PRINCIPLES FOR A DEMOCRA-TICALLY LEGITIMATE DIGITALI-SATION

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REGROUP

REBUILDING GOVERNANCE AND
RESILIENCE OUT OF THE PANDEMIC

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Culminating more than a decade of crisis in Europe, the Covid-19 pandemic has opened an important window of opportunity for institutional and policy change, not only at the "reactive" level of emergency responses, but also to tackle more broadly the many socio-political challenges caused or exacerbated by Covid-19. Building on this premise, the Horizon Europe project REGROUP (*Rebuilding governance and resilience out of the pandemic*) aims to: 1) provide the European Union with a body of actionable advice on how to rebuild post-pandemic governance and public policies in an effective and democratic way; anchored to 2) a map of the socio-political dynamics and consequences of Covid-19; and 3) an empirically-informed normative evaluation of the pandemic.

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Executive summary

This paper develops principles for a democratically legitimate form of digitalisation. It goes further than a need for an ethics of digitalisation. Ethics is a relationship between all persons. Democratic legitimacy is a relationship between citizens who share a democracy and, therefore, elect governments and make laws together.

Digital technologies have become a part of the infrastructure of contemporary democracies. They are a part of how parties, parliaments and publics debate, deliberate and communicate; how they form opinions; and how they give and demand accounts and justifications needed for public control. Digital technologies have transformed how governments and representatives contest elections; how they structure voter choice; how they compete; how they reach out to different pools of voters in the hope of aggregating them into winning electoral coalitions.

Standards of democratic legitimacy are not just important for those who regulate digital technologies. They also need to answer further questions. First what should consumers who are also citizens demand of social media and digital platforms? When should they complain, feel outraged, question the reputation or credibility of providers; or, where it is possible, take their custom elsewhere? Second what norms should providers internalise and enforce upon themselves if we are to believe them when they claim to contribute to democracy? Third where are democracies justified in demanding autonomy and non-interference by outsiders: both in any substantive rules democracies choose to regulate digitalisation and in the procedures they use to define the do's and don'ts of digital governance?

Our recommendations include:

- Regain trust in the media by countering concentration of ownership: by promoting media pluralism: by mixing private and state institutions to promote diversity; by redressing imbalances of power between media authorities and digital platforms, notably by providing media authorities with more independent financial support;

- Explore new cays of fighting mis- and disinformation. More discussion is needed of how freedom from mis(dis) information contributes to a human right to "free formation of opinion without interference". Mis(dis) information needs closer legal definition. More attention is needed to what to do about dangerous content that goes beyond differences of opinion or freedom of expression. Methods of fact checking need themselves to be more rigorously checked and researched so that they are

not dismissed without evidence or justification. Independent authorities or agencies should take over, or double check, fact-checking by media companies.

- Counter censorship by digital companies and autocratic states. The European DSA and the AI Act are steps in the right direction here, but it remains to be seen how they will be implemented in practice.

- Combine de-concentration of ownership with a rethinking of ownership Should ownership and design of social platforms be determined only be the profit-motive? Should government agencies themselves provide democratic and human rights-friendly platforms for their populations? Should civil society groups be involved in the design and monitoring of social media and the monitoring of them (Mansell et al 2025: 191). Should global digital companies be more strongly bound by human rights?

Keywords: digitalisation; legitimacy; democracy; deliberation; representation.

Introduction[1]

This focus paper recommends principles that should guide digital technologies in our democracies. It turns to democratic theory for diagnosis and prescription. Only democratic theory can provide a full diagnosis of how digitalisation is both threat and opportunity for legitimate democratic politics. Only democratic theory can help us fully understand why digitalisation has become a problem in need of governance. Only democratic theory can identify solutions or even define *standards* by which digitalisation should be evaluated and regulated.

Important things have been said about the need for an ethical digitalisation. This paper asks the somewhat different question of how to define standards for a democratically legitimate form of digitalisation. The distinction is important. Ethics is a relationship between all persons. Political legitimacy is a relationship between citizens. In addition to the *ethics* of how people should treat one another in the digital world are the *civics* of how citizens who share a democracy – and who, therefore, elect governments and make laws together - should use digitalisation and what standards they should expect of it.

