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Schubert, Karsten

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## **Democratization Through “Cancel Culture” – Three Levels of Artistic Freedom Karsten Schubert**

### Abstract

While ‘cancel culture’ is commonly regarded as limiting freedom of speech and artistic freedom, this article proposes a new understanding of ‘cancel culture’ as emancipatory norm-setting that is key for democratization. On a non-governmental level of the self-regulation of the art world, the argument for artistic freedom ignores the fact that art is permeated by power. The introduction of ‘politically correct’ norms leads to a justified redistribution of such power. On a parastatal level of public broadcasting and state cultural funding, neutrality is necessary but should be understood materially to include marginalized voices. Restrictions of freedom of speech and artistic freedom do occur on the state-level of hate-speech regulation. Here, the danger of a potential shift from emancipatory regulation to a harmful restriction is particularly virulent, as a discussion of the German BDS ban shows.

### Keywords

Democratic theory, Radical democracy, Constitutional rights, Social protest, Intersectionality, Identity politics

## 1 Introduction<sup>1</sup>

The contemporary debates about artistic freedom are part of the ‘culture wars’ concerning the relationship between free speech and emancipatory politics. Other well-known buzzwords of these culture wars are ‘political correctness,’ ‘cancel culture,’ and ‘identity politics.’ Contemporary criticism of the restrictions of artistic freedom is usually embedded in a critique of these three phenomena. This critique is about a perceived restriction of public debate and culture by a rigid left-wing moralism.<sup>2</sup> Thus, the conflict is structured by an opposition between the demand for freedom of speech and art<sup>3</sup> on the one hand, and projects of emancipatory social criticism on the other.<sup>4</sup> In a historical comparison, this is remarkable; at least since 1968, left-wing criticism has stood precisely for artistic freedom, which had to be asserted against conservative social hegemony and state censors. Today, this constellation has changed thoroughly. Artistic freedom and freedom of speech have become central arguments—or rather, weapons—of the conservative political project used to fend off emancipatory change (Brown 2018).<sup>5</sup> Art and artistic freedom are not really at stake here; rather, they are merely the venue for contemporary cultural wars about sexism, racism, and transphobia.

A certain anarchist anti-statism prevailed in the tradition of leftist theory, which tended to understand the repressive state in an antagonistic relationship to civil society and the public sphere. Leftist theory, therefore, saw free art as a means to disrupt state ideology. However, today this image is more inaccurate than ever. Instead, state institutions, law, and civil society should be understood as power relations and sites of struggles for political hegemony—as radical democratic theories show (Laclau und Mouffe 2001; Comtesse et al. 2019). Now, to describe artistic freedom and freedom of speech as ‘weapons’ of the conservatives in this struggle does not mean rejecting these fundamental rights and advocating a power politics devoid of rights. On the contrary, these rights are a central component of the radical democratic project. This is why it is important to clearly separate their use or abuse in power politics from their function as fundamental rights. To this end, in this article, I will differentiate the various levels on which restrictions of artistic freedom and freedom of speech are discussed. I will thereby argue that the re-regulation of discourse, culture, and art through ‘political correctness,’ ‘cancel culture,’ or ‘identity politics’ is not the disintegration of democracy, but a step toward its more complete realization.

## 2 Non-Governmental Level: The Art World

In most cases when conservatives criticize restrictions of artistic freedom and freedom of speech, such restrictions do not actually exist. Artistic freedom and freedom of speech are primarily defensive rights against the state. However, the state does not appear as an actor in most of the current disputes about artistic freedom. I will, therefore, refer to this as the non-state level of

disputes about artistic freedom. When the Alice Salomon University paints over an allegedly sexist poem on its facade (Spiegel, Jan. 23, 2018), when Austrian comedian Lisa Eckhart is accused of anti-Semitism and racism and is therefore disinvited from events (Cammann, Aug. 12, 2020), or when J. K. Rowling's new book is boycotted in protest against her transphobia (Maurice, Sept. 16, 2020)—none of these events pertain to artistic freedom in the proper sense. There is no state intervention and control in any of these cases.

What there is, however, is regulation and norm-setting, and with it, power. The phenomena mentioned are part of emancipatory re-regulations of the prevailing norms with the aim of a less sexist, racist, and heteronormative society. Rules and power, the “order of discourse” (Foucault 1991), are nothing new for critical social and legal theory. Its core business is to identify and reveal power, ideology, domination, and repression, where they are not visible at first glance. This invisibility of power, in turn, is not simply a matter of insufficient observation; rather, hiding power is central to its mode of operation. This is also evident in the struggle for artistic freedom. The conservative argument for artistic freedom demands that power should play no role in the regulation of art. This ignores the fact that art is always-already permeated by power because it is part of the reproduction and negotiation of social norms. The art defended by conservatives in the three cited cases is not free, but permeated by sexist, racist, or transphobic norms. These norms block many people's access to the art world from the outset and prevent them from being represented in art. For example, the German cabaret is currently still dominated by Dieter Nuhr and the like, whose conservative resentments are well-received by the majoritarian society. In contrast, the stars of post-migrant cabaret, like idil Baydar, hardly get any prime time.

