NATIONAL REVIEW

Obama Is Wrong about the Fairness Doctrine

Far from saving democracy from propaganda, the Fairness Doctrine was an anti-democratic regulatory weapon for suppressing political dissent and extracting partisan advantage.

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April 29, 2022

Last week, President Barack Obama expressed his worries about "democratic backsliding" in a speech at Stanford University, blaming social-media platforms for spreading disinformation at an unprecedented pace using algorithms that through "subtle manipulations" promote conspiracism, racism, and sexism.

Obama raised these concerns only a few days before Elon Musk's $44 billion purchase of Twitter under the banner of defending free online speech, leading to expectations that Twitter would further relax its content-moderation policies. But while both Musk and Obama have described themselves as "free speech absolutists," Obama means something very different by the phrase than Musk does.

Obama advocates not only for more content moderation by platforms but also targeted government intervention, the work of scrupulous, technocratic regulators who would carefully weigh the costs and benefits of regulations via a transparent, unbiased, and democratic process. He further expects tech companies to work with regulators "to find the right combination of regulation and industry standards that will make democracy stronger."

However, Obama's reliance on altruistic government regulators is misplaced. That is because the history of attempted government regulation of mass media is marked by a nearly unbroken chain of captured regulators setting policy in back-room deals according to the interests of crass partisans and anti-competitive industry executives. Instead, a more reliable pathway forward for the social-media industry is voluntary compliance with industry best practices generated via new, nongovernmental institutions.

To illustrate the wide gulf between Obama's idealistic aspirations for smart Internet regulation and the sordid reality of government media regulation, consider his brief but favorable mention of the Fairness Doctrine, a regulation from the Federal Communications Commission (FCC) in the 1960s to 1980s that required radio and television broadcasters to be balanced in their presentation of various points of view on current events and politics. In Obama's framing, the Fairness Doctrine was a tool for mitigating the spread of "propaganda" and "the flames of hate" in the post–World War II era, a means of ensuring that "our broadcast system was compatible with democracy." Consumers would receive a fair, balanced, and truthful media diet, or at least, that was the stated intent.

Yet the Fairness Doctrine's primary function was as a tool for government censorship. Fairness exists in the eye of the beholder, and, in the early 1960s, that beholder was President John F.

Kennedy. He felt that right-wing radio was being unfair to his administration and so weaponized the Fairness Doctrine to suppress conservative radio broadcasters. Kennedy appointed a new FCC chairman and told him, "It is important that stations be kept fair." Within weeks, the FCC announced a new enforcement push for the Fairness Doctrine that exclusively targeted unbalanced right-wing speech.

The weaponization of the Fairness Doctrine continued after Kennedy's assassination. A team of operatives from the Democratic National Committee used the threat of Fairness Doctrine complaints to extract hundreds of hours of free pro–Lyndon Johnson airtime during the 1964 election season, thus "inhibiting the political activity of these Right Wing broadcasts," in the words of the lead operative. For example, when one conservative host's paid broadcast accused Lyndon Johnson of inflating the Gulf of Tonkin incident as a pretext for escalation in Vietnam — which was correct — the DNC team was able to get response time for free under the Fairness Doctrine, thus sending a message to radio stations that airing conservative dissent literally did not pay.

This anti-conservative Fairness Doctrine campaign compelled radio stations to drop conservative programming to avoid the financial costs of compliance and the existential risk of losing their FCC-issued station license. By the 1970s, under the banner of "fairness," a chill had descended on political speech in broadcasting, with many stations switching to safer all-music formats and avoiding controversial editorializing altogether.

Thus, far from saving democracy from propaganda, as Obama frames it, the Fairness Doctrine was an anti-democratic regulatory weapon for suppressing political dissent and extracting partisan advantage. It serves as a reminder that good intentions cannot insulate regulations from abuse. That government effort at mediating and moderating speech in broadcasting led to one of the most trenchant episodes of censorship in U.S. history.

Today, the Fairness Doctrine could not be copied from broadcasting and pasted to the Internet, given that its legal justification was rooted in spectrum scarcity, which simply does not apply online. However, other Internet regulations proposed in Obama's speech could provide similar opportunities for bad-faith political actors.

For instance, several dozen recent congressional proposals to reform Section 230 of the Communications Decency Act — which provides a vital liability shield for online platforms hosting user content — would make that protection contingent on a platform's content-moderation policies. Democrats want to leverage Section 230 to encourage platforms to suppress hate speech and disinformation. Republicans want to use the same regulatory lever to contrary purpose, pushing platforms to promise content neutrality and not privilege any particular variety of political speech regardless of how odious the speaker is.

But whether Section 230 reforms are deployed to limit or to mandate certain forms of speech, the history of the Fairness Doctrine cautions us to expect its weaponization for partisan advantage. The basis of regulatory leverage is different — the Fairness Doctrine relied on broadcast-station licensing while Section 230 reformers look to the liability shield — but the potential outcomes are similar. In the 1960s, "fairness" was as slippery a concept and as open to abusive interpretation as "neutrality" and "disinformation" are today. And if a government agency were to be tasked with determining what speech is to be excluded from Section 230 protection, there would be ample opportunity for selective enforcement to punish political opponents and reward

allies. Regardless of intent, calls for Section 230 reform are functional invitations for mass-media censorship on a scale unseen since the era of the Fairness Doctrine.

While government intervention to limit online disinformation would be excessive, anti-democratic, and prone to abuse, that does not mean that social-media platforms are off the hook. Their failure to adequately and responsively moderate content has bred public distrust and a disbelief that these platforms are doing enough to remove malignant content or to make moderation decisions in an equitable, nonarbitrary, transparent manner.

The spectacle over Elon Musk's purchase of Twitter is a reminder that merely changing ownership or leadership from one group of wealthy investors to another is an insufficient mechanism for generating industry-wide transformation. Furthermore, most consumers appear to want more moderation than that offered by self-proclaimed free-speech social-media havens that have struggled to match the audiences of the established platforms.

To regain public trust, the social media industry needs more formalized self-regulation. The creation of Meta's Oversight Board was a promising first step, a mechanism for independent arbitration of user complaints and quasi-jurisprudential rulings on content-moderation policy. In that vein, social-media platforms should work together to create independent, cross-platform institutions that would guide industry best practices, promote accountability, and provide transparency via routine audits of platform policies, algorithms, and moderation decisions.

This approach has ample historical precedent. When (ill-advised) public pressure for government censorship of offensive content in movies arose in the 1960s, the industry association representing the major movie studios — the Motion Picture Association of America — headed off the censors by creating an independent film-rating board. It still exists today as a voluntary, nongovernmental system. Filmmakers do not have to submit their movies for a rating but generally do, given the benefit derived from reassuring parents, the public, and hyperbolic politicians that a movie's content has been vetted.

Social-media platforms would do well to learn from that past. By doing so, they could both avoid the potential for censoriousness that comes with government regulation of mass media and rebuild public trust in the industry by creating new, private institutions for accountability.

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