freedom of speech, on the one hand, and the right to dignity and equality, on the other hand. One well known example of such a case is the *Perinçek v Switzerland* case<sup>10</sup>. Perinçek was first sentenced by the Criminal Court in Switzerland for having violated the law against hate speech, but later the European Court of Human Rights decided on the contrary, based on article 10 ECHR: the right to freedom of expression.<sup>11</sup>

Some contemporary free speech scholars, e.g., Erica Howard (2019), argue against hate speech laws, but at the same time, do *not* argue for absolute freedom of speech. Howard suggests that restrictions on speech are acceptable only in cases of incitement to violence (or incitement to hatred

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respective case to decide whether the speech is to be considered as hate speech (and the person who expressed the speech thus be punished) or as political (and thus legal) speech.

<sup>10</sup> See Retrieved May 08 2023: Judgment by the European Court of Human Rights (Grand Chamber), *Perinçek v. Switzerland*, Application no. 27510/08 of 15 October 2015, <http://hudoc.echr.coe.int/eng?i=001-158235>

<sup>11</sup> See also Retrieved February 02 2023:

<https://globalfreedomofexpression.columbia.edu/cases/ecthr-perincek-v-switzerland-no-2751008-2013/>

which may lead to violence), on the one hand, or in cases of ‘religious hatred’, on the other hand. The problem with Howard’s argumentation is that hate speech which is neither expressed nor interpreted as incitement to violence in reality also does lead to a growing number of hate crimes – something which has been proven through several independent surveys.<sup>12</sup>

The main idea is that when one has laws against hate speech, one protects members of (minority) groups against defamatory, degrading, and dehumanizing speech – but one does also have the authority to reject censorship of speech which falls outside of these laws. When one does *not* have any laws against hate speech, however, as the case is in the US, it becomes more difficult – and perhaps less legitimate – not to accept the demands for censorship on certain forms of speech, coming from members of targeted minority groups. And the consequences of these circumstances are, as we have witnessed, cancel culture and ever growing demands for censorship on political speech, which clearly falls outside of what European hate speech laws prohibit.

The fact that minorities have not had a law to protect them against hate speech has more or less forced them to demand to be protected against discriminatory, defamatory, and degrading speech at their educational institutions, workplaces, etc. The problem is that these demands have gone too far and have therefore turned into a serious threat to freedom of political expression.

Implemented hate speech laws in liberal democracy are a sign of societies that take seriously the democratic principles of equality and mutual respect. As Heyman (2008, 183) says:

[...] public hate speech violates their (the targets’) rights of citizenship as well as the basic principles that should govern democratic debate, which depends on mutual respect among free and

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<sup>12</sup> Results from a number of studies have shown a causality between hate speech (without the expression of ‘incitement to crime’) and hate crimes, see for ex: Cardiff University (2019) and Eggebø, H. & Stubberud, E. (2016).

equal citizens. In these ways, both private and public hate speech violate the most basic right of all, the right to recognition as a human being.

If one does not recognize one's fellow citizens as human beings through showing them basic recognition and respect, one has simply opted out of democratic debate. How can one call something a debate or a discussion (something which must build on two or more people's exchange of expressions), if one does not have any rules to follow, but is of the opinion that one should be allowed to utter coarsely degrading and defamatory expressions about one's discussion partner/opponent? The very first rule in order to engage in democratic discussion is necessarily that all interlocutors show each other basic respect and mutual recognition. Heyman (2008, 178) also states: "[...] hate speech transgresses the most basic ground rules of public discourse." What is perhaps the most interesting of Heyman's views (2008, 179) is his reflections on freedom of political speech as being a *relational matter* and a *relational right*. Heyman (2008, 179) sees freedom of political speech (according to the First Amendment to the Constitution of the United States of America) as "a right to interact with others as free and equal citizens who are engaged in discourse on matters of common concern."

Seeing freedom of political speech as a relational right rather than an individual right forces the parts engaged in a political discussion to cooperatively take responsibility for the process of the discussion, i.e., to take responsibility for respecting the democratic principles of mutual respect and recognition for each other. Heyman (2008, 178) also highlights Habermas' idea of political rights as being forms of "communicative freedom", a term, which Habermas uses in relation to the aim for mutual understanding through reasoned discourse.