If emancipatory movements try to change the political norms of art, this does not change the intensity of regulation or the pervasiveness of power in art. Assuming success, there is only a shift in power relations. Harmful norms are criticized and replaced by emancipatory ones—and despite the persistence of social hegemonies, there has already been significant progress in this direction.

Contrary to the ‘cancel culture’ criticism, it is nothing new that the transformation of norms occurs through the regulation of participation in events, membership in institutions, and access to speaking positions. Such regulation has always taken place; the only difference being that, in the past, it was even more strongly dominated by conservative norms that maintained privileges and solidified repressive power relations. Only from the perspective of those who benefited from conservative norms could it appear that art was free, in the sense that it was not shaped by power. They suffer from a structural epistemic deficit due to their privileged position.<sup>6</sup> This epistemic deficit is expressed with the term ‘cancel culture.’ One can feel ‘canceled’ when the norms of the (art) world change and one is no longer in tune with the hegemony. In the past,

one did not get criticism for sexist poems—that is freedom, but only from this perspective. Many people who did not benefit from old privilege structures were ‘canceled’ by the art world from the outset (Schutzbach 2020).

The perspective of power shows three things. First, these power struggles are not a problem of artistic freedom, because regulation, norm-setting, and programming are a constitutive part of the art world and of public debate. Second, it helps to understand why, from the perspective of people with privilege, it can look as if freedom in general is being restricted, because their particular freedom is actually restricted. But this is not a problem of artistic freedom; more than that, it is not a problem at all, but part of social progress. The reduction of privileges is a central means to the further realization of democratic norms of equality and freedom. Failing to see this results from the epistemic deficit of social privilege. Third, this interpretation allows for the sharp rejection of those voices that falsely invoke universal freedom of art and speech to defend their privileges (Schubert 2020). This case is no longer merely an epistemic problem; instead, the argument of artistic freedom is systematically abused. For the evaluation of the argument of artistic freedom, however, such intentionality is not decisive; rather, its discourse structure—the (false) universalization of a particular perspective of the defense of privilege—can be analyzed and criticized independently of the intentions of the actors involved.

‘Political correctness,’ ‘identity politics,’ and ‘cancel culture’ are thus expressions of the conservative lamentation of lost power. Now, it may seem that this interpretation amounts to the affirmation of pure power politics void of universalistic validity. To refute this objection, it is necessary to explain more precisely what it means to say that the emancipatory norm changes aim at the expansion of the democratic project. Radical democratic theories help to show that democratic deliberation does not proceed according to the ideal of free discourse but is permeated by hegemonies that exclude many people (Nonhoff 2007; Mouffe 2008). The democratic project is therefore unfinished. Similar to individuals benefiting from power structures, democratic deliberation and the law suffer from an epistemic deficit that makes it difficult to articulate marginalized people’s experiences of oppression (Rancière 2002; Gebhardt 2020). This is most clear in the case of refugees, whose perspectives can hardly be articulated in contemporary democracy (Schwiertz 2019; Martinsen 2019). Therefore, democracy’s incremental development and improvement depend on the renegotiation and critique of the exclusions it produces (Celikates 2019; Schwiertz 2019: 47–96). However, it cannot do this on its own, but needs radical criticism; for example, of sexism, racism, and transphobia. ‘Political correctness,’ ‘identity politics,’ and ‘cancel culture,’ that is, the conservative expressions for this radical criticism, are therefore not a restriction of democratic plurality and inclusivity but their further realization. Plurality and inclusivity can only be gradually realized through the particular critiques of universalism.

This argument is based on controversial premises. First, that there are hegemonies and structures of privilege that can be objectively described and that also affect the art world. Although emancipatory themes are playing an increasingly important role in the contemporary art world, access and positions of power remain unequally distributed. Critical theory, activist voices, and data on sexist inequality, racism, and transphobia support this (Hark und Villa 2018; Hassler 2017). Second, and consequentially, none of the emancipatory norm-setting is itself hegemonic. While there are advances and gains in the power of feminist, anti-racist, and queer projects, they are far from constituting a hegemony. Only if there was such a hegemony would it pose the problem of potentially resulting in a restriction of artistic freedom. Thirdly, however, we would then have to take a closer look. The enormous discursivity of sociocritical projects suggests that despite the dogmatism which are sometimes observable within left-wing debates, they are generally characterized by a higher (self-)critical capacity than conservative projects (Schubert und Schwiertz 2021). Dogmatic and regressive closures in emancipatory projects are usually immediately met with another round of critique—therein lies their potential for freedom (Schubert 2018). For example, the recent petition demanding Netflix to cancel the film “Mignonnes” (English: “Cuties”) because of an allegedly pornographic depiction of children, which was supported by a cross-front between right-wing Catholics and left-liberal feminists, was quickly identified as an uninformed expression of a regressive sex panic (Jones 2020; Rubin 2011).

