RESTRICTING PLATFORM CREEP

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Social media governance scholarship and Artificial Intelligence ("AI") scholarship need to integrate as social media platforms incorporate AI. Scholarship about speech and platform-enabled harm needs to account for how the communicative platform industry's political economy shapes the platforms' outsized impact on speech and association. "Platform creep" is a new framework for understanding and regulating what I call "super platforms" (firms that influence knowledge institutions, cultural infrastructure, and policymaking beyond their platforms). It accounts for super platforms' growing cultural and political power.

"Platform creep" refers to three key features of super platforms: (1) platforms exert growing control over human communication and association by increasing their use of algorithms and AI; (2) major social media and AI companies influence digital knowledge infrastructure and legacy knowledge institutions such as the press and universities; and (3) digital platforms influence legal institutions and discourse about whether and how they should be regulated. Since these companies are transnational, they exercise this power worldwide, shrinking avenues for counterpower, alternative information, and connection.

Through platform creep, super platforms accumulate cultural and political power, threatening democracy worldwide. They challenge knowledge institutions' influence. Regulations that do not account for all three features tend to fail. Antitrust regulation can curb a firm's power, but it cannot address industry practices or political influence that undermine the law. Platform regulation can restrict the industry's practices, but not its political influence or the weakened state of other cultural institutions. To regulate super platforms effectively, policymakers must address platform creep.

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INTRODUCTION

Legal discourse about Artificial Intelligence ("AI") focuses on the downstream effects of dominant communicative AI products, such as harmful chatbots. Social media jurisprudence, in the meantime, ignores AI's role and treats social media platforms as human-run for an intermediating human speech.[1] AI's role in social media and online

1. *See, e.g.*, Rishika Pardikar, *Social Media Companies Like Instagram Are Censoring Dissent*, JACOBIN (June 1, 2021), https://jacobin.com/2021/06/censorship-facebook-instagram-twitter-india-palestine-colombia [https://perma.cc/G3LC-WQX4] (identifying automated content moderation as a source of suppression of political speech on Instagram by bluntly removing content without adequately accounting for context).

communication is transforming the nature of online speech.[2] The nature of the speaker and content moderation is changing as Generative AI's role increases.[3] I refer not only to AI content such as "slop," constructed videos, and AI summaries, but also to the replacement of human content moderation with AI content moderation.[4]

The social media and AI industries overlap, as only a few firms possess the data and computational power to build widely used Large Language or Multimodal Foundation Models.[5] The AI and social media industry is data-driven, focused on engaging users' attention by targeting their vulnerabilities.[6] It is extremely competitive, as it engages in these practices,[7] concentrating power in the hands of a few actors.[8] I call these actors "super platforms" since they exert platform power beyond their own platforms.[9] Super platforms are gradually dominating the culture industry.[10] They influence individual and social identity.[11] They erode

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2. *See id.*

3. Dave Willner & Samidh Chakrabarti, *Using LLMs for Policy-Driven Content Classifications*, TECH POL'Y. PRESS (Jan. 29, 2024), https://techpolicy.press/using-llms-for-policy-driven-content-classification [https://perma.cc/2Q7G-LVAU].

4. *Id.*

5. *See* RISHI BOMMASANI ET AL., ON THE OPPORTUNITIES AND RISKS OF FOUNDATION MODELS 1, 151 (2021), https://crfm.stanford.edu/assets/report.pdf [https://perma.cc/P9FM-PL9D] (defining a foundation model as "any model that is trained on broad data (generally using self-supervision at scale) that can be adapted [e.g., fine-tuned] to a wide range of downstream tasks"; pointing out that these models can have various capabilities such as the capacity to process different modalities like language and vision, to perform reasoning and interact with humans; and pointing out that "the ownership of data and models are often highly centralized, leading to market concentration"); *see also* Jennifer Cobbe et al., *Understanding Accountability in Algorithmic Supply Chains*, 2023 ACM CONF. ON FAIRNESS, ACCOUNTABILITY, & TRANSPARENCY 1186, 1188.

6. Ryan Calo, *Digital Market Manipulation*, 82 GEO. WASH. L. REV. 995, 999-1004 (2014); Julie E. Cohen, *Oligarchy, State, and Cryptopia*, 94 FORDHAM L. REV. 563, 660-61 (2025); Neil M. Richards, *Intellectual Privacy*, 87 TEX. L. REV. 387, 389 (2008); Frank Pasquale, *The Automated Public Sphere*, *in* THE POLITICS AND POLICIES OF BIG DATA: BIG DATA, BIG BROTHER? 110, 111 (Ann Rudinow Sætnan et al. eds., 2018).

7. Manuel Castells, *Communication, Power and Counter-Power in the Network Society*, 1 INT'L J. COMMC'N 238, 241, 252 (2007); Cohen, *supra* note 6, at 583-84.

8. *See* Castells, *supra* note 7, at 241, 248; Natali Helberger, *The Political Power of Platforms: How Current Attempts to Regulate Misinformation Amplify Opinion Power*, 8 DIGIT. JOURNALISM 842, 846-48 (2020); Cobbe et al., *supra* note 5, at 1195; Blake Montgomery, *The Mind-Boggling Valuations of AI Companies*, THE GUARDIAN (Nov. 4, 2025, 10:00 AM), https://www.theguardian.com/global/2025/nov/04/the-mind-boggling-valuations-of-ai-companies [https://perma.cc/H2YG-BGTX]; Cohen, *supra* note 6, at 573-74.

9. *See infra* Part III. This differs from the European Union's Digital Services Act definition of Very Large Online Platforms because it focuses on infrastructural power which can be related to the number of users but is not determined by them. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC, 2022 O.J. (L277) 1, 63.

10. MAX HORKHEIMER & THEODOR W. ADORNO, *The Culture Industry: Enlightenment as Mass Deception*, *in* DIALECTIC OF ENLIGHTENMENT 41, 56 (1944), https://www.marxists.org/reference/archive/adorno/1944/culture-industry.htm

and infiltrate other knowledge and cultural institutions, such as legacy media and universities.[12] They also influence policy-making around the world, shaping the institutions and discourse that regulate them.[13]

I call this transformation "platform creep."[14] The word creep refers to the incremental increase in firms' control, commandeering the nodes and links of the social network, and through them (and through private influence on other institutions and actors) the connective tissue of society.[15] Creep also refers to platforms' increasing influence over other institutions that are sites of knowledge, identity, and group formation, as well as influence over legal discourse and policy.[16] Super platforms attempt to capture the connective tissue of communication and association, and resist institutions that restrict their efforts or create alternative connective tissue.[17] Platform creep is incremental, which is why social media's influence over institutions changes over time.[18]

[https://perma.cc/ZE8P-4NDV] ("The more strongly the culture industry entrenches itself, the more it can do as it chooses with the needs of consumers – producing, controlling, disciplining them.").

11. Chinmayi Arun, *Communicative Platforms and Epistemic Closure*, 112 CORNELL L. REV. (forthcoming 2026) (manuscript at 9 n.30, 22, 24) (on file with the *Hofstra Law Review*).

12. Woodrow Hartzog & Jessica Silbey, *How AI Destroys Institutions*, 77 U.C. L.J. (forthcoming 2026) (manuscript at 12, 15, 17, 20) (on file with the *Hofstra Law Review*); Robyn Caplan & Danah Boyd, *Isomorphism Through Algorithms: Institutional Dependencies in the Case of Facebook*, BIG DATA & SOC'Y., Jan.–June 2018, at 1-4; Joan Donovan & Danah Boyd, *Stop the Presses? Moving from Strategic Silence to Strategic Amplification in a Networked Media Ecosystem*, 65 AM. BEHAV. SCIENTIST 333, 346-47 (2021).

13. Chinmayi Arun, *The Silicon Valley Effect*, 61 STAN. J. INT'L L. 55, 57, 59, 84-85 (2025); Gregory Shaffer, *Transnational Legal Ordering of Digital Economies: Opportunities and Constraints for a Development Focus*, *in* REORIENTING INTERNATIONAL ECONOMIC LAW FOR THE DIGITAL ECONOMY: TOWARDS DIGITAL DEVELOPMENT (Giorgios Dmitropoulos & Neha Mishra eds.) (forthcoming 2026).

14. *Cf.* Bert-Jaap Koops, *The Concept of Function Creep*, 13 L., INNOVATION & TECH. 29, 35-37 (2021) (defining "function creep" as the expansion of a technology or system beyond its original purpose in ways unforeseen by its developers).

15. *Id*. at 39-40; *see* MIKE ANANNY, NETWORKED PRESS FREEDOM: CREATING INFRASTRUCTURE FOR A PUBLIC RIGHT TO HEAR 115 (2018) (discussing how humans and non-humans combine to create "material publics" within which humans may have limited agency); *see generally* Cory Doctorow, THE REVERSE CENTAUR'S GUIDE TO LIFE AFTER AI (2026) (describing a related idea of the "reverse centaur" which is a human conscripted to serving the machine).

16. ANANNY, *supra* note 15 at 115-17; *see also* Hartzog & Silbey, *supra* note 12 (manuscript at 29-30).

17. *See* Julie E. Cohen, *Infrastructuring the Digital Public Sphere*, 25 YALE J.L. & TECH. (SPECIAL ISSUE) 1, 7-8 (2023).

18. *See* YOCHAI BENKLER ET AL., NETWORK PROPAGANDA: MANIPULATION, DISINFORMATION, AND RADICALIZATION IN AMERICAN POLITICS 42, 155 (2018); Donovan & Boyd, *supra* note 12, at 334-35; David B. Nieborg & Thomas Poell, *The Platformization of Cultural Production: Theorizing the Contingent Cultural Commodity*, 20 NEW MEDIA & SOC'Y 4275, 4276 (2018); Sarah Burkhardt & Thomas Poell, *Feminist Television, Racist Twitter? Feminist Perspectives on the Mediation of Sexual Misconduct in the Netherlands*, NEW MEDIA & SOC'Y, Jan. 7, 2026, at 4-6, https://journals.sagepub.com/doi/epub/10.1177/14614448251409211 [https://doi.org/10.1177/14614448251409211].

Platform creep takes place on three axes.[19] The first is influence over communication and engagement among human beings, made possible by technological advances.[20] This alone would not confer immense power on platforms in a diversified market, but in a concentrated market, it allows super platforms to exert power over mass publics.[21] The second axis is the super platforms' influence over other knowledge and cultural institutions, like the legacy media and universities.[22] The third axis is their influence on the legal order that regulates them, shaping policy and regulatory discourse worldwide and offering powerful resistance to efforts to regulate them.[23]

Law cannot regulate super platforms without targeting platform creep on all three axes. Although super platforms' market dominance is discussed extensively, there is limited legal scholarship focusing on their dominance of public discourse and the extent to which they influence law.[24] Proposals favoring self-regulation risk legitimizing platform power.[25] Restrictions on foreign apps like TikTok further concentrate this power.[26] The Lochnerized First Amendment, with its focus on state non-

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19. *See infra* text accompanying notes 20-23.

20. *See* JULIE E. COHEN, BETWEEN TRUTH AND POWER: THE LEGAL CONSTRUCTIONS OF INFORMATIONAL CAPITALISM 235 (2019).

21. *Id.* at 237 ("[C]oncentrated stakeholder control of the networked communications infrastructure can produce . . . an inversion of law- and policymaking authority, through which some stakeholders become policy hubs in their own right.").

22. Hartzog & Silbey, *supra* note 12 (manuscript at 29-32).

23. Arun, *supra* note 13, at 57, 59, 84-85.

24. *See* Woodrow Hartzog, *Two AI Truths and a Lie*, 26 YALE J.L. & TECH. (SPECIAL ISSUE) 595, 629, 639 (2024).

25. *See* Chinmayi Arun, *Digital Platforms and Epistemic Authority*, 104 TEX. L. REV. 1385, 1393-95 (2026); Hartzog, *supra* note 24, at 631-32; Chinmayi Arun, *The Facebook Oversight Board: An Experiment in Self-Regulation*, JUST SECURITY (May 6, 2020), https://www.justsecurity.org/70021/the-facebook-oversight-board-an-experiment-in-self-regulation [https://perma.cc/F9E2-WF4M]; Evelyn Douek, *The Rise of Content Cartels*, *in* THE TECH GIANTS, MONOPOLY POWER, AND PUBLIC DISCOURSE 5, 10, 16-17 (2020); Juhi Kore & Ebani Dhawan, *The Global Landscape of AI Safety Institutes*, ALL TECH IS HUM., https://alltechishuman.org/all-tech-is-human-blog/the-global-landscape-of-ai-safety-institutes [https://perma.cc/6K4X-CCKE] (last visited July 18, 2026); *see also* Press Release, Off. of Pub. Affs., U.S. Dep't of Com., Biden-Harris Administration Announces First-Ever Consortium Dedicated to AI Safety (Feb. 8, 2024), https://www.commerce.gov/news/press-releases/2024/02/biden-harris-administration-announces-first-ever-consortium-dedicated [https://perma.cc/S4UT-8GXQ] (arguing that the U.S. government must play a significant role in managing the risks and harnessing the potential of AI).

26. *See* Josh Sisco et al., *Meta Saw TikTok as 'Highly Urgent' Threat, Zuckerberg Says at Antitrust Trial*, FORTUNE (Apr. 16, 2025, 4:37 PM), https://fortune.com/2025/04/16/meta-ftc-antitrust-trial-tiktok-threat-facebook-ceo-zuckerberg [https://perma.cc/KS4G-JE39]; Shannon Bond, *China's Influence Operations Against the U.S. Are Bigger Than TikTok*, NPR (Apr. 26, 2024, 5:00 AM), https://www.npr.org/2024/04/26/1247347363/china-tiktok-national-security [https://perma.cc/7T9V-GPNA]; Emmet Lyons, *DeepSeek AI Raises National Security Concerns, U.S. Officials Say*, CBS NEWS, https://www.cbsnews.com/news/deepseek-ai-raises-national-security-concerns-trump [https://perma.cc/S7QX-TFQF] (Jan. 29, 2025, 9:03 AM); Matt Sheehan &

interference, makes platform regulation challenging.[27] Platform creep progresses in the meantime, influencing the formation of individual, public, and national identity and shifting power and authority from other institutions to super platforms.[28]

The legacy media lacked digital platforms' enhanced technological capacity to shape associations and identity in countries across the world.[29] They could also be studied easily since researchers did not have to obtain access to proprietary, personalized interactions with users.[30] The broadcast media were regulated more closely than communicative platforms are.[31] Super platforms exert cultural power by absorbing attention, epistemic closure, and harmful business practices.[32] Without addressing this power, it is difficult to regulate its downstream effects, such as chatbot manipulation and foreign propaganda.[33] The industry also shapes the legal order, impeding regulatory efforts worldwide.[34]

Pressure from regulators following harm at scale persuaded social media platforms to create private rules and bureaucracies to self-regulate.[35] These rules and bureaucracies are unstable and shift rapidly

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Scott Singer, *What DeepSeek Revealed About the Future of U.S.-China Competition*, FOREIGN POL'Y (Feb. 3, 2025, 3:01 PM), https://foreignpolicy.com/2025/02/03/deepseek-china-ai-artificial-intelligence-united-states-tech-competition [https://perma.cc/KE4F-G6YB].

27. Evelyn Douek & Genevieve Lakier, *Lochner.com?*, 138 HARV. L. REV. 100, 149-50, 170 (2024).

28. *See* Hartzog & Silbey, *supra* note 12 (manuscript at 29-32); COHEN, *supra* note 20, at 237.

29. Castells, *supra* note 7, at 247-48; JÜRGEN HABERMAS, THE STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE: AN INQUIRY INTO A CATEGORY OF BOURGEOIS SOCIETY 188-89 (Thomas Burger & Frederick Lawrence trans., MIT Press 1989) (1962) (explaining how legacy media largely operated through one-way communication structures that offered limited opportunities for audience participation and association); TIM WU, THE MASTER SWITCH: THE RISE AND FALL OF INFORMATION EMPIRES 303-04 (2010).

30. *Cf.* Jose van Dijck, *Facebook and the Engineering of Connectivity: A Multi-Layered Approach to Social Media Platforms*, 19 CONVERGENCE: INT'L J. RSCH. INTO NEW MEDIA TECHS. 141, 149-50 (2012) (explaining that internet connectivity is understood through access to invisible interfaces behind a site's features).

31. Kevin Goldberg, *FCC Regulation of Broadcast Media and the First Amendment*, FREEDOM F. (Mar. 20, 2026), https://www.freedomforum.org/fcc-first-amendment [https://perma.cc/HK5H-CJBZ] (noting that federal legislation empowers the FCC to regulate broadcasters in ways that the First Amendment would not permit for other media due to scarcity and pervasiveness concerns).

32. COHEN, *supra* note 20, at 234-36.

33. *Id.* at 235-37.

34. *Id.* at 236-37; Arun, *supra* note 13, at 89-90.

35. Jack M. Balkin, *Free Speech Is a Triangle*, 118 COLUM. L. REV. 2011, 2021 (2018); Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARV. L. REV. 1598, 1622-24 (2018); Evelyn Douek, *Content Moderation as Systems Thinking*, 136 HARV. L. REV. 526, 543-45 (2022); Chinmayi Arun, *Facebook's Faces*, 135 HARV. L. REV. F. 236, 242-43 (2022).

with changes in political and, therefore, regulatory priorities.[36] Lawmakers in the United States cannot access the same tools as their European counterparts to regulate online content because they have to work within the boundaries of the First Amendment.[37] These boundaries protect speech from state power, but rarely from private power.[38] The Supreme Court has stretched them to a dangerous extent to protect American companies' cultural power.[39] To justify this, the judges have mistakenly treated social media platforms as hosts and editors of user speech.[40] They have room to update this view of social media.[41]

"Super platforms," as I call them, have a disproportionately strong influence on mass public conversations, group formation, institutions, and culture.[42] This influence on associational and communicative relationships is critical to theorizing what some call "platform power" in the context of communicative platforms.[43] Super platforms' content and practices flow outward, triggering changes in other super platforms' practices and in the news and cultural industry more broadly.[44] They

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36. *See, e.g.*, Barbara Ortutay, *Meta Rolls Back Hate Speech Rules as Zuckerberg Cites 'Recent Elections' as a Catalyst*, AP NEWS, https://apnews.com/article/meta-facebook-hate-speech-trump-immigrant-transgender-41191638cd7c720b950c05f9395a2b49 [https://perma.cc/XCR8-6Z9V] (Jan. 8, 2025, 7:21 PM) (reporting that Meta loosened its regulations on face-checking, hate speech, and abuse in anticipation of President Trump's second administration, with some commentators suggesting that the changes were motivated by a desire to earn favor with the administration and reduce business costs); Ben Goggin, *Big Tech Companies Reveal Trust and Safety Cuts in Disclosures to Senate Judiciary Committee*, NBC NEWS (Mar. 29, 2024, 1:51 PM), https://www.nbcnews.com/tech/tech-news/big-tech-companies-reveal-trust-safety-cuts-disclosures-senate-judicia-rcna145435 [https://perma.cc/8JK2-M8RK] (disclosing that the CEOs of X, Snap, and Discord all made cuts to their trust and safety departments as part of a broader recent trend toward deregulation).

37. Jack M. Balkin, *Free Speech Versus the First Amendment*, 70 UCLA L. REV. 1206, 1210, 1217-18 (2023).

38. *Id.* at 1216, 1218; Douek & Lakier, *supra* note 27, at 106-07.

39. Douek & Lakier, *supra* note 27, at 108-09.

40. Moody v. NetChoice, LLC, 603 U.S. 707, 728, 739-40 (2024); Mia. Herald Publ'g Co. v. Tornillo, 418 U.S. 241, 256, 258 (1974).

41. Douek & Lakier, *supra* note 27, at 162-64.

42. *See* Lina M. Khan, *Sources of Tech Platform Power*, 2 GEO. L. TECH. REV. 325, 325-26 (2018) (highlighting that the gatekeeper power of tech platforms like Amazon, Google, and Facebook derives from their roles as "infrastructure for digital markets," describing them as the "arteries of commerce" because they control technologies on which other businesses rely on in the online economy).

43. *Id.* at 326-30; José van Dijck et al., *Reframing Platform Power*, 8 INTERNET POL'Y REV. (SPECIAL ISSUE) 1, 3-4 (2019).

44. *See* Sarah Frier & Brad Stone, *Mark Zuckerberg Is Blowing Up Instagram to Try and Catch TikTok*, BLOOMBERG, (May 25, 2022, 12:01 AM), https://www.bloomberg.com/news/features/2022-05-25/facebook-copies-tiktok-app-to-make-instagram-cool-to-teens [https://perma.cc/TXE6-PPTR]; Emma Job, *Instagram Is Considering Creating a Reels App to Compete with TikTok*, TECH EDITION (Feb. 27, 2025),

exert influence on their users, on each other, on content creators, on political communication, on legacy media, and on other knowledge institutions such as universities.[45] They also influence policymaking and policy discourse, which makes regulating them especially challenging.[46]

After drawing the connection between AI and the social media industry in Part I, I discuss three key missteps in the law and policy discourse about governing social media and AI.[47] After this, I discuss the updated empirical account and framing of super platforms that platform creep offers in Part III, following it with case studies discussing the progression of three super platforms that are now incorporating AI in Part IV.[48] In Part V, I outline how regulation can account for platform creep and find ways to regulate super platforms more effectively.[49]

I. CONNECTING AI GOVERNANCE AND SOCIAL MEDIA GOVERNANCE

There are two significant underexplored connections between AI and social media legal scholarship. One is that AI scholarship can learn from social media scholarship about industry dominance, self-regulation, competing legal orders, and more. The second is that the two industries overlap and are functionally connected.[50] Meta and Google are significant players in the AI industry, which includes other Big Tech platform companies, such as Amazon and Microsoft.[51] Both industries collect user data and show users content based on constantly updating information about their cognitive vulnerabilities.[52] The companies are able to act on this information across and beyond their platforms, which can exert power outward.[53]

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https://www.techedt.com/instagram-is-considering-creating-a-reels-app-to-compete-with-tiktok [https://perma.cc/8DDD-BUQN].

45. *See* van Dijck et al., *supra* note 43, at 7-9; *see also* Vicki C. Jackson, *Knowledge Institutions in Constitutional Democracies: Preliminary Reflections*, 7 CAN. J. COMP. & CONTEMP. L. 156, 161, 167, 179, (2021).

46. *See* van Dijck et al., *supra* note 43, at 11.

47. *See infra* Parts I–II.

48. *See infra* Parts III–IV.

49. *See infra* Part V.

50. Brandon C. Boatwright et al., Somebody's Poisoned the Water Hole! Advancing Social Media Data Collection Principles to Account for the Effects of AI Slop on Public Relations Scholarship (Jan. 27, 2026) (unpublished manuscript) (on file with the *Hofstra Law Review*) ("Generative AI now permeates nearly every dimension of social media. On one hand, it creates new opportunities for increased ideation and efficiency for practitioners; on the other, it deeply unsettles the reliability of data on which public relations research depends.").

