

Language on the Move: “Cancel Culture,” “Critical Race Theory,” and the Digital Public Sphere

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abstract. Scores of people have been talking about “cancel culture” and “Critical Race Theory” recently. However, what people mean when they use the terms varies wildly. This Essay examines the recent drift around the meaning of these terms, analyzing the role that the digital public sphere has played in generating these examples of language on the move. Part I describes the Habermasian concept of the public sphere, its theorized importance to democracy, and the ways in which the digital public sphere has not lived up to the Habermasian ideal. Part II explores how the terms “canceling” and “Critical Race Theory” have rapidly shifted in meaning as political actors have bandied the phrases about in the digital public sphere. Part III cautions that we should not blame the digital nature of the digital public sphere for these shifts in meaning; while technology plays some role in the perversion of “canceling” and “Critical Race Theory,” larger social, cultural, and political processes bear greater responsibility.

introduction

“Cancel culture” has been on the tip of many tongues of late. The folks decrying it have been a true model of diversity – ranging from defendants facing charges for rioting at the Capitol on January 6, 2021¹ to entertainers Chris Rock and Donald Glover (both of whom blamed the “boring” quality of recent entertainment on cancel culture).² “Critical Race Theory” (CRT), meanwhile, has incited just as much conversation.³ A vocal cadre of conservatives has been on the warpath, seeking to expunge CRT from schools, institutions, and, it seems, all

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1. Zoe Tillman, *Alleged Capitol Rioters Are Telling Judges They Shouldn't Be Tried in DC Because of “Cancel Culture,”* BUZZFEED NEWS (May 20, 2021, 5:40 PM ET), <https://www.buzzfeednews.com/article/zoetillman/capitol-riot-cases-dc-venue-cancel-culture> [https://perma.cc/73SQ-E4P3].
 2. Lee Brown, *Chris Rock Rips Cancel Culture for Rise in “Boring” Entertainment,* N.Y. POST (May 20, 2021, 12:20 PM), <https://nypost.com/2021/05/20/chris-rock-rips-cancel-culture-for-rise-in-boring-entertainment> [https://perma.cc/2DZ6-S9GU].
 3. See, e.g., Jeremy Barr, *Critical Race Theory Is the Hottest Topic on Fox News. And It's Only Getting Hotter,* WASH. POST (June 24, 2021), <https://www.washingtonpost.com/media/2021/06/24/critical-race-theory-fox-news> [https://perma.cc/B9AN-J62K]; Barbara Sprunt, *The Brewing Political Battle over Critical Race Theory,* NPR (June 29, 2021), <https://www.npr.org/2021/06/02/1001055828/the-brewing-political-battle-over-critical-race-theory> [https://perma.cc/JJ52-BYV7].

of public life.⁴ Those behind both movements claim that cancel culture and CRT are corrupting public discourse – the former by intimidating speakers into silence, the latter by teaching falsehoods about the United States’s racial past and present. However, what people mean when they use the terms “cancel culture” and “Critical Race Theory” varies wildly. If public discourse about the terms has deteriorated, it may be attributable to discrepancies in their usage: people are talking past each other. This Essay examines the recent drift around the meaning of these terms, analyzing the role that the digital public sphere has played in generating these examples of language on the move.

The Essay proceeds in three Parts. Part I describes the Habermasian concept of the public sphere, its theorized importance to democracy, and how the digital public sphere has not lived up to the Habermasian ideal. Part II explores how the terms “canceling” and “Critical Race Theory” have rapidly shifted in meaning as they have been bandied about in the digital public sphere. Part III cautions that we should not blame the *digital* nature of the digital public sphere for these shifts in meaning; while technology plays some role in the perversion of the terms “canceling” and “Critical Race Theory,” larger social, cultural, and political processes bear greater responsibility. A brief conclusion follows.

i. the digital public sphere

Philosopher Jürgen Habermas imagined the public sphere as a space that was open to all citizens to gather and engage in rational debate about matters affecting the polity.⁵ Rationality is key within Habermas’s formulation: the arguments that citizens make when engaging with one another in the public sphere must be reasoned, logical, and sensible.⁶ Eventually, according to Habermas, the din of the debates that occur in the public sphere subsides, and “public opinion” is generated out of the tumult.⁷ In a legitimate democracy, says Habermas, the state is

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4. See Michelle Goldberg, *The Social Justice Purge at Idaho Colleges*, N.Y. TIMES (Mar. 26, 2021), <https://www.nytimes.com/2021/03/26/opinion/free-speech-idaho.html> [<https://perma.cc/8QUM-ASAF>]; see also Anuli Ononye & Jackson Walker, *The States Taking Steps to Ban Critical Race Theory*, HILL (June 9, 2021, 1:13 PM EDT), <https://thehill.com/homenews/state-watch/557571-the-states-taking-steps-to-ban-critical-race-theory> [<https://perma.cc/U2YK-XBVT>] (collecting legislation in several states that purports to ban the teaching in K-12 schools of “critical race theory” or other “divisive concepts”).
 5. JÜRGEN HABERMAS, *THE STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE: AN INQUIRY INTO A CATEGORY OF BOURGEOIS SOCIETY* 1-4 (Thomas Burger trans., 1989).
 6. *Id.* at 27-28; see also Peter Dahlgren, Commentary, *Public Sphere Participation Online: The Ambiguities of Affect*, 12 INT’L J. COMMUN 2052, 2057 (2018) (noting that rationality is a “normative ideal for participation and deliberation”).
 7. HABERMAS, *supra* note 5, at 244-45; see also Peter Dahlgren, *The Internet, Public Spheres, and Political Communication*, 22 POL. COMMUN 147, 148 (2005) (“[A] functioning public sphere is understood as a constellation of communicative spaces in society that permit the circulation of information, ideas, debates – ideally in an unfettered manner – and also the formation of political will (i.e., public opinion).”).

sensitive to public opinion; indeed, public opinion constrains the actions that a legitimate state may take.⁸

In this way, Habermas conceptualized the public sphere as necessary to a healthy democracy. He was thus concerned by what he saw when he surveyed the media landscape in the mid-twentieth century: powerful media companies, which were more interested in generating profit than in promoting democracy, dominated the formation of public opinion.⁹ Indeed, “the commercialized mass media . . . turned the public sphere into a space where the rhetoric and objectives of public relations and advertising [were] prioritized. Commercial interests, a capitalist economy, and mainstream media content . . . colonized the public sphere and compromised rational and democratic public discourse.”¹⁰ Public opinion was no longer the product of rational arguments among citizens; instead, it was whatever the media conglomerates, motivated by the imperative of wealth accumulation, wanted it to be.¹¹

And so, observers sympathetic to Habermas’s view breathed a sigh of relief with the arrival of the internet.¹² In the halcyon early days of the worldwide web, it seemed to be the public sphere’s salvation¹³ – an unfiltered space free from gatekeepers, be they media executives or anyone else.¹⁴ It appeared to be open to all, provided that one had access to a computer and a dial-up internet connection. Indeed, optimistic commentators theorized that the internet would “empower those who have always wanted to engage in public debate but were previously marginalized by traditional media.”¹⁵ The most starry-eyed among them believed that the internet would revitalize the public sphere and save democracy.¹⁶

8. HABERMAS, *supra* note 5, at 243.

9. *Id.* at 181-82.

10. Zizi Papacharissi, *The Virtual Sphere 2.0: The Internet, the Public Sphere, and Beyond*, in ROUTLEDGE HANDBOOK OF INTERNET POLITICS 230, 232 (Andrew Chadwick & Philip N. Howard eds., 2008) (citing JÜRGEN HABERMAS, *THE DIVIDED WEST* (Ciaran Cronin trans., 2006)).

11. *See id.* at 231 (“The modern public sphere, according to Habermas, plagued by forces of commercialization and compromised by corporate conglomerates, produces discourse dominated by the objectives of advertising and public relations. Thus, the public sphere becomes a vehicle for capitalist hegemony and ideological reproduction.”).

12. *See, e.g.*, YOCHAI BENKLER, *THE WEALTH OF NETWORKS: HOW SOCIAL PRODUCTION TRANSFORMS MARKETS AND FREEDOM* 212 (2006) (noting that the internet has “fundamentally altered the capacity of individuals, acting alone or with others, to be active participants in the public sphere as opposed to its passive readers, listeners, or viewers”).

13. *See* Mike S. Schäfer, *Digital Public Sphere*, in *THE INTERNATIONAL ENCYCLOPEDIA OF POLITICAL COMMUNICATION* 322, 323 (Gianpietro Mazzoleni ed., 2015) (noting that the digital public sphere “has been conceptualized as a complement, or even substitute, to the pre-existing, ‘old’ public sphere[,] which is widely seen as a crucial element of modern democracies”).

14. *See id.* at 324 (observing the absence of “gate-keeping journalists” when one is online).

15. *Id.* at 324 (internal quotation marks omitted).

16. *See, e.g.*, Ray E. Hiebert, *Commentary: New Technologies, Public Relations, and Democracy*, 31 PUB. RELS. REV. 1, 1 (2005) (noting that some have suggested that “new communication technologies [like the internet] can save democracy by restoring dialogic and participatory communication in the public sphere”). *But see* Cass Sunstein, *Is the Internet Bad for Democracy?*, BOS. REV. (June 1, 2001), <https://bostonreview.net/forum/cass-sunstein-internet-bad-democracy> [<https://perma.cc/EB5N-6R6R>] (warning that the internet might endanger democracy because it reduces the number of “unanticipated encounters” and the range of “common experiences,” which makes it more difficult for the members of “a heterogeneous society . . . to address[] social problems and understand[] one another”).

We now know that the optimists were terribly, terribly wrong. Twitter is not the “heir to the Greek ideal of the Agora, to New England-style colonial-era town-hall meetings, Parisian café culture, or Viennese salon discussions of previous centuries.”¹⁷ Indeed, commentators today are less likely to argue that the internet has rescued democracy and more likely to lament that the internet has sent democracy into a death spiral. On social media, rational debate—the hallmark of the civic deliberations that took place in the Habermasian public sphere—is not a dominant presence.¹⁸ When one dares to open the Twitter app, one is more likely to encounter abusive speech, ad hominem attacks, and wildly fact-free and logic-free statements than rational argumentation.¹⁹ The inevitable invective that one can expect to find in the replies to tweets discussing politically salient topics makes Twitter an unbearably hostile place for those who would otherwise like to engage in political debate with their fellow citizens.²⁰ This hostility functions to exclude many from the digital public sphere—a space that should be open to all if it is to fulfill the promises of the Habermasian ideal.²¹