Digital technologies have become a part of the infrastructure of contemporary democracies. They are a part of how parties, parliaments and publics debate, deliberate and communicate; how they form opinions; and how they give and demand accounts and justifications without which there can be no public control. Digital technologies have transformed how governments and representatives contest elections; how they structure voter choice; how they compete; how they reach out to different pools of voters in the hope of aggregating them into winning electoral coalitions. How far then do digital technologies contribute or detract from democratic legitimacy and standards? How should we even go about answering that question?

Our purpose is not to suggest this or that standard. Rather, it is to frame general principles for a democratically legitimate digitalisation that should then inform policies and regulation of platform governance. Those whose unhappy task it is to regulate digitalisation need clarity on principles before specifying standards. Further questions also need discussion. First, what should consumers who are also citizens demand of social media and digital platforms? When should they complain, feel outraged, question the reputation or credibility of providers; or, where it is possible, take their custom elsewhere? Second, what norms should providers internalise and enforce upon themselves if we are to believe them when they claim to contribute to democracy? Third, where are democracies justified in demanding autonomy and non-interference by outsiders: both in any substantive rules democracies choose to regulate digitalisation and in the procedures they use to define the do's and don'ts of digital governance?

The paper contributes to Work Package 9 of REGROUP, whose objectives include 'proposals to improve societal and democratic resilience in post-pandemic Europe'. The paper delivers task 9.3. 'to formulate proposals for EU and national policies on platform governance, and regulation of social media with a view to empowering citizens and increasing their participation'. The following points explain how supplementing an ethical digitalisation with standards for a democratically legitimate digitalisation can contribute to a) 'democratic resilience' b) empowering citizens' and c) 'increasing political participation.'

Resilience. Legitimacy – defined as justified political power (Beetham 2013), or, better still, the right to exercise political power - is not just an abstract concept for philosophers. It is key to the resilience of political orders. Since they are understood as rightful, justified and binding, legitimate political orders are better able to agree and apportion sacrifices. They are also less likely to exhaust themselves in enforcing their laws on a reluctant population. Legitimacy, as Pierre Bourdieu (1994) put it, is a 'coercion minimising device'. People comply with laws because they believe they are rightly made. Self-enforcement largely replaces enforcement. Legitimate political orders are therefore more likely to survive crises and adapt to them. Think of the pandemic which has been the focus of our research in REGROUP. People were asked to stay at home, wear masks, accept interruptions in the schooling of their children, stop visiting elderly relatives. Yet the rules needed to manage the pandemic were overwhelmingly enforced by citizens themselves, on themselves. Can democracies continue to rely on such miracles of self-enforcement for their resilience? Much will depend on how digitalisation is refashioning democracy and with what implications for trust; for reliable communication; and for the legitimacy of procedures used to make laws.

Empowering Citizens. Democratic citizenship consists of just those rights, responsibilities and capabilities needed for individuals to play their part in sustaining a democratically legitimate form of political power. Democratic legitimacy, therefore, defines democratic citizenship and what needs to be done to enable it. Democratic citizens need to be enabled to control the making, amendment and administration of their own laws through representatives and governments they elect as equals; to take collectively binding decisions; to take co-responsibility as the ultimate co-legislators of laws that deeply affect the lives of their co-citizens; and to take co-responsibility for all the systems and infrastructures – including new systems of communication – by which they govern themselves and make laws together.

Participation. As Caroline Böck and Matthias Kettemann (2024: 15) remark, 'social platforms have a strong influence on political participation opportunities.' The key moment in democratic participation is, of course, when power briefly returns to citizens to be decided in competitions for the people's vote (Schattsneider 1960). But democratic participation requires 'voice' as well as 'votes'. It is a 'daily plebiscite': an everyday process of public opinion formation and of 'trial by debate' (Manin 1995). New social media radically changes participation in periodic elections and in everyday opinion formation. It affects confidence in the public sphere as a forum for fair and trustworthy participation in public debate. It proliferates opportunities for participation and communication only to raise questions of whether it can meet democracy's need for equal forms of participation.

From an ethical digitalisation to a democratically legitimate digitalisation.