51. *See* Montgomery, *supra* note 8.

52. *See* Liv McMahon, *Instagram Courts TikTok Users with Algorithm Revamp*, BBC (May 3, 2024), https://www.bbc.com/news/articles/cmm3yn4pr17o [https://perma.cc/8KH2-2PBE]; Ryan Calo, *supra* note 6, at 1002-04, 1033.

53. Calo, *supra* note 6, at 1006-07.

Antitrust scholars have critiqued Big Tech companies' market domination, and communications scholars have written about social media's unique features as platformized infrastructures.[54] Together, these two bodies of scholarship have implications for the public sphere that should inform the social media and AI regulation debates. Given Generative AI's diffusion and use on social media platforms, through AI-slop, chatbots, and AI-driven content moderation, social media regulation debates are incomplete unless informed by AI scholarship.[55] In other words, social media scholarship needs to focus more on algorithmic decision-making on social media platforms. This includes shaping connection, not just speech, and therefore influencing identity formation.[56] Connective features, which I discuss further in Part II, set digital media apart from legacy media.[57]

This Part is about how and why legal discourse has lost its way.[58] It highlights the Supreme Court's mistaken comparison of social media with legacy media.[59] The Supreme Court's assumptions about user content and human-led curation are already belied by AI's impact on social media.[60] This Part also discusses lawmakers' efforts to regulate what is perceived as ideological manipulation by digital platforms, a concern common to people across the ideological spectrum.[61] Laws attempting to regulate this manipulation to make social media ideologically "neutral"

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54. *See, e.g.*, K. Sabeel Rahman, *The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept*, 39 CARDOZO L. REV. 1621, 1627-28 (2018); Lina M. Khan, *The Separation of Platforms and Commerce*, 119 COLUM. L. REV. 973, 981-83 (2019); COHEN, *supra* note 20, at 234-36; Nieborg & Poell, *supra* note 18, at 4276-77; van Dijck et al., *supra* note 43, at 2-3; Cohen, *supra* note 17, at 4-5.

55. Jason Koebler, *Zuckerberg: The AI Slop Will Continue Until Morale Improves*, 404 MEDIA (Oct. 31, 2024 1:45 AM), https://www.404media.co/zuckerberg-the-ai-slop-will-continue-until-morale-improves [https://perma.cc/ER27-WX8V]; Effie Webb & Shubhangi Goel, *Leaked Docs Reveal Meta Is Training Its Chatbots to Message You First, Remember Your Chats, and Keep You Talking*, BUS. INSIDER (July 3, 2025, 5:22 AM), https://www.businessinsider.com/meta-ai-studio-chatbot-training-proactive-leaked-documents-alignerr-2025-7 [https://perma.cc/U2P8-2KH2]; Willner & Chakrabarti, *supra* note 3.

56. Castells, *supra* note 7, at 246-50.

57. *See infra* Part II.

58. *See infra* Part I.A–C.

59. *See infra* Part I.A–B; *see, e.g.*, Moody v. NetChoice, LLC, 603 U.S. 707, 733-34 (2024).

60. Brandi Wampler, *Social Media Platforms Aren't Doing Enough to Stop Harmful AI Bots, Research Finds*, NOTRE DAME NEWS (Oct. 14, 2024), https://news.nd.edu/news/social-media-platforms-arent-doing-enough-to-stop-harmful-ai-bots-research-finds [https://perma.cc/Y56J-BQDB]; Samantha Cole, *Instagram's AI Chatbots Lie About Being Licensed Therapists*, 404 MEDIA (Apr. 29, 2025, 10:37 AM), https://www.404media.co/instagram-ai-studio-therapy-chatbots-lie-about-being-licensed-therapists [https://perma.cc/PC82-EKBC]; Willner & Chakrabarti, *supra* note 3.

61. *See infra* notes 93-100 and accompanying text.

led to *Moody v. NetChoice, LLC*.[62] The restriction of foreign-owned platforms, similarly, appears to be based on the idea that changed ideology will reduce the likelihood of foreign manipulation.[63] Finally, I discuss platform power, which is the foundational problem with social media and AI.[64] I explain why the antitrust and utilities models proposed by legal scholars do not go far enough.[65]

A. User Speech, Machine Interfaces and Machine Speech

The Supreme Court has not discussed AI platforms, but has recently expressed its view on social media through a series of cases.[66] Of these, *Moody v. NetChoice, LLC* is arguably the most significant.[67] The Supreme Court ruled that social media platforms are protected by the First Amendment to the extent that they create expressive products.[68] Justice Kagan, writing for the majority, presented the judges' view of social media platforms, unfortunately treating them as editors and curators of third-party content.[69] She compared platforms' choices to editorial decisions by traditional publishers and editors, suggesting that both decide what to include, exclude, and prioritize, and "what third-party speech to display and how to display it," to produce their own compilations of expression.[70] Based on this empirical understanding of social media platforms, it is unsurprising that the Supreme Court came to the conclusion that social media platforms are expressive products.

However, anyone who has used a social media platform recently might have noticed AI-generated videos of animals in extremely improbable poses.[71] Generative AI content is almost intrusive on social media platforms. Generative AI also mediates search tools offering

62. 603 U.S. 707 (2024); *see also* Daphne Keller, *Texas, Florida, and the Magic Speech Sorting Hat in the NetChoice Cases*, LAWFARE (Feb. 21, 2024, 12:26 PM), https://www.lawfaremedia.org/article/texas-florida-and-the-magic-speech-sorting-hat-in-the-netchoice-cases [https://perma.cc/7EYC-BRXU].

63. Dara Kerr, *Lawmakers Grilled TikTok CEO Chew for 5 Hours in a High-Stakes Hearing About the App*, NPR, https://www.npr.org/2023/03/23/1165579717/tiktok-congress-hearing-shouzi-chewproject-texas [https://perma.cc/T4K2-C9DL] (Mar. 23, 2023, 5:34 PM).

64. *See infra* Part I.C.

65. *See infra* Part I.C.

66. *Moody*, 603 U.S. at 716-17; Twitter, Inc. v. Taamneh, 598 U.S. 471, 480 (2023); Murthy v. Missouri, 603 U.S. 43, 50 (2024).

67. *Moody*, 603 U.S. at 744-45.

68. *Id.*

69. *Id.* at 742-43.

70. *Id.* at 716-17.

71. *See, e.g.*, John Ruwitch, *'AI Slop' Videos May Be Annoying, but They're Racking up Views—and Ad Money*, NCPR (Aug. 28, 2025, 5:00 AM), https://www.northcountrypublicradio.org/news/npr/nx-s1-5493485/ai-slop-videos-may-be-annoying-but-they-re-racking-up-views-and-ad-money [https://perma.cc/7T6X-24LN].

unasked-for summaries.[72] In other words, social media platforms are already changing as they incorporate Generative AI and their users draw on this technology.[73] Arguably, this machine speech carries a different status than the human speech of users.[74]

Although the norms for content creation were initially created and enforced by human beings supported by other human beings and algorithms, content moderation is becoming more algorithm-driven than human-driven.[75] This distinguishes it from editorial decision-making, which is human curation of content, and should also raise questions about how far social media produces expressive products.[76] The other view is Justice Thomas's treatment of platforms as neutral "infrastructure," in *Twitter, Inc. v. Taamneh*,[77] comparing them to the internet and cell service providers.[78]

Social media platforms are not neutral as is clear from Justice Barrett's view of their role in curating content in *Murthy v. Missouri*[79] (that platforms actively manage content, and take "a range of actions to suppress certain categories of speech," such as deleting and labeling certain posts, demoting or downranking content in the feed, and suspending or banning users who violate the platforms' content policies).[80] This is true, but platform moderation is different from human moderation because it takes place at scale.[81] Unsurprisingly, the increased role of algorithms in content moderation is giving way to an outsourcing of moderation decisions to AI.[82]

AI manipulation is in its early stages, with news reports raising concerns.[83] However, social media manipulation has arguably scaled

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72. Athena Chapekis & Anna Lieb, *Google Users Are Less Likely to Click on Links When an AI Summary Appears in the Results*, PEW RSCH. CTR. (July 22, 2025), https://www.pewresearch.org/short-reads/2025/07/22/google-users-are-less-likely-to-click-on-links-when-an-ai-summary-appears-in-the-results [https://perma.cc/N4C2-9ZTP].

73. *See* Webb & Goel, *supra* note 55.

74. *See infra* Part III.A; Tim Wu, *Machine Speech*, 161 U. PA. L. REV. 1495, 1501 (2013).

75. Evelyn Douek, *Content Moderation as Systems Thinking*, 136 HARV. L. REV. 526, 545-47, 549-50 (2022).

76. *See id.* at 548-50; Helberger, *supra* note 8, at 845-46.

77. 598 U.S. 471 (2023).

78. *Id.* at 498-99.

79. 603 U.S. 43 (2024).

80. *Id.* at 50-51, 53.

81. Douek, *supra* note 75, at 545-47, 549.

82. *See* Willner & Chakrabarti, *supra* note 3.

83. Tom Singleton et al., *How a Chatbot Encouraged a Man Who Wanted to Kill the Queen*, BBC NEWS (Oct. 6, 2023), https://www.bbc.com/news/technology-67012224 [https://perma.cc/BP7R-9C8B]; Sy Boles, *'I Exist Solely for You, Remember?'*, THE HARV. GAZETTE (Sept. 30, 2025), https://news.harvard.edu/gazette/story/2025/09/i-exist-solely-for-you-remember [https://perma.cc/3UWS-ZKM7]; Jody Godoy, *US Parents to Urge Senate to Prevent AI*

worldwide. Social media platforms enable the spread of incitement to violence and genocide, electoral manipulation, addiction, and propaganda, some of which are problems inherited from legacy media: if Facebook enabled genocide in Myanmar, Radio Télévision Libre des Mille Collines enabled it in Rwanda.[84] Social media's visible harms have attracted regulatory attention and scholarship, and will continue to do so.[85]

B. Platform-Enabled Culture Wars

Since social media and now AI platforms make decisions about content at scale, they tend to trigger culture wars. AI's culture wars are relatively new, unlike social media culture wars, which have a longer history.[86] Two kinds of culture wars take place over social media content and underlie cases before the Supreme Court.[87] One is overtly ideological, with disagreements about race, gender, sex, and other politically fraught questions.[88] The other is articulated in terms of national security

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Chatbot Harms to Kids, REUTERS (Nov. 17, 2025), https://www.reuters.com/world/us/us-parents-urge-senate-prevent-ai-chatbot-harms-kids-2025-09-16 [https://perma.cc/A766-BZF2].

84. *See* Paul Mozur, *A Genocide Incited on Facebook, with Posts from Myanmar's Military*, N.Y. TIMES (Oct. 15, 2018), https://www.nytimes.com/2018/10/15/technology/myanmar-facebook-genocide.html [https://perma.cc/8JXY-BC33]; *see also* Gustave Adolphe Messanga & Marios Yannick Duclair Tajeugueu, *The Role of* Radio-Télévision Libre Des Mille Collines *in The Rwandan Genocide: An Analysis from the Theoretical Perspectives of Intergroup Threat and Aggression*, 5 INT'L J. RSCH. & INNOVATION SOC. SCI. 154, 157-60 (2021).

85. *See, e.g.*, Kai Nicol-Schwarz, *Elon Musk Calls for Abolition of European Union After X Fined $140 Million*, CNBC (Dec. 9, 2025, 7:43 AM), https://www.cnbc.com/2025/12/08/elon-musk-eu-should-be-abolished-after-x-fined-140-million.html [https://perma.cc/B26U-7QKK] (reporting that the European Union fined X $140 million under the Digital Services Act following a two-year investigation into deceptive design and transparency violations).

86. *See, e.g.*, Kevin Roose, *The Chatbot Culture Wars Are Here*, N.Y. TIMES (July 23, 2025), https://www.nytimes.com/2025/07/23/technology/trump-ai-chatbots-bias.html [https://perma.cc/4LH5-DW44]; Nick Robins-Early, *'Very Wonderful, Very Toxic': How AI Became the Culture War's New Frontier*, THE GUARDIAN (Aug. 21, 2023, 6:00 AM), https://www.theguardian.com/us-news/2023/aug/21/artificial-intelligence-culture-war-woke-far-right [https://perma.cc/6ESF-F6QN]; Katrina Trinko, *How the Biden White House, Facebook Quietly Censored Americans*, HERITAGE FOUND. (Aug. 8, 2023), https://www.heritage.org/the-constitution/commentary/how-the-biden-white-house-facebook-quietly-censored-americans [https://perma.cc/URQ5-NA4Q]; Pardikar, *supra* note 1.

87. TikTok Inc. v. Garland, 604 U.S. 56, 74-75 (2025) (per curiam); Murthy v. Missouri, 603 U.S. 43, 50-51, 53 (2024).

88. *See Murthy*, 603 U.S. at 50-51; Rohan Goswami, *Elon Musk Told Joe Rogan He Bought Twitter to Stop 'Extinctionist' Mind Virus*, CNBC, https://www.cnbc.com/2023/11/02/elon-musk-told-joe-rogan-he-bought-twitter-to-stop-extinctionist-mind-virus.html [https://perma.cc/W3ZN-VAG6] (Nov. 2, 2023, 12:04 PM); Tom Sayers, *Queer People Are in the Midst of a Painful Social Media Migration*, SLATE (Mar. 7, 2025, 11:00 AM), https://slate.com/life/2025/03/meta-facebook-hate-speech-transgender-queer-delete-account.html [https://perma.cc/LV38-ZTV3]; Sam Biddle, *Leaked Meta Rules: Users Are Free to Post "Mexican Immigrants Are Trash!" or "Trans People Are Immoral"*, THE INTERCEPT (Jan. 9, 2025, 7:45 PM),

and foreign propaganda.[89] While the covert influence operations like troll farms escalating divisive arguments about American culture are seen as foreign interference, there are also concerns about foreign ideological influence, for example, in the context of Chinese content curation changing American culture.[90] These concerns about ideological capture underlie most major debates about social media.[91]

Concerns about social media culture wars have triggered lawmaking as well as business decisions that change platform rules.[92] *Moody v. NetChoice, LLC* was triggered by speech libertarians trying to restrict social media platforms from "censoring" users through their private content moderation rules.[93] Texas and Florida attempted to regulate platforms' influence through must-carry laws to avoid direct content regulation that would violate the First Amendment.[94] These laws sought to limit platforms' private content moderation, including removing content, sanctioning speakers, or promoting or demoting content.[95] Florida required favorable treatment for speech by large journalistic enterprises (with a substantial subscriber or user base) and speech by or about electoral candidates.[96] Texas wanted to mandate viewpoint neutrality, which

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https://theintercept.com/2025/01/09/facebook-instagram-meta-hate-speech-content-moderation [https://perma.cc/EC8J-JQLF].

89. *See Garland*, 604 U.S. at 74-75; David Shepardson & Rami Ayyub, *TikTok Congressional Hearing: CEO Shou Zi Chew Grilled by US Lawmakers*, REUTERS, https://www.reuters.com/technology/tiktok-ceo-face-tough-questions-support-us-ban-grows-2023-03-23 [https://perma.cc/ZP2A-QRUY] (Mar. 24, 2023).

90. Alan Z. Rozenshtein, *What if Free Speech Means Banning TikTok?*, THE ATLANTIC (Dec. 13, 2024), https://www.theatlantic.com/ideas/archive/2024/12/tiktok-ban-free-speech/680976 [https://perma.cc/8H53-NC9L]; Jian Lin & Jeroen de Kloet, *TikTok and the Platformisation from China: Geopolitical Anxieties, Repetitive Creativities and Future Imaginaries*, 45 MEDIA, CULTURE & SOC'Y 1525, 1527-28 (2023).

91. *See* Rozenshtein, *supra* note 90; Lin & de Kloet, *supra* note 90, at 1527.

92. *See* Will Oremus, *Want to Regulate Social Media? The First Amendment May Stand in the Way.*, WASH. POST (May 30, 2022), https://www.washingtonpost.com/technology/2022/05/30/first-amendment-social-media-regulation [https://perma.cc/W3HR-9KVC] (discussing Texas and Florida laws restricting social media platforms' content moderation practices in response to controversies over political discourse on those platforms).

93. Moody v. NetChoice, LLC, 603 U.S. 707, 717, 720-21 (2024); *see also* Oremus, *supra* note 92; Daphne Keller, *Lawful but Awful? Control over Legal Speech by Platforms, Governments, and Internet Users*, U. CHI. L. REV. ONLINE (2022), https://lawreview.uchicago.edu/online-archive/lawful-awful-control-over-legal-speech-platforms-governments-and-internet-users [https://perma.cc/ZXY8-M5TM]; Cindy Cohn, *Bad Facts Make Bad Law: How Platform Censorship Has Failed so Far and How to Ensure That the Response to Neo-Nazis Doesn't Make it Worse*, 2 GEO. L. TECH. REV. 432, 441-42, 444 (2018).

94. *Moody*, 603 U.S. at 717, 720-21; Keller, *supra* note 62; Keller, *supra* note 93.

95. Keller, *supra* note 62; *see* Jack M. Balkin, *Moody v. NetChoice: The Supreme Court Meets the Free Speech Triangle*, 2024 SUP. CT. REV. 127, 132, 138-39.

96. Keller, *supra* note 62; Balkin, *supra* note 95, at 138.

would only permit "censoring" of categories of content apart from specified exceptional cases.[97] "Censoring" referred to a range of platform actions, including blocking, deboosting, limiting visibility for, or otherwise discriminating against the content.[98] The origins of the laws in question lay in conservative lawmakers' suspicions that platforms were removing conservative speech and speakers.[99]

Concerns about foreign influence also trigger legal intervention. *Twitter, Inc. v. Taamneh*, for example, was a case deciding whether social media platforms aided and abetted an ISIS terror attack because their recommendation algorithms enabled propaganda, fundraising, and recruitment.[100] The United States legislated to ban TikTok owing to concerns that its Chinese ownership threatens national security, and the Supreme Court upheld the ban.[101] While banning TikTok, legislators and judges expressed concerns about the Chinese government accessing Americans' personal data and manipulating them.[102] However, all super platforms possess the power to influence society through data collection and manipulation. Legal discourse addresses the outcomes of this power but not the power itself.[103]

Although AI chatbots are not sufficiently widely used to trigger the debates social media has triggered for over a decade, they are well on their way to doing so. Grok is already making headlines for content that social media has created systems to filter out after prolonged negotiation.[104] Other chatbots like Gemini have also been mired in debates about politics and the appropriateness of content.[105] AI-enabled chatbots

97. Keller, *supra* note 62; Keller, *supra* note 93.

98. Balkin, *supra* note 95, at 139.

99. *See id.* at 145-46.

100. Twitter, Inc. v. Taamneh, 598 U.S. 471, 478, 481-82 (2023).

101. TikTok Inc. v. Garland, 604 U.S. 56, 63-65, 80 (2025) (per curiam); Anupam Chander, *Trump v. TikTok*, 55 VAND. J. TRANSNAT'L L. 1145, 1148, 1151, 1155-56 (2022).

102. *See Garland*, 604 U.S. at 64, 67, 73.

103. I refer to American legal discourse. European countries with laws that permit regulation in the interests of media pluralism attempt to address this power more directly. *See* Helberger, *supra* note 8, at 843-44.

104. Kat Tenbarge, *Grok Is Being Used to Mock and Strip Women in Hijabs and Saris*, WIRED (Jan. 9, 2026, 7:23 PM), https://www.wired.com/story/grok-is-being-used-to-mock-and-strip-women-in-hijabs-and-sarees [https://perma.cc/Y8ZB-XKGX]; Mia Sato, *Grok Is the Most Antisemitic Chatbot According to the ADL*, THE VERGE (Jan. 28, 2026, 7:00 AM), https://www.theverge.com/news/868925/adl-ai-antisemitism-report-grok-chatgpt-gemini-claude-deepseek-llama-elon-musk [https://perma.cc/D5X8-RBTM]; Matt Burgess & Maddy Varner, *Grok Is Generating Sexual Content Far More Graphic Than What's on X*, WIRED (Jan. 7, 2026, 4:47 PM), https://www.wired.com/story/grok-is-generating-sexual-content-far-more-graphic-than-whats-on-x [https://perma.cc/2DKJ-MFDP].

105. Bobby Allyn, *Google Races to Find a Solution After AI Generator Gemini Misses the Mark*, NPR (Mar. 18, 2024, 5:07 AM), https://www.npr.org/2024/03/18/1239107313/google-races-to-find-a-solution-after-ai-generator-gemini-misses-the-mark [https://perma.cc/M4RK-KJL8].

raise two broad content questions in the context of culture wars. One is concerned with what they might produce, arguably erroneously, in response to queries—this might cover tendencies such as always displaying men when the query is for a physicist, or as Gemini did, depicting Nazi soldiers as black.[106] The other is concerned with their function as a tool when they work as they should, but generate offensive nonconsensual images, sexualizing third-party individuals in response to queries.[107] Concerns that AI chatbots will be dangerous instruments of radicalization are already validated by the AI chatbot girlfriend that helped a man plan an assassination.[108]

C. Platform Power

In *Twitter, Inc. v. Taamneh*, Justice Thomas described Facebook, YouTube, and Twitter as "the largest and most ubiquitous platforms on the internet," on which people share content for others to engage with and share, acknowledging that the companies profit by charging third parties for advertisements targeted at users using recommendation algorithms.[109] However, Justice Thomas viewed the recommendation algorithms as "agnostic as to the nature of the content, matching any content (including ISIS' content) with any user who is more likely to view that content."[110] Although it is true that algorithms do not have intentions or opinions, algorithms are encoded with the companies' values and priorities.[111]

"Platform" evokes an even, neutral space that hosts user-generated content, eliding the presence of advertisers and commercial content producers.[112] It erases how far platform design measures and maps human

106. *Id.*; *cf.* Reece Rogers & Victoria Turk, *OpenAI's Sora Is Plagued by Sexist, Racist, and Ableist Biases*, WIRED (Mar. 23, 2025, 6:00 AM), https://www.wired.com/story/openai-sora-video-generator-bias [https://perma.cc/YNQ9-MXH9] (revealing that Sora AI reinforces gender stereotypes by often depicting pilots, CEOs, and college professors as men, and flight attendants, receptionists, and childcare workers as women).

107. Kevin Butler & Patrick Traynor, *Researchers Warn of Rise in AI-Created Non-Consensual Explicit Images*, UNIV. OF FLA. EXPERTS (Jan. 20, 2026), https://experts.ufl.edu/experts/spotlights/spotlight/?id=11314 [https://perma.cc/T98H-8J22].

108. Mason Boycott-Owen, *Prepare for the 'Coming Wave' of AI Terrorism, Top Adviser Warns UK Government*, POLITICO (July 15, 2025, 3:06 PM), https://www.politico.eu/article/ai-terrorism-uk-government-propaganda-jonathan-hall [https://perma.cc/8AS2-L879].

109. Twitter, Inc. v. Taamneh, 598 U.S. 471, 479-81 (2023).

110. *Id.* at 499.