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17. Schäfer, *supra* note 13, at 323. But, of course, it does not follow that because one does not feel like one has entered a Viennese salon when one opens Facebook on one’s phone, we should all delete our Facebook accounts. As one scholar observes, the internet is not “Athens, nor Appenzell, nor Lincoln-Douglas. It is, if anything, less of democracy than those low-tech places. But of course, none of these places really existed either, except as an ideal, a goal, or an inspiration.” Papacharissi, *supra* note 10, at 243 (quoting Eli M. Noam, *Why the Internet Is Bad for Democracy*, 48 *COMMUNISMS ACM* 57, 58 (2005)).
 18. See Dahlgren, *supra* note 7, at 156 (“[R]ecent research has shown that online discussions do not always follow the high ideals set for deliberative democracy. Speech is not always so rational, tolerance toward those who hold opposing views is at times wanting, and the forms of interaction are not always so civil.”). Of course, this is not a novel feature of political discourse. As Dahlgren observes, “political life offline” can often be irrational, intolerant, and uncivil. *Id.*
 19. Soroush Vosoughi, Deb Roy & Sinan Aral, *The Spread of True and False News Online*, 359 *SCIENCE* 1146, 1150 (2018) (finding that false news spreads “significantly faster, farther, deeper, and more broadly” than the truth on Twitter); Mary Blankenship & Carol Graham, *How Misinformation Spreads on Twitter*, BROOKINGS INST. (July 6, 2020), <https://www.brookings.edu/blog/up-front/2020/07/06/how-misinformation-spreads-on-twitter> [<https://perma.cc/XC8E-S585>]; Robinson Meyer, *The Grim Conclusions of the Largest-Ever Study of Fake News*, ATLANTIC (Mar. 8, 2018), <https://www.theatlantic.com/technology/archive/2018/03/largest-study-ever-fake-news-mit-twitter/555104> [<https://perma.cc/3G6U-CF72>] (inferring from Vosoughi et al., *supra*, that “users seem almost to prefer sharing falsehoods”); Jennifer Grygiel, *Hate Speech Is Still Easy to Find on Social Media*, CONVERSATION (Oct. 31, 2018, 2:02 PM), <https://theconversation.com/hate-speech-is-still-easy-to-find-on-social-media-106020> [<https://perma.cc/B5CX-B7TE>]. Who one follows on Twitter may affect the likelihood of encountering abusive speech, ad hominem attacks, and fact-free and logic-free statements; however, some encounters may be unavoidable, as Twitter’s algorithm puts tweets on users’ timelines from those they do not follow. See Stuart Dredge, *Yes, Twitter Is Putting Tweets in Your Timeline from People You Don’t Follow*, GUARDIAN (Oct. 17, 2014, 4:41 AM), <https://www.theguardian.com/technology/2014/oct/17/twitter-tweets-timeline-dont-follow> [<https://perma.cc/4RQ6-RVMB>].
 20. See Dahlgren, *supra* note 6, at 2063 (noting that the abuse and harassment that individuals encounter on the internet “has made the Net at times not only an unpleasant place but also a dangerous place, potentially silencing voices in the public sphere”).
 21. HABERMAS, *supra* note 5, at 1.

As noted above, Habermas theorized that reason would both anchor and propel the political discussions that take place in the public sphere. However, scholars have observed that *emotion* frequently drives people to engage in public discourse.²² Communications scholar Peter Dahlgren, for example, has noted the difference between instrumental and expressive political engagement.²³ While instrumental political engagement seeks to get things done – for example, getting a referendum item on the ballot, increasing the turnout at a protest, or forcing an elected official to take a particular action – the goal of expressive political engagement is emotional release. “[W]ith expressive politics, the benefit is seen as residing in the act of voicing one’s views. That is, there is no anticipation or demand that the act will have consequences beyond the satisfaction it affords the citizen: It ‘feels good,’ it ‘gets something off one’s chest,’ and so on.”²⁴ Dahlgren attributes “the growing uncivil and even baleful character”²⁵ of political discussions in the digital public sphere to the proliferation of expressive politics – that is, to the fact that social-media users frequently turn to these technologies to satisfy their emotional needs.

Dahlgren also observes that social-media users are drawn to other users who have had similar emotional reactions to the political facts of the day. These users help each other comprehend what, to them, is incomprehensible. “Cognitive dissonance is replaced with cognitive comfort via emotion. . . . [I]t fosters cognitive closure of groups and ultimately damages the critical role of the public sphere.”²⁶ Dahlgren asserts that the existence of these siloed communities of individuals who offer each other cognitive comfort helps to explain the rise of our “post-truth” present, where every set of facts can be met with a set of “alternative” facts.²⁷ He writes that in the digital public sphere, “[t]ruth becomes reconfigured as an inner subjective reality with an affective leap and thus becomes the foundation for validity claims about reality. Rational argument becomes all the more incommensurable as a mode of discourse.”²⁸ Dahlgren’s observations sound the death knell for realizing the idealized Habermasian public sphere.

And while Habermas lamented that commercial interests were corrupting the public sphere in the late twentieth century, those interests have made themselves at home in the digital public sphere.²⁹ Media scholar Zizi Papacharissi argues that the internet’s transformation into an “online multi-shopping mall” has

22. Peter Dahlgren has sought to problematize theoretical constructs that propose that reason and emotion are mutually exclusive to one another. See Dahlgren, *supra* note 6, at 2057 (“We must grasp the interconnectedness of reason and emotion. At bottom, political passions always have reasons, even if they are not always immediately accessible to us . . .”).

23. *Id.* at 2061–62.

24. *Id.*

25. *Id.* at 2062.

26. *Id.* at 2065.

27. See *id.*; Dahlgren, *supra* note 7, at 152 (“[C]yber ghettos threaten to undercut a shared public culture and the integrative societal function of the public sphere, and they may well even help foster intolerance where such communities have little contact with—or understanding of—one another.”).

28. Dahlgren, *supra* note 6, at 2065.

29. See *id.* at 151 (arguing that “the Internet’s political economy suggests that its development is quickly veering toward the intensified commercialization that characterizes the traditional media model”).

influenced the quality of the political discussions that take place there.³⁰ “[E]asy-to-digest exciting news like horserace or scandals” are more profitable than “in-depth analyses of wonkish policy details” – a feature of most “advertising-supported media”³¹ that curtails the sophistication of the information that is readily available online. So while social-media platforms may be “democratizing” in the sense that they allow most anyone to engage in political speech – indeed, the price of admission to the digital public sphere is a (free) Facebook or Twitter account – they simultaneously allow powerful actors to manipulate public discourse. These powerful actors range from the mass-media conglomerates of yesterday (all of which have online outlets) to new actors who are unique to the digital public sphere, including the architects of social-media algorithms and organizations that pay individuals to pose as unpaid users in order to influence other users and the terms of the debate.³²

As this Part has demonstrated, the digital public sphere has failed to live up to the Habermasian archetype. The next Part analyzes the role of the fraught digital public sphere in the shifts that we have witnessed around the meanings of “cancel culture” and “Critical Race Theory.” The analysis ultimately reveals that responsibility for these examples of language on the move lies less with the digital public sphere and more with larger economic and political dislocations.

ii. “cancel culture” and “critical race theory”

A. Canceling “Cancel Culture”

According to some very insistent voices on the political right, the country is in the midst of a crisis.³³ This crisis does not involve the fragility of the nation’s

30. Papacharissi, *supra* note 10, at 235-36; *see also* Dahlgren, *supra* note 6, at 2060-61 (“To engage politically via the Internet is to enter into a communicative environment that is structured by a small number of very large corporate actors, such as Google, Microsoft, and Facebook. This political economy renders the Net commercial to the core. . . . [E]ven if our intentions are civic or political, we are still addressed by and embedded in dominant online consumerist discourses.” (citation omitted)).

31. YOCHAI BENKLER, ROBERT FARIS & HAL ROBERTS, NETWORK PROPAGANDA 17-18 (2018).

32. Joanna Stern, *Social-Media Algorithms Rule How We See the World. Good Luck Trying to Stop Them*, WALL ST. J. (Jan. 17, 2021, 7:00 AM ET), <https://www.wsj.com/articles/social-media-algorithms-rule-how-we-see-the-world-good-luck-trying-to-stop-them-11610884800> [<https://perma.cc/SJC7-FF95>]; Elizabeth Culliford, *From Facebook to TikTok, U.S. Political Influencers Are Paid for Posts*, REUTERS (Oct. 29, 2020, 7:06 AM), <https://www.reuters.com/article/us-usa-election-socialmedia-sponsored-idUKKBN27E1T9> [<https://perma.cc/TM4J-3QFP>]; *Digital News Fact Sheet*, PEW RSCH. CTR. (July 27, 2021), <https://www.pewresearch.org/journalism/fact-sheet/digital-news> [<https://perma.cc/RB6U-E8C2>].

33. Giovanni Russonello, *Is the U.S. in Crisis? Republicans Want Voters to Think So*, N.Y. TIMES (June 17, 2021), <https://www.nytimes.com/2021/06/17/us/politics/republicans-2022-midterms.html> [<https://perma.cc/RYM4-6XAQ>]; Natalie Gontcharova, *The Real Reason Republicans Are Talking About “Cancel Culture,”* REFINERY29 (Aug. 25, 2020, 5:45 PM), <https://www.refinery29.com/en-us/2020/08/9987812/rnc-cancel-culture-kimberly-guilfoyle-donald-trump-jr> [<https://perma.cc/4CLE-KBPD>] (“[S]peakers argued that citizens

democratic processes (which were revealed so dramatically during the 2020 presidential election), the inequalities that the novel coronavirus has laid bare, or even the increasing severity and frequency of environmental disasters.³⁴ Instead, the crisis stems from “cancel culture.”

During the twilight of his presidency, President Trump used an Independence Day address to speak about the newest “political weapon[] of the “far left.”³⁵ Standing in front of Mount Rushmore, Trump explained that the threat of “cancel culture” was “driving people from their jobs, shaming dissenters, and demanding total submission from anyone who disagrees.”³⁶ He described cancel culture as the “very definition of totalitarianism,” ensuring that anyone who does not “speak its language, perform its rituals, recite its mantras, and follow its commandments” is “censored, banished, blacklisted, persecuted, and punished.”³⁷ Trump, later echoed by other high-profile members of the GOP,³⁸ seemed to be referring to the practice of collectives expressing distaste through social-media platforms for a person (or institution) and deciding to withdraw support.³⁹ The term, however, has become much more expansive than that narrow understanding.

Observers and scholars have offered origin stories for the idea that a human being – as opposed to a subscription, an order, a flight, or some other inanimate object – can be “canceled.” Most begin with *New Jack City*, a 1991 film about a Harlem drug czar’s rise and fall in the early days of crack cocaine’s seizure of poor black communities.⁴⁰ In one scene, the czar, played by Wesley Snipes, is confronted by his girlfriend, who is distraught over the ease with which he commits murder. Snipes’s character, Nino Brown, responds by pouring a bottle of champagne over her head and ordering a lieutenant to remove her from the premises,

should be most concerned about, of all things, Democrats trying to ‘control’ them through ‘cancel culture.’”).

34. See Zachary Roth, *The Five Biggest Threats Our Democracy Faces*, BRENNAN CTR. FOR JUST. (Dec. 15, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/five-biggest-threats-our-democracy-faces> [<https://perma.cc/SV7P-KQY8>]; *Health Equity Considerations & Racial & Ethnic Minority Groups*, CTRS. FOR DISEASE CONTROL & PREVENTION (Apr. 19, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html> [<https://perma.cc/8ZED-W38G>]; Maarten K. van Aalst, *The Impacts of Climate Change on the Risk of Natural Disasters*, 30 *DISASTERS* 5, 9 (2006).
35. President Donald J. Trump, Remarks at an Independence Day Celebration at the Mount Rushmore National Memorial in Keystone, South Dakota (July 3, 2020), in 2020 *DAILY COMP. PRES. DOC.*, at 2, <https://www.govinfo.gov/content/pkg/DCPD-202000494/pdf/DCPD-202000494.pdf> [<https://perma.cc/FU5J-UNCS>].
36. *Id.*
37. *Id.*
38. Aja Romano, *The Second Wave of “Cancel Culture”: How the Concept Has Evolved to Mean Different Things to Different People*, VOX (May 5, 2021, 1:00 PM EDT), <https://www.vox.com/22384308/cancel-culture-free-speech-accountability-debate> [<https://perma.cc/PW58-45C2>].
39. See Meredith D. Clark, *DRAG THEM: A Brief Etymology of So-Called “Cancel Culture,”* 5 *COMM’N & PUB.* 88, 88 (2020) (describing “canceling” as “an expression of agency, a choice to withdraw one’s attention from someone or something whose values, (in)action, or speech are so offensive [that] one no longer wishes to grace them with their presence, time, and money”).
40. Aja Romano, *Why We Can’t Stop Fighting About Cancel Culture*, VOX (Aug. 25, 2020, 12:03 PM EDT), <https://www.vox.com/culture/2019/12/30/20879720/what-is-cancel-culture-explained-history-debate> [<https://perma.cc/CP8Z-DBWE>].

telling him, “Cancel that bitch. I’ll buy another one.”⁴¹ Decades later, hip-hop wordsmith Lil Wayne rapped about his relationship woes, informing his listeners that after many ups and downs with his love, he was single after having to “cancel that bitch like Nino.”⁴² A few years after that, a cast member on the reality show *Love and Hip Hop*—apparently having watched *New Jack City* the night before—declared that a love interest, who had hidden the fact that she was a mother, similarly was “canceled.”⁴³ Eventually, the term “canceling” moved past its misogynist origins of men canceling “bitches” and came to signify something that anyone can do to anyone else.

