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Perspectives on Platform Regulation

Concepts and Models of Social Media Governance Across the Globe

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Foreword:
Perspectives on platform regulation: models and limits

Monroe E. Price

These are startling times in the history of media and information regulation. Existing frameworks fray as disruption becomes the rule. Societies dispute the way to define freedom of expression and, in fear of disappearing stability, emphasize the establishment of order. Authoritarian tendencies capture what were often invented as technologies of freedom. In this environment, governments, the tech companies, and civil society all are in search of redesigning and thereby guiding basic organizing principles. This book excavates, develops, examines and tests a basic concept – the platform as a central mode for classifying thought about this century's experiments in regulating speech and information flows.

The very idea of "the platform" is intriguing. Platforms are a metaphor, and a powerful one. The image can be of a performer-athlete ready to make a perfect dive. Platforms can be sites for exclusive opportunities to demonstrate and frequently, platforms can be defined through issues of access. Platforms can be seized, hijacked and controlled or they can be virtual common carriers. Often it appears as a locus that is neutral and necessary for commerce in the commodity for which the platform accommodates trade. "Platform" has become a weighted term, an opportunity for a wide variety of distinct approaches to regulation to be articulated, legislated and implemented.

The concept of "platform" is appealing because it creates a category distinction (or the illusion of such distinction), one between content production and distribution facilitator. Having and cultivating such a distinction opens the opportunity – so welcome – for creative regulatory choices. The distinction is necessary so as to allow zones of immunity from liability, said to be critical in the development of social media and the Internet. Distinguishing the platform from its users has had complex implications for regulation of ownership in successive iterations of media and society.

The editors of this volume have, in fact, themselves created a platform – a platform for competing designers of regulatory architecture in the field of information and media to describe their findings and arguments. The authors use debates about hate speech and its regulation as a broad case

study of the variety of models and the omnipresence of limits on finding a model that can operate in a variety of contexts. Providing a taxonomy of possible regulatory choices, surveying conceptual models, is an important contribution. The editors recognize the significance of observing models as they operate in context. The volume takes the quite difficult step of including descriptions of how various conceptual models fare in an array of geographically distinct environments.

Implicit in the work that characterizes these pages is the recognition of what might be called a "regulatory deficit." In my view a regulatory deficit exists where there is a well-founded societal desire for governmental response to a social need, as yet unsatisfied, coupled with an appropriate understanding of fundamental (including constitutional) limitations. The treatment of hate speech is a useful example, of an area of regulatory deficit as exemplified in this book. The problem of regulatory deficit exists with respect to many chronic areas of crisis: terrorism, harsh political polarization, disinformation and even the general issues of identity and society. In each case, an often desperate search for government response becomes an insistent demand for which a supply of near formulaic remedies is produced. Much of the discourse here identified with platform regulation deals with this problem of regulatory deficit. Of course, not all such demand is owed respect and authors in this book often take a dim view of asserted deficits. The challenge exists of refining the category to measure a demand for regulation that is consistent with international human rights norms and laws. But even this is problematic because it does not necessarily recognize that those long established norms and laws might themselves change and reflect newly deemed necessities for control. Even the immutable sometimes mutates.

In all of this, in the intense culture of debate, collaboration, and experimentation, new patterns of global engagement in the construction of changing regulatory paradigms are striking. Relevant is the relatively plastic, yet liberating idea of the epistemic community: "a network of professionals with recognised expertise and competence in a particular domain and an authoritative claim to policy relevant knowledge within that domain or issue-area."[1] Over time, the potential of such a community has grown as a concept. What one might search for and cherish in epistemic communities is a psycho-social surplus, a quality beyond scholars demonstrating a common view of a way of organizing knowledge. An

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1 Peter M. Haas, *Introduction: epistemic communities and international policy coordination* (*International Organization*, 1992), 1.

epistemic community becomes one that has developed shared views and, among contests for primacy, advances them to realize further a common goal or improve operation of an institution. These characteristics can be seen among scholars working together to improve the understanding of hate speech and the role of platforms. Peter Haas identified typical features of such communities: a *shared set of normative and principled beliefs*; *shared causal beliefs between policy actions and desired outcomes*; *shared criteria for validating knowledge*; and a *common enterprise, presumable out of the conviction that human welfare will be enhanced as a consequence*.[2]

Epistemic communities celebrate the coming together of scholars across disciplines. The volume is the product of the Institute for Telecommunications and Media Law at the University of Muenster cooperating with scholars at the University of Essex and the University of Helsinki. The processes by which the volume was produced demonstrate what is required for a modern epistemic community and the essays in this book exemplify how emerging institutions benefit from the attendant interchange. The (Facebook) Oversight Board grows and changes, often, in response to the active sphere of experts engaged in blogging, writing, zooming, in short bringing insights, viewpoints and expertise to a significant and jurisprudentially challenging project. All this cross-border discussion takes place in a world still defining state sovereignty in an environment where technologies disrupt and industries transcend borders. It is an era of change, radical system-wide change. And it is an era where effort is needed to retain basic values of free expression in the face of geopolitical, technological, and economic transformations. It is a time of extraordinary anxiety about the project of regulation. And therefore it is a time where studies like those provided here are so important.

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2   Haas, *Introduction*, 3.