111. Cathy O'Neil, *The Era of Blind Faith in Big Data Must End*, TED, at 1:40 (Apr. 2017), https://www.ted.com/talks/cathy_o_neil_the_era_of_blind_faith_in_big_data_must_end [https://perma.cc/UW9B-HEXA] ("Algorithms are opinions embedded in code.").

112. Tarleton Gillespie, *The Politics of 'Platforms'*, 12 NEW MEDIA & SOC'Y 347, 348-49, 352 (2010).

behavior, relationships, and communication, targeting information flows.[113] It erases how far the algorithmic and AI elements of the platform are overpowering the human elements. By using the "platform" lens for social media, and comparing algorithmic intermediation of communication to editorial curation, the Supreme Court risks uncritically adopting the social media companies' strategic narrative.[114] This reading of the First Amendment in the context of social media is unmoored from the empirical reality of social media platforms and the forces that drive them.

The companies owning the major social media platforms are part of a highly concentrated industry, aiming to maximize profits.[115] Like social media, the AI industry is highly concentrated and uses a platform model for its products and services.[116] The industry concentration was initially based on network effects and strategic purchase of competitors, and now on access to resources, data, and computational power for AI.[117] A small number of transnational firms own the major digital communicative platforms.[118] I call these firms "super platforms" because they exert influence not only on their platforms but also beyond them.[119] These firms wield a growing structural power over online communication, which I discuss in more detail in Part III.[120] Tim Wu called this kind of private power "the Master Switch."[121] As I show in Part III, the

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113. Balkin, *supra* note 37, at 1251-53; COHEN, *supra* note 17, at 23-24.

114. *See* Cohen, *supra* note 17, at 23-24; *Taamneh*, 598 U.S. at 499.

115. *See* David Dorn, *The Rise of Superstar Firms: Market Concentration and Labor's Falling Share of GDP*, UNIV. OF ZURICH (Nov. 1, 2021), https://www.ubscenter.uzh.ch/de/publikationen/policy_briefs/the-rise-of-superstar-firms.html [https://perma.cc/6FSB-UXXH]; ULISES A. MEJIAS & NICK COULDRY, DATA GRAB: THE NEW COLONIALISM OF BIG TECH AND HOW TO FIGHT BACK 94-95 (2024); Cohen, *supra* note 6, at 576-78; Arun, *supra* note 13, at 75.

116. *See* MEJIAS & COULDRY, *supra* note 115, at 243-44 (explaining how AI systems are advancing into more sophisticated platforms); Cobbe et al., *supra* note 5, at 1186 (describing AI technologies as "increasingly modular, dependent on cloud-based technologies, and interconnected").

117. SHOSHANA ZUBOFF, THE AGE OF SURVEILLANCE CAPITALISM 83, 106 (2019); MEJIAS & COULDRY, *supra* note 115, at 95; Cohen, *supra* note 17, at 17-18; Cobbe et al., *supra* note 5, at 1186, 1191-92; Arun, *supra* note 13, at 81-82.

118. Matthew Ricketson & Andrew Dodd, *Murdoch to Musk: How Global Media Power Has Shifted from the Moguls to the Big Tech Bros*, THE NEW DAILY, https://www.thenewdaily.com.au/news/politics/2024/09/10/murdoch-musk-how-global-media-power [https://perma.cc/KV9E-AHRL] (Sept. 10, 2024).

119. *See infra* Part III (describing the growing influence of super platforms over social interaction, knowledge systems, and lawmaking); *see also* SIVA VAIDHYANATHAN, ANTI-SOCIAL MEDIA: HOW FACEBOOK DISCONNECTS US AND UNDERMINES DEMOCRACY 8-9 (2018) (arguing that Facebook exerts a "destructive influence" on other media industries and institutions by "distort[ing] the very sources of news and information on which a democratic republic relies").

120. *See infra* Part III.

121. WU, *supra* note 29, at 12-13 ("We sometimes treat the information industries as if they were like any other enterprise, but they are not, for their structure determines who gets heard. It is in

power of communicative apps is unprecedented and growing.[122] These apps not only control who and what gets heard, but also which relationships and ideological leanings they deepen.[123]

Since there is substantial overlap with the social media industry, the AI industry uses updated versions of social media companies' strategies to ensure its products are widely adopted, gradually integrated into people's lives, and that regulation does not restrict its growth or practices.[124] Consider how widely Meta's platforms are used. In 2025, most Americans reported using Facebook; half of American adults reported using Instagram, as opposed to the one-in-ten or fewer that use BlueSky and Truth Social; and thirty-two percent of American adults reported using WhatsApp.[125] Meta wields considerable power over not just how people communicate and what they can communicate to each other, but also which people are encouraged to be in conversation with each other or shown certain kinds of content.[126] As I show in Part III, it wields power beyond its platform, affecting culture more broadly.[127]

Early commentators focused on how social media platforms enable communication, which they do.[128] This is also true of generative AI—the celebration of what it adds to human communication is not misplaced. However, super platforms configure platforms to further a business model that prioritizes collecting data from users and using the data to keep users engaged.[129] In other words, the companies' primary goal is to offer engaged audiences for advertisers to target—they are marketing platforms.[130] This characteristic drives the platforms' priorities and

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this context that Fred Friendly, onetime CBS News president, made it clear that before any question of free speech comes the question of 'who controls the master switch.'").

122. *See infra* Part III.

123. *See infra* Part III.A.

124. *See* ZUBOFF, *supra* note 117, at 8-12, 15, 100-02; COHEN, *supra* note 20, at 234-35; Arun, *supra* note 13, at 95-99.

125. Jeffrey Gottfried & Eugenie Park, *Americans' Social Media Use 2025*, PEW RSCH. CTR. (Nov. 20, 2025), https://www.pewresearch.org/internet/2025/11/20/americans-social-media-use-2025 [https://perma.cc/K94X-US67].

126. Cohen, *supra* note 17, at 10-12, 23.

127. *See infra* Part III.C.

128. Cohen, *supra* note 17, at 6; ZUBOFF, *supra* note 117, at 46.

129. Cohen, *supra* note 17, at 12, 22-24. This model is not essential for social media, and Blue Sky is looking for ways to avoid it. *See* Sarah Perez, *Bluesky Announces Its $8M Seed Round and First Paid Service, Custom Domains*, TECHCRUNCH (July 5, 2023, 3:57 PM), https://techcrunch.com/2023/07/05/bluesky-announces-its-8m-seed-round-first-paid-service-custom-domains [https://perma.cc/72BJ-TTAM].

130. Cohen, *supra* note 17, at 22-28 (describing the elaborate "advertising dashboard," a set of tools devised by super platforms that, among other things, enables advertisers to target desired audiences through machine-learning analysis of user data).

growth.[131] It explains several unpopular changes that super platforms introduce, ranging from Facebook's Beacon and News Feeds to Meta's more recent experimentation with AI bot accounts that do nothing for human connection but facilitate the engagement and data collection critical to the company's business model.[132] Unrestricted, the profit-oriented tendencies of the social media industry will inevitably overcome efforts to regulate at the content level.[133] Given that social media and AI are highly influential in the knowledge industry, this impacts democracy.[134]

Antitrust and public utilities scholarship focusing on social media platforms offers a helpful way to restrict platform power through structural separation and industry regulation.[135] Some scholars who favor governing these platforms as utilities underestimate the effects of strategies that work well in finance and energy on speech.[136] Other scholars advocate for structural separation, drawing from antitrust literature, while acknowledging that social media requires industry-specific regulation to protect its speech functions.[137] This is a more reasonable point of view. Scholarship treating platforms as infrastructure comes the closest to addressing their cultural domination problems.[138] Professor Rahman has astutely identified the problem as users' dependence on the platforms, making them vulnerable to the platforms' harmful practices.[139] However, there are additional problems of what Professor Khan might call gatekeeping and leveraging through which platforms exert control over other parts of the knowledge infrastructure, such as the legacy media.[140]

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131. *See* Cohen, *supra* note 17, at 24-26; *see also* VAIDHYANATHAN, *supra* note 119, at 167-69 (discussing Facebook's targeted advertising practices in the political sphere).

132. *See* Betsy Schiffman, *Facebook CEO Apologizes, Lets Users Turn Off Beacon*, WIRED (Dec. 5, 2007, 8:00 PM), https://www.wired.com/2007/12/facebook-ceo-apologizes-lets-users-turn-off-beacon [https://perma.cc/R5YG-DFTL]; Mark Sweney & Emily Gosden, *Facebookers Protest over Privacy*, THE GUARDIAN (Sept. 8, 2006, 5:29 AM), https://www.theguardian.com/technology/2006/sep/08/news.newmedia [https://perma.cc/H2YG-BGTX]; Webb & Goel, *supra* note 55.

133. *See* Julie E. Cohen, *Law for the Platform Economy*, 51 U.C. DAVIS L. REV. 133, 165-67 (2017); COHEN, *supra* note 20, at 236-37; Cohen, *supra* note 17, at 28-30.

134. *See* Cohen, *supra* note 17, at 9-10, 25-30; Arun, *supra* note 13, at 75-76; VAIDHYANATHAN, *supra* note 119, at 167-69; ZUBOFF, *supra* note 117, at 100.

135. Ganesh Sitaraman, *The Regulation of Foreign Platforms*, 74 STAN. L. REV. 1073, 1101-03 (2022).

136. *See id.* at 1086-87 (arguing in favor of restricting foreign ownership of social media platforms).

137. *Id.* at 1090; Khan, *supra* note 54, at 1071-72.

138. Rahman, *supra* note 54, at 1629, 1639; Cohen, *supra* note 17, at 16-17.

139. Rahman, *supra* note 54, at 1653-54, 1671-72.

140. Khan, *supra* note 42, at 327-29.

Professors Cohen and Rahman highlight socio-technical problems produced by social media's political economy.[141] Their project is to discuss domination, but not necessarily super platforms' cultural impact.[142] They make a very important contribution by discussing social media as an industry and not confining their analyses to choices made by particular actors.[143] However, because social media is an informational industry, its version of domination has cultural and informational consequences. When Meta purchased Instagram and WhatsApp, it also transformed the platforms to fit its business model, which means that their unique communicative value was affected.[144] This is cultural influence and potential domination, and it affects democracy.[145]

II. HOW NOT TO GOVERN COMMUNICATIVE PLATFORMS

Legal scholars have discussed platform regulation from the perspective of speech and listening, limiting immunity for harm, self-regulation, and utilities or infrastructure-based regulations.[146] The scholarship on utilities or infrastructure-based regulation offers helpful pathways for restricting super platforms' power, which I discuss in Part III below.[147] Here, I discuss scholarship that focuses on communicative platforms.[148]

There are three critical, interconnected missteps in the legal discourse around platform governance.[149] The first is the continued focus on the individual speaker's First Amendment speech rights, even though technology has made other rights more salient.[150] The second is the deregulatory approach that treats self-governance as the best form of

141. Rahman, *supra* note 54, at 1628-29; Cohen, *supra* note 17, at 12, 17.

142. *See* Rahman, *supra* note 54, at 1629, 1640; Cohen, *supra* note 17, at 6.

143. Rahman, *supra* note 54, at 1633-34, 1640-41; Cohen, *supra* note 17, at 8-9, 12.

144. Cecilia Kang, *At Trial, Instagram Co-Founder Says Meta Denied His Company Resources*, N.Y. TIMES (Apr. 23, 2025), https://www.nytimes.com/2025/04/22/technology/meta-trial-instagram-kevin-systrom.html [https://perma.cc/75ZW-NL7D]; Parmy Olson, *Exclusive: WhatsApp Cofounder Brian Acton Gives the Inside Story on #DeleteFacebook and Why He Left $850 Million Behind*, FORBES (Feb. 21, 2019, 3:13 PM), https://www.forbes.com/sites/parmyolson/2018/09/26/exclusive-whatsapp-cofounder-brian-acton-gives-the-inside-story-on-deletefacebook-and-why-he-left-850-million-behind [https://perma.cc/SX5Z-4649].

145. Cohen, *supra* note 17, at 25-26 ("[P]latformized communication infrastructures have become key facilitators of . . . the 'common knowledge attack' on democracy: they are entry points and incubators for strategies designed to undermine the stability of commonly recognized facts and commonly understood principles of democratic ordering.").

146. *See infra* Parts II.A–B, III.B.

147. *See infra* Part III.B.

148. *See infra* Part II.A–C.

149. *See infra* Part II.A–C.

150. *See infra* Part II.A.

regulation for communicative platforms.[151] The third takes an arguably confusing view of platforms, refusing to recognize their power over individuals and society unless they are foreign.[152] In this view, the problem appears to be framed as one of foreign states exercising power through foreign platforms, rather than one of the platforms having excessive power.

A. The Speaker as the Main Character

First Amendment jurisprudence tends to focus on protecting speakers' rights from government regulation.[153] This interpretation of the First Amendment causes judges and experts who subscribe to it to favor government non-interference with speech.[154] This tendency is present in the Supreme Court's social media opinions, which treat social media platforms' algorithms as having expressive value.[155]

Professor Douek and Professor Lakier have discussed how the courts, in the last few decades, have favored what is essentially government non-interference with speakers.[156] This focus on non-interference has been extended to newspapers, parade organizers, and social media platforms, without considering whether structural power allows these entities to suppress individuals' speech.[157] In the context of web-based, algorithmically mediated speech, focusing on protecting platforms from state regulation is a dangerous path to take.[158] This is because when the First Amendment protects both social media companies and their users equally, it effectively prioritizes protecting the social media companies which are able to exert power over users' speech and have the resources to win any contestation of their decisions.[159]

Fortunately, by remanding the Texas and Florida challenges to lower courts instead of striking them down, the Supreme Court has been

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151. *See infra* Part II.B.

152. *See infra* Part II.C.

153. *See* Citizens United v. FEC, 558 U.S. 310, 361, 365 (2010).

154. *See, e.g.*, *id.* at 340, 365 (suggesting that what counts as speech is arguably expansive).

155. *See* Moody v. NetChoice, LLC, 603 U.S. 707, 731-32 (2024). Writing for the majority, Justice Kagan suggests that some platform communication, such as direct messages, may have a different First Amendment status. *Id.* at 725-26; *see also* TikTok Inc. v. Garland, 604 U.S. 56, 80-81 (2025) (Sotomayor, J., concurring); Douek & Lakier, *supra* note 27, at 101, 126, 136; Balkin, *supra* note 95, at 143-44, 152.

156. Douek & Lakier, *supra* note 27, at 101-02.

157. *Id.* at 101; *see also* WU, *supra* note 29, at 98, 122; Jerome A. Barron, *Access to the Press—A New First Amendment Right*, 80 HARV. L. REV. 1641, 1650-51 (1967); C. Edwin Baker, *Turner Broadcasting: Content-Based Regulation of Persons and Presses*, 1994 SUP. CT. REV. 57, 58.

158. *See* Balkin, *supra* note 37, at 1225-26.

159. *See id.* at 1221-22, 1225-26.

cautious, with the judges articulating their opinions in ways that leave the door open for their permitting future regulation of platforms.[160] This suggests that even though the Supreme Court has shown a strong tendency toward treating government non-interference as a priority, it is open to new ways of interpreting the First Amendment for digital platforms.

The speech focused government non-interference theory is losing its utility as the mass public sphere has reached a stage at which the problem of what speech is amplified and made salient is at least as critical as the problem of whether speech is censored or not.[161] It is complicated further as Generative AI floods platforms with speech indistinguishable from human-authored speech.[162] Unsurprisingly, some scholars have already argued that government non-interference should apply to Generative AI output in the interests of listeners' rights and as tools for users' speech.[163]

This illustrates the importance of agreeing on a helpful empirical frame for platform speech and association. If the Supreme Court justices understand the extent to which the government's non-interference theories enable platform interference with speech and association, through decisions about what speech is amplified and who associates with whom, they might consider other strategies and rationales, such as structural regulation, listeners' rights, and democratic self-governance, in the future.[164]

B. Self-Regulation: Foxes Guarding the Henhouse

As a consequence of treating state regulation of platforms as censorship, self-regulation is often presented as the best answer to the problem of platform power.[165] The social media platforms have enjoyed

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160. Douek & Lakier, *supra* note 27, at 138, 154.

161. Balkin, *supra* note 37, at 1242-43, 1245; Erin L. Miller, *Amplified Speech*, 43 CARDOZO L. REV. 1, 8-10 (2021).

162. Eugene Volokh et al., *Freedom of Speech and AI Output*, 3 J. FREE SPEECH L. 651, 652-53 (2023).

163. *Id.* at 655, 658-59; *cf.* Peter N. Salib, *AI Outputs Are Not Protected Speech*, 102 WASH. U. L. REV. 83, 109, 111-12 (2024) (suggesting that classifying AI outputs as First Amendment speech means laws regulating them would be considered content-based restrictions).

164. James Grimmelmann, *Listeners' Choices*, 90 U. COLO. L. REV. 365, 373, 409 (2019); Miller, *supra* note 161, at 15, 41, 57, 62; Robert Post, *Recuperating First Amendment Doctrine*, 47 STAN. L. REV. 1249, 1270, 1275 (1995); Jack M. Balkin, *Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society*, 79 N.Y.U. L. REV. 1, 30-31, 39 (2004).

165. *See, e.g.*, PAUL GOWDER, THE NETWORKED LEVIATHAN: FOR DEMOCRATIC PLATFORMS 203-04 (2023); Martha Minow & Newton Minow, *Social Media Companies Should Pursue Serious*

many years under the prevailing self-regulatory model, and the AI Platforms have had early success in persuading American regulators that a deregulatory or self-regulatory approach is the best way forward.[166]

However, the problem with this is that it grants regulatory power to companies that already have too much power. Platforms can and do stop self-regulating when it stops serving their interests.[167] Former super platform employees are trying to professionalize what the platforms call "trust and safety," but this only develops granular recommendations, not obligations.[168]

Previously, super platforms were responsive to non-state actors' voices, including movements and civil society, in rethinking their private rules.[169] This was because the companies feared that movements would result in regulation, or (in fewer cases) that they might impact advertising revenue.[170] Jack Balkin called this tripartite relationship a triangle.[171] For the triangle to remain stable, citizens, typically exercising their collective voice through movements, need access to political power, which an influential movement might possess in a functioning democracy.[172] However, as political leaders and super platform owners develop close relationships, marginalizing civil society influence, the triangle distorts.[173] The points associated with the state and companies draw closer

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Self-Supervision—Soon: Response to Professors Douek and Kadri, 136 HARV. L. REV. F. 428, 429-30, 437 (2023).

166. Klonick, *supra* note 35, at 1662-64; Michael D. Shear et al., *Pressured by Biden, A.I. Companies Agree to Guardrails on New Tools*, N.Y. TIMES (July 21, 2023), https://www.nytimes.com/2023/07/21/us/politics/ai-regulation-biden.html [https://perma.cc/NH25-32ZA]; Exec. Order No. 14,365, 90 Fed. Reg. 58499 (Dec. 11, 2025); *Global Leaders Agree to Launch First International Network of AI Safety Institutes to Boost Cooperation of AI*, GOV.UK (May 21, 2024), https://www.gov.uk/government/news/global-leaders-agree-to-launch-first-international-network-of-ai-safety-institutes-to-boost-understanding-of-ai [https://perma.cc/7WS4-GDAR].

167. Arun, *supra* note 13, at 72-73, 75-76; Douek, *supra* note 25, at 35-37; *see e.g.*, Liv McMahon et al., *Facebook and Instagram Get Rid of Fact Checkers*, BBC (Jan. 7, 2025), https://www.bbc.com/news/articles/cly74mpy8klo [https://perma.cc/G9ML-LLQV] (reporting that Meta abandoned use of independent fact checkers on Instagram and Facebook).

168. Arun, *supra* note 13, at 96-98; Douek, *supra* note 25, at 13-14; Danielle Keats Citron & Ari Ezra Waldman, *The Evolution of Trust and Safety*, EMORY L.J. (forthcoming) (manuscript at 21-22) (on file with the *Hofstra Law Review*).

169. *See* BEN WAGNER, GLOBAL FREE EXPRESSION - GOVERNING THE BOUNDARIES OF INTERNET CONTENT 52-53, 161-62 (L., Gov. & Tech. Ser. No. 28, 2016); Brenda Dvoskin, *The Illusion of Inclusion: The False Promise of the New Governance Project for Content Moderation*, 93 FORDHAM L. REV. 1315, 1329, 1331 (2025).

170. Balkin, *supra* note 35, at 2022.

171. *See id.* at 2012, 2014-15.

172. *Id.* at 2043-44.

173. *Id.* at 2014-25; *see, e.g.*, Fin Daniel Gómez & Ed O'Keefe, *Jeff Bezos, Elon Musk, Mark Zuckerberg to Attend Trump's Inauguration*, CBS NEWS (Jan. 14, 2025 5:09 PM),

together, while the point associated with movements and users drifts further out.

The Big Tech companies are investing in influencing political leadership instead of in responsiveness to their users.[174] This implies that their decisions about content are becoming less concerned with democratic input than with political leaders' input. This changes the nature of social media influence through content rules: it shifts focus away from questions of self-regulation, transparency, and accountability surrounding harmful content. Although these questions remain important, the change in political relationships such that super platforms respond to political actors, not democratic processes, increases the odds of harms like digital gerrymandering.[175]

This shift also changes platforms' prior responsiveness to movements, necessitating a new approach to super platforms' content rules.[176] Social media platform owners who have strong ideological opinions can reconfigure teams and the administrative-algorithmic systems to serve their goals.[177]

C. Platforms as Patriots

Another significant reason that American legislators are reluctant to regulate the technology industry is that they worry about foreign platforms dominating the global market.[178] They are also concerned about

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https://www.cbsnews.com/news/jeff-bezos-elon-musk-mark-zuckerberg-trump-inauguration [https://perma.cc/AUM3-EDCA]; Ortutay, *supra* note 36.

174. *See, e.g.*, Gómez and O'Keefe, *supra* note 173. It is worth noting that even during its period of creating transparent and accountable content processes, Meta had secret special processes for influential people to avoid antagonizing them by applying the publicly available rules for everyone else to them. *See* Adam Satariano & Sheera Frenkel, *Oversight Board Criticizes Meta for Preferential Treatment*, N.Y. TIMES (Dec. 6, 2022), https://www.nytimes.com/2022/12/06/technology/meta-preferential-treatment.html [https://perma.cc/J8YC-E9EH].

175. Jonathan Zittrain, *Engineering an Election*, 127 HARV. L. REV. F. 335, 335-38 (2014).

176. *See, e.g.*, KATE CONGER & RYAN MAC, CHARACTER LIMIT: HOW ELON MUSK DESTROYED TWITTER 64-65, 73 (2024).

177. *See id.* at 242-44, 246 (highlighting Elon Musk's changes at Twitter).