As sociologist Ruha Benjamin writes, critique is “[n]o longer limited to television or newspapers” in the digital age.⁴⁴ Instead, canceling, as a form of critique, often occurs on digital platforms.⁴⁵ And that is what gives canceling its power. Online platforms have made drawing and quartering a transgressor in the “virtual public square easier and swifter. Viral hashtags and memes allow almost anyone to publicize . . . transgressions, sometimes as they are happening, with the potential for news to spread globally in a matter of minutes.”⁴⁶

Scholars of the phenomenon of canceling have observed that it likely has several digital antecedents. For example, before “cancel” culture, there was “call-out” culture, in which people used social-media platforms to draw attention to problematic acts committed by others.⁴⁷ And then there was “dragging,” in

41. *Id.*

42. *Id.* (quoting LIL WAYNE & DRAKE, *I’m Single*, on NO CEILINGS (Young Money Ent. & Cash Money Recs. 2009)).

43. *Id.*

44. RUHA BENJAMIN, RACE AFTER TECHNOLOGY: ABOLITIONIST TOOLS FOR THE NEW JIM CODE 25 (2019).

45. See Gwen Bouvier & David Machin, *What Gets Lost in Twitter ‘Cancel Culture’ Hashtags? Calling Out Racists Reveals Some Limitations of Social Justice Campaigns*, 32 DISCOURSE & SOC’Y 307, 307 (2021) (stating that debate over “cancel culture” has been “driven chiefly by Twitter”); Clark, *supra* note 39, at 89-91 (observing that “the idea of ‘cancel culture’ . . . is a phenomen[on] uniquely enabled . . . by our connectivity to social media” and noting that “[s]ocial media allows hundreds of thousands—if not millions—of everyday people to leverage networked collectivity and a sense of immediacy to demand accountability from a range of powerful figures”).

46. BENJAMIN, *supra* note 44, at 25.

47. See Romano, *supra* note 40 (observing that while “call-out culture” and “cancel culture” appear to be “interchangeable at a glance, they’re different in important ways,” as “[c]all-out culture predates cancel culture as a concept, with online roots in early 2010s Tumblr fandom callout blogs”). Romano explains that “[c]ancel culture can be seen as an extension of call-out culture: the natural escalation from pointing out a problem to calling for the head of the person who caused it.” *Id.*; see also Ligaya Mishan, *The Long and Tortured History of Cancel Culture*, N.Y. TIMES (Dec. 3, 2020), <https://www.nytimes.com/2020/12/03/t-magazine/cancel-culture-history.html> [<https://perma.cc/67A8-AK45>] (“Once we spoke of ‘call-out culture,’ but the time for simply highlighting individual blunders for the edification of a wider audience, as in a medieval morality play, seems to have passed.”).

which online users, as a collective, critiqued a bad actor.⁴⁸ Importantly, many scholars of canceling insist upon crediting black people for the cultural expression.⁴⁹ For these thinkers, “Black Twitter” – the appellation given to the distinctive collective voice that black Twitter users have come to generate⁵⁰ – is the birthplace of canceling.⁵¹

When the origins of canceling are located in the black community, a historically disadvantaged group, we can better see how the act of canceling might be understood as a province of the disempowered. That is, canceling may be how the marginalized “speak back” to power.⁵² The disempowered have very few tools at their disposal when it comes to convincing, compelling, or pressing those with power to do what is right. Rarely can the marginalized make the powerful accede to their demands. But one tool that the marginalized can deploy is the collective – and publicized – withdrawal of their support.⁵³ Hence, canceling might be understood as a digital weapon of the weak⁵⁴ that allows “coalitions of the Othered”⁵⁵ to commune, and perhaps heal, through acts of public condemnation.⁵⁶

Further, if canceling, as initially understood, is a weapon of the weak, it should not be surprising that most of the time, being “canceled” does not actually destroy anyone – President Trump’s portrayal of the phenomenon

48. Bri Griffith, *Dragging, the New Form of Bullying Developed on Twitter, Is Getting Out of Control*, STUDY BREAKS (Nov. 10, 2016), <https://studybreaks.com/culture/dragging> [<https://perma.cc/MK7B-U3YB>].

49. See generally Clark, *supra* note 39 (discussing the practice of canceling in online black-activist discourse).

50. See *id.* at 89 (describing Black Twitter as “the meta-network of culturally connected communities on the microblogging site”).

51. See Romano, *supra* note 40 (“[T]he terminology of cancel culture may be . . . most applicable to social media through Black Twitter . . .” (quoting Anne Charity Hudley)).

52. See Bouvier & Machin, *supra* note 45, at 309 (observing that “if we think about mainstream news media as communicating elite ideologies top-down into society, social media allows voices from below to speak back” and stating that social media has allowed those who “formerly lack[ed] a platform to speak” to “be heard, share their ideas and mobilise themselves and others” (citation omitted)).

53. See Romano, *supra* note 40 (“Canceling is a way to acknowledge that you don’t have the power to change structural inequality . . . You don’t even have the power to change all of public sentiment. But as an individual, you can still have power . . . to ignore.” (alterations omitted) (quoting Anne Charity Hudley)).

54. Clark theorizes:

Reading, which begat *calling out* (which begat canceling), is an “indigenous expressive form” particular to the Other. It has been perfected by Black women like our grandmothers, who let us know what they see, even if they don’t directly say it; minors deprived of a sense of agency, who quickly learn how to detect and name adults’ ulterior motives; and queer folk whose first line of defense is withering critique.

Clark, *supra* note 39, at 89 (citation omitted).

55. *Id.* at 91.

56. See BENJAMIN, *supra* note 44, at 25 (arguing that “dragging,” which is related to canceling, “is also cathartic for those who previously had their experiences of racism questioned or dismissed. It offers a collective ritual, which acknowledges and exposes the everyday insults and dangers that are an ongoing part of Black life”).

notwithstanding.⁵⁷ More often than not, those who have been canceled resume their ordinary lives after the flurry of attention surrounding their cancellation ebbs. And, as one journalist notes, “[w]hen the mighty do fall, it often takes years, coupled with behavior that’s not just immoral but illegal.”⁵⁸ Harvey Weinstein, for example, “was indicted for crimes, not canceled.”⁵⁹

If conceptualized in this way, those on the political right who decry cancel culture misunderstand – or deliberately misdescribe – what is going on when celebrities and noncelebrities are canceled. Those folks are not “censored, banished, blacklisted, persecuted, and punished”⁶⁰ – at least not in a way that is enduring. Kanye West, for example, has been canceled several times over the past few years.⁶¹ Nevertheless, he recently released an album that reached number one on the Billboard charts and became a billionaire.⁶² To suggest that online collectives successfully run the targets of their ire out of public life attributes more power to these collectives than they actually have. It also falsely attributes a *lack* of power to the privileged subjects of cancellation.⁶³ Whipping oneself (and one’s base) into a fury about cancel culture, then, is less about identifying a phenomenon that coerces conformity and restricts liberty and more about constructing a reality that does not exist – one in which the powerful are disempowered

57. See Romano, *supra* note 40 (“[A]s it has gained mainstream attention, cancel culture has also seemed to gain a more material power – at least in the eyes of the many people who’d like to, well, cancel it.”).

58. Mishan, *supra* note 47.

59. *Id.*

60. Trump, *supra* note 35.

61. As West told a radio station in 2019, “I’ve been canceled before they had cancel culture. I was canceled before they had the term.” Keith Nelson Jr., *The ‘Donda’ Hype Proves Kanye Can Never Truly Be Canceled*, MIC (July 23, 2021), <https://www.mic.com/p/will-kanye-ever-truly-be-canceled-82593303> [<https://perma.cc/U8VV-EK3E>].

62. See Ben Sisario, *Kanye West’s ‘Ye’ Ties a Record Held by Eminem and the Beatles*, N.Y. TIMES (June 11, 2018), <https://www.nytimes.com/2018/06/11/arts/music/kanye-west-ye-billboard-no-1-chart.html> [<https://perma.cc/JP7E-2GAV>]; Zack O’Malley Greenburg, *Kanye West Is Now Officially a Billionaire (And He Really Wants the World to Know)*, FORBES, <https://www.forbes.com/sites/zackomalleygreenburg/2020/04/24/kanye-west-is-now-officially-a-billionaireand-he-really-wants-the-world-to-know> [<https://perma.cc/7PHQ-PHHU>]; Jason Parham, *The Devolution of Kanye West and the Case for Cancel Culture*, WIRED (Oct. 5, 2018, 4:15 PM), <https://www.wired.com/story/kanye-west-cancel-culture> [<https://perma.cc/SA3Q-3D59>]; Alaa Elassar, *Kanye West Says He’s Running for President. But He Hasn’t Actually Taken Any Steps*, CNN (July 5, 2020, 6:36 PM ET), <https://www.cnn.com/2020/07/05/entertainment/kanye-west-running-for-president-trnd/index.html> [<https://perma.cc/7L4L-JM2S>].

63. Jacqui Higgins-Dailey, *You Need to Calm Down: You’re Getting Called Out, Not Canceled*, INTEL. FREEDOM BLOG (Sept. 3, 2020), <https://www.oif.ala.org/oif/?p=21815> [<https://perma.cc/C4S8-WV5W>] (noting that “[m]ost of the people writing about the dangers of cancel culture are those who are more likely to have their PRIVILEGE challenged when being called out”); Sarah Hagi, *Cancel Culture Is Not Real – At Least Not in the Way People Think*, TIME (Nov. 21, 2019, 6:43 AM EST), <https://time.com/5735403/cancel-culture-is-not-real> [<https://perma.cc/7QYZ-HS84>] (noting that social media allows the calling out of those “whose privilege has historically shielded them from public scrutiny”).

and the disempowered are powerful.⁶⁴ So understood, describing cancel culture as a plague on American democracy is an attempt to “silenc[e] marginalized people who have adapted earlier resistance strategies for effectiveness in the digital space.”⁶⁵

This is not to say that the phenomenon of canceling someone is entirely unproblematic. The harm caused by being canceled, even if only temporarily felt, may be disproportionate to the act that triggered the cancellation.⁶⁶ There may also be premature cancellations—that is, collectives may censure an individual before a full, exonerating account of the facts emerges.⁶⁷ Additionally, the burdens that cancellation brings may be more onerous and enduring for noncelebrities than for celebrities.⁶⁸

Scholars have convincingly argued that canceling an individual also works to individualize racism, sexism, homophobia, xenophobia, and other forms of discrimination.⁶⁹ Canceling allows racism, for example, to be understood as a personality trait that bad actors possess—as opposed to a banal feature of our

64. See Romano, *supra* note 38 (proposing that the concept of cancel culture “may have become a weapon for people in power to use against those it was intended to help”); Clark, *supra* note 39, at 89 (“[Canceling] was subsequently seized upon by outside observers, particularly journalists with an outsized ability to amplify the(ir own) white gaze. Politicians, pundits, celebrities, academics, and everyday people alike have narrativized being canceled into a moral panic akin to actual harm, . . . associating it with an unfounded fear of censorship and silencing.”).