### 3 Parastatal Level: Public Service Broadcasting and State Cultural Funding

Artistic freedom is also discussed in relation to public broadcasting and state cultural funding, and here the matter is more complicated. To be sure, it is also true of this field that the contemporary question of artistic freedom is primarily a struggle between conservative defenses of privilege and emancipatory reregulation. It is equally true that the structures at stake are necessarily sites of power: decisions must be made about who gets airtime and funding. There is no such thing as power-free neutrality; only disputed interpretations of the principle of neutrality. The already mentioned strong presence of conservative thigh-slappers à la Dieter Nuhr and Lisa Eckhart in public cabaret shows this (Rabe, 14.8.2020). Hence, also in this parastatal sphere, it has a democratizing effect to politically re-regulate and include more critical voices, which of course goes hand in hand with a loss of relevance and resources for conservative artists.

The central difference to the non-governmental sector is the requirement for neutrality and pluralism in public media and state cultural funding. On the one hand, this requirement is democratically necessary because it ensures free discourse and the free development of art. Only fostering and supporting certain positions here would constitute a material restriction of the freedom of art and press due to the enormous importance of the parastatal sphere for the public

and culture. For example, the intensity and manner in which public broadcasters have addressed the issue of refugees and migration have been criticized for contributing to a shift in social discourse to the right (Gäbler 2017; MIDEM 2018). Particularly problematic in this context is the new mobilization of right-wing voices (see Ramin 2023, in this volume) that repeatedly manage to intervene in parastatal programming, such as in the case of WDR's 'Oma-Gate.' Especially when institutional support fails, such cases can lead to greater caution on the part of journalists and artists, which can lead to a restriction of freedom of art and press, although that is by no means generally the case in Germany today.

On the other hand, emancipatory criticism demands new norms to appear in the field of public broadcasting and public arts funding. To be sure, emancipatory groups aim to reshape the understanding of neutrality and plurality in such a way that it becomes more inclusive and plural. Nevertheless, at first glance it looks as if such politicization of the parastatal sphere would have to be rejected on the grounds of the neutrality requirement and artistic freedom. State-orchestrated 'political correctness' is arguably a horrible idea, and not only for conservatives reminiscent of Stalinism.

However, the case for such politicization of parastatal institutions can also be made through democratic theory. That the currently existing democracy is unfinished and that the democratic promise of equal freedom for all has not been realized is a widely shared diagnosis in democratic theory (Heil and Hetzel 2006). Accordingly, there is much thinking about how political and legal institutions can be reformed to systematically break down structures of privilege (Herrmann and Flatscher 2020). Democratic progress would thus also be driven internally by the institutions, and not just by external social pressure. This, of course, raises the question of how democratic progress can be defined universally—after all, it is obviously politically disputed. The answer to this question is two-fold. First, there are extensive resources for a plausible foundation in political philosophy; for example, the post-Hegelian method of immanent critique, which starts from basic democratic values such as freedom, equality, and solidarity and analyzes the conditions of their realization in the present (Stahl 2013; Jaeggi 2009). Secondly, such institutional reforms do not aim to establish a political truth, but rather to open up social discourse. Thus, the propositions of democratic theory are not about dictating specific policies (content), for example, that all publicly funded art should address racism against Muslims in a post-migrant society. Rather, it is about proceduralist arrangements (form) that are open in terms of content and can be implemented differently at the local level. For example, by introducing an abstract criterion that art funding should contribute to the reduction of arbitrary power and privilege, or that representatives of marginalized groups should have a voice in the allocation of funds and programming. Thus, while artistic freedom is a central good of a free democracy, it does not follow that the principles of

neutrality and plurality of the state vis-à-vis the arts should be interpreted formalistically, but rather as a mandate for their actual material realization through appropriate procedures.

#### 4 State Level: Legal and Political Restrictions of the Freedom of Art and Speech

Shifts in norms on the non-state level and the democratization of ideas of neutrality on the parastate level are thus not restrictions of the freedom of art and speech but rather transformations of the field of the sayable, which in the longer term shape which positions and artistic expressions are heard and which are not. This must be distinguished from actual and direct restrictions on artistic freedom and freedom of speech imposed by law and politics. This involves, on the one hand, general laws such as the prohibition of incitement to hatred and other regulations of hate speech. On the other hand, in Germany, it also involves special rights regarding Holocaust denial, which is punishable by law (Hong 2018a), and the use of Nazi symbolism in art, a matter of controversy regarding artistic freedom.