178. *See, e.g.*, Cristina Criddle, *Microsoft Warns That China Is Winning AI Race Outside the West*, FIN. TIMES (Jan. 13, 2026), https://www.ft.com/content/f7a5b184-1fef-4f02-b957-4c2b07adf91f [https://perma.cc/GUS7-FJE9]; Loreben Tuquero, *Trump Says the U.S. Is Winning the AI Race with China. Here's What Experts Say*, POYNTER (Feb. 4, 2026), https://www.poynter.org/fact-checking/2026/whos-winning-ai-race-us-vs-china [https://perma.cc/6WNG-TKA3]; Arjun Kharpal, *China Just 'Months' Behind U.S. AI Models, Google DeepMind CEO Says*, CNBC (Jan. 15, 2026, 6:30 PM), https://www.cnbc.com/2026/01/16/google-deepmind-china-ai-demis-hassabis.html [https://perma.cc/F4TD-SMU6].

foreign platforms manipulating American citizens.[179] This concern triggered legislation requiring that TikTok no longer be foreign-owned, and permitting future restrictions of other platforms from a list of foreign states.[180] Brilliant legal scholars have endorsed the idea that foreign platforms might pose a threat to national security.[181] These concerns ignore the possibility that American platforms can pose a national security threat and that it is possible to regulate in ways that require global platforms to follow coordinated norms.[182]

The Supreme Court treated regulation of ownership as regulation of non-expressive activity that burdens expressive activity in *TikTok Inc. v. Garland.*[183] This principle would be fine if the judiciary intends to treat American companies' platform ownership similarly. The Supreme Court relied heavily on giving the government latitude to design regulatory solutions.[184] The standard is that the government's regulatory solution must not be substantially broader than necessary to achieve its interest.[185] It is not at all obvious that the transfer of ownership fits this standard in contrast with data protection regulation and the other options proposed by TikTok.[186]

The latitude offered to the Executive also permitted the Executive to negotiate directly with TikTok.[187] In other words, it permitted the American state—which the First Amendment prevents from interfering

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179. *See* Kerr, *supra* note 63 (discussing American politicians' concerns with TikTok being used as a weapon by China to spy on and blackmail Americans). *But see* Peter Suciu, *TikTok Users Should Take Note, China Has Banned U.S. Social Media*, FORBES (Mar. 15, 2024, 11:44 AM), https://www.forbes.com/sites/petersuciu/2024/03/15/tiktok-users-should-take-note-china-has-banned-us-social-media [https://perma.cc/FR7Z-3VTC] (expressing the belief that, although Chinese-owned applications such as TikTok are prevalent within the United States, the country's democratic principles create a buffer against the influence of their foreign owners).

180. Shepardson & Ayyub, *supra* note 89; Kerr, *supra* note 63; Chander, *supra* note 101, at 1167-68.

181. Rozenshtein, *supra* note 90; Sitaraman, *supra* note 135, at 1078; Zephyr Teachout & Lina Khan, *Market Structure and Political Law: A Taxonomy of Power*, 9 DUKE J. CONST. L. & PUB. POL'Y (SPECIAL ISSUE) 37, 52-53 (2014).

182. *See, e.g.*, Twitter, Inc. v. Taamneh, 598 U.S. 471, 478 (2023) (discussing the plaintiff's accusation that American platforms were aiding and abetting ISIS).

183. 604 U.S. 56 (2025) (per curiam).

184. *Id.* at 77.

185. Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 662 (1994).

186. *Garland*, 604 U.S. at 77; Kerr, *supra* note 63; *cf. Turner*, 512 U.S. at 682 (O'Connor, J., concurring in part and dissenting in part).

187. Sylvan Lane, *5 Things to Know About Trump's Plan to Create a Sovereign Wealth Fund*, THE HILL (Feb. 3, 2025, 4:05 PM), https://thehill.com/policy/technology/5123831-trump-sovereign-wealth-fund-tiktok [https://perma.cc/YA7L-CSFR]; Savannah Sellers et al., *Trump Taps Vance to Negotiate Sale of TikTok Ahead of April Deadline*, NBC NEWS (Feb. 7, 2025, 3:33 PM), https://www.nbcnews.com/tech/tech-news/trump-taps-vance-negotiate-sale-tiktok-ahead-deadline-rcna191185 [https://perma.cc/8324-JY7G].

with communicative activity—to steer ownership, and potentially the terms on which a major communicative platform operates.[188] Policy makers and the Supreme Court first need a theory for regulating social media, and can then apply that theory—modified for national security if necessary—to Chinese companies. The digital public sphere introduces several threats to democracy and Chinese surveillance is just one of them.[189] Commentators have pointed out that a data privacy law might address many concerns about TikTok while ensuring that the American platforms are not also engaged in surveillance.[190] There is no reason to imagine that American companies are uninterested in selling data and engaging in other activities that might harm democracy.[191]

AI companies are able to raise concerns about Chinese innovation to ensure both freedom from regulation in the United States and diplomatic support for freedom from regulation elsewhere.[192] By presenting the Chinese companies, which are regulated in their country, as a bogeyman, the companies are avoiding the more important questions about their impact on citizens and how the state should mitigate this.

III. PLATFORM CREEP

The Platform Creep frame for social media and AI platforms' impact highlights the critical features lawmakers should account for. It is an industry-wide transnational socio-technical, political economy-driven

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188. Sellers et al., *supra* note 187; Dara Kerr & Nick Robins-Early, *Trump Signs Executive Order to Transfer TikTok to US Owners*, THE GUARDIAN (Sept. 25, 2025, 5:56 PM), https://www.theguardian.com/technology/2025/sep/25/trump-china-tiktok-deal [https://perma.cc/G5FG-QYY4].

189. *See* Aaron Glasserman & Monica Greco, *The US Needs Data Privacy, Not a TikTok Ban*, PROJECT SYNDICATE (Mar. 21, 2024), https://www.project-syndicate.org/commentary/us-needs-data-regulation-not-tiktok-ban-by-aaron-glasserman-and-monica-greco-2024-03 [https://perma.cc/Z83F-RAKG] ("[TikTok] is only one small part of a much larger problem: the lack of an affirmative model of data privacy that protects privacy and civil liberties.").

190. *See id.*; Anupam Chander & Paul Schwartz, *The President's Authority over Cross-Border Data Flows*, 172 U. PA. L. REV. 1989, 2027-28 (2024).

191. *Cf.* Olivia Solon & Sabrina Siddiqui, *Russia-Backed Facebook Posts 'Reached 126m Americans' During US Election*, THE GUARDIAN (Oct. 31, 2017, 9:26 PM), https://www.theguardian.com/technology/2017/oct/30/facebook-russia-fake-accounts-126-million [https://perma.cc/FP7Q-RLUU] (hypothesizing that Russia-backed content and advertisements displayed on large social media platforms may have interfered with the 2016 U.S. election); Shannon Bond, *This Is What Russian Propaganda Looks Like in 2024*, NPR (June 6, 2024, 5:00 AM), https://www.npr.org/2024/06/06/g-s1-2965/russia-propaganda-deepfakes-sham-websites-social-media-ukraine [https://perma.cc/HP4T-DG68] (detailing Russia's use of AI to manipulate public opinion on platforms such as Meta).

192. Criddle, *supra* note 178; Siladitya Ray, *JD Vance Knocks EU's Regulation of US Tech Giants: 'America Cannot Accept That,'* FORBES, https://www.forbes.com/sites/siladityaray/2025/02/11/jd-vance-knocks-eus-regulation-of-us-tech-giants-america-cannot-accept-that [https://perma.cc/QEG4-QFJH] (Feb. 11, 2025, 7:52 AM).

phenomenon through which super platforms exert unprecedented influence on the cultural and political institutions that exert countervailing power.[193] Cultural power is usually distributed across knowledge institutions like universities, museums, libraries, and media in democracies.[194] Authoritarian states tend to capture these institutions to capture cultural power.[195] Instead of, or in addition to, states, cultural power is now gradually concentrating in the hands of a few companies through platformed infrastructures, and cultural and political power I discuss below.[196] Super platforms are similar to but not the same as the "gatekeepers" envisioned in the European Digital Markets Act.[197]

"Creep" refers to the process of transformation as technology advances, and the platforms become more dominant.[198] Its incremental quality explains why institutions like the legacy media that once exerted friction against digital platforms' influence are now struggling to do so.[199] This implies that prior studies showing that social media has a limited influence on the dissemination of propaganda need updating to account for social media's influence on legacy media.[200] Platform creep is enabling super platforms to accumulate vast, possibly unprecedented, cultural power globally.[201] Super platforms, through this creep, have the

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193. For a discussion of countervailing political power in democracies, see Stuart Hall, *Culture, the Media and the 'Ideological Effect'*, *in* MASS COMMUNICATION AND SOCIETY 315, 329 (James Curran et al. eds., 2009); K. SABEEL RAHMAN, DEMOCRACY AGAINST DOMINATION 3, 106-08 (2017); Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546, 563, 569-71 (2021).

194. *See* Louis Althusser, *Ideology and Ideological State Apparatuses (Notes Towards an Investigation)*, *in* LENIN AND PHILOSOPHY AND OTHER ESSAYS 79, 79-80 (Ben Brewster trans., 1971).

195. *See id.* at 81.

196. *See infra* Part III.B–C; *see also* Hartzog & Silbey, *supra*, note 12 (manuscript at 12, 15, 17, 20).

197. *See* Commission Regulation 2022/1925, 2022 O.J. (L265); Khan, *supra* note 42, at 326-328; *see also* Teachout & Khan, *supra* note 181, at 41, 55 (arguing that corporate dominance creates governance-like power that transcends ordinary market gatekeeper functions).

198. *See* Zongyi Zhang, *Infrastructuralization of Tik Tok: Transformation, Power Relationships, and Platformization of Video Entertainment in China*, 43 MEDIA, CULTURE & SOC'Y 219, 220-21, 226, 233 (2021) (describing how platforms undergo a process of transformation from narrow entertainment functions to dominant integrated infrastructures that reshape entire social sectors and compel dependence); *cf.* Koops, *supra* note 14, at 32, 39-40.

199. van Dijck et al., *supra* note 43, at 5, 7, 11; David Nieborg et al., *The Platformization of Making Media*, *in* MAKING MEDIA: PRODUCTION, PRACTICES, AND PROFESSIONS 85, 86, 90-91, 93 (Mark Deuze & Mirjam Prenger eds., 2019); Nieborg & Poell, *supra* note 18, at 4277, 4283-84; Caplan & Boyd, *supra* note 12, at 6-7.

200. *See, e.g.*, BENKLER ET AL., *supra* note 18, at 226, 233; Donovan & Boyd, *supra* note 12, at 339, 343.

201. *See supra* text accompanying notes 10-13. For a discussion of how super platforms can exercise a form of private governance that shapes individual behavior even without actively exercising their power, see Teachout & Khan, *supra* note 181, at 58.

incentives and capacity to influence law directly, and to align platform design and law with private power.[202]

Super platforms exert increasing power on three axes: (1) human communication and association; (2) other platforms and other knowledge infrastructure (like the media); and (3) democratic lawmaking across global markets.[203] By doing so, they influence who talks to whom (or to machines), how they do so, what issues and questions are viewed as salient, the accessibility of counter-narratives, and how likely they are to be regulated.[204] The concentrated industry's global reach extends this knowledge infrastructure worldwide, restricted only to the extent that regulators in other countries can resist its power.[205] Although some states (like China) can produce different versions of social media and AI, these versions also heavily privilege user engagement.[206]

The major social media and AI firms also engage in what Professors Teachout and Khan would describe as dominant behavior: governing through the marketplace and driving policy agendas.[207] As the cultural industry becomes dependent on them, super platforms shape communication and culture.[208] This power expands as their dominant connective role that enables, aggregates, and monetizes cultural service providers' engagement with end-users grows.[209] I draw from communications, AI, and law and political economy scholarship to develop this account of social media and communicative AI, which is empirically up to date and accounts for the processes transforming communicative platforms.[210]

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202. *See* Caplan & Boyd, *supra* note 12, at 5, 8; *see also* Nieborg & Poell, *supra* note 18, at 4276, 4285.

203. *See infra* Part III.A–C.

204. *See infra* Part III.A; *see also* Donovan & Boyd, *supra* note 12, at 345 (explaining how search companies like Google and Bing are developing new tools to sort what content that certain individuals will see in their search returns); Caplan & Boyd, *supra* note 12, at 2, 8 (highlighting how information technology companies have increasingly come to mediate everyday life).

205. Wilfred Yang Wang & Ramon Lobato, *Chinese Video Streaming Services in the Context of Global Platform Studies*, 12 CHINESE J. COMMC'N 356, 360-61, 364, 366 (2019) (examining how the global reach of US-based platforms is constrained only in jurisdictions like China, where regulators possess both the political will and institutional capacity to intervene).

206. *See id.* at 359, 364; *see also* Zhang, *supra* note 198, at 229.

207. Teachout & Khan, *supra* note 181, at 37, 38, 41, 53.

208. JOSÉ VAN DIJCK, THE CULTURE OF CONNECTIVITY: A CRITICAL HISTORY OF SOCIAL MEDIA 4 (2013); THOMAS POELL ET AL., PLATFORMS AND CULTURAL PRODUCTION 5 (2022).

209. VAN DIJCK, *supra* note 208, at 4; POELL ET AL., *supra* note 208, at 5.

210. *See infra* Part III.A–C.

A. Shaping Association and Public Discourse

Platforms shape public discourse in more ways than through content curation and information flows.[211] Apart from shadow-banning and dark patterns, platforms shape relationships between different kinds of content, which people the content is targeted to, and which people are encouraged to engage with each other.[212] If a platform treats high school as a critical relational factor, it will show you content and contact suggestions based on your high school. If it treats liking dogs as a significant relational feature, it will show dog-lovers each other's content and suggest that they follow each other.[213]

The increasing machine or algorithmic component of social networks is a significant feature of Platform Creep. If you imagine the early online social networks as human beings finding each other by using the machine to search and draw links, the modern social network consists more of the machine links steering humans toward others and further within the machine. In other words, the algorithmic dimension of social media is overpowering the human dimension and therefore human agency on digital communicative platforms.

The machine element now includes Generative AI.[214] It distinguishes platform influence from legacy media influence.[215] Legacy media broadcast persuasive content to large swathes of the population, but social media and AI platforms can target content at individual users' vulnerabilities.[216] Legacy media triggered group formation—the famous Habermasian mass publics—when people *elected* to consume content at

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211. *See* Balkin, *supra* note 164, at 15 (explaining how the digital revolution creates new forms of cultural participation and ideas of what freedom of speech means, while also creating new opportunities for profits that can only be achieved by shutting down or limiting the exercise of that freedom and participation).

212. *See* VAN DIJCK, *supra* note 208, at 12 ("[S]ocial media are inevitably *automated systems* that engineer and manipulate connections. In order to be able to recognize what people want and like, Facebook and other platforms track desires by coding relationships between people, things, and ideas into algorithms.").

213. *See* Zheping Huang, *TikTok Has a Few Main Ingredients for Making Money*, BLOOMBERG (June 28, 2022, 6:45 AM), https://www.bloomberg.com/news/newsletters/2022-06-28/how-does-tiktok-make-money-app-relies-on-a-few-main-ingredients [https://perma.cc/2GVJ-JNAN] (explaining that the algorithm of major platforms such as TikTok have the ability to discern user's likes and dislikes from their activity on the platform, picking up on how long you view certain content); *see also* van Dijck, *supra* note 30, at 145 ("Human preferences, tastes, desires and interests are profoundly manoeuvred by the interface features that direct online behaviour, while users' behavioural metadata in turn help to configure the very algorithms steering the site.").

214. Hartzog, *supra* note 24, at 607-08.

215. *See* Hartzog & Silbey, *supra* note 12 (manuscript at 30-31).

216. Helen Norton, *Manipulation and the First Amendment*, 30 WM. & MARY BILL RTS. J. 221-22, 226, 228 (2021); Calo, *supra* note 6, at 1021.

the same time and then conversed with their fellow citizens about it.[217] Platforms influence individuals' identity reinforcement and the formation of groups by targeting content and chatbot tone to users' vulnerabilities, and encouraging them to engage with more extreme content than they would independently.[218]

1. Algorithmic Creep in Social Networks

Social media platforms control the environment within which people engage and can therefore heavily influence group formation and association in ways that legacy media was technologically unable to.[219] They nudge users about who to include in networks and decide which people are shown each other's posts or the same third-party posts. They replace human agency with platform choices. Their design of connective spaces for communication and information sharing is oriented toward their goals.[220]

By banning all content about vaccination, including tags that enable tracking of the subject, a dominant platform can impede user discussion of the subject and the growth of groups and conversations about vaccination. If all major super platforms take this action, they can shrink the space for associational speech about vaccination.[221] Equally, by promoting particular kinds of content, groups or tags, especially to people it categorizes as likely to be interested in them, a platform can shape the formation of groups.[222] Therefore, social media companies control more than informational flows. They control associational engagement, and through it, shape publics.[223]

These two features are difficult to track and critique, unlike press and broadcasting content, because only the platform can access how people are categorized.[224] These two features also allow dominant

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217. *See* HABERMAS, *supra* note 29, at 51-56; Robert C. Post, *Data Privacy and Dignitary Privacy:* Google Spain, *the Right to Be Forgotten, and the Construction of the Public Sphere*, 67 DUKE L.J. 981, 1044 (2018).

218. *See* Norton, *supra* note 216, at 222, 226, 228; Singleton et al., *supra* note 83.

219. *See* VAN DIJCK, *supra* note 208, at 12. This is different from concerns about the "filter bubble" because it is about which people are proposed as contacts for each other and shown each other's content most frequently. *Id.*

220. *See* van Dijck, *supra* note 30, at 143-45; COHEN, *supra* note 20, at 42-43.

221. *See* Pardikar, *supra* note 1; *see also* Ashutosh Bhagwat, *Associational Speech*, 120 YALE L.J. 978, 981 (2011) ("Associational speech is speech that is meant to induce others to associate with the speaker, to strengthen existing associational bonds among individuals including the speaker, or to communicate an association's views to outsiders (including government officials).").

222. *See* Bhagwat, *supra* note 221, at 1028; *see also* COHEN, *supra* note 20, at 83, 85-86.

223. *See* Bhagwat, *supra* note 221, at 1028; *see also* COHEN, *supra* note 20, at 83, 86.

224. Platforms tend to aggressively protect this information from third parties. *See* Shannon Bond, *NYU Researchers Were Studying Disinformation on Facebook. The Company Cut Them Off*,

platforms to manipulate users into identifying strongly with views and groups that they might otherwise have just regarded as passing, even temporary interests.[225] Normally socialized human beings tend to attune to people with whom they are in regular contact. This is further complicated when Generative AI bots present in ways that are difficult to separate from people, adding emotionally manipulative machine-human engagement to human assembly.[226]

2. Opaque Decisions About Content and Assembly

Platform design permits platforms to conceal decisions about speech and assembly within algorithms, sometimes to avoid controversy, as the Twitter case study shows.[227] This is different from major newspapers, which have editorial policies that, if not widely known, are known to the editorial team.[228] Although the platforms, notably Facebook, attempted to create analogous transparent content policies, they have shown that they can withdraw them at will.[229] Unlike legacy media content decisions, which are communicated to and implemented by a human team, typically professional journalists, technology companies' decisions only need limited communication with team members developing criteria and those coding them.[230]

The opacity of platforms' power and influence grows as they shift categories of decision-making about content and audiences to

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NPR (Aug. 4, 2021, 6:45 PM), https://www.npr.org/2021/08/04/1024791053/facebook-boots-nyu-disinformation-researchers-off-its-platform-and-critics-cry-f [https://perma.cc/A5LP-WYKR].

225. *See* COHEN, *supra* note 20, at 86-87.

226. *See* NOORTJE MARRES, MATERIAL PARTICIPATION: TECHNOLOGY, THE ENVIRONMENT AND EVERYDAY PUBLICS 67-68, 70-71 (2012) (explaining how everyday technologies manipulate human participation and interaction); Boles, *supra* note 83; Wampler, *supra* note 60.

227. *See infra* Part IV.C.

228. *See* Richard Luscombe, *Washington Post Opinion Editor Departs as Bezos Pushes to Promote 'Personal Liberties and Free Markets'*, THE GUARDIAN (Feb. 26, 2025, 5:55 PM), https://www.theguardian.com/media/2025/feb/26/jeff-bezos-washington-post-opinion [https://perma.cc/7BNB-9LUB]; David Folkenflik, *Bezos' Changes at 'Washington Post' Lead to Mass Subscription Cancellations—Again*, NPR (Feb. 28, 2025, 12:37 PM), https://www.npr.org/2025/02/28/nx-s1-5312819/washington-post-bezos-subscriptions-cancellations [https://perma.cc/ZS2T-ECAX].

229. *See, e.g.*, Klonick, *supra* note 35, at 1620-21, 1634; Arun, *supra* note 35, at 246-48, 262; Biddle, *supra* note 88.

230. *See* CONGER & MAC, *supra* note 176, at 93, 147-48, 397 (discussing how Twitter's proposed "Project Saturn" was meant to engage in algorithmic amplification and deamplification based on shared criteria, and involved its trust and safety leadership; the platform had to notify engineers when Elon Musk wanted to ensure that his tweets were amplified widely).

algorithms.[231] It increases with the use of AI content creators such as chatbots and voice assistants that give users a single perspective in place of a list of answers to their queries. The integration of chatbots is an expansion of platform creep and of the platforms' machine-driven element of their human-algorithmic communities.[232]

To maximize profits, super platforms have to attract advertisers, and to attract advertisers, they have to maximize their influence. Social media companies innovate constantly in a race for attention.[233] They work to keep as many people as possible engaged on their platforms for as long as possible.[234] The most profitable social media platforms do more than display advertisements—they aim to get users to watch them and click on them, for which they prime their audiences.[235] These goals underlie their choice of what content is amplified and which people are put in discursive relationships with each other.[236] Profit-making social media platforms connect end-users with businesses like advertisers and content creators, governments and non-profits.[237] Platforms that are unable to keep up tend to come under pressure to change their practices or ownership.[238]

3. Manipulative Design

The companies' decisions about content are not as precise as editorial decisions by newspapers, but they shape information flows and therefore influence public discourse.[239] They also influence community formation, directly through friend and group suggestions and indirectly by choosing what kinds of content to target at specific groups of people. Platforms target connection and content suggestions to groups based on

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231. *See* Frank Pasquale, The Automated Public Sphere 4-9 (Nov. 10, 2017) (unpublished manuscript) (on file with the *Hofstra Law Review*), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3067552 [https://perma.cc/C3GZ-4N6X].

232. *See, e.g.*, Kat Tenbarge, *Meta Removes AI Character Accounts After Users Criticize Them as 'Creepy and Unnecessary'*, NBC NEWS (Jan. 3, 2025, 6:15 PM), https://www.nbcnews.com/tech/social-media/meta-ai-insta-shuts-character-instagram-fb-accounts-user-outcry-rcna186177 [https://perma.cc/T6JF-WQZ7]; Cole, *supra* note 60.

233. COHEN, *supra* note 20, at 84-85.

234. *Id.* at 85; Balkin, *supra* note 37, at 1239.