65. Clark, *supra* note 39, at 89; see also Romano, *supra* note 38 (arguing that it is “because of the collective organizational power that online spaces provide to marginalized communities . . . that anti-cancel culture rhetoric focuses on demonizing them”).

66. See Hadar Aviram, *Progressive Punitivism: Notes on the Use of Punitive Social Control to Advance Social Justice Ends*, 68 BUFF. L. REV. 199, 202 (2020) (describing “progressive punitivism” as “a logic that wields the classic weapons of punitive law — shaming, stigmatization, harsh punishment, and denial of rehabilitation — in the service of promoting social equality” and noting that while progressive punitivism “has gained some hold in academic discourse, particularly in the legal field, its core lies in the leftist social media arena, where it has enjoyed considerable popular appeal in the last few years”); see also Elliot Ackerman et al., *A Letter on Justice and Open Debate*, HARPER’S MAG. (July 7, 2020), <https://harpers.org/a-letter-on-justice-and-open-debate> [<https://perma.cc/Z4TY-MZV4>] (worrying about “institutional leaders, in a spirit of panicked damage control, . . . delivering hasty and disproportionate punishments instead of considered reforms”).

67. See Peter Grier, *Is America’s Media Divide Destroying Democracy?*, CHRISTIAN SCI. MONITOR (Apr. 16, 2019), <https://www.csmonitor.com/USA/Politics/2019/0416/Is-America-s-media-divide-destroying-democracy> [<https://perma.cc/M3BK-P3DP>] (discussing an occurrence involving a white Republican representative who seemingly told a Mexican-American Democrat colleague to “go back to Puerto Rico,” and explaining that the statement was actually a reference to a trip that thirty Democrats took to Puerto Rico to fundraise — a trip that raised Republican ire (and was covered extensively on conservative media outlets but largely ignored by mainstream media outlets)).

68. As actor Jameela Jamil colorfully proposes,

Cancellation means being de-platformed, having your rights taken away, your job taken away, your finances being harmed. That mostly happens to civilians, not celebrities. I got canceled 45 times in February. All of my shows got recommissioned, I landed a huge campaign, and my book deal remains. I’m [expletive] fine.

Jill Radsken, *Jameela Jamil Is in a Good Place*, HARV. GAZETTE (Sept. 22, 2020), <https://news.harvard.edu/gazette/story/2020/09/jameela-jamil-talks-cancel-culture-in-hollywood> [<https://perma.cc/T6RG-Q5CH>].

69. See Bouvier & Machin, *supra* note 45, at 313-14.

country's laws, institutions, and processes.⁷⁰ So conceptualized, we “fix” racism by identifying, and canceling, racist individuals – as opposed to redistributing power and reorganizing society.⁷¹ Further still, scholars have observed that canceling an individual is profitable for social-media platforms insofar as it increases user engagement.⁷² Ligaya Mishan proposes that the next time we flock to Twitter to read about the misdeeds of the latest cancellee, we should keep in mind that we are “uncredited workers, doing the free labor of making the platform more valuable.”⁷³

These concerns about canceling are valid. That said, we can, and should, criticize canceling for the reasons above while also recognizing that when commentators identify “cancel culture” as an existential threat to democracy, such critiques engage in a project of protecting privilege and preserving the status quo.

More recently, the term “canceling” has been applied to acts of censure that do not stem from relatively disempowered online collectives. For example, critics have derided the decisions of social-media companies to deplatform particularly “dangerous” users as acts of “canceling.”⁷⁴ What is likely the most well-known example of deplatforming concerns President Trump himself.⁷⁵ After a mob of Trump’s supporters stormed the Capitol in an effort to prevent the election from being “stolen,” Twitter and Facebook suspended his accounts, citing several of his posts that had incited the violence.⁷⁶ Facebook CEO Mark Zuckerberg explained that the company arrived at this decision because it believed that “the risks of allowing the President to continue to use our service during this period [were] simply too great.”⁷⁷ Trump, in a video tweeted from the White House Twitter account, described his deplatforming as the latest in widespread “efforts to censor, cancel and blacklist our fellow citizens.”⁷⁸

When President Trump and other commentators characterize deplatforming as an act of “canceling,” language is on the move. It is worth emphasizing that

70. *See id.*

71. *See* BENJAMIN, *supra* note 44, at 87 (noting that “[s]ome may consider [canceling] a distraction from the more insidious, institutionalized forms of racism” and observing that the “d  ja vu regularity of all those low-hanging N-words would suggest that stigmatizing individuals is not much of a deterrent and rarely addresses all that gives them license and durability”); Mishan, *supra* note 47 (arguing that individuals participating in “cancel culture” “tend to fixate on minutiae, which can distract from attempts to achieve broader change”).

72. *See* BENJAMIN, *supra* note 44, at 25 (observing that condemning an individual on social media “is profitable for corporations by driving up clicks”).

73. Mishan, *supra* note 47.

74. *See, e.g.,* MARK E. JEFTOVIC, UNASSAILABLE: PROTECT YOURSELF FROM DEPLATFORM ATTACKS, CANCEL CULTURE AND OTHER ONLINE DISASTERS 9-11 (2020).

75. *See* Aja Romano, *Kicking People Off Social Media Isn't About Free Speech*, VOX (Jan. 21, 2021, 3:30 PM EST), <https://www.vox.com/culture/22230847/deplatforming-free-speech-controversy-trump> [<https://perma.cc/HNS7-NL5R>].

76. Dylan Byers, *How Facebook and Twitter Decided to Take Down Trump's Accounts*, NBC NEWS (Jan. 14, 2021, 5:01 PM EST), <https://www.nbcnews.com/tech/tech-news/how-facebook-twitter-decided-take-down-trump-s-accounts-n1254317> [<https://perma.cc/BA6J-LYTA>].

77. *Id.*

78. *Id.*

“relatively disempowered collectives” did not make the decision to cancel Trump. Instead, those decisions were made by a handful of extremely wealthy and powerful tech executives.⁷⁹ While this dynamic was especially salient in Trump’s deplatforming—where journalists have reported that the number of executives involved in the decision to suspend his accounts was preciously low⁸⁰—it has also been true with respect to the deplatforming of other social-media users.⁸¹ That is, collectives do not make the determinations about whether a particular user’s content actually violates a particular platform’s community standards.⁸² Those decisions are internal to the social-media companies.⁸³ If the internet is, indeed, a public sphere, it is one that is governed by profoundly undemocratic processes and institutions.

To address this democratic deficit, Facebook has established the Facebook Oversight Board (“the Board”), which Zuckerberg has described as a “Supreme Court.”⁸⁴ The Board is an independent panel composed of law professors, politicians, journalists, and activists, offered as a mechanism to allow outside input for decisions at Facebook—including decisions around deplatforming particular users or removing certain content.⁸⁵ Facebook has agreed to be bound by the Board’s “rulings,” which involve specific decisions around whether content should be removed or allowed.⁸⁶ However, the “recommendations” that the Board makes, which concern the company’s content policies generally, are non-binding.⁸⁷ With regard to Trump’s deplatforming, the Board upheld Facebook’s decision to suspend Trump’s account, while also counseling the company to review its decision to suspend the account indefinitely.⁸⁸ Facebook ultimately decided to impose a two-year suspension; at the end of two years, it will revisit its

79. See Romano, *supra* note 75. After deciding to suspend Trump’s account indefinitely, then-Twitter CEO Jack Dorsey tweeted his discomfort with the fact that deplatforming decisions involve “an individual or corporation” that enjoys enormous power “over a part of the global public conversation.” Jack Dorsey (@Jack), TWITTER (Jan. 13, 2021, 7:16 PM), <https://twitter.com/jack/status/1349510772871766020> [<https://perma.cc/447U-AKBY>].

80. Byers, *supra* note 76.

81. Of course, regular people get deplatformed all the time. See Michael Luca, *Social Media Bans Are Really, Actually, Shockingly Common*, WIRED (Jan. 20, 2021, 9:00 AM), <https://www.wired.com/story/opinion-social-media-bans-are-really-actually-shockingly-common> [<https://perma.cc/YM4Q-T6X5>]. Hardly anyone bats an eyelash at these more prosaic instances of deplatforming.

82. See, e.g., Woodrow Hartzog, *User Agreements Are Betraying You*, ONEZERO (June 5, 2018), <https://onezero.medium.com/user-agreements-are-betraying-you-19db7135441f> [<https://perma.cc/P69P-5653>] (“The user agreement has become a potent symbol of our asymmetric relationship with technology firms. . . . These agreements aren’t designed in a way that would allow us to properly consider the risks we’re taking. Tech companies have no incentive to change them.”).

83. See *id.*

84. See *Facebook Oversight Board General Documents*, LAWFARE, <https://www.lawfareblog.com/facebook-oversight-board-general-documents> [<https://perma.cc/3KRD-PKMJ>].

85. See OVERSIGHT BD., <https://oversightboard.com> [<https://perma.cc/496F-N56E>].

86. See *id.* (“The board’s decisions to uphold or reverse Facebook’s content decisions will be binding, meaning Facebook will have to implement them, unless doing so could violate the law.”).

87. See *id.*; Cecilia Kang, *What Is the Facebook Oversight Board?*, N.Y. TIMES (May 5, 2021), <https://www.nytimes.com/2021/05/05/technology/What-Is-the-Facebook-Oversight-Board.html> [<https://perma.cc/T5PU-BKQB>].

88. See Kang, *supra* note 87.

decision and determine whether it is safe to let the former President use the platform again.⁸⁹

While the establishment of the Board is promising, Zuckerberg’s description of it as a “Supreme Court” reveals its mixed democratic implications.⁹⁰ After all, the U.S. Supreme Court is a countermajoritarian body, subject only indirectly to democratic processes.⁹¹ Board members are appointed by Facebook, making them even more insulated from direct democratic accountability than Supreme Court Justices, who are at least appointed by democratically elected Presidents. While the Board increases the number of participants and variety of perspectives involved in decisions relating to content on the platform, it does not fundamentally change the undemocratic character of Facebook’s governance structure. Nevertheless, the Board is, undeniably, a start.⁹²

We might dare to hope that the Board is an overture—a first offer in our negotiations around the ultimate form that platform governance will take. If Facebook and Twitter are indeed the central sites of the digital public sphere, and if, as Habermas proposed, the public sphere is essential to democracy, then we may want these platforms to have strong democratic commitments. If so, we might imagine userbase-wide elections of Board members. We might ensure that the Board, as well as any supervisory council that Twitter may implement in the future, are truly representative of Facebook and Twitter users. If robust democratic commitments guided our vision of online governance—democratic commitments that are even more robust than the ones that have led U.S. elections to be marginally democratic, at best—perhaps the digital public sphere

89. See Gilad Edelman, *Admit It: The Facebook Oversight Board Is Kind of Working*, WIRED (June 4, 2021, 5:11 PM), <https://www.wired.com/story/facebook-oversight-board-kind-of-working-trump-ban> [<https://perma.cc/U2P3-QHCH>].

