Time to Start Over: Calling all Stakeholders for a Fairer Platform Society

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It’s hard to ignore the increasingly pronounced tremors that mark the economic landscape shifting underneath our feet. The presumed solid bedrock of well-regulated trades and services supplying predictable employment prospects, of workers’ welfare under-girded by frameworks of rights and guaranteed by contracts, is apparently splitting asunder. Workers in countries who felt well-protected by their current legal and economic regimes now realise that their situations may be more precarious than expected, as they face competition from colleagues classified as self-employed, or employed cheaply on zero-hours contracts. Industries, previously grounded in ownership and control of otherwise easily-shareable resources such as creative content or journalism argue their profits are foundering at the hands of social media companies.

Similar fears arise in other corners of society. The growing panic about fake news on social media reflects less a concern that public gullibility is increasing, but rather a worry that well-regulated journalism is threatened by new models of information exchange that allow public opinion and debate to be ever more cynically steered or fragmented. In more visceral terms, we read about abuses of power where ride-sharing providers assault their customers, or tourist-hosting flat-owners use hidden cameras to spy on their guests. In each of these cases, it is easy to construct a scare-story, whereby all the hard-won social progress of recent decades is lost to technological innovation and the regulatory slipperiness of the platform society. But as ever, reality is more complicated than newspaper headlines would give us to believe.

In many ways, we are already too embedded in the platform society to consider it dispassionately from the outside. On a typical day in many parts of the world, most of us will interact with the platform economy in multiple ways. We might use a ride-sharing app instead of a licensed taxi, listen to music online, buy a book (or something much more obscure) on Amazon or scroll through our social media feeds. Perhaps less obviously, we may also be interacting with platform businesses we’ve never heard of: the Fortune 500 companies we buy goods or services from are increasingly likely to use labour hired on gig economy platforms1. Even our exchanges with government may be facilitated by commercial platforms designed to enable citizen transactions at speed.

The platform society is all around us, and it is naive to believe that we can just roll back the clock. The only alternative is to embrace it, (or at least accept it), and more
importantly to analyse, assess and critique. Governments, unions and consumer groups need to focus attention on the swiftly expanding array of digital companies that function as ‘platforms’. Consider, for example, what this concept purports to offer. The neoliberal logic of the platform society is one of efficiency and opportunity. Online platforms proudly claim to directly connect buyers and sellers of goods, services or labour, to provide immediate access to new markets, to enable speedy, transparent and mutually beneficial transactions.

Yet as Tarleton Gillespie has noted, there is some rhetorical sleight of hand in the very idea of the platform society (Gillespie 2010). In its original computational meaning, a platform referred simply to something that could be programmed on or for. But that usage has been lost in everyday speech, where online platforms are instead understood as go-betweens, providing new spaces for speech or monetised exchange. In policy debates, the normativity of the concept is even more obvious with platforms often portraying themselves as neutral hosts, providing not just space for speech or monetary exchange, but open space for free speech and faster, more efficient transactions. That platforms are, in Gillespie’s words, inherently political, will come as no surprise to anyone engaged in digital policy debates. But it’s worth pressing this point still further, as platforms need to be seen not just as new economic but also fundamentally political actors, playing an increasingly important role in distributive justice, namely the business of who gets what, when and from whom.

The reason for this is that digital platforms do far more than enable us to share, communicate or transact easily. Instead they govern the types of transactions that are possible, or the terms on which they take place. The addition or removal of key lines of code can make it harder or easier for a worker to get a job, or may make a ride-sharing service more or less expensive to users in particular places at certain times of day. There’s nothing new in the observation that digital platforms govern: Larry Lessig’s proclamation that ‘code is law’ has been informing the ways we make policy in Internet-related matters for 18 years now. But with the advent of the platform society, there is novelty in the extent to which code now rules our lives, and the multiplicity of ways this threatens to undermine prior regulatory certainties. Nowhere does this matter more than in politics, where the expanding role of social media platforms in serving political content and shaping our speech opportunities is impossible to ignore.

For those of us wearying of reading daily stories of attempts by foreign powers or extremist political groups to manipulate our social media feeds for political ends, the techno-optimism of early Internet scholars seems remarkably distant. That optimism was
not unjustified. Drawing on the work of democracy theorist Robert Dahl, Bruce Bimber’s classic text Information and American Democracy argued that information technologies could help to reduce one of the significant sources of political inequality, namely unequal access to political information\textsuperscript{4}. There is some evidence that this has occurred, with research suggesting that those whose demographic profiles would make them less likely to participate in political activities, may have gained the most\textsuperscript{5}. Other positive signs include the growing ranks of younger citizens who engage in new forms of ‘micro-participation’ online\textsuperscript{6}, or the famous 60 million-person experiment that proved the potential of ‘social contagion’ (seeing that friends on Facebook had voted) to increase voter turnout\textsuperscript{6}. Social media platforms have undoubtedly created new opportunities for civic and political engagement, enabling both political actors and ordinary citizens to capitalise on innovative forms of communication that promise more immediacy, authenticity and even entertainment.