Seen from this perspective, hate speech laws are no threat to political speech – or as Heyman (2008, 179) puts it: "Thus, the duty to refrain from speech that denies recognition to others is not one that is imposed on public discourse from the outside, but one that is inherent in the concept of political

speech.” Heyman points to the concept of political speech as speech free from disrespect or disregard of one’s fellow citizens and interlocutors. Further Heyman (2008, 179) argues that: “[...] although some forms of political speech should be protected despite their impact on rights, this is not true of hate speech because it falls outside of a proper understanding of political debate”.

Based on the standpoints of Heyman and Habermas as well as of Waldron, I argue that hate speech laws are not a threat to political speech and democratic rights – quite the contrary.

The argument from democratic formation reflects very well the thoughts of Habermas and Heyman on political speech. Seeing political speech from Habermas’ and Heyman’s point of view, contrary to the view among scholars who oppose laws against hate speech and defend absolute freedom of speech, e.g., Ronald Dworkin (2006) and Eric Barendt (2005), opens up a more balanced approach to the freedom of speech debate, which is the main aim of the argument from democratic formation. This, I hold, is the most democratic solution to the foundational challenges in the freedom of speech debate. It is a solution which protects citizens from being victims of hate speech, while at the same time also protects citizens from being ‘cancelled’ due to their political opinions.

#### **4. A Growing Cancel Culture and Demands for Censorship on Political Speech**

I argue that cancel culture is a reflection of a decline in democratic formation. People who defend cancel culture believe that they are in their right to prohibit certain political views from being publicly expressed and, by that, perhaps from gaining influence. Sometimes the speech that cancel culture actively censors might have fallen under the definition of hate speech, according to (European) hate speech laws, and in these cases, one might support the idea of prohibiting someone to express themselves in, let’s say a US university

(since the US does not have laws against hate speech). But the important point is that in most cases, the ‘cancelled speech’ would *not* be defined as hate speech according to functioning hate speech laws – it would simply be defined as (controversial) political speech.

There are, of course, many examples of this in the media. One example from 2022 is the case about Michael Stoil who was a human rights professor at George Washington University. Stoil was fired as a result of students’ demands after they found out (from Stoil himself) that he had used the N-word in a conversation with the vice provost, in order to explain that the N-word was inappropriate. The irony is that Stoil was fired for a word he used while arguing against racism. It is also important to stress that Stoil never used the N-word in class.<sup>13</sup>

Defenders of cancel culture take on a position which denies certain political speech space in the public discourse. This is a radical position which, at least to some extent, is related to totalitarianism: it only accepts certain political views to be expressed publicly, and the views which are in opposition to the accepted ones are being censored.

One can ask oneself why cancel culture has not been dealt with in a more constructive way, i.e., why one has not been able to stop the cancelling and the censorship of specific political expressions which have been going on at several universities and other institutions during the last years? One reason is no doubt the lack of hate speech laws in the US. As earlier mentioned, cancel culture started in the US, but has later (as most tendencies do), also spread to Europe. This is very well documented in the previously mentioned report (Kaufmann 2021). If the US had laws which protected minorities against hate speech (and these laws were formulated as, or close to, European hate speech laws), they could more easily have dismissed any demands for censorship of

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<sup>13</sup> See Retrieved November 08 2022 from: <https://www.dailymail.co.uk/news/article-11272437/George-Washington-University-professor-canceled-enraging-class-n-word-discussion.html>.

speech which clearly would not fall under the definition of hate speech according to the functioning law.

I argue that cancel culture, hence, is a consequence which comes in the form of a backlash from not having passed hate speech laws in the US. Further, I argue that cancel culture is also a consequence of a decline in democratic formation in society more generally. This decline in democratic formation is, on the one hand, reflected by a non-critical approach to censoring certain political expressions and views which takes place at many universities and other institutions. On the other hand, it is reflected by the lack of respect for and the lack of taking the responsibility for members of minority groups who are targets of hate speech.

Many defenders of cancel culture do, indeed, see themselves as defenders of democracy. When they demand censorship of certain political views and deny certain public figures the right to, say, give talks at universities, they see this as acts which protect minority groups (such as people belonging to the LGBT movement) against hate speech – and thus, they view their acts as democratic: they view them as acts that fulfil the democratic duty to protect minorities and to make sure that the minorities’ voices are not silenced.