90. See LAWFARE, *supra* note 84.

91. See ALEXANDER M. BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS* 16 (1986). Some scholars have disputed the claim that the judiciary and the power of judicial review are, indeed, countermajoritarian. See, e.g., Barry Friedman, *Dialogue and Judicial Review*, 91 MICH. L. REV. 577 (1993) (denying that courts are countermajoritarian).

92. We should bear in mind that while decisions to deplatform certain problematic users can be important, individual problematic users might not be the biggest part of the problem. In its comments to the Board regarding Trump’s suspension, the Knight First Amendment Institute explained:

Trump’s statements on and off social media in the days leading up to January 6 were certainly inflammatory and dangerous, but part of what made them so dangerous is that, for months before that day, many Americans had been exposed to staggering amounts of sensational misinformation about the election on Facebook’s platform, shunted into echo chambers by Facebook’s algorithms, and insulated from counter-speech by Facebook’s architecture.

Edelman, *supra* note 89 (quoting Jameel Jaffer, Katy Glenn Bass, Alex Abdo, Katie Fallow & Lyndsey Wajert, *Submission to Facebook Oversight Board*, KNIGHT FIRST AMEND. INST. (Feb. 11, 2021), <https://knightcolumbia.org/documents/39b35525do> [<https://perma.cc/EA9L-N4D8>]). As Facebook was led to develop the Board in response to concerns over its decisions around content moderation, we should encourage it to develop a means to address “algorithmic amplification.” *Id.*

would not replicate the inequities of race, class, sexuality, gender identity, and other axes of stratification that exist in real life.

As noted above, while the internet has been democratizing in the sense that it is a space for relatively unfiltered discourse, it is also a commercial space where powerful actors – from media conglomerates to computer engineers interested in algorithmic optimization – can and do manipulate public discourse.⁹³ And so, we might be attuned to how the shifts in the meaning of “canceling” and “cancel culture” are the effects of manipulation by these media conglomerates, engineers, and others. “Cancel culture” may be the crisis du jour because algorithms have put discussions of the phenomenon at the top of our newsfeeds, and media outlets likely earn handsome profits when they offer generous coverage of the “crisis.” Moreover, we might be interested in investigating just *how* these shifts manipulate us. We might interrogate how identifying President Trump and other deplatformed figures as victims of “cancel culture” distracts us from the discussions that we should be having about online governance. People are using the term “canceling” to refer to collective acts of censure by the disempowered, as well as unilateral acts of censorship by powerful social-media conglomerates. This dual use obscures the sharp distinction between these types of “cancellations,” lumping two very different phenomena under the same critique of “cancel culture.” The confusion undermines the legitimacy of collective withdrawals of support, while simultaneously distracting us from the need to advocate for platform accountability.

The drift in the use of the term “cancel culture” also has implications beyond online governance. For example, branding Dr. Seuss a victim of “cancel culture” hinders a deeper conversation about the propriety of applying contemporary racial norms to artifacts produced in times when those norms were dramatically different.⁹⁴ Additionally, it diverts us away from conversations about what corporate responsibility looks like in this context, as well as what meaningful engagements with racial inequality the Dr. Seuss estate – and other similarly situated institutions – might take after having financially benefited from the racial subordination of nonwhite people.⁹⁵ Whenever we hear accusations of “cancel culture” – from the Capitol rioters, Chris Rock, and others – we might ask ourselves what we are being manipulated into discussing and, perhaps more importantly, not discussing.

93. See *supra* Part I.

94. For example, *And to Think That I Saw It on Mulberry Street*, one of the books that the Dr. Seuss estate decided to remove from its catalog due to its racist depictions of Asian people, was published in 1937 – six years before the Chinese Exclusion Act was repealed. See Alexandra Alter & Elizabeth A. Harris, *Dr. Seuss Books Are Pulled, and a ‘Cancel Culture’ Controversy Erupts*, N.Y. TIMES (Oct. 20, 2021), <https://www.nytimes.com/2021/03/04/books/dr-seuss-books.html> [<https://perma.cc/YGY6-RN46>]; H. Mark Lai, *The Chinese Exclusion Act: Observations of a Centennial*, 9 AMERASIA 1, 2 (1982). To state the point differently, the book was published during a time when anti-Asian sentiment had the force of law and had been operationalized to remove Chinese nationals from the body politic. Thus, the racial norms around Asian-ness and Chinese-ness that were regnant at the time of *And to Think That I Saw It on Mulberry Street*’s publication were such that we ought to be surprised if the book did *not* contain racist depictions of Asian people. This contention should not be taken to argue that racism is acceptable; instead, it is simply a reflection on the banality of racism.

95. It deserves underscoring that Dr. Seuss’s books contained racist imagery because the racist imagery was *profitable*. What would a disgorgement of ill-gotten profits look like in this context?

Further, we might ask why so many have allowed themselves to believe that there exists a “cancel culture” that censors, banishes, blacklists, persecutes, and punishes. We might wonder whether this is an example of successful political manipulation possible only because the specter of a powerful “cancel culture” “resonates and reproduces already existing fears and doubts.”⁹⁶ The precariousness suggested by an omniscient and omnipresent “cancel culture” – everyone is just one problematic statement away from becoming a hashtag and, subsequently, an unemployed pariah – might actually speak to a real precariousness that people feel. That is, do people feel vulnerable because they know that one false move may lead to them being pilloried on Twitter? Or, rather, do they feel vulnerable because their healthcare is tied to their at-will employment, their real wages have decreased over time, their ability to retire comfortably is not guaranteed, and the nation’s social safety net has always been, and remains, inadequate?⁹⁷ Perhaps the perceived cancel culture crisis is merely a vehicle by which people can process the precarity wrought by the United States’s ongoing experiment with neoliberalism.

B. Canceling “Critical Race Theory”

Some strident members of the Republican Party have recently fixated on CRT. Most accounts of the origin of their newfound obsession trace it to an appearance by conservative activist Christopher F. Rufo on Tucker Carlson’s show on Fox in the last few months before the November 2020 presidential election.⁹⁸ During that appearance, Rufo reported that several executive agencies were engaging in employee trainings on CRT.⁹⁹ It seems unlikely that the trainings to which Rufo referred actually exposed participants to actual CRT; that is, it is unlikely that those trainings explored the law’s role in producing, protecting, and naturalizing racial inequality, as such training would be completely irrelevant to the job that most federal employees have been hired to do. Nevertheless, Rufo, having identified the subject of the trainings as CRT, declared “a one-man war against [CRT] in the federal government,” assuring Carlson’s audience that he was going to continue investigating the trainings “until we can abolish [CRT] within our public institutions.”¹⁰⁰ Apparently, someone from the Trump Administration was watching. After Rufo’s appearance, the White House Chief of Staff

96. Johan Farkas & Jannick Schou, *Fake News as a Floating Signifier: Hegemony, Antagonism and the Politics of Falsehood*, 25 JAVNOST: PUB. 298, 309 (2018).

97. Anne Case & Angus Deaton, *Mortality and Morbidity in the 21st Century*, 2017 BROOKINGS PAPERS ON ECON. ACTIVITY 397.

98. See, e.g., Fabiola Cineas, *Critical Race Theory, and Trump’s War on It, Explained*, VOX (Sept. 24, 2020, 2:20 PM) <https://www.vox.com/2020/9/24/21451220/critical-race-theory-diversity-training-trump> [<https://perma.cc/6DYY-BEHD>].

99. See *id.*

100. *Id.*

reportedly reached out to Rufo, asking for his help in putting together an executive order that would prohibit these “problematic” trainings.¹⁰¹

On September 4th, 2020, the Trump Administration issued a memorandum directing all federal agencies to “begin to identify all contracts or other agency spending related to any training on ‘critical race theory,’ ‘white privilege,’ or any other training or propaganda effort that teaches or suggests either (1) that the United States is an inherently racist or evil country or (2) that any race or ethnicity is inherently racist or evil.”¹⁰² President Trump ultimately issued an executive order that prohibited trainings for the military, grant recipients, contractors, and federal agencies that were “rooted in the pernicious and false belief that America is an irredeemably racist and sexist country.”¹⁰³

After Trump lost the presidential election, President Biden quickly rescinded the executive order.¹⁰⁴ However, the rescission of the order did not quell conservatives’ newfound fascination with CRT. Lawmakers in a variety of states have since introduced bills that purport to ban CRT in government and schools.¹⁰⁵ Some of these bills have been passed and signed into law.¹⁰⁶

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101. See Michelle Goldberg, *The Campaign to Cancel Wokeness: How the Right Is Trying to Censor Critical Race Theory*, N.Y. TIMES (Feb. 26, 2021), <https://www.nytimes.com/2021/02/26/opinion/speech-racism-academia.html> [https://perma.cc/3856-XBDQ]. Of course, we should pay attention to the precise historical moment in which the Trump Administration began its fascination with Critical Race Theory (CRT): the enchantment began after Derek Chauvin killed George Floyd by kneeling on his neck for over nine minutes, sparking a summer of protests against police violence. See Matthew S. Schwartz, *Trump Tells Agencies to End Trainings on ‘White Privilege’ and ‘Critical Race Theory,’* NPR (Sept. 5, 2020, 4:31 PM ET), <https://www.npr.org/2020/09/05/910053496/trump-tells-agencies-to-end-trainings-on-white-privilege-and-critical-race-theor> [https://perma.cc/S9FK-AGG2] (“The directive was issued against the backdrop of the ongoing national conversation around police brutality and systemic racism.”). President Trump quickly “sided with law enforcement over advocates for racial justice and supporters of the Black Lives Matter movement.” *Id.* Dismissing the claims made by racial-justice advocates was a mechanism by which Trump could align himself with white people while figuring nonwhite people as threats to the nation. See German Lopez, *Trump’s Criminal Justice Policy, Explained*, VOX (Sept. 11, 2020, 10:05 AM), <https://www.vox.com/2020-presidential-election/21418911/donald-trump-crime-criminal-justice-policy-record> [https://perma.cc/3EZ4-LEQF]. One might theorize that condemning CRT—a body of scholarship largely produced by, and identified with, people of color—allowed Trump to continue his attack on nonwhite people, albeit indirectly, and reiterate his status as the caretaker of white grievances.
 102. Memorandum from Russell Vought, Dir., Off. of Mgmt. & Budget, Exec. Off. of the President, to the Heads of Exec. Dep’ts & Agencies (Sept. 4, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/09/M-20-34.pdf> [https://perma.cc/L2SD-79EV].
 103. Exec. Order No. 13,950, 85 Fed. Reg. 60,683 (Sept. 22, 2020).
 104. See Goldberg, *supra* note 101.
 105. See *id.* For his part, Florida Governor Ron DeSantis issued an order banning CRT in Florida public schools. See David Theo Goldberg, *The War on Critical Race Theory*, BOS. REV. (May 7, 2021), <https://bostonreview.net/race-politics/david-theo-goldberg-war-critical-race-theory> [https://perma.cc/G4UW-6N5B].
 106. See, e.g., Kimberlee Kruesi, *Tennessee Bans Teaching Critical Race Theory in Schools*, ASSOC. PRESS (May 25, 2021), <https://apnews.com/article/tennessee-racial-injustice-race-and-ethnicity-religion-education-9366bceabf309557811eab645c8dad13> [https://perma.cc/QHS7-JAUP]; Sean Murphy, *Oklahoma Governor Signs Ban on Teaching Critical Race Theory*, ASSOC. PRESS (May 7, 2021), <https://apnews.com/article/oklahoma-race-and-ethnicity-d69cf5d38e3293884fca00ad3963a90e> [https://perma.cc/2LMP-SZAG]; Keith Ridler, *Idaho Governor Signs ‘Nondiscrimination’ Education Bill*, ASSOC. PRESS (Apr. 28, 2021), <https://apnews.com/article/idaho-business-religion-bills-health-515b6e1eadcfafa1c05d248do4118c5> [https://perma.cc/3BSF-2VYR].

