

# Democratizing the platforms: Promises and perils of public utility regulation

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*The democratic world faces a wicked problem. Information and communication systems that people rely on for many facets of their daily lives have become increasingly antidemocratic, causing profound harm across the globe. The technologies driving these systems – aimed primarily to extract data from users and sell for profit – are designed and deployed without public consent. How do we bring platform companies that operate these systems under democratic control?*

In general, three basic options present themselves: 1) break up, 2) regulate, or 3) create non-commercial, public alternatives. These approaches are not mutually exclusive and often overlap – societies can implement them simultaneously. For example, in addition to breaking up platform monopolies, governments might use regulatory incentives and penalties to prevent these firms from exploiting their market power and causing social harm. Democratic governments also can create “public options” to encourage good behaviour from commercial players while providing public services that market-driven institutions are unlikely to deliver.

Thus far, however, platforms like Facebook (now known as Meta) have largely escaped such arrangements. While the European Union’s Digital Service Act and Digital Media Act hold promise – potentially ensuring some degree of social responsibility, greater competition, and better protections for individual freedoms – platforms have continued to dodge significant government regulation and public oversight. Moreover, despite their privileged position within the global political economy, platforms generally are not held to the



level of public accountability normally expected of state-sanctioned monopolies.

Given that many large platform companies have become invaluable digital infrastructures, societies should democratize their ownership and governance. Toward this objective, one argument gaining traction in recent years is that platform monopolies should be subject to public utility regulation. But many questions persist about the viability of this approach. The following essay sketches an overview of recent thinking about the promises and perils of the public utility approach and how this regulatory framework might be applied to platforms. I conclude with a brief discussion regarding more radical alternatives that warrant further consideration within current policy debates.

### The public utility option

Broadly speaking, public utilities are institutions that provide essential services and goods to the public. Different varieties are possible: They may be publicly or privately owned, cooperatively governed, locally controlled at the municipal level or maintained as a state monopoly. Regardless of form, public utilities are typically subject to higher levels of regulation and public accountability. Although not a prerequisite, these models often arise within sectors of the economy likely to be dominated by what are sometimes called “natural monopolies.”

This tendency toward one large, centralized entity is based partly on the considerable high fixed costs of building such systems and partly due to greater efficiencies borne out by demand-side network effects and economies of scale. Firms in these positions frequently operate core services or infrastructures – such as electricity, water, telecommunications, and transportation systems – yielding tremendous positive externalities that democracy requires. Because such services are often expensive to maintain but essential for the public good, many societies buffer them from unfettered market forces and public utility regulation provides a set of policy tools for doing so. For example, such regulations can help guarantee reliable goods and services according to reasonable rates, non-discriminatory access, and other public interest protections.



Despite being well established in American history and mainstream legal and economic thought, some historical recovery is required to fully understand the potential vitality of public utility regulation. Drawing from a much older legal concept of “business affected with a public interest,” public utility regulation emerged in the late 1800s and early 1900s as an entering wedge to curb corporate power and impose some semblance of social responsibility onto profit-driven enterprises (Novak, 2017). Central to this movement was a concern over concentrated private power and its service to the public good (Rahman, 2017).

Spanning populist and progressive antimonopoly traditions as well as more radical currents within socialist and labour movements, grassroots pressures compelled political elites to craft laws and policies to rein in and democratize monopolistic firms (Schiller, forthcoming). In recent years, a growing number of scholars from diverse intellectual backgrounds have argued for revitalizing public utility regulation to address platform-related problems.

Dan Schiller (2020), a leading telecommunications historian, shows us that the public utility concept – as he notes, never a “settled formula” – was deeply rooted in social forces from below that sought to gain democratic control over key infrastructures. While noting that the public utility model sometimes supplanted more radical efforts toward public ownership and nationalization (e.g., “postalization” of telecommunication networks), Schiller calls for a renewed and expansive framework to confront contemporary challenges. Such a reimagined concept of public utility, he writes, must be “sufficiently capacious to permit us to erect a common roof over all segments of contemporary networking: not only terrestrial, submarine, satellite, and mobile carriers, but also search, e-commerce, and social network companies.”

Envisioning this “new institutional structure of public operation and control,” Schiller draws inspiration from robust public institutions established throughout American history, including the Government Printing Office, the U.S. Post Office, the Smithsonian Institution, the Library of Congress, and notable others. He proposes, for example, that a properly funded national library system “can take custody over algorithms, notably for search engines,” to ensure “that they are nonexploitive and non-discriminatory.”



Legal scholars K. Sabeel Rahman and Zephyr Teachout likewise have made a compelling case that public utility regulation be used as a key plank within a broader antimonopoly project. They note how such regulation “has been an essential complement to antitrust and breakup strategies ... to enforce critical public obligations such as common carriage, non-discrimination, rules of interoperability, and fair pricing.” Ensuring that information platforms support a healthy public sphere, this model could facilitate a ban on targeted ads that would, in turn, encourage alternative revenue schemes (such as modest annual fees) more aligned with public-serving infrastructure. Ultimately, they call for structural reform as opposed to “managerialist” strategies that rely on various types of self-regulation like content moderation and privacy protections.

Structural regulations ensuring some degree of public ownership and control are necessary to protect what Rahman (2018) categorizes as “infrastructural goods and services” such as “water, finance, internet access” that are foundational to daily economic and social activity. Rahman argues that “arbitrary, exclusionary, or unfair governance of these services poses a particularly troubling problem for individuals, businesses, and communities” and thus require a special framework that has historical and legal roots in public utilities.

