



Written by [William P. Hoar](#) on May 20, 2019

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Correction, Please!

In a Self-interested Move, Big Tech Seeks Government Regulation

Item: *Mark Zuckerberg, chief executive of Facebook, is pushing for government bodies to enforce stronger industry standards for social-media firms such as his own, as well as new legislation and regulations on the platform companies. In an article in the Washington Post for March 30, he wrote that “we need a more active role for governments and regulators. By updating the rules for the Internet, we can preserve what’s best about it — the freedom for people to express themselves and for entrepreneurs to build new things — while also protecting society from broader harms.”*



AP Images

Zuckerberg and Facebook have been under strong criticism for privacy issues and mishandling of personal information of users. In his op-ed, he called on governments worldwide to ally with social-media companies to regulate online speech. “Regulation could set baselines for what’s prohibited and require companies to build systems for keeping harmful content to a bare minimum.”

In addition, he maintained, “effective privacy and data protection needs a globally harmonized framework. People around the world have called for comprehensive privacy regulation in line with the European Union’s General Data Protection Regulation, and I agree. I believe it would be good for the Internet if more countries adopted regulation such as GDPR as a common framework. New privacy regulation in the United States and around the world should build on the protections GDPR provides.”

Item: *The London-based Economist for March 23 is also a fan of the GDPR scheme of antitrust, taxation, and regulation policies. In a piece entitled, “Europe takes on the tech giants,” the magazine calls for the United States to adopt its stances. It suggests this “could benefit millions of users, boost the economy and constrain tech giants that have gathered immense power without a commensurate sense of responsibility.”*

Item: Kara Swisher in the New York Times for April 14 (as part of that paper’s “Privacy Project”) insists that we need “to put in place some rules — rules that have real teeth — on big tech companies.” According to Swisher — editor at large for Recode (a technology news website focusing on the business of Silicon Valley) as well as a contributing writer for the Times — the question is “what those rules should look like.”

Correction: Some of us are old enough to recall when free speech was prized and a largely unrestrained Internet was seen as an ideal. We also remember when an American president pointed out



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that the most terrifying words in the English language are: “I’m from the government and I’m here to help.”

Now, unfortunately, far too many maintain that if private companies don’t control their products appropriately, the federal government — or even an international body — should do it for them, claiming this is necessary for the public good.

But we are not compelled to use, for example, Facebook or Twitter. Just because their policies and practices might be deemed objectionable doesn’t mean that Congress or some new asinine bureaucracy should be calling the shots for private entities.

To be sure, there is plenty to dislike about the large social-media companies and their practices, in particular when conservatives are the targets. The Right has also had to deal with a (generally) unfriendly academe, Hollywood, and mass media. Yet, the proper response isn’t to establish federal departments of “fair” colleges, movies, and publications.

Facebook’s Mark Zuckerberg claims he wants us to be protected from harmful content on his platform — so he is trying to get someone else to do that. That sounds remarkably like a government censor. Then we must ask, as Juvenal did in ancient Rome, *Quis custodiet ipsos custodes?* (“Who will guard the guards themselves?”)

One recurrent complaint about major social-media platforms has been their filtering practices, which are biased against conservative websites. Of late, some in Washington have been promoting government-directed “neutrality” in that regard, including some legislators generally seen as conservative.

One of those testifying last year at an April 2018 hearing before the House Committee on the Judiciary, TechFreedom president Berin Szókal, argued that the notion that the federal government “should police the ‘neutrality’ of websites is, in effect, a Fairness Doctrine for the Internet.” He observed that it was “ironic that such a proposal should come from any Republican,” especially conservatives long known for opposition to the Fairness Doctrine “for stifling conservative voices on radio and television.” It was, as he testified, “President Reagan whose FCC finally abolished the Fairness Doctrine and Reagan himself who vetoed Democratic legislation to revive the doctrine.” As Szókal then put it:

Why conservatives would suddenly embrace the Fairness Doctrine after decades of opposing it is simply baffling. Conservative talk radio was impossible before the Reagan FCC repealed the Fairness Doctrine, for example. The Fairness Doctrine suppressed heterodox viewpoints and enforced a bland orthodoxy in media. It would do the same for the Internet.

Concerns about Facebook’s potential slant are best addressed through other measures, starting with transparency and user empowerment. Ultimately, the best check on Facebook’s power today is the threat of a new Facebook disrupting the company’s dominance — just as many younger Internet users abandoned the site first for Instagram and then for Snapchat.

Is Facebook an invincible, permanent monopoly? No. Indeed, it inevitably takes government help to make a true monopoly. Markets change. Consider a formerly dominant social-networking company and the question posed in 2007 by the U.K.-based *Guardian*: “Will Myspace ever lose its monopoly?” The answer is yes. “Monopoly” Myspace employed about 1,600 people in 2009; it now has a staff of about



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150. It was “broken up” by the marketplace.

Facebook itself has also been punished by the market: During the year after Facebook’s Cambridge Analytica data-harvesting scandal was revealed on March 2018, shareholders lost more than \$61.6 billion in value.