235. COHEN, *supra* note 20, at 77, 85.

236. Cohen, *supra* note 17, at 16 ("[Infrastructures for online communication] determine the precise ways communication may be transmitted, received, and recirculated; as a practical matter, then, they shape both experiences and perceptions of what is ordinary and natural in the linked realms of private and public interconnection and sensemaking.").

237. *See* van Dijck et al., *supra* note 43, at 5-6; POELL ET AL., *supra* note 208, at 182-83.

238. *See* POELL ET AL., *supra* note 208, at 41-43 (describing how the competitive nature of platform markets limits how many platform companies can be economically viable at any one time).

239. Balkin, *supra* note 35, at 2040-41.

invisibly determined metrics that sort users into groups.[240] By choosing the metrics and groups, platforms decide what affinities and shared communication or experience to encourage. At scale, this ability to make some content and connections salient, and influence group formation, allows communicative platforms to influence identity and culture.

Social media companies use demographics or user behavior to target content: they categorize individuals based on company-defined characteristics, which can determine what content they are shown.[241] These characteristics include companies' profiling data about users' reactions on their platforms. For example, Facebook reportedly shows users it categorizes as being interested in news and politics more of this content than they have (self-reported) interest in.[242] Super platforms also use browser data and data from other apps that they infiltrate, which can extend to and far beyond location, age, nationality, or other demographics, including racial proxies, for profiling. This would be enhanced by engaging, addictive bots that chat with users, collecting data, thereby further extending the profiling.[243] Chatbots on social media platforms can target susceptible users easily.[244]

Pre-determined categorization has informational consequences like disproportionately targeted advertisements for for-profit universities with predatory marketing practices to black people; and deliberate exclusion of groups like Black people, Spanish speakers, Jews, and people interested in wheelchair ramps from audiences to whom advertisers target advertisements.[245] This targeting is opaque and can both coerce associational engagement and reinforce aspects of individuals' identities

240. *Id.* at 2021-25, 2042, 2047-48; *see generally*, GEOFFREY C. BOWKER & SUSAN LEIGH STAR, SORTING THINGS OUT: CLASSIFICATION AND ITS CONSEQUENCES (1999).

241. *See* Balkin, *supra* note 37, at 1241-43.

242. Kjerstin Thorson et al., *Algorithmic Inference, Political Interest, and Exposure to News and Politics on Facebook*, INFO., COMMC'N & SOC'Y, July 27, 2019, at 1, 11.

243. *See* Cole, *supra* note 60; Webb & Goel, *supra* note 55; Hannah Murphy & Cristina Criddle, *Meta Accelerates Voice-Powered AI Push*, FIN. TIMES (Mar. 7, 2025), https://www.ft.com/content/a1014427-c2ce-4204-b41a-001277309cea [https://perma.cc/8ZY9-FUZ6].

244. *See, e.g.*, Jeff Horwitz, *Meta's Flirty AI Chatbot Invited a Retiree to New York. He Never Made it Home.*, REUTERS (Aug. 14, 2025, 6:00 AM), https://www.reuters.com/investigates/special-report/meta-ai-chatbot-death [https://perma.cc/3QUH-ABYP]; Webb & Goel, *supra* note 55; Cole, *supra* note 60.

245. Julia Angwin et al., *Facebook (Still) Letting Housing Advertisers Exclude Users by Race*, PROPUBLICA (Nov. 21, 2017, 1:23 PM), https://www.propublica.org/article/facebook-advertising-discrimination-housing-race-sex-national-origin [https://perma.cc/2YF2-G5HA]; Thomas Claburn, *Meta Algorithms Push Black People More Toward Expensive Universities, Study Finds*, THE REGISTER (June 4, 2024), https://www.theregister.com/2024/06/04/meta_ad_algorithm_discrimination [https://perma.cc/UP3C-6CLN].

without them realizing it.[246] You might not actively seek out content about sports or music that was popular within the communities of your origin or childhood, but if it is repeatedly placed before you, it might elicit your curiosity and interest. You might take a look, only to have it placed before you again, and then again, until over time a past or passing interest becomes a greater part of your identity than you might have chosen for it to be.

This targeting is arguably a version of Althusser's idea of interpellation except that instead of being hailed explicitly into a subject position tied to one's gender, race or nationality, for example, one is hailed implicitly by being shown content targeted to a particular characteristic.[247] This produces invisible hegemonic effects, repeatedly tying individuals into a particular subject position, and redefining that characteristic in subtle ways that then shape how these individuals perceive themselves.[248]

B. Infrastructural Influence

Super platforms are infrastructure, acting as shared means to many ends.[249] Social media plays a powerful role in democracy by supporting human communicative activity and, therefore, public discourse.[250] AI enables people to create and process information and culture in new ways.[251] Many scholars have pointed out that communicative infrastructure is critical to the exercise of First Amendment rights.[252]

However, super platforms configure infrastructure using a platformized model, which centralizes control, allowing the owner companies extensive power. This means that super platform companies control critical communicative infrastructure. Their incentives are aligned toward "tipping human societies away from (concededly imperfect) democratic equilibria into different systemic patterns" that make them better

246. *See, e.g.*, Thorson et al., *supra* note 242, at 2, 11 (finding that users who self-identify as interested in news and politics are shown more of this kind of content).

247. *See* Althusser, *supra* note 194, at 84-87.

248. *See id.*; Thorson et al., *supra* note 242, at 2, 11.

249. BRETT M. FRISCHMANN, INFRASTRUCTURE: THE SOCIAL VALUE OF SHARED RESOURCES 334-35 (2012).

250. Post, *supra* note 217, at 1043 ("The virtual public sphere becomes more democratic as a mass audience is able more easily to participate in its construction . . . ."); Cohen, *supra* note 17, at 17-18.

251. Volokh et al., *supra* note 162, at 651-52.

252. *E.g.*, Balkin, *supra* note 37, at 1260-61 ("Telecommunications infrastructure and digital industries can promote free speech values, and so can good design of communicative technologies, interfaces, and affordances.").

consumers for advertisers.[253] In addition to the visible harms that emerge from these tendencies, there is a risk of social media capture, which, like media capture, can allow political actors to influence what information reaches the public.[254]

Above, I discussed how platforms determine who is connected, how they can communicate, and what content is made salient.[255] Here, I discuss how super platforms project this power of agenda-setting beyond their platforms.

Owing to their infrastructural power, super platforms access data beyond their platforms and influence stakeholders—like advertisers, app developers, media, influencers, and others—through their relationships with them. Generative AI has extended these relationships further, into institutions like universities.[256] In other words, dominant platforms exert power over social relationships and democratic institutions.[257]

1. Infrastructure

Social media, now heavily mediated by AI, enables ways of communicating and engaging that are worth preserving. Super platforms control a great share of communication and mobilization.[258] Unlike smaller platforms like Blue Sky or Truth Social, which form a part of communicative infrastructure but are unlikely to disrupt a significant part of it, super platforms exhibit infrastructural qualities.[259] They are accessible to a sizeable number of people and do have positive externalities.[260]

Super platforms feature the following infrastructural characteristics: they are embedded in other social arrangements and technologies, they invisibly support tasks, they reach beyond single events and practices, new participants acquire familiarity with using them, they have a standardizing influence on other infrastructures and tools, and they become

253. Cohen, *supra* note 17, at 26-28.

254. *See* Anya Schiffrin, *Introduction to Special Issue on Media Capture*, 19 JOURNALISM 1033, 1034, 1036 (2018).

255. *See supra* Part III.A.

256. van Dijck et al., *supra* note 43, at 3-4, 6.

257. *Id.* at 3.

258. *Id.* at 3-4.

259. *See* Rahman, *supra* note 54, at 1640-42 (arguing that dominant firms that produce goods or services that are deemed necessities and make users vulnerable to exploitation and control downstream use of those goods or services comprise "the basic *infrastructure* of modern society").

260. FRISCHMANN, *supra* note 249, at 4-5; Rahman, *supra* note 54, at 1640-42.

visible upon breakdown.[261] The large language models are a new technology, but they are being rapidly embedded in other systems, being adopted by universities and workplaces, and becoming ubiquitous as people learn to use them.[262]

Searching for information online is almost synonymous with Google, and connecting with people informally is almost synonymous with Facebook and WhatsApp. Both companies have encouraged user and institutional dependence through aggressive drives to get their products adopted universally.[263] When they stop working, their absence is conspicuous.[264] Similarly, large language models are becoming ubiquitous and encouraging user dependence.[265] If a page that ranked high on Google Search's results for your name can cause you substantial reputational harm, this is arguably shifting to what the Gemini summary of the results your name produces, or to where ChatGPT thinks you work. Whichever platform is the "one-stop" infrastructure where people seek information acquires enormous power. Each platform vies for this role.

2. Platformized Infrastructure

Super platforms use a platformized model for their web-based communicative infrastructure.[266] Platformization of social media and AI affords companies centralized power because platforms are typically centrally designed and controlled, such that the core has low variability, and components have high variability.[267] Through this centralized platform power, companies determine what content they will permit and the

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261. Susan Leigh Star & Karen Ruhleder, *Steps Toward an Ecology of Infrastructure: Design and Access for Large Information Spaces*, 7 INFO. SYST. RSCH. 111, 113-14 (1996); Cohen, *supra* note 17, at 14.

262. Star & Ruhleder, *supra* note 261, at 113.

263. Anne Helmond et al., *Facebook's Evolution: Development of a Platform-as-Infrastructure*, 3 INTERNET HISTS. 123, 124-25, 139 (2019); Jean-Christophe Plantin et al., *Infrastructure Studies Meet Platform Studies in the Age of Google and Facebook*, 20 NEW MEDIA & SOC'Y 293, 303-06 (2016).

264. Charlotte Edwards, *WhatsApp and Instagram Restored After Meta Outages*, BBC (Dec. 11, 2024), https://www.bbc.com/news/articles/c623jr6kxz2o [https://perma.cc/X6HM-ELN3]; Stacy Liberatore, *Google Is DOWN: Search Engine, YouTube and Other Services Hit with Outage*, DAILY MAIL, https://www.dailymail.co.uk/sciencetech/article-13735777 [https://perma.cc/2E7K-R5U3] (Aug. 12, 2024, 5:18 PM).

265. Ala Yankouskaya et al., *Can ChatGPT Be Addictive? A Call to Examine the Shift from Support to Dependence in AI Conversational Large Language Models*, 5 HUM.-CENTRIC INTELLIGENT SYS. 77, 82-83 (2025).

266. *See* Cohen, *supra* note 17, at 26, 28; *see also* Plantin et al., *supra* note 263, at 298-301 (explaining that digital technologies have platformized infrastructure and infrastructuralized platforms).

267. *See* Cohen, *supra* note 17, at 28; Plantin et al., *supra* note 263, at 303-04.

terms on which users can engage with them and each other.[268] A platform owner can make platform-wide changes that can affect entities off the platform.[269] The consequences of this centralized power raise enough concerns for several experts to have argued in favor of decentralizing social media platforms to decentralize this power.[270]

The history of super platforms shows that they transformed into infrastructure, initially susceptible to influence from their margins, setting up private bureaucracies to interface with the public for sociological legitimacy. However, as their power grew as a part of Platform Creep, they were able to exert influence from the core over not only the parts of the infrastructure they own, but also the external forces trying to influence it. Their centralized control over widely used communicative infrastructure, on which other institutions gradually depend, allows them to influence other platforms and industries.[271]

The AI industry builds on this ecosystem, also aiming to engage users. However, unlike social media platforms, Generative AI platforms do not have to work with users' or paid influencers' content.[272] They can create content tailored to engage users and keep them online.[273] As I discussed above, chatbots are becoming a part of social media platforms.[274] Social media platforms, after having unintentionally connected end-users with bot accounts previously, are experimenting with intentionally doing

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268. Plantin et al., *supra* note 263, at 298-99.

269. *See, e.g.*, Sam Sanders, *Upworthy Was One of the Hottest Sites Ever. You Won't Believe What Happened Next*, NPR (June 20, 2017, 3:35 PM), https://www.npr.org/sections/alltechconsidered/2017/06/20/533529538/upworthy-was-one-of-the-hottest-sites-ever-you-wont-believe-what-happened-next [https://perma.cc/5H5A-ELMQ] (reporting that changes to Facebook's algorithm governing how news is displayed on the platform caused a once-popular media site to plummet in number of visitors).

270. Mike Masnick, *Protocols, Not Platforms: A Technological Approach to Free Speech*, KNIGHT FIRST AMEND. INST. (Aug. 21, 2019), https://knightcolumbia.org/content/protocols-not-platforms-a-technological-approach-to-free-speech [https://perma.cc/UB25-2Y58]; Ethan Zuckerman & Chand Rajendra-Nicolucci, *What if Social Media Worked More Like Email?*, KNIGHT FIRST AMEND. INST.: TOWARD A BETTER INTERNET (Nov. 3, 2020), https://knightcolumbia.org/blog/what-if-social-media-worked-more-like-email [https://perma.cc/2DMC-LPNU]; *see also* Alan Z. Rozenshtein, *Moderating the Fediverse: Content Moderation on Distributed Social Media*, 3 J. FREE SPEECH L. 217, 231-35 (2023).

271. van Dijck et al., *supra* note 43, at 9.

272. *See* McMahon, *supra* note 52; *Performance-Based Payouts: A Simpler, More Rewarding Way to Earn from Your Content*, FACEBOOK (Jan. 9, 2024), https://creators.facebook.com/how-performance-based-payouts-reward-creators [https://perma.cc/7E2P-MCBB]; Sarah Perez, *X Changes Creator Payouts to Depend on Engagement, Not Ads*, TECHCRUNCH (Oct. 10, 2024, 2:48 PM), https://techcrunch.com/2024/10/09/x-changes-creator-payouts-to-depend-on-engagement-not-ads [https://perma.cc/GBB7-8ZKD].

273. Webb & Goel, *supra* note 55; Boles, *supra* note 83.

274. *See supra* text accompanying notes 105-09.

so.[275] Their administrative-algorithmic content apparatuses are directed at keeping end-users online and open to content marketed to them, which in turn brings in advertising revenue.[276] Replacing paid content creators with AI content creators would increase their profit margins.[277] The industry-wide pressure to be the most influential platform applies to AI companies. They compete to retain audiences, prime them to be receptive to advertisements targeted at them, and persuade advertisers that they can access large audiences that are receptive to their messages.[278]

3. Off-Platform Infrastructural Influence

Super platforms accumulated power by developing interoperable technical and economic protocols and using them to leverage their network effects and expand their global diffusion.[279] Social media is interconnected through socio-technical gateways, and the platforms' content reaches more participants than their users.[280] Super platforms' boundary protocols allow connection with other apps, and in doing so, influence and control other apps, and choices made by and on other apps' platforms.[281] This is possible because they have created gateways, like APIs, to permit other apps to plug into them, granting them control over environments in which the external apps operate.[282] They exert control beyond their platforms, to an ecology or network or web of linked apps and systems, many of which may be independently maintained.[283]

As this infrastructural role grows, they penetrate cultural industries, and cultural production is increasingly organized around the platforms, their rules, practices, and affordances.[284] They are able to exert power over both cultural producers and cultural intermediaries, which means

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275. Sarah Perez, *It Sure Looks Like X (Twitter) Has a Verified Bot Problem*, TECHCRUNCH (Jan. 10, 2024, 10:37 AM), https://techcrunch.com/2024/01/10/it-sure-looks-like-x-twitter-has-a-verified-bot-problem [https://perma.cc/S8S3-8QG5]; Wampler, *supra* note 60; Webb & Goel, *supra* note 55.

276. Cohen, *supra* note 6, at 618-19; Balkin, *supra* note 37, at 1264-67.

277. *See* Cenk Demircan, *The Role of AI in Content Generation: Will Machines Replace Marketers?*, TIME SQUARE CHRONS. (Mar. 13, 2025), https://t2conline.com/the-role-of-ai-in-content-creation-will-machines-replace-marketers [https://perma.cc/HF6S-5WLQ] (explaining how AI platforms can generate content in seconds and help businesses market at unprecedented speeds and efficiency).

278. Gillespie, *supra* note 112, at 353-55; Cohen, *supra* note 17, at 17-18.

279. van Dijck et al., *supra* note 43, at 3.

280. Plantin et al., *supra* note 263, at 299.

281. *Id.* at 303-04; *see also* Sanders, *supra* note 269.

282. Plantin et al., *supra* note 263, at 303.

283. *Id.* at 301, 303.

284. Nieborg & Poell, *supra* note 18, at 4276.

that app developers, advertisers, influencers and newspapers are all affected by them.[285]

Dominant platforms can transform entire industries and institutions. I discuss this in more detail below.[286] Super platforms incentivize content producers, ranging from journalists to artists, to prioritize visibility over creativity and careful journalism.[287] This is because content producers have to align their business models to the metrics and affordances of these platforms.[288] A superstar like Taylor Swift may be able to negotiate with the platforms but most producers have to accept the platforms' terms if they want to reach large audiences. The greater the number of users on a platform, the more power it has over content producers.[289] However, platforms also replace content producers, integrating additional business and adding subsidiaries and chatbots, expanding their multisided markets.[290]

C. Cultural Dominance

Media shapes culture based on its political economy. Concerns about its influence have been raised repeatedly through history.[291] The media's influence is mitigated by counter-influences from other institutions such as universities, unions, and other associations through which people exercise collective power.[292] The features I described above, along with industry concentration, increase super platforms' power over democratic and cultural institutions. By doing so, they blunt the friction that other cultural and knowledge institutions and political associations typically exert on influential actors.[293] Since super platforms possess greater access to resources than most states, they are able to dominate where the legacy media could only influence.[294] They are also able to shape associations.[295]

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285. van Dijck et al., *supra* note 43, at 3; van Dijck, *supra* note 30, at 149; Nieborg & Poell, *supra* note 18, at 4278; POELL ET AL., *supra* note 208, at 86.

286. *See infra* Part III.C.

287. POELL ET AL., *supra* note 208, at 144-45.

288. *See id.* at 40.

289. *Id.* at 37.

290. *Id.* at 41 (demonstrating that major platforms like Google and Facebook have morphed into parent organizations operating different platform subsidiaries in order to attract new users).

291. Arun, *supra* note 13, at 72-73.

292. Andrias & Sachs, *supra* note 193, at 551-52; RAHMAN, *supra* note 193, at 101-02.

293. *See supra* Part III.B.1–3; VAN DIJCK, *supra* note 208, at 20-21; Andrias & Sachs, *supra* note 193, at 551-52.

294. *See* Arun, *supra* note 25, at 1349-404.

295. Ian Bremmer, *The Technopolar Moment: How Digital Powers Will Reshape the Global Order*, FOREIGN AFFS. (Oct. 19, 2021), https://www.foreignaffairs.com/articles/world/ian-bremmer-big-tech-global-order [https://perma.cc/665C-M5NS].

I discuss three major sectors, critical to democracy, that super platforms are heavily influencing below.[296] The first is the media. Super platforms influence communication beyond the digital public sphere by engaging in three processes that frame public discourse: agenda-setting, priming, and framing.[297] Through this, they affect what information people see, whether they see it as salient and persuasive, and shape the formation of collectives.[298] The second is knowledge—they influence what is perceived as authoritative, shifting epistemic power away from universities and scientific bodies.[299] The third is states and regulators. Super platforms have extensive resources and political power, enabling them to influence the framing and development of legal frameworks worldwide. This permits the unrestricted growth and experimentation on different societies in markets across the world, which is a part of Platform Creep.[300]

1. Super Platforms and the Press

Social media's threat to journalism is evident from the fact that states are looking for ways to get social media companies to directly or indirectly pay for press content.[301] However, the fact that super platforms are effectively gatekeepers to legacy media content, on their own terms, also means that they set the terms of how this content is presented and when it is amplified.[302]

Communication scholars point out that the news and cultural production industries adapt their editorial and production practices and goals to fit super platforms' technological requirements, terms of access, and priorities since they depend on super platforms to reach

296. *See infra* Part III.C.1–3.

297. MANUEL CASTELLS, COMMUNICATION POWER 157-58 (2d ed. 2013); *see infra* Part III.C.1.

298. CASTELLS, *supra* note 297, at 157-58.

299. *See infra* Part III.C.2; *see also* Arun, *supra* note 25, at 1404-05; Brian Leiter, *The Epistemology of the Internet and the Regulation of Speech in America*, 20 GEO. J.L. & PUB. POL'Y 903, 906-08 (2022).

300. *See infra* Part III.C.3.

301. Nadine Yousif, *Meta's News Ban in Canada Remains as Online News Act Goes into Effect*, BBC (Dec. 19, 2023), https://www.bbc.com/news/world-us-canada-67755133 [https://perma.cc/83NM-9CMK]; *Australia Plans to Tax Tech Giants if They Fail to Pay News Outlets*, AL JAZEERA (Dec. 12, 2024), https://www.aljazeera.com/news/2024/12/12/australia-to-force-tech-giants-to-pay-for-news [https://perma.cc/9VW3-8RTU]; Hannah Ritchie, *Australia to Force Tech Giants to Keep Paying for News*, BBC (Dec. 12, 2024), https://www.bbc.com/news/articles/cy4pvgjklevo [https://perma.cc/DT54-498Y].

302. András Koltay, *The Protection of Freedom of Expression* from *Social Media Platforms*, 73 MERCER L. REV. 523, 525-27, 529 (2022).

audiences.[303] The nature of legacy media permitted important but unappealing news to be packaged along with more appealing news and entertainment. However, social media privileges virality and is designed to use virality to determine what content is salient.[304] As legacy media stories are desegregated from their print or broadcast packaging, and viewed within the platform environment, their salience and amplification are also subject to the virality standard.[305]

Super platforms change journalism by reconfiguring its relevance and value through code that determines how people access this news and information on its platform. It induces the news industry to account for metrics like click-rates, likes, and shares through its configuration of advertisement and attention.[306] As more people rely on social media platforms to the exclusion of other media, larger audiences get accustomed to content filtered by algorithms instead of journalists and editors.[307] Although chatbots are not currently how most people receive their news, as large language models and their user-interfaces evolve, this can be expected to change.

The criteria and processes platforms use to determine what is amplified differ from standard newsroom practices, and might be considered to be of a completely different nature than those employed by legacy media.[308] Editorial practices might prioritize authoritative sources, but platforms' algorithms prioritize engagement, leading content producers to discover that they can draw more attention with outrageous content than carefully produced content.[309] Recent platform practices have involved incentivizing influencers to create content likely to keep users

303. Donovan & Boyd, *supra* note 12, at 338; Mike Ananny & Kate Crawford, *A Liminal Press: Situating News App Designers Within a Field of Networked News Production*, 3 DIGIT. JOURNALISM 192, 194 (2015); Nieborg et al., *supra* note 199, at 89.

304. *See* Balkin, *supra* note 37, at 1214, 1239, 1250-51.

305. *Id.* at 1222-23.