One can, certainly, sympathize with the need to protect minorities against ‘real’ hate speech, meaning speech that would be defined as hate speech according to functioning (European) hate speech legislation. One can also claim that it is contradictory to defend European hate speech legislation<sup>14</sup> while rejecting cancel culture, in cases where cancel culture is dealing with the exact same forms of speech that the European hate speech laws prohibit. However, trying to defend some parts of cancel culture, while rejecting others (namely those that ‘cancel’ speech which does *not* fall under the label of hate

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<sup>14</sup> The reference to European hate speech legislation is, of course, general, but the different laws against hate speech in European countries all represent the same basic message of prohibiting coarsely degrading speech which generalizes a group based on external characteristics, such as skin colour, religion, nationality, sexual orientation etc. For a general overview, see e.g. Retrieved May 08 2023: <https://futurefreespeech.com/global-handbook-on-hate-speech-laws/>

speech according to European hate speech laws) is, simply, an almost impossible task.

When one does not have a law – and thereby a judge – to set the limits for and make the judgments of possible hate speech, one ends up with disputes and clashes that are hard to come to any agreement on. It is also important to stress that this is, in reality, exactly what has taken place in the US: Universities and other institutions have sympathized with minorities which have been the victims of hate speech. These respective universities and institutions have thus supported the targeted minorities in (some of) their demands for censorship on speech and ‘cancellations’ of speakers.<sup>15</sup> The problem is that the good intentions from the universities and institutions have then, unintentionally, led to the development of unreasonable demands for censorship, and a cancel culture that violates basic democratic principles.

The most serious problem is that there are no hate speech laws in the US to point to and that the defenders of cancel culture have gone too far. They are following their own agenda and demanding censorship of political opinions which they simply do not agree with. This is, indeed, a problematic tendency, and as earlier mentioned, a tendency which has some totalitarian leanings. The other side of the coin in the free speech debate in the US is the view that there should be absolute freedom of speech and that cancel culture is a reflection of what hate speech laws stand for. But – as previously emphasized – this is *not* the case since the speech that tends to be censored through cancel culture mostly does not fit under the definition of hate speech according to implemented hate speech laws elsewhere.

The main point in this discussion is, thus, that both defenders of cancel culture and defenders of absolute freedom of speech are compromising core democratic principles in their pursuit of either protecting certain political perspectives and agendas that they think they are in their right to do through

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<sup>15</sup> Another reason for the support from the universities may be their dependency on a certain number of students and student fees and, hence, the universities might (in some cases), feel ‘forced’ to support the demands for a cancel culture and restrictions on speech.

censoring specific political views (from cancel culture's point of view), *or* protecting all political speech and by that, not accepting limits on hate speech based on the concern that it may compromise freedom of political speech, e.g., through a so-called 'chilling effect' (from the point of view of absolute freedom of speech).<sup>16</sup>

Hence, both of these approaches compromise democratic rights in ways that a more balanced approach does not. If we base our approach on the view that political speech is relational, rather than individual, and that its premises are mutual recognition and mutual respect among the interlocutors, we reach the aim of protecting *both* freedom of political speech as well as citizens from being victims of hate speech through *so-called* 'political speech'. First, the relational approach to political speech requires people to express themselves respectfully, and hence protects members of minorities from being targets of hate speech in political debates, and second, this approach also does not accept cancel culture, since the mutual respect and mutual recognition demanded in public democratic discourse implicitly implies that all citizens are entitled to express their political opinions.

The earlier mentioned report (Kaufmann 2021) points to a number of concerns in relation to academic freedom and growing demands for censorship on political speech at universities. One of the report's main conclusions is that there is a prioritization of progressivism over liberalism at universities – performed through the support of 'political correctness' (Kaufmann, 2021, 9).

The question to pose, then, is *why* this prioritization is taking place. And the response to this, I argue, is what I have already touched upon in this paper, namely that the lack of hate speech legislation in the US has led to minorities taking matters into their own hands by demanding restrictions on

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<sup>16</sup> "Chilling effect" is a term which explains a reaction that hate speech laws can create among the public: some people will hold back their (legal) political opinions – or practice 'self-censorship' – because they fear that their expressions might be illegal and that they, thus, can be prosecuted (and perhaps convicted). Hate speech laws can, hence, according to this view, 'chill' public discourse.

discriminating, degrading and insulting speech. An appropriate following question then is why this is taking place now – and has done so during the last couple of decades – and not earlier? The response to this is, indeed, complex. I have in a previous article (Gæini, 2022, 17) elaborated on these circumstances:

One reason could be that minority rights have been on the rise more or less all over the world in recent years and that this also leads to stronger demands from minority groups in relation to restrictions on hate speech. [...] Another reason could be the rise of the internet, which exposes minorities much more to hate speech than before.

