

Private Authority, Public powers:
Users Unions in Platforms as a Method to Bridge the Private/Public Divide
(Enforcement of private rights online)

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Big platforms such as Facebook, Google and Amazon function as regulators, using new data-driven tools of governance. While their authority receives its mandate from private law (property law and contract law), it has public effects: impacts on the political freedom of individuals and on the public sphere as whole. This duality challenges contemporary legal theory. Although platforms reshape the entire contemporary public arena and have a profound impact on users' political rights, treating the platforms as public entities raise theoretical difficulties. Especially in the United States, the language of constitutional rights has almost no application in the “private” sphere. This tradition organizes around the protection of the private sphere from government intervention. Conversely, in Europe the fear of cataloging platforms as public entities relate more to the desire to protect the public sphere from private interests. While these two positions are well justified, the impasse between them means that big data-driven corporations continue to serve as political authorities with little restrictions.

This paper suggests a theoretical way out of the impasse, making it possible to avoid direct confrontation with the challenges created by the distinction between the private and the public. This suggestion draws inspiration from labor law, which combines protective laws with a structure set up for workers' organizations, dealing with the political power of private entities. This path offers a way to regulate the political power of private actors, without recognizing them as public, thereby giving them the legitimacy to shape the public good by themselves.

I therefore suggest that dealing with the political power of platforms should include two coping channels. First, legislation and regulation on issues such as data protection, antitrust, and privacy, and, second providing an institutional structures for the existence of user organizations, which will allow users to have collective voice and political rights within the platforms. Creating

an institutional structure involves legislation that will require the platforms to provide tools for users to organize, along with legislation that will interact with corporate governance of platforms, and give unions a voice in the decision-making process.

The paper begins by analyzing the unique system of regulations that characterizes the platforms. It continues by analyzing the challenge that this private regulation poses to users' political freedoms. Finally, it describes a new model for tackling the challenge. This model suggests developing new structures for user's collective participation in the internal governers of platforms.