306. *See* Caplan & Boyd, *supra* note 12, at 5 ("[T]he more dependent an industry becomes on one organization who is exerting a dominant administrative function . . . the more that organization will be able to exert change on other organizations that rely upon them.").

307. Jeffrey Gottfried, *Americans' Social Media Use*, PEW RSCH. CTR. (Jan. 31, 2024), https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2024/01/PI_2024.01.31_Social-Media-use_report.pdf [https://perma.cc/3P2V-KSLV].

308. Donovan & Boyd, *supra* note 12, at 339.

309. Killian L. McLoughlin et al., *Misinformation Exploits Outrage to Spread Online*, 386 SCI. 991, 995 (2024). It is worth noting that not all editorial practices are the same, as is evident from the role of the legacy media in electoral manipulation. *See* BENKLER ET AL., *supra* note 18, at 272 (using Facebook as an example to show that certain platforms aim to collect user data in order to steer their users to do certain things, such as spend money or vote a certain way).

online and engaged.[310] An engaging chatbot can tailor its content to users.[311]

2. Super Platforms, Expertise, and Knowledge Institutions

Traditionally, universities, a flourishing independent press, and other institutions have underwritten democracy.[312] Universities and the press rely on other institutional actors, such as scientific panels and the World Health Organization, when they present facts to their audiences.[313] Since everyone cannot conduct scientific experiments to determine whether the earth is round, whether viruses are contagious, and how we should protect ourselves from disease, we treat experts and institutions as proxies, treating their determinations as authoritative.

Super platforms are displacing this authority. Debates that should take place between experts with years of training take place online, or are poorly summarized by AI.[314] The culture of virality displaces carefully developed institutional processes that test theories before presenting them publicly.[315] Reliance on conclusions drawn from big data and AI-enabled information processing without examining the data sets or

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310. *Performance-Based Payouts: A Simpler, More Rewarding Way to Earn from Your Content*, *supra* note 272; McMahon, *supra* note 52; Sarah Perez, *Twitter, Now X, Opens up Its Ad Revenue Sharing Program with Global Creators*, TECHCRUNCH (July 28, 2023, 12:02 PM), https://techcrunch.com/2023/07/28/twitter-now-x-opens-up-its-ad-revenue-sharing-program-with-global-creators [https://perma.cc/M67Y-FQBQ]; Rebeca Suárez-Álvarez & Ana Pastor-Rodríguez, *Influencer Advertising on TikTok: Advert Formats and Illicit Product Advertising. A Study Involving Germany, France, Spain and Italy*, 36 COMMC'N & SOC'Y, no. 3, 2023, at 175, 185.

311. Oksana Chyketa, *What Is Chatbot Marketing and How Can It Help Your Business?*, NOFORM (Oct. 20, 2025), https://noform.ai/blog/chatbot-marketing [https://perma.cc/6RLY-4WAW].

312. *See* Balkin, *supra* note 37, at 1261.

313. *See Global Presentations*, YALE SCH. OF PUB. HEALTH: CTR. FOR METHODS IN IMPLEMENTATION & PREVENTION SCI., https://ysph.yale.edu/cmips/presentations [https://perma.cc/3UEL-3WZP] (May 15, 2026); Rob Mitchum, *Scientists Confront Challenges to Communicating Facts*, UCHICAGO NEWS (Mar. 3, 2017), https://news.uchicago.edu/story/scientists-confront-challenges-communicating-facts [https://perma.cc/5R4L-ENEH]; Vanessa Schipani, *Journalism and Public Trust in Science*, SYNTHESE, Aug. 2024, at 1, 5-6.

314. Rob Kitchin, *Big Data, New Epistemologies and Paradigm Shifts*, BIG DATA & SOC'Y, Apr.–June 2014, at 1, 2.

315. *See, e.g.*, Nicole Mortillaro, *Scientists Skeptical About Recent Claims That Signs of Life Were Possibly Detected on Exoplanet*, CBC, https://www.cbc.ca/news/science/k218b-exoplanet-skepticism-1.7520656 [https://perma.cc/35PT-ZBST] (Apr. 29, 2025) (describing a publicized study suggesting that gases on an exoplanet could indicate life, while noting that the claim lacked substantial evidentiary support); Kiran N. Kumar, *Life Traces on Exoplanet K2-18b? Critics Say Too Early to Confirm*, THE AM. BAZAAR (Apr. 17, 2025), https://americanbazaaronline.com/2025/04/17/life-traces-on-exoplanet-k2-18b-critics-say-too-early-to-confirm-461893 [https://perma.cc/5QHJ-RQKK].

the processes and parameters of AI decision-making similarly displaces knowledge institutions.[316]

Professors Hartzog and Silbey point out that AI degrades knowledge institutions like universities from the inside by offloading the cognitive work critical to learning, producing mediocre ideas, and marginalizing breakthrough ideas, and by prioritizing research questions that can be answered through quantifiable data, which shifts research agendas.[317] Separately, super platforms also present themselves as the only viable experts on their own industry, creating a circular trap for regulators in which super platforms can only be regulated within parameters that they set for themselves.[318] I discuss this and their related strategies for domination below.[319]

3. Super Platforms and Political Power

This last element of Platform Creep is not limited to the communicative platforms or even the digital platform sector. However, super platforms exert political power to shape transnational legal orders in ways that permit their growth and accumulation of power.[320] This reshaping is critical to keep regulators and the public at bay as the platforms grow. This access to political power can extend to persuading one state to use its power to prevent other states from regulating super platforms.[321]

Zephyr Teachout and Lina Khan offer a helpful taxonomy of how large companies exercise political power: by setting policy, regulating markets, taxation, and being dominant.[322] They point out that "[p]ower may be exercised through force, coercion, tradition, wealth, social status, resource control, information, or persuasion."[323] In addition to lobbying, companies engage in campaign funding, staffing, and recruiting from governments.[324] They create and disseminate information, sometimes

316. Kitchin, *supra* note 314, at 2, 9.

317. Hartzog & Silbey, *supra* note 12 (manuscript at 15-17).

318. Arun, *supra* note 13, at 59-60.

319. *See infra* Part III.C.3.

320. Teachout & Khan, *supra* note 181, at 42-54 (discussing the numerous ways that companies able to drive legislation and influence policy-making); Arun, *supra* note 13, at 84-85 (describing how large technology companies are able to set regulatory agendas that influence law-making and in turn protect themselves from state regulation); *see also* RAHMAN, *supra* note 193, at 2, 100 (arguing that it is the democratic public, not individual experts, that must channel and process knowledge and information flows, including when making economic policy choices).

321. Arun, *supra* note 13, at 84-85; Ray, *supra* note 192.

322. Teachout & Khan, *supra* note 181, at 38.

323. *Id.* at 39.

324. *Id.* at 43-45.

through knowledge institutions like universities, which they are able to fund generously.[325]

This political power and influence are visible as leaders from super platform companies cultivate political power around the world.[326] Like other dominant industry actors, Big Tech companies can influence democratic institutions. Arguably, they have even greater power because of their ability to shape public discourse and agenda-setting, as well as their extensive resources.[327] This means, for example, that the American super platforms are able to persuade regulators and the public not to regulate them because there is a global race that China might win, or that they frame regulatory discourse around self-regulatory measures like AI Safety.[328]

IV. THREE SUPER PLATFORMS: TIKTOK, TWITTER, AND FACEBOOK

Here, I describe how three super platforms exert cultural power. Two of these platforms are American, and the third is Chinese.[329] Of the three platforms, Meta's Facebook may be the classic example of platformized infrastructure. Facebook has, over time, and progressing at different paces in different markets and through different platforms like WhatsApp and Instagram, heavily influenced cultural and news production industries.[330]

Twitter has had an outsized cultural influence for an app that did not leverage its infrastructural qualities for profits to the degree that other apps did. However, Twitter did demonstrate that if a dominant platform does not join the winner-takes-all race, the industry will intervene, and someone with different values might take it over.[331] Arguably, this is

325. *Id.* at 46-49.

326. Gómez & O'Keefe, *supra* note 173; Keach Hagey & Mike Cherney, *ChatGPT Owner Vows to Improve Its AI Tools After Sam Altman's World Tour*, WALL ST. J. (June 29, 2023, 4:39 PM), https://www.wsj.com/articles/chatgpt-owner-vows-to-improve-its-ai-tools-after-sam-altmans-world-tour-e0466dfd [https://perma.cc/4AQS-5SBY].

327. Arun, *supra* note 13, at 84-85; *see also* Press Release, Off. of Pub. Affs., U.S. Dep't of Com., *supra* note 25.

328. *See* Kharpal, *supra* note 178; Criddle, *supra* note 178; Press Release, Off. of Pub. Affs., U.S. Dep't of Com., *supra* note 25.

329. *See infra* Part IV.A–C.

330. *See infra* Part IV.A; Helmond et al., *supra* note 263, at 137-40; Thorson et al., *supra* note 242, at 11-13.

331. *See* Kurt Wagner, *What Kind of Business is X Now?*, BLOOMBERG (Apr. 11, 2025, 9:00 AM), https://www.bloomberg.com/news/articles/2025-04-11/two-years-after-elon-musk-bought-twitter-how-does-x-make-money? [https://perma.cc/5REW-WHCQ].

also what happened to WhatsApp. Signal claims to follow a different model that is not susceptible to this problem.[332]

The third and most controversial super platform is TikTok, which appears to have innovated differently owing to its Chinese origins.[333] Unlike platforms like Twitter and Facebook, whose founders professed from the start that they saw the very American value of free speech as central to their mission, TikTok's self-professed vision of itself was as a video encyclopedia.[334] Perhaps it is TikTok's later origin that permitted its more realistic view of itself as a curator, or perhaps it was a feature of its cultural origin that it aligned itself with learning or exploration, not liberty, as its core value.

A. Facebook

Facebook's parent company, Meta, dominates social networking. While I focus on its flagship platform—Facebook—and a little on Instagram, it is worth noting that Meta owns WhatsApp, a very popular messaging platform, and arguably created 'Threads' to enter the Microblogging space as Twitter appeared to lose its hold on it.[335] When TikTok was banned in India, a market in which it was very popular, Meta updated Instagram to include video-sharing reminiscent of TikTok, arguably to enter the video-sharing social network space.[336] In other words, Meta visibly makes efforts to retain its dominance over social networking.

Meta's profits on its platforms come from targeted advertisements. Facebook's advertisement portal makes this clear, letting potential advertisers know that they can choose audiences for their advertisements

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332. *See Speak Freely*, SIGNAL, https://signal.org [https://perma.cc/JE9H-CJFG] (last visited July 18, 2026).

333. D. Bondy Valdovinos Kaye et al., *The Co-Evolution of Two Chinese Mobile Short Video Apps: Parallel Platformization of Douyin and TikTok*, 9 MOBILE MEDIA & COMMC'N 229, 230 (2021).

334. *See* Klonick, *supra* note 35, at 1620-22; Zhang, *supra* note 198, at 226.

335. Kang, *supra* note 144; Antonio Pequeño IV, *Elon Musk's X Sees Popularity Slide After Election—While Threads, Bluesky Makes Gains*, FORBES (Mar. 26, 2025, 10:21 AM), https://www.forbes.com/sites/antoniopequenoiv/2025/03/25/elon-musks-x-sees-popularity-slide-after-election---while-threads-bluesky-makes-gains [https://perma.cc/7NGX-AUS4]; Jonathan Vanian, *How Bluesky Rose Out of Twitter's Ashes to Challenge X and Threads*, CNBC, https://www.cnbc.com/2024/11/26/how-bluesky-rose-out-of-twitters-ashes-to-challenge-x-and-threads.html [https://perma.cc/K566-7NC2] (Nov. 26, 2024, 8:45 AM); Olson, *supra* note 144.

336. Krutika Pathi, *Here's What Happened When India Banned TikTok*, PBS NEWS (Apr. 24, 2024, 11:30 AM), https://www.pbs.org/newshour/world/heres-what-happened-when-india-banned-tiktok [https://perma.cc/QQ8W-GZRF]; Sarah Jackson, *Mark Zuckerberg Told Meta Employees to Zero in on Video Because They're up Against an 'Unprecedented Level of Competition' from TikTok, Report Says*, BUS. INSIDER (Feb. 3, 2022, 4:48 PM), https://www.businessinsider.com/mark-zuckerberg-meta-faces-unprecedented-competition-from-tiktok-focus-reels-2022-2 [https://perma.cc/BN9T-CB63].

based on characteristics like where people live, demographics (like age and gender among others), interests, and behaviors.[337] The source of profitability means that advertisers, not content producers or users, are central to Facebook's business model.[338] Advertisers include political campaigns for significant national elections that were eager to use Facebook's detailed demographic data for targeting campaign messages.[339] Millions of dollars were spent on Facebook advertising for both leading American presidential candidates' campaigns for the 2020 and 2024 elections.[340] This includes spending on deceptive advertisements, which Facebook had the power to permit or restrict.[341]

Facebook is able to appropriate from the app developers and content producers who are reliant on it to reach its unrivalled audiences.[342] It gained access to online publishers' platforms, tracking their users, by offering these publishers "plug-ins" that enabled their users to easily "like" and "share" content on Facebook and simultaneously permitted Facebook to identify and track these third-party publishers' users.[343] This is an example of how Facebook used its dominant status and infrastructural features to influence third-party behavior to the detriment of both the publisher (whose sensitive data Facebook used to compete with it) and users.[344]

However, this is a story of market domination, which, while it does affect the news and cultural production industry, is only a part of the story.[345] To this narrative, familiar to legal scholars, I add accounts from communications scholarship of Facebook's cultural impact.[346] Facebook

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337. META, https://www.facebook.com/business/news/How-Facebook-Ads-Work [https://perma.cc/T23Q-766M] (last visited July 18, 2026).

338. Nieborg & Poell, *supra* note 18, at 4282.

339. VAIDHYANATHAN, *supra* note 119, at 167-69.

340. Jennifer Stromer-Galley et al., *Illuminating 2020 Report: The 2020 General Election Campaign Advertising on Facebook*, ILLUMINATING PROJECT (Dec. 4, 2020), https://news.illuminating.ischool.syr.edu/2020/12/04/illuminating-2020-report-the-2020-general-election-campaign-advertising-on-facebook [https://perma.cc/RV2L-RSSY]; Blake Montgomery, *Elon Musk's Pro-Trump Pac Pouring Millions into Facebook Ads Instead of X*, THE GUARDIAN (Oct. 22, 2024, 6:37 PM), https://www.theguardian.com/technology/2024/oct/22/elon-musk-pac-spending-facebook [https://perma.cc/Y8SN-CT8Y]; Shane Goldmacher & Nicholas Nehamas, *Harris, with an Online Avalanche, Outspends Trump by Tens of Millions*, N.Y. TIMES (Sept. 20, 2024), https://www.nytimes.com/2024/09/20/us/politics/kamala-harris-trump-campaign-spending.html [https://perma.cc/74JN-2VLP].

341. *See* Bobby Allyn, *An Elon Musk-Backed Political Group Is Posting Fake Kamala Harris Ads on Facebook*, NPR (Oct. 30, 2024, 6:02 PM), https://www.npr.org/2024/10/30/g-s1-31042/elon-musk-kamala-harris-facebook [https://perma.cc/96LP-PTFZ].

342. Khan, *supra* note 54, at 1001; VAIDHYANATHAN, *supra* note 119 at 58-59.

343. Khan, *supra* note 54, at 1003-04.

344. *Id.* at 1004-05.

345. *Id.* at 1008.

346. *E.g.*, Caplan & Boyd, *supra* note 12, at 5.

transforms the news, leveraging its dominant infrastructural function which makes the news industry reliant on Facebook's News Feed algorithm, to redefine information and news media's relevance and value media around Facebook's prioritization of attention and advertising.[347] Through the plug-ins I described above, Facebook gives cultural producers attractive distribution infrastructures and market analytics, which leads to news organizations unbundling their products (like newspapers) into individual stories, whose structure and content are contingent on Facebook's systems and metrics.[348] The unbundling and integrating with stories from other sources on the platform also results in users drawing cognitive connections between individual pieces of content drawn by the algorithm from different sources.[349]

These changes I described above are not static but are incremental.[350] As a dominant platform, Facebook constantly reconfigures the changes in what Helmond et al. describe as an aggressive infrastructural posture.[351] This aggressive posture not only further embeds Facebook's dominance, but also pushes the cultural industry to change on Facebook's terms.[352] This can change both individual content producers' practices and long institutionalized practices of knowledge production.[353] For example, Caplan and Boyd offer the vivid example of how *Upworthy* shifted its own metrics of success in response to Facebook shifting its metrics to account for how long users spent reading content.[354] Donavan and Boyd discuss institutional changes that erode institutionalized editorial practices such as maintaining what editors or journalists view as a strategic silence on certain subjects, which has now been cast aside owing to the impetus to compete with stories that are popular online.[355]

Although these changes undermining knowledge institutions and concentrating informational power in Facebook are new to people

347. *Id.* at 5-6.

348. *See* Nieborg & Poell, *supra* note 18, at 4287; Donovan & Boyd, *supra* note 12, at 338-39.

349. *See* Nieborg & Poell, *supra* note 18, at 4287; Donovan & Boyd, *supra* note 12, at 344-45; VAIDHYANATHAN, *supra* note 119, at 59.

350. *See* text accompanying notes 338-50.

351. Helmond et al., *supra* note 263, at 125.

352. *See* Caplan & Boyd, *supra* note 12, at 5-6.

353. *See id.* at 5 ("By defining and re-defining the concept of *relevance* or "value" of information and news media, Facebook increasingly writes the rules, or code, that defines which content succeeds or fails . . . .").

354. *Id.* at 6.

355. Donovan & Boyd, *supra* note 12, at 339.

residing in the United States, they are not new to the world.[356] The most prominent example might be Facebook's rapid domination of news in Myanmar, where the legacy media was already weak from years of repression, and was severely constrained even after liberalization.[357] Facebook introduced a program called Free Basics that allowed the population to connect to the internet free of charge through its platform—the platform came preloaded on phones—which made Facebook the monopolistic dominant communicative infrastructure in the country.[358] The anti-Islamic content was produced by the military and even by journalists who had succumbed to Facebook's metrics, prioritizing "likes" over accuracy.[359] Between the state and the dominant platform, it appears that there was very little space for counter-narratives.[360]

This is different from more stable democracies, where Facebook's infrastructural and cultural influence increased over time, undermining and changing knowledge and cultural institutions.[361] However, even these democracies are clearly concerned, as is evident from Australia and Canada's attempts to protect their news industry from Facebook.[362] Meta visibly cultivates political leaders, deferring to their content preferences.[363] It even went so far as to hire a deputy prime minister for its

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356. Tina Burrett, *Journalism in Myanmar: Freedom, Facebook and Fake News*, *in* THE ROUTLEDGE COMPANION TO POLITICAL JOURNALISM 131, 131-32 (James Morrison et al. eds., 2022).

357. *Id.*

358. *Id.* at 136; VAIDHYANATHAN, *supra* note 119, at 193-94.

359. *See* Burrett, *supra* note 356, at 137; Mozur, *supra* note 84; Joshua Carroll, *In Myanmar, Journalists Have Sided with the Military Against the Rohingya*, COLUM. JOURNALISM REV. (Mar. 20, 2018), https://www.cjr.org/watchdog/myanmar-rohingya.php [https://perma.cc/S7RM-YEHM].

360. *See, e.g.*, Russell Goldman & Mike Ives, *Myanmar Releases Reuters Journalists Jailed for Reporting on Rohingya Crackdown*, N.Y. TIMES (May 6, 2019), https://www.nytimes.com/2019/05/06/world/asia/myanmar-releases-jailed-reuters-journalists.html [https://perma.cc/X698-6BED] (reporting that Myanmar imprisoned Reuters journalists for investigating the military's massacre of Rohingya villagers).

361. *See* Caplan & Boyd, *supra* note 12, at 5-6; *see also, e.g.*, Matina Stevis-Gridneff & Stuart A. Thompson, *News Is Blocked on Meta's Feeds in Canada. Here's What Fills the Void.*, N.Y. TIMES (Apr. 28, 2025), https://www.nytimes.com/2025/04/21/technology/canada-election-facebook-instagram-meta.html [https://perma.cc/23DH-84UL].

362. *See* Stevis-Gridneff & Thompson, *supra* note 361; Ritchie, *supra* note 301.

363. *See, e.g.*, Helene Fouquet, *Mark Zuckerberg to Talk Hate Speech and Fake News with Macron*, BLOOMBERG, https://www.bloomberg.com/news/articles/2018-05-23/zuckerberg-to-talk-hate-speech-fake-news-with-macron-in-paris [https://perma.cc/EM8D-9CYJ] (May 23, 2018, 10:25 AM); Josh Constine, *Indian Prime Minister Tells Zuckerberg Social Media Creates a New Form of Diplomacy*, TECHCRUNCH (Sept. 27, 2015, 10:22 AM), https://techcrunch.com/2015/09/27/modiberg [https://perma.cc/245Z-KJWA]; Agence France-Presse, *Meta Blocks Major Muslim Instagram Page in India Amid Rising Conflict*, THE GUARDIAN (May 8, 2025, 10:55 AM), https://www.theguardian.com/world/2025/may/08/meta-instagram-muslim-news-page [https://perma.cc/42CM-Z7DN]; Aisha Down, *Meta Shuts Down Global*

policy team and a former prime minister for its oversight board.[364] This again is a phenomenon that started outside the United States and eventually affected speech within the United States.[365] The super platform has advocated for self-regulation, initially investing heavily in human moderation and decision-making, and more recently shifting to a less expensive machine and community-driven model.[366] Unsurprisingly, given the super platform's political influence, it has been able to introduce chatbots with little legal consequence.[367]

B. TikTok

TikTok has dominated the short video format social networking worldwide, competing with major American technology companies.[368] It is especially interesting from an American point of view because, unlike the rest of the world, which has adapted to the ubiquitous use of foreign (American) super platforms, TikTok was the United States' first extended experience of a foreign super platform.[369] It acted as a competitive force that American super platforms could neither subdue nor acquire, until the state forced a transfer of ownership to Americans.[370] TikTok's

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Accounts Linked to Abortion Advice and Queer Content, THE GUARDIAN (Dec. 11, 2025, 5:00 AM), https://www.theguardian.com/global-development/2025/dec/11/meta-shuts-down-global-accounts-linked-to-abortion-advice-and-queer-content [https://perma.cc/QKE9-7XV4].

364. Mark Sweney, *Facebook Hires Nick Clegg as Head of Global Affairs*, THE GUARDIAN (Oct. 19, 2018, 8:05 AM), https://www.theguardian.com/technology/2018/oct/19/facebook-hires-nick-clegg-as-head-of-global-affairs [https://perma.cc/MU54-2BGL]; Murad Ahmed, *Meta Oversight Board's Helle Thorning-Schmidt: 'Not All AI-Generated Content Is Harmful'*, FIN. TIMES (June 20, 2024), https://www.ft.com/content/ac54c25c-5c1b-4fd6-b803-b1051fbd3e5e [https://perma.cc/375R-BLM2].

