

Regulatory Politics and Platform Power: Polanyi for the 21st Century

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The Power of the Platform: The Rise & Maturation of the Platform Economy

Platform power has transformative implications for:

Competition

Firms

Labor

Technology

Society

Emerging Regulatory Debates over Platform Power:

- Regulatory politics at inflection point—*laissez faire* techno-libertarianism is no longer politically viable.
- How should governmental authorities respond to platform power? To what ends? Using what tools? At what level of governance?
- No clear answers yet—but we need to clarify emerging regulatory & political dynamics.

Polanyi's Double Movement for 21st Century Platforms

- **Movement 1:** Expansion of platform firms & markets. Transformative effects of platforms on markets, competition, firms, work, and socio-political power relations (Managerial Control—Private Ordering).
- **Movement 2:** Expansion of regulatory control over platform structure & conduct—re-embedding of platforms. Growing societal support & political momentum to regulate platforms in response to their growing scale, scope, and power (Political/Regulatory Control—Public Ordering).
 - (See Kenney and Zysman (2020), <https://brie.berkeley.edu/news/what-polanyi-teaches-us-platform-economy-and-structural-change>)

The Regulatory Trajectory: Beyond Competition?

- **“Old” debate (early-2020):** Should competition law be strengthened in response to platforms’ growing market power?
- **New debate (crystalized over the last year):** What expansion of multiple areas of regulation & governance are necessary to address platform power and harms?

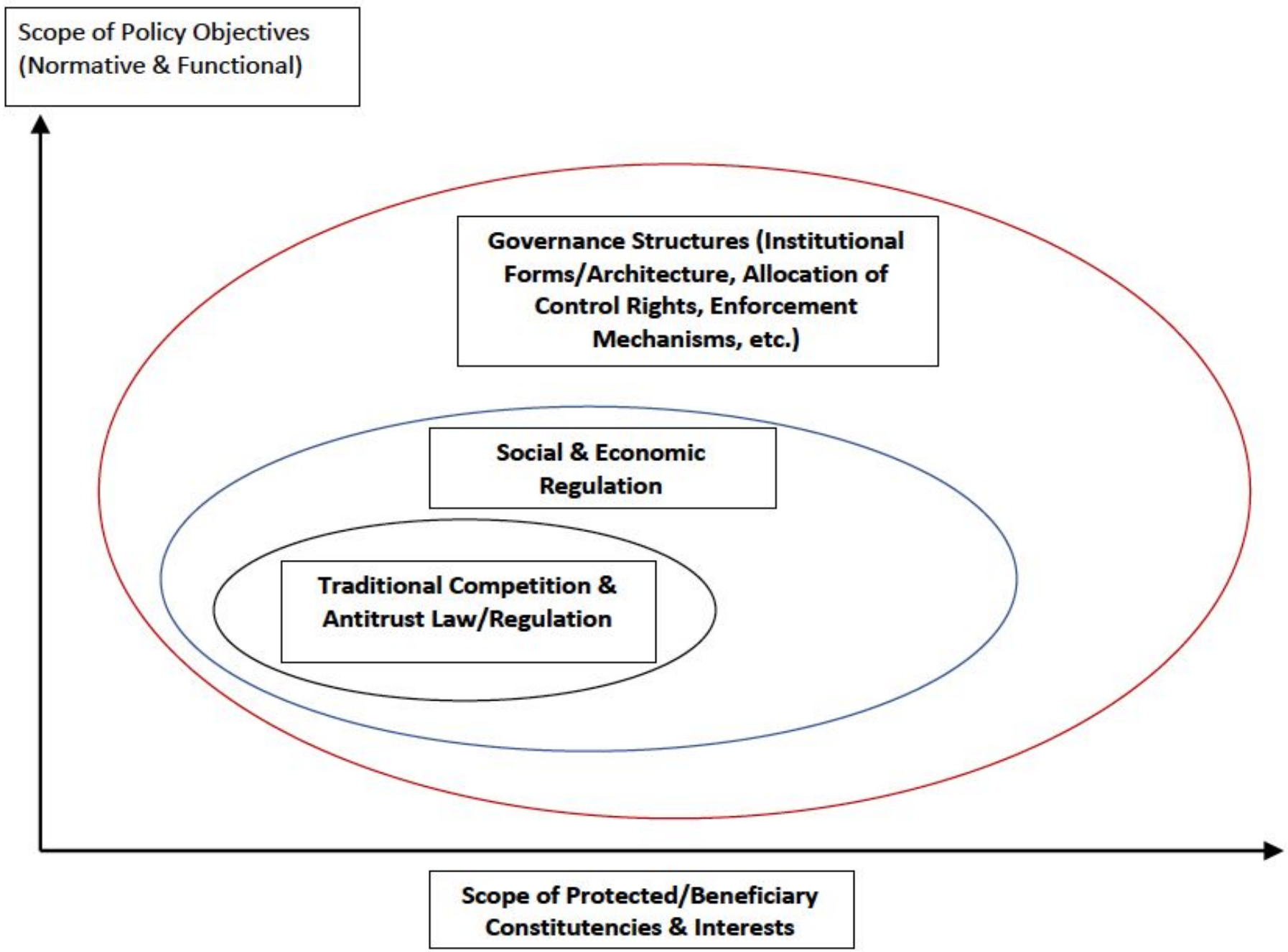
Competition Law vs Socio-Economic Regulation:

Competition/Antitrust:

- Narrow & limited sub-category of economic regulation, biased toward market mechanisms & minimalist intervention.
- Mostly *ex post* case-specific enforcement focused on market power & consumer welfare (limited *ex ante* oversight, i.e., M&A review)
- Case-specific *ad hoc* remedies tailored to specific firm & market.

