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The Philosophy of Law in the Platform Society

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In the twenty-first century, digital platforms such as Google, Meta, TikTok, and X have taken the spotlight in global life. They host the bulk of modern communication, control the circulation of information, and structure economic and political relations. These corporations are privately owned and motivated by profit, but their reach is so extensive that opting out of their systems has become impractical for most. The paradox is that private firms now have power in ways that resemble public authorities, as they adjudicate what speech is permissible and exploit personal data on a scale historically reserved for states. This is a problem for the philosophy of law, because if platforms are neither fully private nor truly public, what are their responsibilities? This paper argues that digital platforms should be understood as quasi-public actors, and although platforms may not be sovereign states, their unprecedented influence over speech, privacy, and decision-making requires regulation analogous to constitutional or public law.

This analysis draws from John Rawls, Ronald Dworkin, Jürgen Habermas, Michel Foucault, Robert Nozick, and Helen Nissenbaum, along with modern-day debates in law and technology. The goal is to provide a philosophical perspective of digital platforms that recognizes their hybrid

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character in that they're privately organized yet publicly consequential, profit-driven yet socially indispensable. The challenge of our time is to develop a governance framework that protects rights and the common good without stifling innovation.

Digital Platforms as Quasi-Public Actors

"Quasi-public actor" is categorized when a private entity takes on functions that are core for public life. Historically, courts and legislatures have recognized this company towns, railroads, and telecommunication carriers. These entities were privately owned, but because they provided critical infrastructure, they were bound by duties of nondiscrimination and fairness. In Marsh v. Alabama (1946), the United States Supreme Court held that a company-owned town could not exclude leafleting by reasoning that its sidewalks functioned as a public forum regardless of corporate ownership.

Digital platforms today fit this categorization. They are important infrastructure for speech, assembly, and commerce in the digital age. As Linnet Taylor finds, these firms *act on the population level* in ways that condition political participation and social interaction, even when individuals nominally consent to their terms of service. Users may click "I agree," but the absence of reasonable alternatives means that consent is in essence, coerced. Citizens become "users" governed by corporate codes rather than public law, which is where the legitimacy crisis comes from: when the most important spaces for communication are ruled by private companies, traditional liberal distinctions between state and market begin to collapse.

One response is to compare platforms to public utilities or common carriers. In earlier eras, railroads, telephone networks, and electricity providers were subjected to regulation because they were indispensable to social participation. Scholars like Vicente Bagnoli argue that platforms have become essential facilities in a similar sense, as they provide access to communication that cannot be avoided.

The utility analogy is supported by jurisprudence. In Packingham v. North Carolina (2017), the Supreme Court described social media as "the modern public square." Although the case was about a state restriction on sex offenders' access, the language reflects judicial awareness that online platforms are public forums. As with water or electricity, a society committed to equality and participation should guarantee fair access to digital platforms.

Philosophically, this perspective connects to Rawlsian justice. Rawls argues that social institutions must have fair equality of opportunity and ensure that primary goods are distributed in ways acceptable to all under a veil of ignorance. Access to digital communication is now a primary good, because without it, people are excluded from democratic participation and economic opportunity. Allowing private corporations unfettered discretion over who may speak and be heard is unjust. A Rawlsian perspective would support obligations on platforms to provide access in ways that prevent arbitrary exclusion.

In the same vein, the republican tradition of freedom as non-domination demonstrates why private platform power is problematic. When an entity can arbitrarily silence speech or control visibility, individuals are dominated even if they are not constantly interfered with. Philip Pettit's account of freedom stresses that the possibility of arbitrary interference itself is a loss of liberty. Digital platforms' moderation is such arbitrary power. Consequently, public law is needed not only to prevent direct censorship by the state but to also prevent domination by corporate intermediaries.

A potential objection is that unlike water or electricity, social media is not a natural monopoly, which weakens the utility analogy. This is because competition among platforms is theoretically possible, such as the rise and fall of services like MySpace. Moreover, platforms are not passive conduits but active curators, because they constantly design algorithms, recommend content, and make editorial judgments. Placing common carrier obligations risks crippling this editorial freedom, which some argue is protected by the principle of free speech. Ronald Dworkin's defense of expressive freedom suggests that even corporate actors may have a right to shape the discourse they facilitate.

Libertarian theorists like Robert Nozick continue by insisting that private property rights entitle owners to control their platforms however they want. With this view, users voluntarily contract to participate under a platform's rules, and the state has no justification for interference unless rights are violated. The possibility of choosing another platform is enough to protect liberty. From a Nozickean standpoint, regulating platforms as public utilities is unjustified paternalism.

However, the problem with these counterarguments is that the exit option is often illusory. Network effects mean that abandoning Facebook or Google constitute large social and economic costs. Moreover, treating corporate terms of service as genuine contracts ignores the extreme asymmetry of power and knowledge between users and platforms. As Helen Nissenbaum argues, the formal act of consent does not ensure substantive legitimacy when users don't have true alternatives and understanding. The

libertarian defense of platforms thus risks legitimizing domination under the facade of voluntary exchange.