If one gives more than a passing glance to descriptions of CRT offered by its opponents on the political right, it quickly becomes apparent that they are not talking about the body of scholarship that legal academics first began generating in the 1980s (or 1970s, depending on who you ask¹⁰⁷). “America is an inherently racist/evil country,” said no critical race theorist ever. Although the troops in the war against CRT cite Ibram Kendi (author of *How to Be an Antiracist*) and Robin DiAngelo (author of *White Fragility*) as critical race theorists,¹⁰⁸ Kendi’s and DiAngelo’s works are cited only infrequently in law reviews – the media in which most CRT scholarship initially appears.¹⁰⁹

The misdescriptions of CRT¹¹⁰ that many of those on the right offer are no accident. Indeed, they are intentionally wrong. Rufo himself tweeted:

We have successfully frozen their brand – “critical race theory” – into the public conversation and are steadily driving up negative perceptions. We will eventually turn it toxic, as we put all of the various cultural insanities under that brand category.

The goal is to have the public read something crazy in the newspaper and immediately think “critical race theory.” We have decodified the term and

107. Interestingly, according to those waging the war against CRT, the movement began in the 1940s with German-American philosopher Herbert Marcuse. See PRESIDENT’S ADVISORY 1776 COMM’N, THE 1776 REPORT (Jan. 2021), <https://ipfs.io/ipfs/QmVzW5NfySnfTk7ucdEoWXshkNUN3dseBA7ZVrQMBfZey> [<https://perma.cc/SKP8-RDFP>] (explaining that Marcuse’s “ideas led to the development of Critical Race Theory” and stating that “Marcuse’s followers use the approach of Critical Race Theory to impart an oppressor-victim narrative upon generations of Americans”). This would be news to the legal scholars who generated the framework in the 1980s.

108. See Goldberg, *supra* note 105.

109. At the time of publication, Ibram Kendi’s name appears fewer than 150 times in a search of all law reviews on LexisPlus. LEXISPLUS, <https://plus.lexis.com> [<https://perma.cc/X748-TFES>] (follow “Law Reviews & Journals” hyperlink; then search for “Ibram Kendi” or “Ibram X. Kendi”). Robin DiAngelo’s name appears fewer than sixty times. LEXISPLUS, <https://plus.lexis.com> [<https://perma.cc/S55A-735U>] (follow “Law Reviews & Journals” hyperlink; then search for “Robin DiAngelo”).

110. There is a massive amount of accurate information about CRT already available to anyone who cares to educate herself about it. See, e.g., KHIARA M. BRIDGES, CRITICAL RACE THEORY: A PRIMER (2018); CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995). Indeed, the disinformation campaign in which vocal members of the Republican Party are currently engaged is being waged *despite* the (quite literal) volumes that have been written about the theory. It would therefore be somewhat redundant to detail here what “Critical Race Theory” signified before a consortium of well-funded actors decided that it would be politically useful to “decodif[y]” and “recodify” the term. See Bethania Palma, *What Is Critical Race Theory and Why Are Some People So Mad at It?*, SNOPE (May 27, 2021), <https://www.snopes.com/news/2021/05/27/what-is-critical-race-theory> [<https://perma.cc/GT2D-2XL6>]. My immediate aim in this Essay is not to defend the boundaries of the term, but to investigate the role that the digital public sphere has played in recent debates around CRT.

will recodify it to annex the entire range of cultural constructions that are unpopular with Americans.¹¹¹

It seems that powerful actors have successfully manipulated a significant number of people into believing that CRT does not reference an advanced legal theory. For millions of people, the term does not mean the framework that brought us Ian Haney López's *White by Law*, a devastating interrogation into the prerequisite cases and the law's formal construction of race.¹¹² CRT does not gesture towards the intellectual toolset that bestowed us with multiple concepts with which to think through the complexities of domination and subordination—concepts like intersectionality,¹¹³ antiessentialism,¹¹⁴ and multidimensionality.¹¹⁵ No longer does CRT mean the framework that has gifted us insightful analyses of diversity as a governmental interest that can allow a racial classification to survive an equal protection challenge,¹¹⁶ English-only rules,¹¹⁷ and—yes—white privilege.¹¹⁸ Instead, CRT has begun to mean something else, “absorbing meanings” that actors “want to impose on it.”¹¹⁹

When deployed by the political right, CRT has come to stand for any rejection of the idea that the nation has triumphed, decisively, over its horrific racist past.¹²⁰ The term has come to index any thought that dares to propose that race remains a meaningful category in the present-day—a category that helps to explain why some people live lives that are longer and more comfortable than others.¹²¹ It references any observation of the fact that white people, as a group,

111. See Palma, *supra* note 110.

112. See generally IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996).

113. See generally Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

114. See generally Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

115. See Darren Lenard Hutchinson, *Identity Crisis: “Intersectionality,” “Multidimensionality,” and the Development of an Adequate Theory of Subordination*, 6 MICH. J. RACE & L. 285 (2001).

116. See generally Asad Rahim, *Diversity to Deradicalize*, 108 CALIF. L. REV. 1423 (2020).

117. See Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329 (1991).

118. See generally Khiara M. Bridges, *Race, Pregnancy, and the Opioid Epidemic: White Privilege and the Criminalization of Opioid Use During Pregnancy*, 133 HARV. L. REV. 770 (2020).

119. Overview: *Floating Signifier*, OXFORD REFERENCE (2021), <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095824238> [<https://perma.cc/GG2Y-ABAQ>].

120. See Cineas, *supra* note 98 (quoting Kimberlé Crenshaw, a self-identified critical race theorist, who explains that the various strands of thought that conservatives have called CRT are united by their refusal “to participate in the lie that America has triumphantly overcome its racist history, that everything is behind us”); Adam Harris, *The GOP’s ‘Critical Race Theory’ Obsession*, ATLANTIC (May 7, 2021), <https://www.theatlantic.com/politics/archive/2021/05/gops-critical-race-theory-fixation-explained/618828> [<https://perma.cc/E63F-BP3S>] (“[CRT] soon stood for anything resembling an examination of America’s history with race. Conservatives would boil it down further: Critical race theory taught Americans to hate America.”); Daniel Trilling, *Why Is the UK Government Suddenly Targeting ‘Critical Race Theory’?*, GUARDIAN (Oct. 23, 2020, 8:22 AM), <https://www.theguardian.com/commentis-free/2020/oct/23/uk-critical-race-theory-trump-conservatives-structural-inequality> [<https://perma.cc/XJ9W-KNFB>] (“[CRT] has become a kind of shorthand in US politics for an approach to race relations that asks white people to consider their structural advantage within a system that has, historically, been profoundly racist.”).

121. See Goldberg, *supra* note 105 (“CRT functions for the right today primarily as an empty signifier for any talk of race and racism at all . . .”).

remain on top of most measures of well-being, as well as any investigation into the processes and discourses that make this fact so.¹²² As theorist David Theo Goldberg describes, for the political right, CRT means “any talk of race and racism at all, a catch-all specter . . . or indeed any suggestion that racial inequities in the United States are anything but fair outcomes, the result of choices made by equally positioned individuals in a free society.”¹²³ CRT, like Antifa before it,¹²⁴ has become a bogeyman.¹²⁵ As unimpeachable evidence of the work that CRT is doing to represent all that the political right wants us to fear and loathe, we need look no further than the fact that some have claimed that CRT is responsible for bringing us the reviled cancel culture.¹²⁶

This Essay has observed how the digital public sphere – one of the spaces in which the battle over CRT has raged¹²⁷ – is a site wherein powerful actors can manipulate the terms of public debate. And so, we might wonder how we have been manipulated by the fight over CRT. After careful consideration, we might conclude that the crusade against CRT is part of an ideological war that endeavors to construct the United States as post-racial – a nation that has put racism firmly in the rearview mirror. The stakes of this war are incredibly high. If the nation is post-racial, then any “racial reckoning” that the nation has initiated has been misguided; moreover, the actors that have been calling for this “racial reckoning” – organizers, protestors, activists, students, scholars – are delusional and even dangerous. If the nation is post-racial, then people who insist on talking and thinking about race are the real racists. If the nation is post-racial, then we do the right thing when we silence them – our portrayal of our nation as one that values “free speech” notwithstanding.

122. See *id.* (arguing that the critics of CRT embrace the idea that “the structures of society bear no responsibility [for racial inequality], only individuals” and that “[r]acial inequities today are at worst the unfortunate side effect of a robust commitment to individual freedom, not the living legacy of centuries of racialized systems”).

123. *Id.*

124. See Laura Finley & Luigi Esposito, *Antifa as Bogeyman*, 14 *FACTIS PAX* 105, 106 (2020) (describing Antifa and framing the political right’s recent discussion of the group “within the history of anti-leftist scapegoating”); Sonam Sheth, *The GOP’s Claim that Antifa Is Infiltrating George Floyd Protests Is a Right-Wing ‘Bogeyman’ that Bears All the Hallmarks of a Domestic Disinformation Campaign*, *INSIDER* (June 8, 2020, 5:34 PM), <https://www.businessinsider.com/trump-republican-allegations-antifa-protest-violence-disinformation-campaign-2020-6> [<https://perma.cc/3XFA-ZPED>] (describing the GOP’s claims that Antifa infiltrated George Floyd protests as untrue and a product of a disinformation campaign).

125. Harris, *supra* note 114 (describing CRT as “the Republicans’ bogeyman”). It may only be a matter of time before we witness the conceptual collapse of CRT and Antifa – with pundits proposing that Antifa and CRT are one and the same, all members of Antifa having steeped themselves in CRT.

126. See Goldberg, *supra* note 101 (“Critical race theory . . . is often blamed for fomenting what critics call cancel culture. And so, around America and even overseas, people who don’t like cancel culture are on an ironic quest to cancel the promotion of critical race theory in public forums.”); Goldberg, *supra* note 105 (noting that a Heritage Foundation webinar has asserted that Critical Race Theory is “leading to cancel culture”).

127. See Trilling, *supra* note 120.

Semioticians have theorized that terms that come to mean different things to different people, like “CRT,” are tools for “constructing political identities, conflicts, and antagonisms.”¹²⁸ It seems apparent that the cooptation of CRT by the political right is a means of constructing conflicts and antagonisms. But how does this cooptation construct *identities*? We might be attuned to how calling a body of scholarship that nonwhite scholars largely have produced “un-American” functions to align nonwhiteness with “not American.” In equating nonwhiteness with “not American,” whiteness gets equated with “American.” The attack on CRT, then, is part of an undertaking to consolidate white identities as American, while excluding nonwhite identities (and people) from that which is American. With this in mind, consider the Trump Administration’s self-described “Muslim Ban,”¹²⁹ the wall the Administration sought to build along the U.S.-Mexico border,¹³⁰ President Trump’s reference to the novel coronavirus as the “Chinese virus” and the “Kung Flu,”¹³¹ and his identification of those who would march alongside neo-Nazis and white supremacists in Charlottesville as “very fine people.”¹³² These events all played a part in a project to align whiteness with American-ness.¹³³ The vilification of CRT is just the latest stage of that project.

iii. seeing the forest, or why we should avoid scapegoating technology

Anyone who has ever perused Facebook or Twitter—or even glanced at a website’s comments section—knows that the internet can be a wild place. Consequently, the instinct may be to believe that if canceling and CRT have come to be problematically unmoored from their original meanings, then the internet is to blame.¹³⁴ After all, the internet has brought us a disinformation infrastructure

128. Farkas & Schou, *supra* note 96, at 300.

129. See Jenna Johnson, *Trump Calls for ‘Total and Complete Shutdown of Muslims Entering the United States,’* WASH. POST (Dec. 7, 2015, 7:43 PM), <https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states> [https://perma.cc/8TLP-EQ3C]; Amy B. Wang, *Trump Asked for a ‘Muslim Ban,’ Giuliani Says—And Ordered a Commission to Do It ‘Legally,’* WASH. POST (Jan. 29, 2017), <https://www.washingtonpost.com/news/the-fix/wp/2017/01/29/trump-asked-for-a-muslim-ban-giuliani-says-and-ordered-a-commission-to-do-it-legally> [https://perma.cc/PQ9V-HPDC].