Let us briefly return to the distinction between an ethical digitalisation and a politically legitimate digitalisation. Arguments for an ethical digitalisation have focussed on privacy, human health, work-life balance, social exclusion. abuse of new technologies for surveillance (Eurofound 2023: 3), risks to vulnerable groups, and dehumanisation of relationships through the automation of tasks that remove human contact and any judgement in the handling of individual cases (ibid 12). A European Commission expert group has emphasised the need to 'respect, serve and protect humans' physical and mental integrity' and to treat 'all people' as 'moral subjects', not as objects to be sifted, sorted, herded, conditioned, manipulated, deceived or coerced (European Commission 2019: 10 & 12).

But, an ethical digitalisation can only be one part of what is needed. As seen, we also need standards that follow from the nature of citizenship and from the deep need of human beings to be able to develop and sustain forms of government that they can all recognise as legitimate. In any case, the concept of a legitimate digitalisation is prior to that of an ethical digitalisation. Without standards of democratic legitimacy – and, therefore, democratic control - standards of ethical digitalisation would be arbitrary and paternalistic. They would be 'regulator knows best' answers to what are 'good' and 'right' forms of digitalisation rather than rules that can ultimately be controlled and authored by those they are supposed to protect. Even without that problem, a Council of Europe study has noted 'the lack of a unified conceptual framework…in digital ethics… there is no description of the main ethical rules that should apply. Moral aspects are often limited to their everyday intuitive interpretation' (Tavits & Sargsyan 2022: 20). A democratic deliberation aimed at justifying and making explicit what a democracy

might expect of a democratically legitimate digitalisation can also help it make public decisions on the individual ethics of digitalisation with more coherence and authority. Hence, in proposing a European declaration of digital rights, the European Commission (2022a) is right to identify a need for a 'democratic framework of digital transformation'.

But how should we identify principles for a 'democratic framework of digital transformation'? Following the work of the political philosopher David Beetham (2008) and his collaborators in developing methods of 'auditing' democracy we take public control with political equality to be necessary conditions for democratic legitimacy. Further principles then follow from what is needed to deliver public control with political equality in any context. We will see how principles of a) deliberation/justification b) representation c) participation and d) accountability/responsibility are important to how far digitalisation contributes to public control with political equality.

Digitalisation as threat and opportunity for democracy

We need to understand why digitalisation is both threat and opportunity to democratic standards of public control with political equality. Digitalisation empowers and it disempowers. It provides citizens with greater means of exercising informed control of their political systems. But it also exposes them to manipulation, domination and inequalities of access. The Pew Centre identifies the difficulty: 'those who control technology will possess more knowledge about individuals than people know themselves, predicting their behaviour, getting inside their minds, pushing subtle messages to them and steering them towards certain outcomes: such "psychographic manipulation" is already being used to tear cultures asunder, threaten democracy and stealthily stifle persons' free will" (Pew Research Centre 2021).

One risk, then, is of eroding the very agency of democratic citizens, both as voters and in the everyday formation of public opinion. As Mark Coeckelbergh (2024) remarks, 'what happens if we continue to transfer agency from humans to algorithms'?

Digitalisation creates a new public space. But it can also undermine the very concept of the public. As the philosopher John Dewey (1954 [1927]) put it, a public requires citizens who are aware of themselves as living together under the same laws and responsible to one another for the shared democratic control of those laws. In contrast, digitalisation can create silos, echo-chambers and polarisation (Kubin & Von Sikorski 2021). The like-minded exchange views already held, rather than broadening their understanding to the needs and values of all with whom they share a public. That corrodes any mutual

sympathy (Mill 1972 [1859]: 359) and mutual understanding needed for democratic politics. It limits openness and pluralism and, therefore, the role of the public sphere in forming public opinions that intermediate between individuals and the political system.

Digitalisation opens power holders to criticism as never before. But it is less clear that it creates conditions for critical debate where all reasons for all views are open to full and equal criticism so that views prevail for the reasons supporting them and not the power of those favouring them.

Digitalisation risks turning democracy into a tragedy of the commons (Hardin 1968). Political legitimacy and the public sphere are public goods on which it is easy to rely without contributing to their provision. Several aspects of democracy are also like a common resource pool (Mansbridge 2014) or a shared reservoir (Easton 1965) that can be depleted if not replenished. Examples are civic capabilities and trust in democracy and in co-citizens, all of which can be depleted by any manipulation, polarisation, or siloisation in political communication.