A better approach is to recognize that platforms are hybrid entities: private in form but public in function. They are not states, but they are not ordinary firms either. As a result, their governance must be judged against public values even if they are privately owned. This does not mean treating them exactly like utilities, but it does require applying principles of justice, fairness, and accountability to them.

Habermas's concept of the public sphere provides more context. He envisioned spaces where citizens participate in rational debate, free from domination by either state or market. Digital platforms could serve this role, but only if structured to facilitate deliberation rather than manipulation. In their current form, profit-driven incentives distort the public toward polarization. Law and philosophy together must determine how these spaces can be reconstituted to promote democratic legitimacy.

Responsibility, Justice, and Legitimacy

The topic of how platforms regulate speech is extremely controversial. Social media companies constantly decide what kinds of expressions are allowed, promoted, or removed. They delete posts deemed to be hate speech, misinformation, or incitement, they suspend users who violate community standards, and they design algorithms that prioritize certain content over others. These actions determine who can participate in public discourse, with what visibility, and under what conditions.

The philosophical stakes are enormous. At the core is the value of free expression: is it compromised when private platforms police speech? Traditionally, constitutional protections apply only to state action. For instance, in the United States, the First Amendment restrains government censorship but does not bind Facebook or YouTube. However, given that these companies host most political conversation, their power over expression increasingly resembles the power once reserved for governments. The liberal state's role in ensuring a free public sphere is now being outsourced to corporations.

From a Habermasian perspective, this is troubling. Habermas's model of the public sphere envisions all voices able to participate in rational conversation on equal footing. Digital platforms were initially celebrated as expanding this public sphere, as anyone with an internet connection could contribute to public conversation. However, reality diverges from the ideal. Echo chambers, harassment campaigns, disinformation, and algorithmic promotion of outrage have crippled reasoned debate. Rather

than empowering citizens equally, platforms often amplify voices already advantaged by resources.

The question, then, is what responsibilities platforms have to promote communicative justice. One approach argues they must actively act against harmful speech to preserve the integrity of public discourse. Jeremy Waldron maintains that hate speech corrodes the dignity of those it targets and undermines their status as equal participants in society. Failing to remove racist or demeaning content allows a poisoned environment where vulnerable groups cannot speak on equal terms.

On the other hand, Ronald Dworkin warns against diluting the principle of free speech. He recognized the temptation to censor what seems vile or worthless, but insisted that treating expression as less than a fundamental right infringes on the moral foundation of free speech itself. Applied to platforms, if corporations or regulators start removing lawful but offensive speech just because it offends prevailing norms, they risk narrowing the scope of permissible discourse and preventing dissent.

Platforms thus confront a double bind. If they under-regulate, they allow disinformation and harassment to thrive, which silences vulnerable voices. If they over-regulate, they risk suppressing expression and creating echo chambers. A just approach requires balance. The principle of proportionality, often used in human rights law, applies in this case, as restrictions on speech must be necessary, suitable, and proportionate to the harm prevented. Platforms should thus only target the most severe and harmful categories, such as direct incitement of violence or harassment.

Procedural fairness is equally important. Content moderation often feels arbitrary, with users receiving vague notices or no explanation at all. Justice demands due process, which means clear rules, transparent reasoning, and accessible avenues of appeal. Initiatives like the Facebook Oversight Board attempt to provide legitimacy through independent review and reasons. Even the scope is limited, these mechanisms demonstrate that platforms' authority must be checked by norms of accountability.

Digital constitutionalism addresses this gap, as it envisions embedding higher-order principles such as freedom of expression, nondiscrimination, due process, into digital platform regulation, much as constitutions constrain states. This could look like external or independent regulation or binding platform commitments. In free speech, the goal should be to protect a digital public sphere where all can participate, while still preserving the broadest possible freedom to express and contest ideas.

Data Privacy, Surveillance, and Power

If there are questions of speech in content moderation, data collection raises questions of privacy and autonomy. The business models of major platforms rely on the consistent harvesting of user data through location, preferences, social connections, and behavior. This data is monetized through targeted advertising and algorithmic profiling. This means that individuals trade their personal information for access to social media.

Pervasive surveillance has also become a more controversial issue. Michel Foucault's analysis of the Panopticon is particularly relevant. In a prison designed under the guise of constant visibility, inmates internalize the surveillance of authority and discipline themselves. Digital platforms are a modern panopticon, as users are continuously monitored, their behaviors tracked and analyzed, and the resulting data used to influence what they see and how they act as a result.

There are significant normative implications to this. Privacy is not just a private preference but is also a condition of autonomy. Without zones of freedom from observation, people lose the ability to have their own judgments or opinions. When platforms use data to micro-target political ads or nudge consumer choices, they compromise peoples' ability for self-determination. Moreover, the asymmetry of knowledge where companies know so much about users, while users know little about how their data is used is astounding. This imbalance cripples the very possibility of informed consent.