When it comes to state regulation of hate speech, the ambivalences of political assessments and the danger of a potential shift from emancipatory regulation to a harmful restriction of artistic freedom and freedom of expression are particularly virulent, because regulations are enforced throughout society by state power. For example, there is currently a critical debate on the potential restriction of freedom of speech through the *Netzwerkdurchsuchungsgesetz* (Network Search Act), which obliges Internet companies to delete content containing hate speech and to send it, along with user data, to the German Federal Criminal Police Office (BKA) without judicial review (Hong 2018b).

The political attempt to take action against hate speech can also lead to an indirect restriction of the freedom of art and speech. For example, the German Parliament Bundestag has condemned the Israel-critical boycott, divestment and sanctions movement (BDS) and its supporters and excluded them from cooperations because it considers them to be anti-Semitic (Deutscher Bundestag 2019).<sup>7</sup> Regardless of a concrete assessment of the BDS movement, it is clear that this issue is highly controversial. The recent controversy surrounding Felix Klein, the Federal Government Commissioner for Jewish Life in Germany and the Fight against Anti-Semitism, who accused postcolonial theorist Achille Mbembe of anti-Semitism demonstrates this. The Bundestag decision may have far-reaching consequences because BDS has broad support in international art, academia, and politics, and a large number of cooperation partners and artists are thus subjected to a German attitude test (*Gesinnungstest*), requiring that international partners adopt the German position on BDS. In contrast to the proposed procedural democratization at the parastatal level, this decision is a concrete substantive decision that intervenes in an ongoing political debate with state power. This is not a restriction of freedom of expression and artistic



freedom in the formalistic legal sense<sup>8</sup> but it is in the material sense because the state unilaterally distributes or withdraws considerable resources for participation in social debates.

#### 4 Conclusion

The analysis of the three levels has shown that the emancipatory critique of society does not pose a threat to artistic freedom and freedom of speech. Rather, freedom of art and freedom of speech have primarily become argumentative weapons in the contemporary culture wars. Conservatives use these arguments to defend their privileges. ‘Political correctness,’ ‘identity politics,’ and ‘cancel culture’ are therefore falsely criticized as restrictions on artistic freedom and freedom of speech. They in fact contribute to the more inclusive realization of democracy. As the promise of democracy, freedom and equality for all, remains far from realized, identity politics are necessary to identify and criticize exclusions and discriminations. Identity politics and new emancipatory regulations are therefore at the heart of democracy.

#### Notes

1. This is an updated and revised translation of Schubert, Karsten. 2020. *Umkämpfte Kunstfreiheit—Ein Differenzierungsvorschlag*. In *Zeitschrift für Menschenrechte* (2): 195–204.
2. The widely acclaimed Harper’s Letter (Harper’s Magazine 2020) is an example of this perception.
3. Because the debate does not usually distinguish between freedom of speech and artistic freedom, I refer to both fundamental rights in this text, unless a differentiation is systematically necessary.
4. I understand ‘left-wing’ politics to mean politics that are committed to the dismantling of domination and to the value of equal freedom for all. Left-wing politics thus aims to realize the unfulfilled promise of modernity and the Enlightenment. As a synonym for ‘left,’ I also use ‘emancipative’.
5. This implies that liberalism and conservatism are merging. Today’s conservatism mainly relies on liberal arguments, as the ones analyzed here. For a broader take on the concept of freedom that is at stake in this development cf. Amlinger und Nachtwey 2022 and Schubert 2023
6. According to feminist standpoint theory or standpoint epistemology, the social standpoint and related experiences greatly influence what people can know (Harding 2004). The term ‘epistemic deficit’ expresses that people are unlikely to gain certain knowledge because of their social position. For example, those who have not had to experience racism are often not good at recognizing racism, cf. also Celikates (2019: 408–409).
7. That the Bundestag chooses the instrument of a resolution for this action against BDS and does not pass a law is consistent because a law in this spirit would be a special right against a particular opinion and therefore unconstitutional.
8. In a formalistic sense, the ECHR recently defended the freedom of speech of BDS activists against the French state, which had prosecuted the activists, see Ambos (2020).

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## Author Bio

Dr. Karsten Schubert is Associate Researcher in Political Theory at Humboldt University Berlin. His work focuses on contemporary critical political theory and social philosophy: Radical democracy, legal critique, Michel Foucault, biopolitics, queer and gay theory, and intersectionality. Currently, he researches at the intersection of radical democratic thought and identity politics. He received his PhD in philosophy from the University of Leipzig. His first book “Freedom as Critique. Social Philosophy after Foucault” (2018, in German) was published with transcript. Texts, videos, and current information at [www.karstenschubert.net](http://www.karstenschubert.net)