New rules will solidify the hold of companies such as Facebook. Consider the stringent conditions imposed by the EU General Data Protection Regulation (GDPR), being touted for use in the United States by Zuckerberg and others. Complying is expensive, which is an advantage for the wealthier established firms. Indeed, some American newspaper websites (the *Los Angeles Times* and *Chicago Tribune*, among them) were taken down in Europe rather than pay for compliance — leaving less for European consumers.

This was one of the results predicted even as the GDPR was being instituted, in a study by analysts at the Washington, D.C.-based Competitive Enterprise Institute (CEI). They forecast: “The economic effects will include greater market concentration, as small firms and startups struggle to comply, conflicting priorities for businesses, greater inconvenience for users, and reduced innovation.” As summarized by Iain Murray, a vice president at CEI, “Some of the GDPR’s requirements and invented rights, such as the ‘right to be forgotten,’ conflict with our more fundamental constitutional rights. A global GDPR, if adopted, will chill speech.” (It took effect in Europe in May 2018.)

A “GDPR” in this country could lead to a government agency or “third-party standard-setting body” making decisions on even everyday matters better handled locally or by individuals.

What if, for example, you posted a photo of your child at First Communion or taking part in a sports competition? That was a question recently addressed by Data Protection Commission (DPC) Ireland. The *Irish Independent* reported in mid-April that the DPC had to issue “guidelines” because of confusion among parents, teachers, and children’s organizations over this issue. (If you are worried about the answer, the national DPC ruled, inter alia, that “taking a photo in public is generally fine; it’s what you do with that photo that can potentially become a data protection issue.” The DPC indicated that this “type of activity falls under the so-called ‘household exemption’ under the GDPR, which provides that the GDPR does not apply when a person processes personal data.” Do we really want Washington to be ruling on such matters?)

Social media have become a bane in many regards. The president’s son Donald Trump, Jr. echoed other critics when writing (in *The Hill*) not long ago: “From ‘shadowbans’ on Facebook and Twitter, to demonetization of YouTube videos, to pulled ads for Republican candidates at the critical junctures of election campaigns, the list of violations against the online practices and speech of conservatives is long.” But inflating Big Government authority is not the proper cure for the ailments of Big Business.

Writing for Fox News (online) in December, John Samples — a vice president at the Cato Institute — also took note of other regulatory problems:

As early as 2021, liberals may control both houses of Congress and the presidency. Are they likely to use the federal government to make sure companies are fair to conservatives? Of course not. So why give the federal government such new power over private companies?

Why indeed? And we should be suspicious when we see Big Tech leaders acquiescing rather easily to



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federal regulation. During the last year, as Nick Gillespie wrote on Reason.com in early April, the heads of Twitter, Google, and Apple, typically before Congress, “have all announced in favor of ‘new rules.’” Indeed, he continued,



Apple’s Tim Cook, the CEO of the planet’s biggest company, said just last December: “I’m a big believer in the free market. But we have to admit when the free market is not working. And it hasn’t worked here. I think it’s inevitable that there will be some level of regulation.... I think the Congress and the administration at some point will pass something.”

In truth, as mentioned earlier, regulations are likely to help those that are supposedly being restrained.

The regulations will, among other things, increase costs (essentially hidden taxes passed along to customers); provide tech companies with legal protections (“outsourcing censorship,” in the words of a former FTC commissioner); and help erect barriers against entry for potential competitors who don’t have the political influence or capital of the established firms. Facebook head Zuckerberg acknowledged as much in congressional testimony last year: “When you add more rules that companies need to follow,” he said, “that’s something that larger companies like ours just has the resources to go do and it just might be harder for a smaller company just getting started to comply with.”

Moreover, those being regulated usually have a considerable say about how that will happen. As explained by Ryan McMaken, a senior editor at the Mises Institute, Facebook would be one of the “most powerful groups at the negotiating table when it comes to writing the new regulations.” The company will, McMaken wrote in early April,

be in a position to make sure the new rules favor Facebook over its competitors. This is a common occurrence in regulatory schemes and is known as “regulatory capture.” When new regulatory bodies are created to regulate firms like Facebook, the institutions with the most at stake in a regulatory agency’s decisions end up controlling the agencies themselves.

This is a familiar script. Big Business, by and large, is not a foe of Big Government. They are frequently allies (though that is not the favored progressive tale). When you look more closely, it turns out that Enron, Philip Morris, and General Motors actually supported strict regulations of, respectively, global energy, tobacco advertising, and clean-air regulations. The list goes on — over many decades.



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Once national governments get in the midst of regulating online content, there will be no end of it. The *Economist*, which has celebrated how the EU is “taking the lead” on these matters, is also apparently keen on “Britain’s approach,” saying that London hopes that it “will be adopted elsewhere.” The publication reported in mid-April about how the U.K. government had just published

a 102-page policy paper outlining how it thinks internet regulation should work to reduce what it awkwardly calls “online harms.” It is enormous in scope and hugely ambitious, encompassing any company that allows people “to share or discover user-generated content or interact with each other online.” That would include not just big social networks but also community forums, review sites, dating apps and much else.... Some fear it opens the door to censorship of the internet.

“Some” folks are correct. We don’t need to adopt such practices in this country. Or to erect what Mark Zuckerberg calls a “common global framework.” Or to promulgate a “Fairness Doctrine” for the Internet, as opposed to the freedom of speech enshrined in the First Amendment to the Constitution.



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