A special problem cutting across all the foregoing is the impact of digitalisation on political equality. Does it disrupt the ideal of democratic citizenship where all can participate equally? As Gesche Joost (Quoted in Harvard Belfer Centre 2025) puts it, in an 'inclusive digital society…every person has to have the right to free and equal access to communication and information services without having to waive any fundamental rights (in the handling of their data) in exchange'. A Council of Europe study asks: 'what is the state of digital inclusion across race, class and gender?' (Tavits and Sargsyan 2022: 5). Using the UK as an example, it also points out that even in a 'wealthy country … 19 per cent cannot perform fundamental tasks such as turning on a device or opening an application'. A 'further 8 per cent are offline because of fears that the internet is an insecure environment' (ibid 33). Although things may improve with time, digitalisation may become an essential part of our democracies – the main place of public debate and opinion formation – without the participation of around 25 per cent of the population.

Democratic politics and the political economy of digitalisation

Digitalisation may be inherently oligopolitistic, or even monopolistic (ECA Economics 2021). Its full potential may only be reached where many people use the same – one – system of communication. As Özlem Bedre-Defolie, and Rainer Nitsche (2020) observe 'positive network effects' mean that the benefits of using a digital platform increase' with the number of other people using it. So, for example, the more people use Google, the more powerful their search algorithms become, and the more people use Facebook,

the more interesting and valuable the content becomes. This creates a barrier to entry' for those able to offer alternatives. The European Commission (2022b) also notes that 'extreme scale economies, which often result from nearly zero marginal costs to add users' mean that a small number of large undertakings have emerged with considerable economic power.'

The big digital oligopolies are increasingly concentrated in just one state, the US, which may, therefore, have limited incentive to regulate all the negative externalities of its tech companies for other democracies. Paul Taylor (2024) observes that 'Among Trump's backers were libertarian tech entrepreneurs Elon Musk and Peter Thiel, who are counting on him to allow a free-for-all on social media, artificial intelligence and cryptocurrency. Musk has been defiant in the face of EU and UK efforts to regulate hate speech and disinformation on his X social media platform.'

Public power needed to regulate digitalisation may also be easily captured or bought. Public rule-makers may struggle to achieve forms of private power created by digitalisation. *Le Monde* (2024) notes that in the week after Trump was re-elected Elon Musk's fortune increased by '70 billion dollars', giving him a 'massive return on his campaign contribution of 120 million dollars'. That is not to mention any further return he may now make in being appointed as regulator of his own interests.

Principles for a democratic digitalisation

Democracy is the only form of government where those subject to laws control laws through representatives they elect. The forms of public and private autonomy needed for democracy presuppose one another. Whole publics control their own laws but with a commitment to just those rights that define forms of personal autonomy needed for citizens to form opinions and exercise control as equals (Habermas 1996). How well digitalisation supports the ability of citizens to form opinions and exercise control as equals we take to be the test of how digitalisation contributes to democracy. From that further principles follow as set out in the rest of the paper.

Reason-giving. One right needed for citizens to form opinions and exercise control as equals is a right to a justification Since democracy is a system in which citizens can be outvoted and coerced into doing what they would rather not do (Dunn 2005), it too requires laws to be justified by reasons. That is also important for losers' consent. Losers must know what justifications for a law they must challenge if they are to have an equal right to argue themselves into a majority needed to overturn a law. Where they contribute to public opinion formation that shapes policy or law binding on all, digital platforms should encourage claims to be supported by reasons. Users should also ex-

pect that of themselves and of one another. As Ronald Dworkin (2011) put it, we cannot expect the agreement of our co-citizens in plural societies or contestatory politics. But we can expect their responsibility. Reason-giving is responsible co-citizenship where, to repeat, public debates shape shared laws.

Hear the other side (Audi Alteram Partem). Living together with others in a democratic polity where citizens exercise share control of laws as equals requires more than a right to a justification. It also requires a right to be heard, especially where some citizens have special needs or values that can easily be lost in mass decision-making based on one person, one vote. Hearing the other side is also the antidote to polarisation and the draining of mutual sympathy and mutual understanding from democratic politics. When James Fishkin (2009) organised what he called deliberative opinion polls he regularly found that a huge one-third of participants changed their views just by taking part in deliberations? Why? For many, it was the first time they had been exposed to different points of view. Digital platforms and citizens who use them should expose themselves to counter-arguments and not seek to avoid them.