The main cause for the demands, however, probably remains the lack of hate speech legislation in the US. And the similar tendencies that are also seen in European countries, only with a delay (Kaufmann, 2021), seem to simply reflect what happens with most American tendencies: they find their way to Europe – and other countries – after a time.

The delay of a cancel culture which is seen in e.g., Canada and Britain reflects how American tendencies influence other countries, even though these countries are not facing the same foundational challenges which have led to a cancel culture (in the US) in the first place. This means that although a country like Britain does have laws against hate speech, the country is still having to deal with a growing cancel culture. The dimensions of it aren't as far-reaching as in the US, however, and as Kaufmann's report shows us, the cancel culture in Britain (as in Canada) is delayed with a period of about 5 years. The delay in itself clearly indicates that these countries have been influenced by the tendencies in the US.

An obvious question to pose is, hence, whether the abovementioned component undermines the point that hate speech laws can function as a protection against cancel culture. I argue that it does not. First, the spreading of cancel culture is much less expansive in Britain and Canada than it is in the US, and second, the reason for the growing cancel culture in these

countries (contrary to in the US) is not based on a lack of protection of minorities. Thus, the challenge in these countries, as opposed to in the US, is not that minorities aren't protected against hate speech. Rather, the challenge is not to accept that the tendencies coming from the US, i.e. cancel culture, gain any serious influence on the practice of freedom of speech (e.g. at universities and on campuses) in these countries. It is also important to notify that this has, indeed, already been done to a considerable degree, such as by passing a 'Higher Education (Freedom of speech) Bill' on May 12, 2021.<sup>17</sup>

The key task of our educational system is reflected in educational laws and curricula. This task is to support pupils and students to develop critical thinking and to encourage them to become active, democratic citizens (who can contribute to a well-functioning democracy). Hence, democratic formation is still at the heart of our educational system, i.e. the educational system in the Western world. At least in theory. The question is whether the focus on critical thinking and democratic principles and rights has, in reality, declined, although it has not been taken out of any educational laws or curricula. During the last couple of decades, there has been tremendous focus on technological development and innovation, and my claim is that this has taken considerable attention from the core educational aim – namely the one of developing critical thinking.

I hold that many of the tendencies that we are witnessing in terms of the weakening of liberal democracy, such as cancel culture and growing demands for censoring certain political speech at universities – but also very specific incidents, such as the infamous “United States Capitol Attack” which took place on January 6, 2020 – are due to this shift which has been taking place in the educational system, as well as in society in general, and which, as a consequence, has weakened the general ability to think critically and to

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<sup>17</sup> For more information, see e.g., Retrieved January 29 2023 from: <https://www.gov.uk/government/news/universities-to-comply-with-free-speech-duties-or-face-sanctions>

understand that core democratic principles must actively be upheld in order to maintain a functioning democracy.

Further, I claim that one of the biggest pitfalls in the change of focus in the educational system (as well as in society in general) is that people lose sight of what the premises for upholding democracy are. These premises are first and foremost the ability to think critically, and by that, to have the skill to argue against governmental decisions (in a civilized way), and second, to understand the imperative importance of democratic principles and rights, such as the right to freedom of (political) speech, the right to equality, the right to safety and privacy, etc. If one does not comprehend these premises, one can easily take democracy for granted, unaware of the fact that one is, really, contributing to its decline by practicing cancel culture and extreme ‘political correctness’.

The difference between hate speech legislation and cancel culture lies in their different approaches to democratic principles and rights. While implemented and functioning hate speech laws, as we know them, are carefully formulated in order to maintain *both* the rights of members of minorities *and* the right to freedom of political speech, cancel culture does not take into account the latter element. In fact, it overrules this right by acting out the idea of “the end justifying the means”. When one compromises people’s right to freedom of speech by censoring and ‘cancelling’ them from public events, based on their political opinions, it is indisputable that one is violating basic democratic principles. Hence, the difference between cancel culture and functioning hate speech laws is significant.

The rationale for not having passed any law against hate speech in the US is their tradition of viewing freedom of political speech as an absolute right which cannot be compromised in any way (Sumner, 2015). The problem with this view on political speech is 1) that it defines all speech – even hate speech – as being political speech, and 2) that it sees political speech as individual speech which does not obligate one to take into account the recognition of and respect for other parts in a political discussion/the public discourse.