But we are all too aware of the less positive aspects too. Growing evidence of online propaganda disseminated with stealth by foreign powers or their agents, raises the spectre of electoral manipulation. The scandal of fake or junk news sounds, on the surface, as if it’s merely a test of our critical media literacy skills, and that if all of us just made more effort to question what we read, this problem would go away. Unfortunately, like the iceberg that sank the Titanic, it’s not what’s on the surface that matters. In this case, junk news is just the outwardly visible sign of a much more deep-rooted problem, namely that the algorithms driving our social media feeds are almost unavoidably corruptible. Not because companies like Google, Facebook or Twitter are corrupt, but because their business models will always favour content that grabs our attention and other actors will manipulate this to achieve their goals. Digital platforms may already be getting much better at labelling content for quality or trustworthiness, but unless human psychology changes drastically, our eyeballs will continue to be drawn to content that seems exciting, scandalous, or bias-confirming. This is the fundamental problem of social media platforms where money is made in the attention economy: content is served on the basis of what we’ve liked before, what we’re likely to want to see now, rather than curated on the basis of what is reliable, well-evidenced or even good for us.

If one issue is the role of algorithms or code in selecting our content, another is the larger corporate role of social media platforms in regulating what content we are allowed to see. Speech in a private context has always been open to regulation. A bar or restaurant is within their rights to eject a customer for swearing, whilst businesses uphold employee codes of conduct. But in the age of social media, three new phenomena arise. First, the very notion of private speech is unsettled, in the one-to-many or many-to-many environment of Facebook or Twitter. Second, so much of our speech, even political
speech now takes place on these platforms, and this matters because the design of these new political spaces is controlled by these companies. An array of apparently technical design choices, such as whether to allow threaded discussion, whether real names are required or who can moderate discussion, now shape the way we conduct political interactions online. And last but not least, governments are placing more and more pressure on social media companies to regulate content, even content that is legal. Consider, for example, the current political pressures from German and UK governments for social media companies to remove hate speech or extremist content in a very short time-span. Will it be possible to adjudicate with perfect accuracy, and if not, are we happy that ‘private sheriffs’ have so much control over what we can say online? Especially if some of this content strays onto political topics. What all of this amounts to is the privatisation of political space. And whoever fixes the rules that define these spaces, however benevolently, cannot help but shape our political lives.

Probably the most fundamental question in politics is the matter of who has power. Scholars have wrestled over decades, first to define what they mean by power, and then to assess who wields it. Stephen Lukes argued that at least three dimensions or types of power matter45. The first and simplest form of power is just a matter of who gets their way. Parliamentarians argue in the debating chamber, seeking to swing a vote for their preferred position. Companies spend money on lobbying to ensure that their views are represented or reflected in the debating chamber, and it is notable that the big 5 tech firms (Amazon, Apple, Facebook, Google, and Microsoft) spend liberally on this front: $49 million in 2017, it seems*. The second dimension is agenda-setting power. If individuals or groups can shift the political agenda so that the issues they favour are never subject to challenge or debate, then this is clearly advantageous. The third and final dimension is more insidious, requiring that institutions play a role in shaping individual views and preferences such that those preferences align with the views of those in power.

This may sound sinister, and it’s important to note that none of this analysis requires us to believe in an evil tech CEO deliberately conspiring to manipulate the political landscape for their own personal financial or ideological gain. Rather it just helps to clarify the point that social media platforms are inherently political players, and more than that, that they hold real political power. It is hard not to see companies like Google, Facebook and Twitter occupying a position where, even unintentionally, they are able to sway the public agenda or let it be swayed by other third parties, and where their chosen architectures encourage or inhibit certain types of civic engagement. Both effects are involuntarily strengthened as states rush to give social media companies ever more responsibilities to police speech and expression. Add to this the fact that the largest companies have billions of users across so many different jurisdictions, and the legal
battles they fight in national and supra-national supreme courts will shape the rights of citizens for years to come. It’s hard not to wonder whether their political power is greater even than that of some states.

It’s tempting, from this perspective, just to panic: close them down, break them up, make them pay. But it’s impossible to go backwards, and the application of existing regulatory frameworks will only barely work if current policy problems such as regulation of fake news or electoral advertisements are inelegantly shoe-horned into them. Our regulatory toolkits are not fit for purpose. Calls from some parties to use principles of competition law to tackle the market power of Google or Facebook miss a rather fundamental point. The issue is not one of consumer harm where quasi-monopolist search and social media companies are able to keep their prices artificially high. Nor is there clear evidence of innovation being stifled – new services, apps and products emerge constantly, and even where (as with Facebook acquiring Whatsapp), successful innovators are bought up by the tech giant, this is lawful so long as the purchased company was not a competitor. The big five tech companies may be enormous, but as academic legal scholars have noted, competition law is not the right hammer to crack this nut*. 

If we are genuinely concerned about the social and political problems of the platform society, we need to go back to first principles. Governments have traditionally regulated markets and businesses in order to protect worker, consumer or citizen rights, counter externalities and to collect taxes to support this role. Instead of relying on broken tools such as data protection regulations that rely too heavily on user consent, or competition law that looks narrowly at pricing but not data accumulation, or gatekeeper power, we need to start afresh. How are our social, political and economic rights, challenged by innovations in the platform society, but also how are they given new meaning? What are the externalities, the hidden social costs of companies who provide consumer products for free whilst deriving profits from our data and our attention?

Digital platforms can and do sidestep existing regulation. Not because they are necessarily and maliciously abdicating expected social responsibilities (although some may) but also because they are social and regulatory innovators. If we are to maximise the benefits of technological advance in the platform society and minimise the harms, policy frameworks must keep step. At this juncture, regulatory innovation is needed even more than technological innovation. Laws fit for the platform society must be remade with a commitment to favour citizen, consumer and worker rights over historic vested interests, and public interest over profit or political capital. Such an endeavour is too
important to leave just to nation-states; there has perhaps never been a greater need to ensure that all stakeholders come to the table. Time to start over.

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