Free Speech & the Postmodern Town Square
A plea for digital literacy

Sebastian Dempf
Ruhr-Universität Bochum, Germany

On April 25, 2022, Twitter announced it would accept Elon Musk's offer to buy the company. His bid for a hostile takeover - following an increasingly critical and outspoken stance on the platform's content moderation policies - had been successful. The deal involving a sum roughly rivalling that of the annual GDP of Lithuania (all at least in parts owed to the rocket-enthusiast-turned-capitalist-ad-astra's fidelity to "420"-joke share prices) marked the end of a month-long "will-they-won't-they" which had many an internet user on the edge of their seat.[1] Much was at stake, it seemed. Musk framed his takeover plans as devotion to free speech on a platform which had over time "become kind of a de facto town square" (Silberling 2022) but his track-record in adhering to this same ideal had historically done all but inspire confidence. What's more, there was reason to doubt whether he had fully grasped the very dilemma of maintaining the kind of free speech absolutism many platforms like Twitter were originally built on but had eventually abandoned in exchange for increased user safety and comfort.

On the other side of the Atlantic, meanwhile, the EU passed the Digital Markets Act (DMA) and the Digital Services Act (DSA) roughly around the same time. Aimed at safeguarding both the interests of digital end users and the prerequisites for a continuously competitive digital market, the DMA and the DSA followed suit in a long string of attempts to introduce regulation to our mostly anarchical digital world. Not least through the introduction of the General Data Protection Regulation (GDPR) in 2018 had the Union arguably already cemented itself as regulatorily avant-garde. For services to be legally offered on European digital soil, companies had to start complying with the relevant regulation governing said digital soil. Especially for bigger actors such as Amazon, Google, and Meta this required sizable investments into compliance efforts and an often-fundamental restructuring of their data gathering and processing activities. GDPR effectively became the regulatory gold standard with even the union-weary UK adopting a copy of it into national law post-Brexit.

What makes this story interesting is that it highlights the precarious state of our digital world. Musk is arguably right in calling Twitter a "de facto town square" with it being both an access point for private individuals to connect to one another as well as a platform where politics happen on an ongoing basis. Almost 230 million users visit the site every day for anything from engaging with fellow like-minded, to learning about recent political events, and, of course, contributing to an ever-developing canon of collective meme culture. With his $44 billion takeover, Musk effectively bought himself not just a ticket to the show but the rights to control ticket sales, ticket admission, and ultimately what the show is going to look like.

With this next stage of techno-feudalism well on its way, the question is how we as political communities want to respond. Arguably, digital platforms like the Musikan Twitter town square play an important role in enabling democratic exchange and opinion formation while, at the same time, posing significant regulatory challenges due to their transnational nature. Mostly limited to the scope of national law, lawmakers are often faced with a dilemma: Be lenient and corporate greed will run rampant exploiting user data for gains and skewing end user perspectives in the process or introduce rules too strict and companies will be forced to

---

[1] At the time of submission, the deal seems to be on hold again: "Twitter deal temporarily on hold pending details supporting calculation that spam/fake accounts do indeed represent less than 5% of users" (Musk 2022).

4

ETHICS, ECONOMICS, LAW and POLITICS Online journal for interdisciplinary discussions on current societal issues   Vol 1/ 2022

withdraw services from your country (or at least threaten to do so, as was the case with Google in Australia in early 2021) (Hern 2021). Luckily, the EU is in somewhat of a unique position in that its market tends to be too large to spur serious corporate backlash against regulations making it difficult for companies to leverage their importance for the public sphere. Combined with the fact that the scale of investment necessary for regulatory compliance often makes a one-size-fits-all approach the most feasible one economically speaking (e.g., companies required to comply with GDPR may not want to invest additional resources towards introducing looser terms of service for their non-European users), the EU's policy apparatus finds itself in a significant position of power.