Similarly, Simons and Ghosh (2020) argue that private companies like Facebook and Google that command such concentrated economic, social, and political power over our daily lives should be treated as “utilities for democracy.” They call for “experimenting with different ways of asserting public power” and argue that regulating large platforms as public utilities would enable “experimenting with new mechanisms of decision-making that draw on the collective judgement of citizens, reforming sclerotic institutions of representation, and constructing new regulatory authorities to inform the governance of algorithms.” More radical versions of the public utility approach can be found in the work of political theorists James Muldoon (2022), who calls for “social ownership of digital assets,” and Nick Srnicek (2017), who sees the model enabling the state to invest resources necessary for transitioning corporate firms into “public platforms”.



Some limitations with public utility regulation

While convincing arguments accumulate for revitalizing public utility regulation to tame run-amok platforms, other analysts have articulated legitimate concerns. Beyond standard questions about feasibility – which often serve as conversation-stoppers for any proposal that challenges industry-influenced consensus – many of these questions are practical. For example, veteran policy analyst Harold Feld (2017) cautions that we need to clearly define our terms – such as avoid conflating public utilities with common carriers or natural monopolies – and that lack of competition alone does not justify such distinctions.

Deeming something a public utility, according to Held, “has to do with the important nature of the service, and the general government responsibility to make sure that everyone has some kind of access,” which justifies subsidies for electricity and telephone service to high-cost rural areas and low-income households. Indeed, ensuring access to reliable broadband services might more readily lend itself to a public utility argument (Pickard & Berman, 2019), and some scholars have suggested that platforms such as Facebook do not meet this threshold of being an essential service (Crawford, 2018). Others have critiqued the public utility argument for being too US-centric for dealing adequately with global firms (Keyes, 2022).

Moreover, different policy measures might lead to similar places. Sandeep Vaheesan (forthcoming) notes that the public utility model takes a firm’s private ownership as the default position and suggests that we instead reform (or restore) the public nature of corporate charters that privilege public duties to society. Others have noted how the public utility approach shades into a technocratic framework as opposed to more democratized ownership and control. Muldoon (2022, p. 69) reminds us that “Public utility regulation adopts a top-down approach of establishing boundaries within which the business can operate ... but this does not entail more wide-reaching changes in terms of workplace democracy and citizen participation.”

More broadly, as with any government regulation of platforms, we must consider the perennial tensions between democratic determination and industry regulatory capture of the policy apparatus. Furthermore, any such



regulatory approach risks inadvertently locking in the existing power relationships by conferring a competitive advantage to the largest platforms who can bear the added costs required to comply with potentially costly rules – from paying fines to lawyering up to legally challenge such restrictions – that smaller firms simply cannot afford.

These concerns notwithstanding, keeping the public utility model in the conversation is exceedingly important. History offers cautionary tales about what happens if we allow industry imperatives to delimit policy choices and steer our discourses in subtle but significant directions – ultimately yielding our communication infrastructures to operate under self-regulatory regimes and profit motives instead of democratic ownership and control (Pickard, 2015). Towards preventing this historical pattern to repeat yet again, in the following I conclude with a brief discussion of more ambitious plans that go beyond public utility regulation to consider radical alternatives to today's extremely commercialized internet.

### The road ahead

Regardless of what path democratic societies choose we can be certain that the status quo is unsustainable and market forces alone will not democratize the platforms – indeed, quite the opposite – necessitating government intervention. Whichever interventions we deploy, we must ensure they penetrate to the root causes of run-amok platform power. Namely, they must disrupt the unfettered market logic, the concentrations of undemocratic corporate power, and the underlying business model that makes surveillance capitalism a rational mode of digital governance and an unavoidable consequence of a profit-driven system.

What might such democratized platforms look like? They could take many forms and radical ideas for structural reform are flourishing, though one would be forgiven for not hearing about them from the constricted discursive parameters of mainstream policy debates. Beyond transitioning platforms into public utilities, we might devolve their ownership and governance to users and tech workers as cooperatives (Muldoon, 2022). Others have suggested creating an entire public stack in which each layer of our digital media – from platforms to the pipes that carry internet services into our homes – is democratized (Tarnoff, 2022)



Another set of compelling ideas are sketched out in Fuchs and Unterberger (2021) "Public Service Media and a Public Service Internet" manifesto that lays out an alternative vision for our entire digital media ecosystem, one based on enhancing democracy and privileging public need over commercial imperatives. Relatedly, Jeremy Corbyn's proposal – variations of which are espoused by British media reformers – to establish a "British Digital Corporation" as a sister organization to the BBC could also provide a public alternative to commercial platforms (2018).

Although these plans are ambitious, to say the least, it is precisely during critical junctures such as our current moment when we should advance bold, even utopian, ideas for radical social change. As such proposals gain more attention, they hopefully will broaden conversations beyond neoliberal and technocratic paradigms for platform ownership and governance. The public utility approach, despite its limitations, can begin to provide a general framework for transitioning platforms toward public ownership and control, thereby advancing a longer-term vision for a post-commercial digital media system (Pickard, 2020).

For many liberals and conservatives alike, market imperatives dictate the horizons of the social imaginary about what is politically possible. This market libertarianism has enabled the commercial capture of our communication infrastructures, elevating rich white men like Mark Zuckerberg and Elon Musk to use their obscene wealth against any semblance of a democratic future.

Surrendering our essential information infrastructures and communication systems to the whims of billionaires and profit-driven monopolies was always bad social policy. No democratic society should be designed this way and we must reverse course before it is too late. Today we face a crossroads: Oligarchy and technocracy from above or radical reform and democracy from below. The choice is ours.

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