If one regards political speech from the points of view of Meiklejohn, Habermas, and Heyman, one liberates the discussion from whether hate speech should be counted as political speech. Their view on political speech is that it “should be understood as discourse between individuals who recognize one another as free and equal persons and members of community” (Heyman, 2008, 178). I hold that the definition of political speech as being relational is the interpretation which mostly takes into account basic democratic principles. If one respects the basic rules of democratic discussion or public discourse one does not express oneself through hate speech. Attacking others with hate speech, in this case, simply means opting out of democratic discussion.

Jeremy Waldron (2014, 100) emphasizes how hate speech implicitly is public and, thereby, affects the public good:

Hate speech and group defamation are actions performed in public, with a public orientation, aimed at undermining public goods. We may or may not be opposed to their regulation, but we need at least to recognize them for what they are.

Waldron’s emphasis on the effect hate speech has in the public is another aspect of the responsibility that Habermas and others point to in relation to political speech. The key aspect is that if one follows democratic principles when taking part in public discourse, one does not cross the line where political speech turns to hate speech. Hence, in one’s approach to and definition of political speech lies the solution to the challenge of *both* protecting freedom of political speech *and* protecting members of minorities against hate speech.

If one looks at the historical views on political speech, the indication is that the interpretation of political speech tended to be less disputed than is the case today. As I have argued elsewhere:

However, there are circumstances that indicate a much more ‘straightforward’ interpretation of political speech in the times of the

Enlightenment and the century after than what the tendency among many scholars is today. First, there are implications that what we nowadays call hate speech was not counted as political speech – or as speech of any value. An example of this is when Mill writes that one should ignore “distasteful citizens” in the third chapter of his essay *On Liberty* (Mill 1859). Mill argues for the utter importance of freedom of speech, but clearly counts “distastefulness” – or what scholars nowadays might call low value speech or hate speech – as speech without any value. Second, the aim was to promote critical thinking and political (as well as personal) freedom, something which was born out of the oppression of citizens – a tendency which had been dominating for the preceding centuries. The foremost aim was to be free to criticize every oppressor and every institution of power. In this context, the protected speech would implicitly be political. Hence, the aim was to criticize authorities – not to mock and degrade minorities (Gaiñi, 2022, 2-13).

When scholars such as Eric Barendt (2005) claim that hate speech fits under the definition of political speech, they are neither acknowledging that responsibility follows with participating in public discourse, nor are they recognizing that the consequences of accepting hate speech as a legitimate part of democratic discussion violates basic democratic principles. There are a number of surveys which have demonstrated that hate speech leads to discrimination of the targeted minority groups, e.g. on the labour market, and – more seriously – that it also leads to hate crimes.<sup>18</sup>

I hold that US scholars who defend absolute freedom of speech – and hence, argue against any form of hate speech laws – must come to the realization that their approach has proven to be counter-productive. This is reflected through the consequences that the lack of hate speech laws in the US has led to, namely, that members of minority groups have felt unprotected and let

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<sup>18</sup> Results from a number of studies have shown a causality between hate speech and hate crimes, see e.g. Williams, Burnap, Javed, Liu and Ozlap (2020) and Eggebø & Stubberud (2016).

down. From that, a cancel culture has developed, which, in turn, has left the US with greater demands for censorship at universities and other institutions than is the case of countries with functioning hate speech laws.

## 5. Conclusions

Cancel culture is a growing phenomenon and a democratic problem, first and foremost in the US (but also in other countries, only with a delay). The defenders of cancel culture are demanding censorship and the ‘cancellation’ of specific political views that they disagree with.

In the US there are no laws against hate speech. I hold that this is one of the reasons that cancel culture has developed since minorities have not felt protected against hateful speech, which in turn has made them (and their supporters) set demands for censoring certain forms of speech at their educational institutions and workplaces. However, this has gone too far, and the speech, which is being censored and cancelled is most often speech which would not fit under the label of hate speech according to functioning (European) hate speech laws.

I argue that the main reason for the development of cancel culture is the decline of a so-called democratic formation, first and foremost in the educational system, but also more generally in society. Democratic formation chiefly covers the ability to think critically and the ability to take on individual responsibility in order to act according to democratic principles, such as showing mutual respect and mutual recognition when engaging in political discourse.

Further, I argue that democratic formation can work *both* as a protection against cancel culture and extreme ‘political correctness’ *and*, at the same time, also work as a protection against hate speech targeted towards minorities, for example by passing hate speech laws. Democratic formation will namely lead to the seeking of a balance in the pursuit of reaching both of these foundational democratic principles: the freedom to express political

opinions (through critical thinking) as well as the protection of minorities from being victims of hate speech.

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