Respect Fundamental Rights in the round. Freedom in what can be said is not the only freedom of speech. As John Stuart Mill (1972 [1859]: 78) observed, we also interfere in the autonomy of others and their right to make up their own minds by telling them 'what they should be allowed to hear.' There are, therefore, 'speaker' and 'listener' theories of Free Speech (Howard 2024). Digital companies, especially platform operators, play a key role in access to opinion and the presentation of certain content. It is wrong to assume that they are merely infrastructure operators without legal obligations, as the companies would like them to be (Mast et al 2024: 260). Rather, so-called private regulations have emerged on social platforms, in which the platform operators specify certain rules of behaviour via so-called community guidelines and define the relationship between the platform and the user (Kettemann & Böck 2023: 120). In addition, there are technical settings, in particular by means of algorithms, which moderate the presentation and distribution of content (Quintais et al 2023). As private companies, these companies are free to decide on moderation without having to observe fundamental rights. For this reason, the view that digital companies must respect fundamental rights on their platforms has been developing for some time, particularly in European case law, but also through European legislation within the framework of digital law (Kettemann & Böck 2023: 125). It is necessary to limit the power of the platforms so that all opinions that are protected under freedom of expression are represented, and especially phenomena such as filter bubbles or profiling to pressure users into making purchasing decisions.

Truth-seeking? There are fewer more difficult questions than whether public debate should seek the truth. There are few truths in politics. Often there are only opinions, including rival opinions about just what are the facts. Maybe we should just accept that and aim merely for such mutual understanding as we can achieve? But that will not quite do. What about blatant lies presented as if they were facts? Surely we can agree some things are 'untrue' and 'bad' even where it is harder to agree what is 'true' and 'good'? Disinformation is an attack on freedom of expression where it distorts – without possibility of complaint or challenge - what others have said in exercising their own freedom of expression. The announcement by Meta that it will no longer carry out fact-checking and content moderation leaves no mechanism for safeguarding human rights and principles important to democracy. Even, indeed, where elaborate policing is difficult and undesirable, self-enforcement of norms can be helped by awareness of how avoiding disinformation is a part of what is needed to live together with others in a shared democracy. As Robert Goodin (2010: 731 & 738) puts it, 'democratic politics amounts to giving laws to ourselves [...] lying [...] interferes with collective self-government. Those who believe misinformation can end up basing their contributions to public opinion formation or public control on falsehoods they assume to be true.

Equal opportunity to participate. If public opinion is formed through debate and not just prior to it, it is all the more important that digital platforms should level inequalities in access to public debate, not reproduce them. A double equality of access is needed: of citizens and of all points of view.

No participation without representation. Empowering citizens through digitalisation means improving their representation and not just their participation in new forms of public opinion formation. There can be no participation without representation (Plotke 1997). Even those who participate closely in public debate count on others to represent what they cannot say. To identify what can be expected of digitalisation, consider two features of representation. First it can make the absent present (Ankersmit 2002). By speaking on behalf of those they represent, representatives can make even the views of the absent present in public discussions and decisions. Second, representation is heavily constructed. It depends, as Mike Saward (2010) puts it, on claims to represent being accepted or rejected. The lost opportunity from its misuse is that digitalisation could otherwise revolutionise how the views of the absent can be present in public debate, decisions and control. Digitalisation can also help in the social construction of representation by providing almost instantaneous feedback of how far claims to represent are accepted or rejected.

Digitalisation should contribute to both the formal and informal public spheres while respecting the distinction between the two. Informal representation may be no more than one person representing the views of others in public opinion formation. Formal, on the other hand, is the kind of representation needed for legitimate law-making. So, as Habermas (1996: 307) puts it, the informal public sphere can be 'wild'. Its purpose is to promote the spontaneous evolution of public opinion, including by those who self-organise independently of the political process. In contrast, the formal public sphere is debate that is structured by the political process for the purposes of public control with political equality, notably parliamentary debate. Only parliamentary debate allows i) representatives elected on a basis of one person-one vote to ii) test all opinions in relation to one another iii) during the course of law-making itself, all iv) within a body that has continuing public control over implementation by executives.