From a justice perspective, there's also problems regarding distribution. Platforms reap huge profits from personal data, while users receive little more than targeted ads and access to services. Some propose treating data as labor or property, which allows individuals to demand compensation for its use. Others argue that privacy is a fundamental right that should not be commodified. A Rawlsian analysis would ask whether the rules of data regulations could be justified under a veil of ignorance. It is doubtful that rational individuals would accept a system that allows corporations almost unlimited collection and monetization of their personal lives without much accountability or oversight.

Responsibility for data harms is another problem. When scandals like Cambridge Analytica revealed mass misuse of Facebook data, blame was diffused. Users had technically consented, third-party developers exploited loopholes, and Facebook claimed ignorance. However, justice requires that responsibility tracks power. Platforms, as the architects of the system, have the greatest ability to prevent abuse and are most responsible. This idea is what creates the foundation for proposals to treat platforms as information fiduciaries, such as doctors or lawyers who handle sensitive

information. Fiduciary duties of loyalty and care would require platforms to act in users' best interests, not exploit their data for profit.

Algorithmic Governance and Fairness

It's worth noting that perhaps the most distinctive aspect of digital platforms is their reliance on algorithms to influence experience. Recommendation algorithms get to decide which posts users see, search engines rank information, and automated moderators flag or remove content. These systems are increasingly working through machine learning, which makes them difficult to fully understand and control, even for their creators. Algorithms are thus a form of control, because they set the rules of visibility in the digital space.

This brings up great philosophical questions on fairness, transparency, and accountability. Do algorithms distribute attention and opportunities in fair ways? Do they reinforce or reduce social inequalities? Can people contest the algorithmic decisions that affect them?

A Rawlsian perspective provides one point of view. Access to reliable information and visibility in public discourse are arguably primary goods. Individuals would want rules ensuring that these goods are fairly distributed and not monopolized. However, current algorithms often do the opposite. For example, YouTube's recommendation engine has been shown to push users toward increasingly extreme content because outrage drives up engagement. Social media feeds prioritize viral content, not necessarily truthful information. In regards to justice, these designs fail the test of fairness, because they expose individuals to manipulation and degrade the quality of public discourse.

Bias in algorithms also leads distributive concerns. Automated moderation systems may disproportionately flag the speech of minority groups due to biased training data. Advertising algorithms may show high-paying job ads more often to men than women, which would essentially reproduce workplace inequalities. These outcomes are normative failures. A just system would need to protect and ensure algorithms do not systematically disadvantage marginalized groups. Proposals such as algorithmic audits would institutionalize such protections and would require platforms to evaluate and correct discriminatory effects.

Foucault's concept of disciplinary power also provides further context on issues related to autonomy. Algorithms normalize certain behaviors by rewarding what goes hand in hand with platform incentives and penalizing what does not. Creators learn to produce content that performs well with algorithms, often by being more sensational or conforming to norms.

In this way, algorithmic governance disciplines expression and influences culture and subjectivity. Recognizing this dynamic is important to resisting undue normalization and preserving pluralism in the digital sphere.

Responsibility for algorithmic harms can not be deflected onto machines. Platforms design, deploy, and profit from these systems. When algorithms push misinformation or discriminate against vulnerable groups, the companies that created them bear responsibility. There have begun debates over whether immunity for platforms should apply when their algorithms materially contribute to harm. Philosophically, the principle is clear in that accountability must track control. To allow companies to hide behind the scapegoat of algorithms would be to abdicate justice.

Altogether, these concerns emphasize the important of a regulatory framework of algorithmic governance with fairness, transparency, and responsibility. Fairness ensures that algorithms do not perpetuate inequity, transparency enables users to understand and contest outcomes, and responsibility ensures that those with power to design and profit from algorithms are held accountable. Meeting these requirements will not eliminate all algorithmic harms, but it would better connect platform governance with principles of justice.

Conclusion

Digital platforms can no longer be treated as ordinary private companies. They decide who gets heard, what information circulates, and how people relate to one another in ways that create the foundation of public life. When access to speech, privacy, and visibility is controlled by corporate rules rather than public norms, the classic boundary between state and market breaks down. Recognizing platforms as quasi-public actors does not mean turning them into governments, but it does mean judging their power by public standards.

Across speech moderation, data collection, and algorithmic governance, the same problem keeps resurfacing: power without enough checks. Content rules can silence or promote voices with little explanation, surveillance weakens autonomy under the guise of consent, and algorithms quietly steer attention and behavior while remaining difficult to understand. Philosophical frameworks from Rawls, Habermas, Foucault, and others converge on a simple point: when institutions impact basic conditions of freedom and participation, justice requires limits on arbitrariness and protections against domination.

The task ahead is not to reject digital platforms or smother innovation, but to bring their regulation in line with the values they already

affect. This means stronger protections for speech, tangible constraints on data exploitation, and real accountability for algorithmic harms. Law and philosophy together offer the tools to do this work. If digital platforms are where public life now happens, then they must be governed in ways that respect the people who depend on them.

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