130. See Ron Nixon & Linda Qiu, *Trump’s Evolving Words on the Wall*, N.Y. TIMES (Jan. 18, 2018), <https://www.nytimes.com/2018/01/18/us/politics/trump-border-wall-immigration.html> [https://perma.cc/AFT2-S27R].

131. See *Donald Trump Calls Covid-19 ‘Kung Flu’ at Tulsa Rally*, GUARDIAN (June 20, 2020, 9:06 PM), <https://www.theguardian.com/us-news/2020/jun/20/trump-covid-19-kung-flu-racist-language> [https://perma.cc/X49U-JZDV].

132. See Rosie Gray, *Trump Defends White-Nationalist Protesters: ‘Some Very Fine People on Both Sides,’* ATLANTIC (Aug. 15, 2017), <https://www.theatlantic.com/politics/archive/2017/08/trump-defends-white-nationalist-protesters-some-very-fine-people-on-both-sides/537012> [https://perma.cc/WD3N-KQAA].

133. Elsewhere, I have written about the “axiomatic relationship between whiteness and ‘American’-ness.” See KHIARA M. BRIDGES, *REPRODUCING RACE: AN ETHNOGRAPHY OF PREGNANCY AS A SITE OF RACIALIZATION* 219–20 (2011).

134. See BENKLER ET AL., *supra* note 31, at 4 (observing that when it appeared that democracy was becoming more unstable, “our collective eye feel on the novel and rapidly changing—technology” and stating that we, as a collective, came to believe that “[t]echnological processes

that allows algorithms to drive conversation – even those conversations that are madly unmoored from facts. And the internet has enabled a democratization of speech; anyone can declare what “canceling” and “Critical Race Theory” are, correctly or incorrectly, and those declarations can circulate widely and rapidly. If the internet is to blame for the recent shifts in the meaning of these terms, then the obvious way to solve the problem, or to avoid future iterations of this problem, would be through fixing the internet.¹³⁵ This “fix” would take the form of more rigorous self-regulation or governmental regulation of platforms.¹³⁶

It is undoubtedly true that technology has played a role in the transformation – and degradation – of the terms “canceling” and “Critical Race Theory.” This is to say that the internet itself may be partially to blame for the defanging of canceling and CRT as critiques of power.

While terms have always shifted meaning over time, the internet has accelerated the speed of these shifts. Yochai Benkler, Robert Faris, and Hal Roberts have analyzed the “propaganda feedback loops” that make it possible for individuals to become insulated from competing sources of information and that have been exacerbated by the advent of social-media platforms.¹³⁷ Indeed, Benkler and his coauthors have shown that anywhere from fifty to sixty percent of self-identified Republicans are enmeshed in an information “ecosystem” consisting of “media outlets [that] compete with each other on how sharply they stoke the confirmation bias, the identity of the partisans, and police each other for deviations – not from the truth but from the party line.”¹³⁸ While most individuals whose politics are center or left of center get at least some of their news

beyond the control of any person or country – the convergence of social media, algorithmic news curation, bots, artificial intelligence, and big data analysis – were” to blame for “overwhelming our capacity to make sense of the world, and with it our capacity to govern ourselves as reasonable democracies”).

135. *See id.* at 360 (“The primary focus of solutions-oriented conversations since 2016 – in the United States, in Europe, and throughout the world – has been on changing how information is accessible, framed, shared, or remunerated on platforms, primarily on Facebook and Google.”).

136. *See id.* There have been recent efforts by GOP Governors DeSantis and Abbott of Florida and Texas, respectively, to disallow platforms from self-regulating in certain ways. *See* Cat Zakrzewski, *Florida Governor Signs Bill Barring Social Media Companies from Blocking Political Candidates*, WASH. POST (May 24, 2021, 4:21 PM EDT), <https://www.washingtonpost.com/technology/2021/05/24/florida-gov-social-media-230/> [<https://perma.cc/F9L5-GVSY>]; Cat Zakrzewski, *Texas Governor Signs Bill Prohibiting Social Media Giants from Blocking Users Based on Viewpoint*, WASH. POST (Sept. 9, 2021, 5:57 PM EDT), <https://www.washingtonpost.com/technology/2021/09/09/govgregabbott-social-media-censorship-bill/> [<https://perma.cc/E8QN-Y7SU>].

137. *See id.* at 75-100.

138. Patt Morrison, Opinion, *How the ‘Propaganda Feedback Loop’ of Right-Wing Media Keeps More than a Quarter of Americans Siloed*, L.A. TIMES (Nov. 7, 2018) (interviewing Yochai Benkler, Professor, Harvard Law School), <https://www.latimes.com/opinion/op-ed/la-ol-patt-morrison-yochai-benkler-20181107-htmllstory.html> [<https://perma.cc/W6UV-2WHC>]; *see also* BENKLER ET AL., *supra* note 31, at 79 (describing the “propaganda feedback loop” as a “self-reinforcing feedback loop that disciplines those who try to step off of it with lower attention or votes, and gradually over time increases the costs to everyone of introducing news that is not identity confirming, or challenges the partisan narratives and frames”).

from sources that are nostalgically committed to facts, a sizeable portion of those whose politics skew right get their news from sources that are part of a self-referential universe of media outlets that “will pick up [a] story, reframe it, tell it again, [and] identify it as true.”¹³⁹ Importantly, a right-leaning information ecosystem has existed for decades.¹⁴⁰ However, the development of social-media platforms like Twitter and Facebook have made it much easier to transmit wholly siloed, wildly fact-free information.¹⁴¹ Moreover, powerful figures game the system to achieve political ends – tweeting interviews or other videos that go viral, which leads to coverage by other media outlets, which leads to additional interviews and videos, and so on.¹⁴²

These digitally mediated propaganda feedback loops have helped to untether terms from their original meaning with unprecedented speed. An individual can now watch a Fox News segment in the morning reporting that CRT is the brainchild of Marxists who believe that all white people are racist,¹⁴³ and then, in the afternoon, encounter a Twitter feed and Facebook timeline filled with articles from dozens of conservative news outlets repeating that same claim.¹⁴⁴ Almost overnight, CRT will become, for those residents of this peculiar ecosystem, a term that refers to ideas proposed by Marxists who believe that all white people are racist. This digitally mediated process helps to explain why so many have come to perceive CRT as a crisis – and even an existential threat to the country.¹⁴⁵

139. Morrison, *supra* note 138. Benkler describes the results of a Pew survey showing that respondents who espoused conservative political views “reported that their most trusted news sources were Fox News, Sean Hannity, and Rush Limbaugh,” while respondents who held consistently liberal views “placed NPR, PBS, and the BBC in those top three most trusted positions.” BENKLER ET AL., *supra* note 31, at 73. Benkler observes that “[t]his pattern of trust in television and radio sources – one side trusting a highly partisan commercial outlet and two of the most incendiary personalities in American political media, and the other in three public institutions of the most traditional journalistic form . . . is highly congruent with the patterns we observe online.” *Id.*

140. Grier, *supra* note 67 (“In its infancy, conservative media also gathered together into a self-referential and mutually supportive network. If the National Review was opposing a new highway program, for instance, it would point to a piece in Human Events that drew in turn on a person who had appeared on Manion’s radio program.”).

141. Morrison, *supra* note 138.

142. *The Guardian* reports that videos of parents at school board meetings passionately demanding that their children receive a CRT-free education have gone viral – viewed millions of times – after being generously shared on Facebook and Twitter. See Julia Carrie Wong, *From Viral Videos to Fox News: How Rightwing Media Fueled the Critical Race Theory Panic*, *GUARDIAN* (June 30, 2021, 6:00 AM EDT), <https://www.theguardian.com/education/2021/jun/30/critical-race-theory-rightwing-social-media-viral-video> [<https://perma.cc/3Y8L-CA8Z>]. The media outlets that comprise the right’s information ecosystem then cover the virality of the videos. *Id.* In this way, the parents’ inaccurate description of CRT is validated, and their claim that CRT will be taught to children across the nation unless concerned parents speak out is confirmed as true.

143. Ben Carson, *Dr. Ben Carson: Fighting Critical Race Theory – Here’s How We Stop This Blatantly Racist Ideology*, *FOX NEWS* (July 19, 2021), <https://www.foxnews.com/opinion/fighting-critical-race-theory-racist-ideology-dr-ben-carson> [<https://perma.cc/HWT9-VWPL>] (describing CRT as “Marxist” and stating that the framework “assumes all White people are racist oppressors”).

144. See BENKLER ET AL., *supra* note 31, at 97 (noting that the propaganda feedback loop results in “readers, viewers, and listeners encounter[ing] multiple versions of the same story, over months, to the point that both recall and credibility [are] enhanced”).

145. Douglas Carswell, Opinion, *Critical Race Theory Is a Threat to Nation*, *NORTHSIDE SUN* (Aug. 1, 2021, 8:00AM), <https://www.northsidesun.com/columns-local-news-opinion/opinion->

The same might be said of cancel culture. Notably, we can look beyond the right-leaning media ecosystem for lamentations about the practice of canceling. For example, the *New York Times* has published several stories suggesting that a “cancel culture” exists.¹⁴⁶ This might merely serve as a reminder that politically liberal and centrist media outlets are also profit-oriented enterprises. Indulging public fascination is good for the bottom line – regardless of the political commitments of the audience.¹⁴⁷

But while all media outlets might be motivated by the desire to generate profits, Benkler observes that news organizations outside of the right-wing information ecosystem still embrace traditional journalistic norms.¹⁴⁸ Accordingly, the ability of untruths to circulate within that ecosystem decreases substantially.¹⁴⁹ For this reason, propaganda feedback loops are unique to the political right. Moreover, these loops, intensified by online platforms, create siloed discussions of “cancel culture” and CRT, resulting in millions of Americans encountering the terms only as construed by conservative commentators.¹⁵⁰ With such centrifugal digital forces acting on these terms, there should be little wonder that they have begun to drift. Instead, the real marvel may be that more words have not been untethered from their initial meanings.

But if we resist the delicious urge to fetishize technology, we will see that the problem that we face is bigger than the internet. As Papacharissi formulates it, technology “possess[es] neither evil nor good inherent characteristics, but at the same time it is not neutral; it is actualized by and within the historical context that delivered it.”¹⁵¹ Benkler reminds us that when the major online outlets in the current right-wing media ecosystem first appeared on the scene, they took their place within an existing right-wing media network.¹⁵² Moreover, for almost a generation prior to the advent of the internet as we know it, that media

[critical-race-theory-threat-nation#sthash.HuWtxJel.KYJSZOJv.dpbs](https://perma.cc/HK6C-XGXY)
[https://perma.cc/HK6C-XGXY].