365. *See* Rishi Gulati, *Meta's Oversight Board and Transnational Hybrid Adjudication—What Consequences for International Law?*, 24 GERMAN L.J. (SPECIAL ISSUE) 473, 478 (2023).

366. Klonick, *supra* note 35, at 1615, 1620; Luis Espada, *Meta's Secret Weapon Against Content Chaos*, PPC LAND (Jan. 2, 2026), https://ppc.land/metas-secret-weapon-against-content-chaos [https://perma.cc/NY9S-QX6X]; Rui Liu et al., Scaling Reinforcement Learning for Content Moderation with Large Language Models 14 (Dec. 24, 2025) (unpublished manuscript), https://arxiv.org/pdf/2512.20061 [https://perma.cc/8T78-KUSU]; Karissa Bell, *The Oversight Board Calls Meta's Uneven AI Moderation 'Incoherent and Unjustifiable'*, ENGADGET (June 24, 2025, 6:00 AM), https://www.engadget.com/social-media/the-oversight-board-calls-metas-uneven-ai-moderation-incoherent-and-unjustifiable-100056893.html [https://perma.cc/HCC8-9ZDR].

367. Jeff Horwitz, *Meta's AI Rules Have Let Bots Hold 'Sensual' Chats with Kids*, *Offer False Medical Info*, REUTERS (Aug. 14, 2025, 6:00 AM), https://www.reuters.com/investigates/special-report/meta-ai-chatbot-guidelines [https://perma.cc/F3KJ-JA6G]; Cole, *supra* note 60; Webb & Goel, *supra* note 55; Christianna Silva, *Meta AI Chatbots Have New Guardrails to Stop Inappropriate Interactions with Children*, MASHABLE (Sept. 29, 2025), https://mashable.com/article/meta-chatbots-guardrails-stop-inappropriate-interactions-children [https://perma.cc/62AK-7BHE].

368. Andreas Schellewald, *Understanding the Popularity and Affordances of TikTok Through User Experiences*, 45 MEDIA, CULTURE & SOC'Y 1568, 1572-74 (2023).

369. *See* Kerr & Robins-Early, *supra* note 188.

370. *Id.*

algorithm, however, mirrors Douyin's algorithm, licensed by the now American TikTok USA.[371] The terms and conditions for the updated app require users to consent to Generative AI features, including content.[372]

ByteDance, which owns TikTok, incorporated learnings from its Chinese platform, Douyin, into TikTok, setting it on a path of algorithmic and business innovation that differs from American social media platforms, which do not learn from operating in China.[373] A close look at TikTok reveals that like other Chinese apps, it is shaped by the Chinese political, cultural and economic context.[374] While Douyin and ByteDance conform with Chinese law, this conformity is not as the West imagines it.[375] TikTok as a super platform engaged in platform creep in turn influences the state and pursues profit and influence in international markets.

TikTok offers tools and filters to creators who can make new videos or duplicate and annotate others' videos, engaging frequently in memetic "challenges" that are easily found because the videos are organized by hashtags that sometimes trend.[376] Like Meta, ByteDance profits from advertising.[377] While there is not as much written about TikTok's particular mode of monetizing its platform, two things are clear: that the company is very much driven by profit-making goals, and that it draws heavily from Douyin's strategies in China for innovative revenue opportunities world-wide.[378] This includes embedding in-feed advertisements with product links (which generate a fee charged to sellers when users click on them) in videos, as well as "key opinion leader" endorsements in which endorsers are paid based on their following and the amount of traffic they are able to direct to sellers' websites.[379] While TikTok can

371. Bobby Allyn, *TikTok Signs Deal to Give U.S. Operations to Oracle-Led Investor Group*, NPR (Dec. 18, 2025, 7:26 PM), https://www.npr.org/2025/12/18/nx-s1-5648844/tiktok-deal-oracle-trump [https://perma.cc/F6SV-3NK7]; Kaye et al., *supra* note 333, at 231.

372. Liv McMahon, *What Does a New US TikTok Deal Mean for Users?*, BBC (Jan. 23, 2026), https://www.bbc.com/news/articles/cq5yynydvgzo [https://perma.cc/YRV9-DSQL].

373. Kaye et al., *supra* note 333, at 229, 231, 243-44; Yulun Ma & Yue Hu, *Business Model Innovation and Experimentation in Transforming Economies: ByteDance and TikTok*, 17 MGMT. & ORG. REV. (SPECIAL ISSUE) 382, 383-84 (2021); Huang, *supra* note 213.

374. Kaye et al., *supra* note 333, at 243-44.

375. *See* Zhen Ye et al., *Douyin's Playful Platform Governance: Platform's Self-Regulation and Content Creators' Participatory Surveillance*, 28 INT'L J. CULTURAL STUD. 80, 84-85 (2025); Jindong Leo-Liu et al., *Cooptation, Hijacking, or Normalization? The Discursive Concession of Body Politics on Douyin*, 27 INT'L J. CULTURAL STUD. 585, 588, 591 (2024).

376. Zhang, *supra* note 198, at 224-25; Lin & de Kloet, *supra* note 90, at 1529.

377. Lin Yuan et al., *The Effect of Advertising Strategies on a Short Video Platform: Evidence from TikTok*, 122 INDUS. MGMT. & DATA SYS. 1956, 1956, 1960 (2022); Kaye et al., *supra* note 333, at 241.

378. *See* Yuan et al., *supra* note 377, at 1956, 1960; Kaye et al., *supra* note 333, at 229, 241.

379. Yuan et al., *supra* note 377, at 1956, 1960-61.

take its time introducing some of these strategies, depending on the market, Meta will often adopt them.[380] Some researchers suggest that TikTok is not yet fully monetized since it targets a younger demographic of users, especially teenagers.[381]

Scholars who studied the two ByteDance apps—Douyin which is used in China and its international version TikTok—found similarities and differences between the two.[382] Their user-functionality, architecture, design and video creation process is the same, and both platforms rely on venture capital and advertising for revenues. There are, however, differences in the ways in which each app has been adapted for the market it faces. Douyin automatically applies a filter that lightens video creators' skin tones, and has a "positive energy" section that displays Chinese patriotic content.[383] Douyin does not have web support so that its users are driven to the mobile app but TikTok has web support and enables users to embed videos on other international platforms.[384] Viral videos on Douyin are shared on TikTok if they are suitable for the local culture of TikTok's audiences.[385]

The literature suggests a tendency to reify TikTok's algorithm, which is described as exceptionally tuned to learning users' preferences from their time spent viewing or reacting to content.[386] While all descriptions of the algorithm do suggest that it is unusually attuned to user preferences, TikTok's appeal to its audiences can also be connected with business decisions, like the length of the videos, the user-friendly interface, and the anonymity and escapism enabled by the app, all of which came from Douyin.[387] The method used by the algorithm to learn user preferences, also from Douyin, and from another ByteDance app called Toutiao, allows TikTok to use data like hashtags, user personas, engagement, views, and audience demographic data for traffic distribution

380. *See* Zheping Huang, *TikTok Turns on the Money Machine*, BLOOMBERG (June 23, 2022, 4:01 PM), https://www.bloomberg.com/news/features/2022-06-23/tiktok-becomes-cash-machine-with-revenue-tripling-to-12-billion [https://perma.cc/G3L9-MRVJ] (acknowledging that TikTok poses the greatest competitive threat to Meta in preserving its dominance, alongside Google, in the online advertising market); McMahon, *supra* note 52 (discussing Meta's efforts to alter its systems in order to emulate TikTok's success); Ma & Hu, *supra* note 373, at 381, 386 (noting that Facebook tried to compete with TikTok by releasing a similar app called Lasso that failed); *see also* Suárez-Álvarez & Pastor-Rodríguez, *supra* note 310, at 176-77, 181 (highlighting TikTok's rapid growth and increased advertising investment since its launch in 2016).

381. *E.g.*, Ma & Hu, *supra* note 373, at 386.

382. Kaye et al., *supra* note 333, at 231, 235, 241, 244-45.

383. *Id.* at 235, 237.

384. *Id.* at 238-39.

385. *Id.* at 244.

386. Ma & Hu, *supra* note 373, at 384-85.

387. *See* Kaye et al., *supra* note 333, at 231, 235-36; Ma & Hu, *supra* note 373, at 385-86; Schellewald, *supra* note 368, at 1573-74.

to consistently recommend content that feels effectively personalized and shareable.[388] This suggests that more method than magic is involved and that the app's Chinese origins have contributed substantially to its sophistication.[389]

As an influential platform, TikTok affects cultural production.[390] The maximum length of a TikTok video influences how some communities of creators make videos.[391] How TikTok works and the value it ascribes to visibility leads creative professionals who post on it to prioritize attention and visibility for professional advancement.[392] Content creators' creativity is also circumscribed by the platform's suggestion of trending pages and hashtags.[393] This is not a one way influence—TikTok's founder consciously ensures that the platform has localized content, and local employees and celebrities who ensure that TikTok is locally embedded enough to have cultural influence.[394] It also tailors its activities, its "challenges" to local markets, adopting anime painting in Japan, and educational and health-related content in India.[395]

Contrary to Western narratives that simplify the Chinese approach to governance of its technology companies to complete and effective control, ByteDance's relationship with the state includes conformity with the law, but also of increasing adaptation of state institutions to the platform.[396] For example, CCTV news customized short videos for TikTok, that were humorous in keeping with TikTok's culture, after its regular shows.[397] Unlike regulatory relationships in which the state acts when companies step out of line, the state-platform relationship in China consists of power negotiations at various levels, including between the state and the market and across sectors.[398] This might explain why TikTok was able to offer options of data transparency and algorithmic audit as options when discussing its transfer of ownership.

388. Ma & Hu, *supra* note 373, at 384-85.
389. *See id.* at 383-85.
390. *See id.*
391. POELL ET AL., *supra* note 208, at 88.
392. *See id.* at 88-89.
393. Kaye et al., *supra* note 333, at 246.
394. Ma & Hu, *supra* note 373, at 385-86.
395. *Id.*; *see also* Lin & de Kloet, *supra* note 90, at 1529.
396. Kaye et al., *supra* note 333, at 233-34; Zhang, *supra* note 198, at 230-31. Although the references in the Zhang article say "TikTok," they likely refer to Douyin, which is ByteDance's platform in China.
397. Zhang, *supra* note 198, at 231-32.
398. *Id.* at 230-31; Wang & Lobato, *supra* note 205, at 359.

The forces shaping Chinese social media are a little different from the forces shaping American platforms.[399] While the Chinese government does play an influential role, its influence on Chinese platforms is simplified in American legal discourse.[400] Chinese apps are not static platforms that were developed despite the Chinese government. They are shaped in part by the unstable equilibrium between the state and market, and by adapting as they are used in different parts of the world.[401] For example, Journalist Karen Hao hypothesized about DeepSeek that the innovation and discovery of new techniques to do more with limited computing power was driven by necessity since Chinese researchers had to find ways to work with more limited resources than American researchers.[402] While the model does follow Chinese government restrictions, it has also taken the world by storm, prompting researchers to think differently.[403] At the same time, TikTok displays all the features of a super platform.

C. Twitter

Twitter (now X) is interesting because it was a profitable multi-sided platform, but it did not choose as aggressive a profit-making strategy as Facebook, Google, or TikTok.[404] The platform relied on advertising revenue, but most controversies about it seem connected with its cultural influence.[405] It even created an offshoot, now independent, called

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399. Lin Zhang & Julie Yujie Chen, *A Regional and Historical Approach to Platform Capitalism: The Cases of Alibaba and Tencent*, 44 MEDIA, CULTURE & SOC'Y (SPECIAL ISSUE) 1, 2-3 (2022).

400. *See id.* at 2, 16.

401. *Id.* at 2.

402. Justin Hendrix, *DeepSeek Prompts a Rethink*, TECH POL'Y PRESS (Jan. 28, 2025), https://techpolicy.press/deepseek-prompts-a-rethink [https://perma.cc/L7QB-7X5Z].

403. *Id.*

404. *See* David Curry, *Social App Revenue and Usage Statistics (2026)*, BUS. OF APPS, https://www.businessofapps.com/data/social-app-market [https://perma.cc/86X8-EBEU] (May 13, 2026) (demonstrating that as of the fourth quarter of 2024, X made $710 million in revenue, while TikTok and Facebook generated around $6.64 billion and $25.86 billion, respectively); Shruti Shekar, *Alphabet Reports 12% Increase in Revenue Totalling $96.47 Billion in Q4 2024*, YAHOO!FINANCE (Feb. 4, 2025), https://finance.yahoo.com/news/alphabet-reports-12-increase-revenue-214015721.html [https://perma.cc/E37E-PH3V] (reporting that Alphabet, Google's parent company, generated more than $96 billion in fourth-quarter revenue in 2024); *see also* Wagner, *supra* note 331 (explaining that Twitter relied for much of its existence on broad "brand advertising," a strategy that placed the platform at a competitive disadvantage relative to the more lucrative hyper-targeted advertising models employed by Google and Meta); VAN DIJCK, *supra* note 208, at 80-81.

405. Nathan Reiff, *How X (Formerly Twitter) Makes Money*, INVESTOPEDIA, https://www.investopedia.com/ask/answers/120114/how-does-twitter-twtr-make-money.asp [https://perma.cc/9XZY-Y6M8] (Jan. 24, 2025); *see* JEAN BURGESS & NANCY K. BAYM, TWITTER: A BIOGRAPHY 8-9 (2020).

Bluesky (intended as one vision of correcting what Twitter got wrong), which is trying to develop a business model independent of advertising.[406] Twitter was a significant communicative infrastructure, acting as a counterpoint to the press where journalism was thriving and offering ways to share information where it was not.[407] Elon Musk purchased it for its influence on public discourse.[408] States block it because of its cultural and political influence.[409] Musk's transformation of the platform offers insights into how ownership affects the super platforms' mediation of speech and cultural impact.[410]

A Bloomberg report suggests that before Musk purchased Twitter, it relied heavily on revenue from traditional billboard-style advertising instead of the hyper-targeted advertising model, with additional charges for users who responded to it (Facebook and Google's model).[411] It appears that the company did engage in some targeting, but through relatively limited inference of user demographics.[412] This was partly because the company targeted large advertisers that did not need the granular targeting for small and medium businesses that Meta and TikTok offer, and partly because Twitter had limited user data to work with since the company did not collect or track data to the extent that the other platforms did.[413] Twitter never adopted the surveillance capitalism that underlies Facebook and Google.[414] Sarah Perez's reporting shows that after the

406. Perez, *supra* note 129; *Our Plan for a Sustainably Open Social Network*, BLUESKY (July 5, 2023), https://bsky.social/about/blog/7-05-2023-business-plan [https://perma.cc/Q4RQ-L3GT].

407. BURGESS & BAYM, *supra* note 405, at 14-15.

408. *See* CONGER & MAC, *supra* note 176, at 246; Aisha Counts, *Elon Musk Is a 'Free Speech Absolutist,' Except at Work*, BLOOMBERG (Sept. 14, 2023, 6:00 AM), https://www.bloomberg.com/news/newsletters/2023-09-14/elon-musk-says-he-s-pro-free-speech-but-fired-twitter-staff-for-comments [https://perma.cc/DUX8-VMV9]; Goswami, *supra* note 88; Sheila Dang, *Elon Musk Manages Free Speech Versus 'Hellscape' at Twitter*, REUTERS, https://www.reuters.com/technology/elon-musk-takes-over-twitter-free-speech-limits-tested-2022-10-28 [https://perma.cc/9VJM-VW6J] (Oct. 29, 2022).

409. Eloise Barry, *These Are the Countries Where Twitter and Facebook Are Banned*, TIME (Jan. 18, 2022, 2:08 PM), https://time.com/6139988/countries-where-twitter-facebook-tiktok-banned [https://perma.cc/76AZ-PQPF]; Ben Derico & Ione Wells, *Brazil Lifts Ban on Elon Musk's X After It Pays $5m Fine*, BBC (Oct. 8, 2024), https://www.bbc.com/news/articles/c5y06vzk3yjo [https://perma.cc/NCY7-YG3R]; Daren Butler & Orhan Coskun, *Anger over Turkey's Temporary Twitter Block During Quake Rescue*, REUTERS, https://www.reuters.com/world/middle-east/anger-over-turkeys-temporary-twitter-block-during-quake-rescue-2023-02-09 [https://perma.cc/R4BJ-Q478] (Feb. 9, 2023).

410. *See* Joe Stafford, *Musk's Twitter Takeover Highlights Danger of Owner-Dominated Social Media Platforms*, THE UNIV. OF MANCHESTER (Mar. 18, 2026), https://www.manchester.ac.uk/about/news/musks-twitter-takeover [https://perma.cc/G3TN-NXNV].

411. *See* Wagner, *supra* note 331.

412. *See* Email from John Doe, to Chinmayi Aun, Author (June 29, 2025, 2:29 EDT) (on file with author).

413. *Id.*

414. *See* ZUBOFF, *supra* note 117, at 9, 19-20, 23-24.

platform was purchased by Elon Musk in 2022, it experimented with revenue models, introducing a subscription-based model, and trying out different kinds of payment for creators, such as ad revenue sharing and engaging premium users.[415]

Jack Dorsey openly discussed his infrastructural ambitions for Twitter, describing it as neutral and as a utility like water or electricity.[416] Unsurprisingly, this neutrality proved to be a very difficult value to hold, and the platform was pushed to develop rules for content it would allow or delete.[417] What was once a flow of content in real time was (controversially) algorithmically mediated and remediated by the platform using different weights and criteria that prioritized some kinds of users and some kinds of communication.[418] There was limited transparency over how exactly content was prioritized in the algorithmic ranking, unlike account suspensions and labels for which the platform published policies.[419] Towards the end of Jack Dorsey's tenure, there was an internal plan to lean further into the opacity afforded by algorithmic ranking, effectively "shadowbanning" content by decreasing its visibility instead of blocking it.[420]

Although Twitter appeared to be optimizing for engagement and growth, and made design choices that prioritized frequent tweeting, positive engagement, and more personalized, affective messages, it does not appear to have connected this with its advertising strategy in as fine-tuned a manner as Facebook, Google and TikTok.[421] Reports suggest that the platform inadvertently enabled third parties to monetize its data stream, including third-party apps that connected to its API and search

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415. Sarah Perez, *Elon Musk's X Still Struggles to Grow Subscription Revenue*, TECHCRUNCH (Oct. 15, 2024, 10:30 AM), https://techcrunch.com/2024/10/15/elon-musks-x-still-struggles-to-grow-subscription-revenue [https://perma.cc/6LB5-UV7L]; Perez, *supra* note 310; Perez, *supra* note 272.

416. D. T. Max, *Two-Hit Wonder*, NEW YORKER (Oct. 14, 2013), https://www.newyorker.com/magazine/2013/10/21/two-hit-wonder [https://perma.cc/YQ4M-EJSW].

417. CONGER & MAC, *supra* note 176, at 60-62, 64-65, 67-69, 73-74.

418. VAN DIJCK, *supra* note 208, at 77 ("The concept of an indiscriminate flow of tweets is at odds with Twitter's efforts to structure the amorphous information stream into a usable, exploitable resource."). Similarly, Google uses algorithms to extract personal data related to its users, such as location, purchase history, and search history, in order to curate search results. SPANDANA SINGH, RISING THROUGH THE RANKS: HOW ALGORITHMS RANK AND CURATE CONTENT IN SEARCH RESULTS AND ON NEWS FEEDS 12-13 (2019).

419. *See* VAN DIJCK, *supra* note 208, at 83-84.

420. CONGER & MAC, *supra* note 176, at 60, 146-48, 245. The plan was called Project Saturn, proposed by Parag Agarwal and discussed from Jack Dorsey's tenure up to Elon Musk's ownership, during which Vijaya Gadde pitched it to him. *Id.* at 146-48, 245.

421. *See supra* notes 406-07 and accompanying text.

engines that were able to include tweets in their search results.[422] Commercial and non-profit third parties were mining twitter for trends and mood and sentiment analysis.[423]

Although Twitter eventually introduced paid advertising, promoted tweets, and promoted trends and location-based targeting, this was very different from Facebook and Google's sophisticated and opaque systems for advertisers.[424] Van Dijck writes that the company limited access to its API and partnered with Google Analytics, perhaps to better integrate advertising.[425] Kate Conger and Ryan Mac have reported in detail about the platform's transition from Jack Dorsey's leadership to Elon Musk's purchase, and their account suggests that the inability to fully monetize the platform might have come from the leadership's inability to reconcile the cultural significance and communicative role of the platform, with running it like a business.[426] For example, they report that advertising revenue dropped significantly during the Russia-Ukraine conflict because the images on the platform were not what advertisers wanted next to their content.[427] Elon Musk, after saying he planned to make the platform profitable, was also focused on its cultural and informational influence to the detriment of profits.[428]

Twitter might be the platform that highlights the significance of dominant platforms' cultural impact. It was a cultural phenomenon, introducing words like "tweet" and concepts like hashtags, tagging, and sub-tweeting to human interaction.[429] The "tweet" button was ubiquitous, and legacy media often listed "trending topics" and took cues from it for reporting.[430] Broadcast media and in-person gatherings used the platform to draw audiences into the conversation.[431] Politicians and media outlets were on the platform and engaged based on its culture of personalized communication.[432] The platform also enabled subcultures and movements like Black Twitter, Australia's indigenous communities, and India's marginalized caste groups.[433] If the dissolving of institutional

422. *Id.* at 80-81.
423. *Id.* at 82.
424. *Id.* at 72, 81; Wagner, *supra* note 331.
425. VAN DIJCK, *supra* note 208 at 84, 87.
426. *See* CONGER & MAC, *supra* note 176, at 60-74, 245-46.
427. *Id.* at 92-94, 146-47.
428. *Id.* at 245-46.
429. BURGESS & BAYM, *supra* note 405, at 33.
430. VAN DIJCK, *supra* note 208, at 80; *see also* Donovan & Boyd, *supra* note 12, at 338-39.
431. VAN DIJCK, *supra* note 208, at 80.
432. BURGESS & BAYM, *supra* note 405, at 7-8.
433. *Id.* at 8-9; Hari Bapuji & Snehanjali Chrispal, *How Twitter Got Blindsided by India's Still-Toxic Caste System*, THE UNIV. OF MELB. (Dec. 4, 2018, 1:51 PM), https://findanexpert.unimelb.edu.au/news/2721 [https://perma.cc/258D-8AV2].

media's barriers enabled these people, it also enabled the far right, and political leaders' dogwhistling, leading to debates about what content should be allowed and what is threatening, with governments, with powerful figures (including Elon Musk, who then purchased the company), and among the platform's staff.[434]

Under Jack Dorsey's leadership, Twitter had attempted to professionalize its content moderation.[435] It shared its rules, sought external advice, and tried to be transparent about its decisions to flag or block content.[436] One might think of it as an editorial bureaucracy similar to Facebook but arguably more transparent. However, this led to an uproar among those who saw it as "censorship," notably Elon Musk, who had strong opinions about the ideological positions he wanted the platform to affirm and amplify.[437] For example, Musk wanted to eradicate the "woke mind virus," which he appears to have perceived as a threat to one kind of identity, and saw transphobic, banned accounts as points of view that should not be censored in a free society.[438] He also believed that if the algorithm worked as it should, his tweets would circulate more widely than that of (the then President) Joe Biden.[439] Someone with a different leadership style might have implemented these changes gradually, integrating them within the platform. However, Musk was firing most of the staff and requiring change at a pace that was a shock to the system, both internally and externally, leading to what (if it were not real) would have been a caricature account of how someone can change or undo a dominant platform's influence.[440]

Although X has lost substantial revenue and users under Musk's leadership, his ability to sustain the losses allows him to continue platform creep.[441] The integration of Grok, X's Generative AI bot, has been

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434. CONGER & MAC, *supra* note 176, at 60-64, 66-67.