Social & Economic Regulation:

- *Ex ante* proscriptive and/or prescriptive rules governing market behavior.
- Broader range of (economic & non-economic) interests, values, constituencies recognized & protected.
- Rules & enforcement mechanisms override or displace market mechanisms.



The DMA & DSA Proposals: Regulatory Expansion & the Double Movement

DMA—Constraining “gatekeeper” platform market power.

- **Missing pieces: No merger review provisions & no structural remedies.**
- The most “regulatory” parts of competition law not strengthened.
- Will require further reform OR future expansion of DSA-type regulation.

DSA—Expanding regulation of platform behavior.

- Broader scope of platform coverage & substantive concerns than DMA.
- Expanding use of uniform *ex ante* proscriptive & prescriptive rules.
- Expanding range of objectives = consumer protection, privacy, correct market failures, protection of non-economic interests/values.
- Expanding array of constituencies & interests in regulatory politics.

Advantages of Regulation:

- Address market failures & market power abuses short of breakup.
 - E.g., platform scaling or control intrinsic to benefits.
 - Especially when the platform is the market.
- Uniformity creates level playing field.
 - E.g., prevent regulatory arbitrage (but also may be barrier to entry).
- Advance non-consumer interests & non-economic values/ends.
 - Increasingly important as platforms transform society, work, etc.
- Constrain role of hostile/inept courts, dysfunctional litigation.
 - Reduce scope & role of judicial interpretation.
 - Legislation may expand regulator's discretionary authority.

Regulatory Responses & Political Realignment:

- Different regulatory forms appeal to different constituencies.
 - Competition law appeals to businesses dependent on platforms (otherwise wary of regulation).
 - Broader regulation appeals to groups & policy entrepreneurs not served by market competition.
- Regulatory expansion may lead to more unpredictable & complex regulatory politics.
 - More potential interest group coalitions.
 - More policy ends & potential trade-offs.
 - Platform firms will maneuver against each other & use regulatory politics strategically—regulation as sword or shield.

Europe/EU in the Vanguard of Regulatory Change:

- Europe/EU in lead because authorities less conflicted (US treats Big Tech as national champions), yet powerful at global level (compare Australia vs Facebook).
- Likely to embroil EU in growing international conflict over platform regulation.
- Tensions/trade-offs between regulatory uniformity & divergent national regulation may make for counter-intuitive political coalitions/strategies.
 - Who benefits from uniformity? From fragmentation?

Takeaways:

- Early days of a great regulatory transformation.
- Regulatory expansion is re-embedding platforms within social, political & legal frameworks.
- Politics is transforming platform regulation, even as regulatory change will transform politics in unpredictable ways.
- EU is leading new platform regulation & likely continue to amid growing international conflict.
- All signs point to continued regulatory expansion, displacement of private ordering, & subordination of competition law.

When to Use Regulation vs. Competition Policy?

Competition Policy/Antitrust:

- Preserve or restore competition where practicable.
- Where rigidity of uniform *ex ante* regulation unnecessary/too costly.
- Where specific market power abuses/anti-competitive practices are idiosyncratic to firm.

Regulation:

- Prevent/penalize abuse of market power when breakup non-viable.
- Address market failures (the platform is the market).
- Creation of level playing field (prevent regulatory arbitrage).
- Advance non-consumer interests & non-economic values/ends.
- Constrain role of hostile/inept courts, dysfunctional litigation.

Paths Not (Yet) Taken? Future Alternatives to Constrain Platform Power:

- Utility model of intensive regulation.
- New institutional forms of countervailing power, e.g.:
 - Cooperatives of dependent firms
 - Allocation of bargaining rights (e.g., Australian news media rules).
- Mandatory licensing of IP.
- Exclusion of foreign platforms.
- Nationalization or partial public ownership of platforms.
- Political viability of regulatory/governance alternatives contingent on success of current regulatory efforts.

Political & Regulatory Dynamics:

- Backlash against platform firms has hit a tipping point, but big platform firms are intransigent. (strategically short-sighted?)
- Beyond economics—potential role of ideological/cultural politics in animating and mobilizing constituencies/coalitions.
 - From left: misinformation, hate speech, harassment, echo chambers fostering radicalization of right.
 - From right: accusations of PC bias, censorship of conservative views, cultural pluralism/anti-traditionalism.
- Hostility to platform-driven Big Tech enables: (1) potential cross-class coalitions in regulatory politics, & (2) pro-regulation alliances at international level.