Even so, however, a regulatory approach faces two major challenges: 1) It assumes that third party actors take seriously their responsibility for regulatory compliance and 2) it will inevitably leave a broad range of operational decision making to the corporations offering their services (as it arguably should). In most cases, platforms that have managed to manifest themselves as an integral part of a society's public sphere intend to maintain their position. Apart from cases like that of the messenger service Telegram, simple non-compliance therefore rarely poses an issue. Operational freedom, on the other hand, is a different story. Ultimately, regulation aims to rule out the very worst of outcomes and behaviours, only constituting the rough foundation on which service delivery can be built according to corporate need, desire, and purpose; which for the town square analogy consequently means its undoing: Where physical town squares are objective, providing the same experience to every visitor, digital town squares adapt. Depending on user preferences, demographics, marketability, and many other factors we can only speculate about at this point, service algorithms individualize the town square experience for every visitor in an attempt to create maximum engagement. And this, it appears, is the central issue: The primary good traded within the digital economy is not a tangible object, or a service, or an ideal like free speech; it is statistically guaranteed end user attention.[2]

In itself, this is fairly alarming. Putting aside the anthropological conundrum of behavioural predictability, history has famously shown how far reaching the effects of such digital attention machines can be. Facebook, for example, is at this point generally accepted to have played a major role in the outcome of the 2016 US presidential election, having allowed user feeds to be "overrun with hyperpartisan misinformation, some of it Russian, that was amplified by its own algorithms" (Roose 2020). Following public backlash, the platform has since made some strides towards mitigating the political risk its advertising model poses to free elections, but the nature of its algorithmic amplification continues to be confidential. The DSA hopes to be an at least partial response to such practices requiring large companies to make their algorithms transparent and giving users the option to opt out of being presented with a tailored, profile-based service experience; and Musk, interestingly, has already announced similar steps for Twitter suggesting its recommendation algorithm could become open source on GitHub - giving users more insight into (and potentially control over) what they see. Still,

---

[2] One could argue that Musk's plans to increase Twitter's financial stability through optional user subscriptions may do away with the platform's need for ad revenue thereby making redundant the need for a user experience designed for maximum attention and reengagement. Even if that is the case, however, a two-tier service model will likely have its own set of adverse effects on algorithm-constrained free-speech.

5

ETHICS, ECONOMICS, LAW and POLITICS Online journal for interdisciplinary discussions on current societal issues   Vol 1/ 2022

one has to wonder about the limits of regulatory power (and proactive transparency) in this context. Free speech that is not absolute is inherently self-contradictory and a delicate balance to get right. What is more, the ease of access with which information can be created, shared, and consumed has not exactly increased the likelihood of a solution either: we need ways to sort and make sense of the content available to us at any given moment, and an inherent part of this process will forever be interpretation: partially, on the side of platforms, and partially on the side of end users.

Alarmingly, it appears, we have thus far mainly focussed on the former. Regulation like the DSA aims to influence the way companies make sense of the anarchical chaos that is our digital world for us; however, where top-down regulation reaches its limits, it may well need to be subsidized with a bottom-up approach. Part of the responsibility for content interpretation will forever be on us, the end users, and it is our duty as political communities to equip ourselves with the tools necessary to fulfil said responsibility. A bigger focus therefore needs to be placed on fostering greater inter-generational sensibility for digital economies, their effect on our views and wellbeing, and how we can participate in them more sustainably. We should take seriously the increased societal fragmentation heralded by political polarization and the very worst a lack of digital literacy has to offer as already seen in splinter groups such as QAnon and Anti-Vax. Illegible as they may be, our answer cannot be an irrationality-implying dismissal but needs to appreciate the weight of the collective educational failure that has brought them about in the first place.

Digital platforms' responsibility in governing our town squares plays an important role - but it would be naive of us to consider it absolute. Both market incentives as well as challenges inherent to the nature of free speech make even well-intended content policies fallible. A new approach will therefore need to place greater focus on equipping end users with the tools necessary to critically engage in our digital economies to avoid their opinions becoming involuntarily skewed over the course of their town square visits. A new approach will need to place greater focus on digital literacy.

References

Hern, A. (2021) *Google threatens to leave Australia – but its poker face is slipping,* https://www.theguardian.com/technology/2021/jan/22/google-threatens-leave-australia-but-poker-face-slipping (29/04/2022).

Musk, E. (2022) *Twitter Status,* https://twitter.com/elonmusk/status/1525049369552048129?cxt=HHwWgsCqkcqUiKoqAAAA (13/05/2022).

Roose, K. (2020) *Buckle Up for Another Facebook Election,* https://www.nytimes.com/2020/01/10/technology/facebook-election.html (29/04/2022).

Silberling, A. (2022) *Elon Musk says he 'doesn't care about the economics' of buying Twitter,* https://techcrunch.com/2022/04/14/elon-musk-buying-twitter-ted-talk/ (04/05/22).

6

ETHICS, ECONOMICS, LAW and POLITICS Online journal for interdisciplinary discussions on current societal issues   Vol 1/ 2022