146. See, e.g., Lisa Lerer, *The New Cancel Culture Capitalism*, N.Y. TIMES (Apr. 10, 2021), <https://www.nytimes.com/2021/04/10/us/politics/cancel-culture-republicans.html> [https://perma.cc/X3H9-R6P7]; Sanam Yar & Jonah Engel Bromwich, *Tales from the Teenage Cancel Culture*, N.Y. TIMES (Oct. 31, 2019), <https://www.nytimes.com/2019/10/31/style/cancel-culture.html> [https://perma.cc/G287-8F34]; John McDermott, *Those People We Tried to Cancel? They're All Hanging Out Together*, N.Y. TIMES (Nov. 2, 2019), <https://www.nytimes.com/2019/11/02/style/what-is-cancel-culture.html> [https://perma.cc/9ZGK-TVZB].

147. See BENKLER ET AL., *supra* note 31, at 17-18 (noting the universal need of “advertising-supported media” to “attract viewers and earn advertising revenues”).

148. See *id.* at 352.

149. See *id.*

150. See Morrison, *supra* note 138 (quoting Benkler as saying, “[t]o the best we can tell from surveys, it looks like it’s about half to 60% of Republicans – which is to say somewhere between 25% and 35%, or between a quarter and a third of the American population in general – exists in cult-like isolation in a right-wing media ecosystem”).

151. Papacharissi, *supra* note 10, at 231; see also BENKLER ET AL., *supra* note 31, at 381 (“Technology is not destiny. Technology interacts with institutions and ideology to shape how we make meaning . . .”).

152. See BENKLER ET AL., *supra* note 31, at 81 (“Even Breitbart was founded in 2007, almost twenty years after Limbaugh became nationally syndicated.”).

network had been moving further and further to the right, while simultaneously rejecting traditional standards of journalism.¹⁵³ As Benkler writes, “[t]he American online public sphere is a shambles because it was grafted onto a television and radio public sphere that was already deeply broken.”¹⁵⁴ Benkler sees the crux of the problem not in Facebook, Twitter, or the internet more generally, but rather in a frayed “institutional and political-cultural fabric” that is both the cause and effect of the radicalization of the Republican Party.¹⁵⁵ If he is right, then we will not prevent the future corruption of terms that critique power—like “canceling” and “Critical Race Theory”—by tweaking Twitter’s algorithm or attaching a label to Facebook posts that are factually untrue. Instead, we will protect the integrity of concepts, ideas, and bodies of scholarship that challenge the status quo by unchaining the Republican Party from a right-wing media network that is committed not to truth in journalism, but rather to the loyalty of its viewers.¹⁵⁶ As Benkler writes, “[I]f the fundamental problem has deep political roots and takes a political shape, it is hard to imagine that it will be solved by technocratic rather than political and cultural means.”¹⁵⁷ If Benkler is correct, then changes to online governance will not save us. Only changes to our political culture and political systems will be our salvation.

That said, I insist upon asking an even bigger question than the one Benkler poses: what makes the hyperbole and outright lies offered in the right-wing media ecosystem make sense to tens of millions of people? We might heed Benkler’s insight and observe the gradual movement of the Republican Party to the far right over the course of decades.¹⁵⁸ But how has the Republican Party taken tens of millions of people along with it as it moved so far to the right? Why did the Republican Party not leave these presumably reasonable people behind as its claims became more and more untethered from reality? The search for the answer might lead us to look beyond the right-wing media ecosystem. We might look to income inequality that exceeds anything that we have seen in at least the past fifty years,¹⁵⁹ the economic precarity that the intersection of neoliberalism

153. *See id.* at 351-52.

154. *See id.* at 386.

155. *See id.* at 23; *see also id.* at 42 (“[T]he present epistemic crisis is not made of technology; it cannot be placed at the feet of the internet, social media, or artificial intelligence. It is a phenomenon rooted in the radicalization of the right wing of American politics and a thirty-year process of media markets rewarding right-wing propagandists.”).

156. *See id.* at 367 (“[T]o ask a small oligopoly of platforms to prevent [those stuck in the propaganda feedback loop] from getting the content they want is, to say the least, problematic. . . . [A]sking platforms to solve the fundamental political and institutional breakdown represented by the asymmetric polarization of the American polity is neither feasible nor normatively attractive.”).

157. *Id.* at 387.

158. *See* BENKLER ET AL., *supra* note 31, at 380 (observing that the Republican Party has been pulled “far to the right”).

159. *See* Katherine Schaeffer, *6 Facts About Economic Inequality in the U.S.*, PEW RSCH. CTR. (Feb. 7, 2020), <https://www.pewresearch.org/fact-tank/2020/02/07/6-facts-about-economic-inequality-in-the-u-s> [<https://perma.cc/ZL62-X5LQ>]; *see also* Elise Gould, *Decades of Rising Economic Inequality in the U.S.*, ECON. POL’Y INST. (Mar. 27, 2019), <https://www.epi.org/publication/decades-of-rising-economic-inequality-in-the-u-s-testimony-before-the-u-s-house-of-representatives-ways-and-means-committee> [<https://perma.cc/F3WY-FC6L>] (detailing a “large rise in overall income inequality”).

with late capitalism has brought,¹⁶⁰ an electoral system that permits profoundly undemocratic results,¹⁶¹ the intentional disenfranchisement of significant portions of the electorate,¹⁶² the alignment of political identities with social identities,¹⁶³ and the leveraging of narratives that the United States is, fundamentally, a white nation under attack by nonwhite Others.¹⁶⁴ The unreality that the Republican Party offers might help its adherents make sense of an increasingly unstable, terrifying world. We cannot indirectly fix these problems by dreaming up and implementing a brilliant scheme of online governance. We can only fix these problems by facing them directly – in the real world.

conclusion

This Essay has sought to be descriptive and theoretical, ultimately proposing that the transformation of the meanings of “canceling” and “Critical Race Theory” is worthy of investigation and analysis because they are symptoms of a larger malaise. They are manifestations of a crisis wrought by technology, yes, but also the radicalization of one of the nation’s parties, neoliberalism, the anti-democratic design of the U.S. system of governance, and the nation’s reiterative denial—from the Founding to the present day—that racism is embedded in the cogs and wheels of our institutions.

Nevertheless, there remains a normative question: what should we do in light of the shift in meanings of canceling and CRT? Some have argued that “an informed and effective response” to language on the move “is not merely to finalize or enforce one definition over all the competing meanings. Rather, it is to acknowledge this gap and decide how and in what ways society should choose

160. See Jedidiah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 128 *YALE L.J.* 1784, 1784, 1786-89 (2020) (linking the “intensified precarity” that people have experienced to a set of “‘neoliberal’ political projects” (internal citations omitted)).

161. See *Electoral College vs. Popular Vote in the United States*, ASSOCIATED PRESS (Sept. 14, 2020), <https://apnews.com/article/electoral-college-popular-vote-explained-f9ba69cbbe0493e0248603065790efad> [<https://perma.cc/DS95-444W>] (explaining how the Electoral College allows presidential candidates who do not win the popular vote to win the presidency).

162. See Theodore R. Johnson & Max Feldman, *The New Voter Suppression*, BRENNAN CTR. FOR JUST. (Jan. 16, 2020), <https://www.brennancenter.org/our-work/research-reports/new-voter-suppression> [<https://perma.cc/7MAS-9HJR>] (discussing voter disenfranchisement that is permitted under law).

163. See EZRA KLEIN, *WHY WE’RE POLARIZED* (2020).

164. For an example of this narrative, see Isaac Chontiner, *A Penn Law Professor Wants to Make America White Again*, *New Yorker* (Aug. 23, 2019), <https://www.newyorker.com/news/q-and-a/a-penn-law-professor-wants-to-make-america-white-again> [<https://perma.cc/AM6Z-36DT>] (describing the view that “Europe and the first world, to which the United States belongs, remain mostly white, for now” and concluding that the U.S. should take “the position that our country will be better off with more whites and fewer non-whites”).

to construct the issue and respond to it.”¹⁶⁵ If this argument is applied to online governance, it would suggest that we should not seek to enforce one definition of “canceling,” “Critical Race Theory,” or any term that may be disputed in the future by removing content that challenges that definition. Instead, we might merely flag that content as participating in a debate about the terms and invite the user to explore competing definitions. This approach might be appropriate for low-stakes debates – those where the survival of certain groups is not at issue. But for high-stakes problems, like COVID-19 vaccine misinformation, this approach may be woefully inadequate.¹⁶⁶

Outside of the context of online governance, the argument that we should not try to enforce one definition would suggest that we should not respond by seeking to declare, definitively, what “canceling” and “Critical Race Theory” mean. The claim counsels a more diplomatic approach. Instead of arguing about whether or not Kanye West has ever been “canceled,” we could simply acknowledge that we mean different things when we say that someone has been “canceled.” We could then engage in discussions about what the consequences should be when people behave in ways that are offensive to others. Instead of arguing about whether or not any public school or executive agency has ever taught “Critical Race Theory,” we could simply acknowledge that we mean different things when we use the term. We could then debate the place that conversations about race and racism should have in schools and workplaces.

Yet, this solution might be a loss in the context of cancel culture. If canceling is a tool that marginalized people deploy to “speak back” to power, then we might lose something by allowing defenders of the empowered to falsely portray the dynamics involved in canceling.¹⁶⁷

With respect to CRT, this solution feels like more than a loss: it feels like a tragedy. I write this as a self-identified critical race theorist. In not protecting what is meant when we say “Critical Race Theory,” CRT – the actual framework and analytical toolset that legal scholars began to generate forty years ago – might lose its utility as a method of critiquing power and inequity. Is that not precisely the goal of those who have aimed to cancel CRT? In not fighting tooth and nail to attach the term “Critical Race Theory” firmly to the nuanced, valuable paradigm that has yielded a wealth of insights about how racial power moves through our society, it feels like giving permission to a cabal – led by bad-faith actors – to kidnap one’s child. In order to honor the people who birthed the framework, my instinct is to assemble all of our resources – including the digital

165. Chris Richardson & Liam Kennedy, “Gang” as Empty Signifier in Contemporary Canadian Newspapers, 54 CANADIAN J. CRIMINOLOGY & CRIM. JUST. 443, 464 (2012) (citing ERNESTO LACLAU, EMANCIPATION(S) 45-46 (2007)).

166. See Eva Mathews, *Facebook Removes Dozens of Vaccine Misinformation ‘Superspreaders,’* REUTERS (Aug. 18, 2021), www.reuters.com/technology/facebook-removes-dozens-vaccine-misinformation-superspreaders-2021-08-18 [https://perma.cc/P485-FR7E]. Of course, the approach would require us to engage in democratic debates about which issues are “low stakes” versus “high stakes.”

167. See Romano, *supra* note 40 (reporting a journalist’s suggestion that “perhaps the best approach to combating the escalation of cancel culture hysteria into a political weapon is to refuse to let those with power shape the way the conversation plays out” and quoting her as saying “I think our remit, if anything, is to challenge that reframing”).

ones – and fight back. My instinct is to wage a counterwar to ensure that the #TruthBeTold.¹⁶⁸

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168. See *Welcome to the #TruthBeTold Campaign*, AFR. AM. POL'Y F., <https://www.aapf.org/truth-betold> [<https://perma.cc/6YQS-GSP5>] (organizing a response to the backlash over CRT that strives not simply to fight bans but to support affected educators, parents, and children).