Counter asymmetries of information in participation and representation. As Thomas Saalfeld et al (2022) note, digitalisation can reduce one of largest obstacles to public control by citizens as equals: namely huge asymmetries of information between executives and elected representatives, between those representatives and those they represent, and between some citizens and others. Digitalisation, and especially the role of artificial intelligence in 'mining' exactly the information that citizens and representatives want from mountains of data opens up new possibilities in exercising public control with political equality. But to overcome asymmetries of information digitalisation needs to emancipate itself from misinformation.

Maintain representation in emergencies. To come full circle to REGROUP as a project on lessons from the pandemic, digitalisation offers the possibility of parliaments and publics going 'on line' in emergencies. If properly based in democratic principles of public control, digitalisation can even overcome or mitigate a need for a state of exception.

Recommendations

From the above, four concrete recommendations can be made that serve to promote social cohesion and democratic principles through digitalisation, as is the goal stated in the first part of this focus paper.

Gain Trust in news and media. In order to create more cohesion in a democratic society, it is important to strengthen trust in the dissemination of news and media. This is especially true in the digital sector, where digital platforms play a key role in news dissemination. In addition, there are partly independent media institutions in various countries, which leads to an "information crisis". This is to be prevented by:

- The concentration of the news media industry is countered and media pluralism is actively promoted.

- In addition, there should be a mix of private and state media institutions to promote diversity.

- The balance of power between media authorities and digital platforms with regard to the dissemination of news should be mitigated. This must be done through financial support from the media authorities, so that they are no longer dependent on the placement of advertising that can mislead users.

- News should be presented in a way that does not lead to news avoidance. A news avoidance to promote mental health leads to exclusion from public life, which is not conducive to cohesion in society.

- Especially in the context of elections, political parties and government agencies must be able to present their political agenda without spreading misinformation. Conversely, they must also be tied to the fact that they are not allowed to spread false information

Fight against Mis- and Disinformation. In connection with trust in the media, the topic of disinformation and misinformation must also be discussed. These phenomena are likely to interfere very strongly with the human right to "free formation of opinion without interference", since no formation of opinion is possible that is based on false and untrue facts and the untruth is not recognizable to humans. In this respect, there can be social polarization that weakens cohesion (For more detail see Böck & Kettemann 2024). This is to be countered as follows:

1. Instead of individual technical solutions that combat misinformation and disinformation in individual cases, the phenomenon must be examined more closely and a holistic solution must be sought that combats the causes of this type of news dissemination in different life situations.

2. From a legal and policy maker point of view, it is necessary to definitively agree on a specific definition of these terms in order to determine which news or content on social platforms must be combated. In addition, consideration must be given to how to deal with this dangerous content. Should they be banned? Do they need to be better identified?

3. As already mentioned, fact checking, which Meta wants to suspend, needs to be put to the test. The underlying algorithms must be checked and it must be checked over time how effective certain changes in the technical settings are. Especially the question of whether people have to carry out this fact check must be carefully weighed up, as the amount of data that has to be checked is con-

stantly increasing. On the other hand, it is desirable that the human right to freedom of expression be verified by human action and not just by a machine (Mansell et al 2025: 152).

Preventing censorship by digital companies and autocratic states. Not only in terms of misinformation and disinformation, but also globlly in terms of content moderation, the centered power of autocratic states and the few digital companies themselves should be limited. Instead of a fact check by the companies themselves, independent authorities or agencies should take over the check to strengthen confidence in their decision. This applies to the supervision of platforms and their own operation. The European DSA and the AI Act are a step in the right direction here, but it remains to be seen how they will be implemented in practice. As already indicated in the first paper of this WP (Böck & Kettemann 2024), it will depend on the correct enforcement of the regulations, as this is the only way the laws can have full effect.

Build a different ownership. Finally, it should be noted that the few digital companies play a very strong role in the formation and expression of opinions. The companies come from capitalist states and are therefore profit-oriented. The question arises as to whether profit orientation is what should determine the design of social platforms. Therefore, alternative ownership of these platforms should be considered, for example by making state participations conceivable. In addition, government agencies themselves could provide democratic and human rights-friendly platforms for their populations. However, this also harbours the potential for abuse by autocratic states. In addition, the question of the feasibility of such ideas arises. At the very least, it should be ensured globally that digital companies are more strongly bound to human rights and enforce them on their platforms. It would also be conceivable to involve civil society groups in the design of social media and the monitoring of them (Mansell et al 2025: 191).

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