435. *Id.* at 62, 66-67.

436. *Id.* at 61-62, 64.

437. *Id.* at 65, 68; Goswami, *supra* note 88.

438. Goswami, *supra* note 88; David Ingram, *Elon Musk's New Twitter Pronoun Rule Invites Bullying, LGBTQ Groups Say*, NBC NEWS (June 1, 2023, 6:54 PM), https://www.nbcnews.com/tech/tech-news/elon-musks-new-twitter-pronoun-rule-invites-bullying-lgbtq-groups-say-rcna87336 [https://perma.cc/7RF8-2SHN].

439. Kari Paul, *Elon Musk Reportedly Forced Twitter Algorithm to Boost His Tweets After Super Bowl Flop*, THE GUARDIAN (Feb. 15, 2023, 4:50 PM), https://www.theguardian.com/technology/2023/feb/15/elon-musk-changes-twitter-algorithm-super-bowl-slump-report [https://perma.cc/ZBL9-RFQW].

440. Dietrich Knauth, *Musk, X Corp to Settle $500-Million Lawsuit over Twitter Firings*, REUTERS, https://www.reuters.com/sustainability/boards-policy-regulation/musk-x-corp-settle-500-million-lawsuit-over-twitter-firings-2025-08-21 [https://perma.cc/SRU7-W47U] (Aug. 21, 2025); Wagner, *supra* note 331.

441. Wagner, *supra* note 331.

extremely controversial.[442] X also appears to be resistant to European efforts to regulate super platforms, with Musk openly brandishing political power in reaction to fines.[443]

V. REGULATING SUPER PLATFORMS

Regulating Platform Creep necessitates addressing all three of its axes.[444] Failure to do so permits super platforms to accumulate either excessive political or cultural power.[445] Since the two kinds of power are connected, each makes it possible for super platforms to accumulate the other.[446] Capturing culture and public opinion can reallocate political power, and accessing political power allows a private actor to influence regulation to allow it to access cultural power.[447] Democracy requires the flourishing exchange of ideas, culture, and new modes of engagement, and for this, it needs diverse sources of ideas and influence, and options for convening and exercising collective institutional power.[448] In other words, democracy requires communicative, cultural, and associational infrastructure that is not heavily influenced or controlled by super platforms.

I suggest a package of reforms because no single reform can address platform creep, which has been underway, largely unregulated, for so long that it is normalized and has shifted considerable political and cultural power toward the super platforms. Super platforms resist state

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442. *See* Laura Cress, *EU Investigates Elon Musk's X over Grok AI Sexual Deepfakes*, BBC (Jan. 26, 2026), https://www.bbc.com/news/articles/clye99wg0y8o [https://perma.cc/L8NQ-7JM2] (indicating that Grok has been used to create false sexualized images of real people, leading to investigations by the European Commission and other European countries).

443. *See* Oliver Marsh & LK Seiling, *What the X Fine Reveals About Data Access Under Article 40 of the Digital Services Act*, TECH POL'Y PRESS (Feb. 12, 2026), https://techpolicy.press/what-the-x-fine-reveals-about-data-access-under-article-40-of-the-digital-services-act [https://perma.cc/SBU5-J49U]. *Compare* Steve Holland & Kanishka Singh, *US Calls EU Fines on Apple and Meta 'Economic Extortion'*, REUTERS, https://www.reuters.com/sustainability/boards-policy-regulation/us-calls-eu-fines-apple-meta-economic-extortion-2025-04-23 [https://perma.cc/7D4G-5JZ9] (Apr. 23, 2025) (highlighting how Apple and Meta got fined 500 million and 200 million euros respectively, for violations of the Digital Markets Act), *with* Nicol-Schwarz, *supra* note 85 (highlighting how X got fined only $120 million euros).

444. *See supra* notes 17-21, 205, and accompanying text; *see also* van Dijck et al., *supra* note 43, at 3-4.

445. van Dijck et al., *supra* note 43, at 3-4, 18 ("Platform owners and app developers are producing agents and social forces; they can exercise economic and political power to change or sustain existing hierarchies and deploy their technologies to do so.").

446. *Id.* at 18.

447. Jack M. Balkin, Commentary, *Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society*, 79 N.Y.U. L. REV. 1, 39 (2004).

448. *Id.* at 28, 34-35, 37-39.

regulation through friction and political influence.[449] My proposed reforms build on other scholars' work.[450] For example, interpreting the First Amendment to permit structural reform, privacy law, statutory structural reform, the creation of a specialized regulator and the subsidizing of the news industry are already underway in other states or present in legal scholarship.[451] I offer ideas to support the cultural industry and knowledge institutions, and anchor super platform regulation through a transnational regulator monitoring them internationally.[452]

Since super platforms also affect the cultural industry and knowledge institutions, regulators must take measures to protect them from dependence on or erosion by super platforms.[453] They might find ways to support these institutions, which are essential to the consolidation and exercise of collective power in democracies. However, these regulatory efforts will be impeded if super platforms continue to exert powerful influence over policy and legal discourse.[454] To avoid this outcome, policymakers need to safeguard democracy from super-platform interference, not just foreign platform interference. The super platforms threaten several democracies, not just the American one.[455] Since domestic structural regulation will have gradual and limited influence over platforms' political and cultural power, it needs to be reinforced by a transnational legal order that adds friction if a change in political leadership renders it more vulnerable to platform power.

A. Updating First Amendment Jurisprudence

The Supreme Court needs to be willing to interpret the First Amendment to account for social media and AI's unique role as communicative infrastructure. Communicative infrastructure's social good can be democracy.[456] However, configured differently, communicative infrastructure can also enable authoritarianism.[457] As the Supreme Court recognized in the context of broadcasting, allowing one part of the communicative infrastructure to destroy other parts of it will not serve First Amendment goals.[458]

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449. Douek & Lakier, *supra* note 27, at 106-08; van Dijck et al., *supra* note 43, at 3-4.
450. *See infra* notes 469, 473-76, 480, 485-86.
451. van Dijck et al., *supra* note 43, at 3-4, 6, 12-13.
452. *See infra* Part V.A–F.
453. van Dijck et al., *supra* note 43, at 3-4.
454. *Id.*
455. *See id.* at 2; Balkin, *supra* note 447, at 30-31.
456. FRISCHMANN, *supra* note 249, at 284-87.
457. Althusser, *supra* note 194; ZEYNEP TUFEKCI, TWITTER AND TEAR GAS (2017); Jack M. Balkin, *Old-School/New-School Speech Regulation*, 127 HARV. L. REV. 2296, 2301-06 (2014).
458. Turner Broad. Sys., Inc. v. FCC II, 520 U.S. 180, 189-90 (1997).

Scholars have pointed out that structural regulation supporting First Amendment values is the best path forward.[459] Fortunately, the Supreme Court has not ruled this out.[460] If the judges recognize that super platforms as privatized infrastructure rather than expressive products, they may permit regulation.[461] However, they have recognized, as an exception, that the State may compel access, based on *PruneYard Shopping Center v. Robins*[462] and *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*,[463] when the party hosting third-party speech is not itself engaged in speech.[464] The government can take measures, such as using competition laws, to protect citizens' access to information from several sources.[465]

A regulatory framework for the social media and AI industry should protect super platforms' enabling speech and association without allowing them to restrict or dominate speech and culture.[466] It needs to safeguard citizens from super platforms' tendency to capture social engagement, and starve, or block, alternative points of view and ways of engaging.[467]

B. Structural Regulation

Antitrust scholarship comes closest to addressing cultural domination concerns because limiting platforms' market domination would address a significant factor that enables cultural domination.[468] Antitrust frameworks, including proposals for market-based structural separation,

459. Douek & Lakier, *supra* note 27; Balkin, *supra* note 447, at 39.

460. *See* Moody v. NetChoice, LLC, 603 U.S. 707, 732-33 (2024).

461. *See id.* at 730-31.

462. 447 U.S. 74 (1980).

463. 547 U.S. 47 (2006).

464. *Moody*, 603 U.S at 730-31; PruneYard Shopping Ctr. v. Robins, 447 U.S. 74, 87-88 (1980); Rumsfeld v. F. for Acad. & Institutional Rts., Inc., 547 U.S. 47, 64-65 (2006).

465. *Moody*, 603 U.S. at 732-33.

466. The Supreme Court has not explicitly ruled this out, although some may adopt an expansive reading of *Moody* to suggest that it has. One reading of the decision suggests that it only applies to expressive products that are interspersed with communicative platforms that engage in non-expressive activity. Balkin, *supra* note 95, at 154. Another reading suggests that the Supreme Court is not in favor of the state imposing viewpoint neutrality specifically, and that it implied that it may be open to legitimate state interest in engaging in the social media equivalent of *Turner*'s allowing regulation to save the local broadcast industry. *See* Kyle Langvardt & Alan Z. Rozenshtein, *Beyond the Editorial Analogy: First Amendment Protections for Platform Content Moderation After* Moody v. NetChoice, 6 J. FREE SPEECH L. 1, 29-30 (2025).

467. *See* Langvardt & Rozenshtein, *supra* note 466, at 38-40.

468. *See, e.g.*, Rahman, *supra* note 54, at 1639; Khan, *supra* note 54, at 980, 1026; Sitaraman, *supra* note 135, at 1086, 1103-04.

can prevent platforms from accumulating too much power.[469] This is, of course, the classic remedy of breaking super platforms up.[470] However, antitrust does not address characteristics common to all super platforms. Cultural power and domination are not confined to individual super platforms but to the industry and its structural orientation toward avoiding new and unorthodox points of view.[471]

Scholars have also proposed structural regulation tailored for super platforms and the attention economy.[472] Professor Lina Khan, for example, suggests structurally separating communication networks from their advertising businesses.[473] Others have suggested "middleware" with different options for ordering content might be a helpful strategy.[474] There are also those who advocate for interoperability.[475]

The major flaws with middleware and interoperability as standalone proposals is that it assumes that non-profit or otherwise under-resourced actors can compete with the super platforms' middleware.[476] Professor Cohen's work makes it clear that the design arc of social media bends towards profits.[477] Unless middleware is combined with other structural separation such as Professor Khan's idea to separate the advertisement businesses from the communication networks, it is very likely that the most up-to-date, attractive middleware will be super platform owned with an advertisement-driven model.[478] That said, the middleware idea is a creative and helpful way to reintroduce diverse ways of engaging on a super platform.

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469. Rory Van Loo, *In Defense of Breakups: Administering a "Radical" Remedy*, 105 CORNELL L. REV. 1955, 1963 (2020).

470. *Id.* at 1961-62.

471. *See* Barron, *supra* note 157, at 1646-47; Orla Lynskey, *Regulating 'Platform Power'* 10-11 (London Sch. of Econ. & Pol. Sci., Working Paper No. 1/2017, 2017).

472. Tim Wu, *Blind Spot: The Attention Economy and the Law*, 82 ANTITRUST L.J. 771, 771-72 (2018); Khan, *supra* note 54, at 1072.

473. Khan, *supra* note 54, at 1072.

474. Daphne Keller, *The Future of Platform Power: Making Middleware Work*, 32 J. DEMOCRACY 168, 168-69 (2021) (defining "middleware" as "content-creation services that could give users more control over the material they see on internet platforms such as Facebook or Twitter").

475. Fiona M. Scott Morton et al., *Equitable Interoperability: The "Supertool" of Digital Platform Governance*, 40 YALE J. ON REG. 1013, 1018, 1020-22 (2023) (arguing interoperability can increase fairness of digital platform markets by enhancing competition).

476. *See id.* at 1020-22; Keller, *supra* note 474, at 169-70.

477. Julie E. Cohen, *Examined Lives: Informational Privacy and the Subject as Object*, 52 STAN. L. REV. 1373, 1393-94 (2000).

478. Khan, *supra* note 54, at 1072; *see supra* text accompanying notes 338, 378, 413-17.

C. Privacy Law

I echo several legal scholars when I write that it is very difficult to regulate super platforms without privacy law to protect their users, and others whose data is collected without their consent.[479] Platform creep enables platforms to incrementally increase their collection of data and profiling of users, and use it in new ways.[480] This asymmetric knowledge and power through which super platforms learn about users and groups, and their vulnerabilities, across the world is harmful in several ways.[481] This includes threatening individuals' privacy and their cognitive liberty.[482] It also includes threatening the formation of the collectives necessary to exert associational and institutional power in a democracy.[483]

Professor Neil Richards has argued that intellectual privacy should be encoded in statutory laws and in our social lives and institutions.[484] Professor Daniel Solove has offered a detailed roadmap for updating privacy laws to address the problems created by AI.[485] Such a statute might include broader anticipatory duties, such as fiduciary obligations, that address unanticipated emerging elements of platform creep.[486]

It could borrow from the European Digital Markets Act ("DMA"), and require super platforms to refrain from certain kinds of conduct, such as merging platform personal data with data from third-party services.[487] This would make it difficult for super platforms to contract around structural separation. The DMA also requires platforms to provide an "independently audited description[] of the[ir] consumer profiling techniques," which could be helpful for the regulator to hold super platforms accountable.[488] As I will discuss below in my discussion of the importance of transnational norms, it is difficult for Europe to hold the line, enforcing these regulations, while the super platforms' practices are unrestricted elsewhere.[489]

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479. *See, e.g.*, Glasserman & Greco, *supra* note 189.

480. *See* Koops, *supra* note 14, at 35; Calo, *supra* note 6, at 1003.

481. *See* Cohen, *supra* note 477, at 1408; Calo, *supra* note 6, at 999; Neil M. Richards, *Intellectual Privacy*, 87 TEX. L. REV. 387, 404-06 (2008).

482. Richards, *supra* note 481, at 404-06.

483. *See supra* Part III.

484. Richards, *supra* note 481, at 431.

485. Daniel J. Solove, *Artificial Intelligence and Privacy*, 77 FLA. L. REV. 1, 17-18 (2025).

486. Neil Richards & Woodrow Hartzog, *A Duty of Loyalty for Privacy Law*, 99 WASH. U. L. REV. 961, 995-96 (2021); Jack M. Balkin, *Information Fiduciaries and the First Amendment*, 49 U.C. DAVIS L. REV. 1183, 1221 (2016).

487. Johann Laux et al., *Taming the Few: Platform Regulation, Independent Audits, and the Risks of Capture Created by the DMA and DSA*, COMPUT. L. & SEC. REV., Nov. 2021, at 1, 5.

488. *Id.*

489. *See infra* Part V.F.

D. Empowering the Knowledge and Culture Industry

A system of free speech needs communicative infrastructure in addition to the absence of state censorship.[490] Along with steps to mitigate super platforms' domination of this infrastructure, states will need to take steps to preserve the diversity and epistemic integrity of other communicative infrastructures.[491] Regulations toward media diversity, must-carry broadcast rules, and net neutrality are usually intended to prevent private actors from dominating communicative infrastructure.[492] The state can also allocate resources to support institutions that form communicative infrastructure.

Other states are experimenting with getting social media platforms to channel funds back into the news industry.[493] Wikipedia is experimenting with getting AI platforms to pay for its content instead of scraping it.[494] Other industries have developed content creators' unions like news and screenwriters' guilds.[495] This professionalizes the content industry and enables collective bargaining. Social media's content creators are not "workers" in the classical sense.[496] Although other gig-workers have received worker status, it will take effort to find a way for content creators to unionize but it is worth trying to frame a legislative amendment through which they might be allowed to organize within the definition of "worker."[497]

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490. *See* Balkin, *supra* note 95, at 131-36; Post, *supra* note 217, at 1015-16, 1046.

491. *See* Balkin, *supra* note 95, at 132-36.

492. *Id.* at 148-49, 155-56.

493. Yousif, *supra* note 301; Ritchie, *supra* note 301.

494. Lola Murti, *Wikipedia Parent Partners with Amazon, Meta, Perplexity on AI Access*, CNBC, https://www.cnbc.com/2026/01/15/wikipedia-amazon-meta-perplexity-ai.html [https://perma.cc/R792-R3MR] (Jan. 15, 2026, 5:36 PM).

495. *See, e.g.*, *CBS News 24/7 Union Reaches Tentative Agreement on New Contract*, WRITERS GUILD OF AM. E. (Apr. 2, 2026), https://www.wgaeast.org/cbs-news-24-7-union-reaches-tentative-agreement-on-new-contract [https://perma.cc/8MB8-ZKUZ]; *About the NewsGuild-CWA (TNG-CWA)*, THE NEWS GUILD, https://newsguild.org/about [https://perma.cc/528X-6MYG] (last visited July 18, 2026).

496. *Compare Worker Definition & Meaning*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/worker [https://perma.cc/F3JG-CFYH] (last visited July 18, 2026) (defining the term "worker" as one that performs "especially at manual or industrial labor or with a particular material"), *with* Armin Beverungen et al., *Free Labour, Social Media, Management: Challenging Marxist Organization Studies*, 36 ORG. STUD. 473, 474 (2015) (acknowledging that the "work" typically performed by Facebook users, such as updating statuses and uploading photos, does not fit the traditional definition of what constitutes labor).

497. *Cf.* Philip M. Glende, *Trouble on the Right, Trouble on the Left*, 38 JOURNALISM HIST. 142, 142 (2012) (discussing journalists' initial reluctance to unionize because it threatened their identity as white-collar professionals distinct from traditional laborers, and their eventual embrace of unionization); *see also CBS News 24/7 Union Reaches Tentative Agreement on New Contract*, *supra* note 495; Beverungen et al., *supra* note 496, at 479, 481-82.

It is too early to understand the effects of AI on universities, but if the effect is to undermine universities as centres of learning and research then it might also be worth thinking of policy solutions to preserve the role of universities in society.[498]

E. Creating State-Based Regulators and Protecting Regulatory Discourse

The super platform sector is complex and evolving. Its technological developments require expertise to monitor and require sector-specific regulation for effective oversight.[499] This might take the form of a new regulator or alternatively expand the FCC's regulatory power and capacity to regulate social media and AI-based communicative platforms.[500]

A new regulator might be set up with a future-oriented strategy that treats super platforms differently, accounting for their political role. Such a regulator can apply its knowledge of platformized infrastructures to all digital platforms whilst evaluating the communicative platform industry by additional democratic goals.[501] I use the term "communicative platform," not social media platform, because the future of connection and content consumption may be AI-based. This regulator might be set up to receive complaints from platform users, especially when they are collectively harmed. It might also mediate on behalf of content creators or smaller platforms affected by a super platform's abuse of power.[502]

F. Creating a Trans-National Legal Order

American lawmakers hesitate to regulate American super platforms because they fear foreign platforms will be at an advantage and will dominate the global market.[503] The way to address this concern is to develop transnational regulatory standards for social media platforms.[504] This will create a harmonized international legal order for all super platforms.[505] Super platforms attempted to create their own harmonized

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498. *See* Hartzog & Silbey, *supra* note 12 (manuscript at 26-30).

499. *See* Shear et al., *supra* note 166.

500. *Cf.* Keller, *supra* note 93, at 7 (discussing the Supreme Court's approval of FCC authority to limit certain foul language on the radio due to its uniquely intrusive nature).

501. *Cf.* Ryan Calo, *The Case for a Federal Robotics Commission*, BROOKINGS (Sept. 2010), https://www.brookings.edu/articles/the-case-for-a-federal-robotics-commission [https://perma.cc/P5VV-AVSV] (arguing for a new federal agency with specialized expertise in robotics and artificial intelligence).

502. *Cf. id.*

503. *See, e.g.*, Tuquero, *supra* note 178.

504. Arun, *supra* note 13, at 101-02.

505. *See id.* at 103-08.

transnational legal order when it appeared that they were at risk of regulation in the United States—this is because TLOs have power and influence national norms.[506]

Super platforms are complex transnational entities that dominate culture around the world.[507] Although local platforms may prevail in some countries, like KakaoTalk in South Korea, the economies of scale favor transnational super platforms.[508] If transnational norms are created, then all super platforms—American or not—will have to ensure their technology, design, and business practices fit these standards.[509] This will prevent the rise of any predatory super platforms from anywhere in the world. It will have the added benefit of being difficult to undo at the state level.[510] The International Telecommunications Union is one model of regulating communicative infrastructure that might be adapted for social media.[511] However, it is possible to create a transnational legal order more organically.

CONCLUSION

Super platforms operate on a much greater scale than the legacy media, extending to interpersonal conversations and nudging the formation of identity and association in ways that were not possible at scale before.[512] They have accumulated unprecedented economic, cultural, and political power, and pose a serious threat to collective autonomy.[513]

This Article's contribution is the platform creep framework and a loosely framed proposal to separate super platforms from other communicative platforms.[514] I hope that this offers lawmakers, judges and legal scholars a useful empirical account and frame for the future of online communication and organizing and how it will affect democracy.

My policy proposals require legislation, and I offer them in the hope that scholars and experts build upon them, such that a detailed

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506. *See Global Leaders Agree to Launch First International Network of AI Safety Institutes to Boost Cooperation of AI*, *supra* note 167; Press Release, Off. of Pub. Affs., U.S. Dep't of Com., *supra* note 25; Kore & Dhawan, *supra* note 25; Arun, *supra* note 13, at 84-86, 88-89.

507. van Dijck et al., *supra* note 43, at 9-10.

508. *See KakaoTalk Leads Social Media Usage in Korea, Followed by YouTube, Instagram*, KOR. TIMES (Feb. 7, 2025, 8:45 AM), https://www.koreatimes.co.kr/southkorea/society/20250206/kakaotalk-leads-social-media-usage-in-korea-followed-by-youtube-and-instagram [https://perma.cc/P8PQ-8927]; van Dijck et al., *supra* note 43, at 9-10.

509. *See* Arun, *supra* note 13, at 104-05.

510. *See id.* at 86-87.

511. *Id.* at 99.

512. *See* HORKHEIMER & ADORNO, *supra* note 10.

513. van Dijck et al., *supra* note 43, at 9-10.

514. *See supra* Parts III.A–C, V.A–F.

framework is eventually available to political leaders who wish to prioritize democracy and a multiplicity of ways to engage and convene, over platforms. Even though it is difficult to rush to pass a package of reforms as I have suggested, it is important for policymakers to understand that platform creep cannot be controlled unless it is restricted on all three axes.[515]

515. *See supra* text accompanying notes 446-57.