

# Civil Rights

*Jeeyun (Sophia) Baik & Hamsini Sridharan*

## Introduction

Digital platforms have perpetrated and enabled discrimination, harassment, and violence that disproportionately impacts marginalized groups, amplifying the impact of structural oppression.<sup>1</sup> From online advertising that perpetuates housing, employment, and credit discrimination, to harassment based on race, gender, and sexuality, digital harms have become pervasive.<sup>2</sup> Civil rights offers one framework, grounded in decades of activism and established law, for addressing such harms. In this essay, we examine what the term “civil rights” means in the context of platform governance, arguing that we must adapt and expand our understanding of the civil rights framework to the digital environment and the specific challenges of protecting marginalized groups from harm online. We focus on the U.S. notion of civil rights, while pointing to the limitations of this national framework for addressing harms on platforms that are global in scope. In the United States, civil rights generally cover areas such as housing, employment, education, and credit, providing legal protections so that no one faces discrimination on

---

<sup>1</sup> See Sarita Schoenebeck & Lindsay Blackwell, *Reimagining Social Media Governance: Harm, Accountability, and Repair*, SOC. SCI. RSCH. NETWORK (July 29, 2021), <https://ssrn.com/abstract=3895779>.

<sup>2</sup> See Julia Angwin & Terry Parris, Facebook Lets Advertisers Exclude Users by Race, ProPublica, October 28, 2016, <https://www.propublica.org/article/facebook-lets-advertisers-exclude-users-by-race> (last visited Feb 19, 2023); Muhammad Ali et al., Discrimination through Optimization: How Facebook's Ad Delivery Can Lead to Biased Outcomes, 3 Proceedings of the ACM on Human-Computer Interaction 1–30 (2019); Jacqueline Ryan Vickery & Tracy Everbach, The Persistence of Misogyny: From the Streets, to Our Screens, to the White House, in *Mediating Misogyny: Gender, Technology, and Harassment* 1–28 (Jacqueline Ryan Vickery & Tracy Everbach eds., 2018); Emily A. Vogels, The State of Online Harassment (2021), <https://www.pewresearch.org/internet/2021/01/13/the-state-of-online-harassment/> (last visited Feb 19, 2023).

the basis of race, ethnicity, gender, sex, religion, ability, national origin and immigration status, or age.<sup>3</sup>

We first explore the ways civil rights have been incorporated into platform governance, looking at the Airbnb and Facebook<sup>4</sup> civil rights audits as examples on the ground. Based on insights from these audits and building on existing scholarship on civil rights and platform governance, we then argue that we should expand our understanding of civil rights in two specific areas of platform governance: speech governance and data governance. After exploring how to enhance civil rights in these areas, we situate the framework in a broader conversation about its limitations and alternatives, with the goal of navigating these limitations and connecting to other visions dedicated to addressing structural racism and discrimination on digital platforms. We emphasize that the debate over rights-based frameworks for the digital environment is closely tied to questions about formal government regulation, but now also includes demands for rights directly from platforms, extending beyond what U.S. law provides for. Through this essay, we hope to contribute to a critical understanding of the politics of civil rights in platform governance.

## I. What Civil Rights Audits Tell Us

The cases of the civil rights audits conducted by Airbnb and Facebook between 2016 and 2020 are rich examples of how civil rights are currently negotiated and incorporated in platform governance. Civil rights advocate Laura Murphy, the auditor who led both processes, defines a civil rights audit as “an independent, systemic examination of significant civil rights and racial equity issues that may exist in a company and provides a plan of action to address those issues in a thorough, deliberate, timely, and transparent manner.”<sup>5</sup> The first such audit was conducted by Airbnb in 2016, after the company faced public scrutiny over the denial of lodging to users with African-American sounding names by hosts on its platform. Facebook, meanwhile, began its auditing process in 2018 when faced with criticism over numerous harms, including the doxxing of Black activists

---

<sup>3</sup> Civil Rights Act of 1964, 42 U.S.C. § 1971; Fair Housing Act, 42 U.S.C. § 3601.

<sup>4</sup> We acknowledge that the Facebook company has rebranded itself as “Meta,” but decided to mainly refer to the Facebook platform.

<sup>5</sup> Laura W. Murphy, *The Rationale for and Key Elements of a Business*, LEADERSHIP CONF. ON CIV. & HUM. RTS. 5 (2021), <http://www.civilrightsdocs.info/pdf/reports/Civil-Rights-Audit-Report-2021.pdf>.

by white nationalists, surveillance of Black users, foreign electoral interference, and discriminatory advertising.<sup>6</sup>

These audits raised critical questions about how to define platforms in the first place. Each company has a distinct area of focus and business model: Airbnb offers a platform for hosts to rent lodging to guests and earns profit mostly from service fees paid by users; Facebook provides users with a platform to share content and interact with one another, and most of its revenue comes from advertising. On the one hand, the two are similar because they both “organize interactions between users.”<sup>7</sup> On the other hand, the ways the two companies operate are quite different; if we follow Gillespie’s emphasis on the hosting and circulation of third-party content as a defining feature of platforms, Airbnb would be seen not as a platform, but rather as “platform-like.”<sup>8</sup>

This distinction illuminates the differences in the scope of what civil rights can cover, as well as subsequent differences in available legal protections. The Airbnb audit focused on housing, whereas Facebook’s covered issues ranging from advertising to elections, the census, and content moderation. When it comes to areas like housing and advertising, platform governance is more aligned with existing civil rights law. The Facebook audit, for example, reported on changes made to prevent discrimination in its housing, employment, and credit advertising practices in response to lawsuits by the National Fair Housing Alliance and the Department of Housing and Urban Development on the basis of the Fair Housing Act.<sup>9</sup> Meanwhile, public debates continue over whether platforms like Airbnb or Facebook can be held legally accountable for providing “public accommodation” under civil rights law, as public accommodations are generally thought to be physical spaces such as hotels, restaurants, and movie theaters. It is in this context that Brody and Bickford identify existing civil rights law’s limited protections against discrimination online, discussing the need to clarify state public

---

<sup>6</sup> See Press Release, Color of Change, Color Of Change Responds to Facebook’s Civil Rights Audit (July 8, 2020), [https://colorofchange.org/press\\_release/color-of-change-responds-to-facebooks-civil-rights-audit](https://colorofchange.org/press_release/color-of-change-responds-to-facebooks-civil-rights-audit).

<sup>7</sup> JOSÉ VAN DIJCK, THOMAS POELL & MARTIJN DE WAAL, *THE PLATFORM SOCIETY: PUBLIC VALUES IN A CONNECTIVE WORLD* 9 (2018).

<sup>8</sup> TARLETON GILLESPIE, *CUSTODIANS OF THE INTERNET: PLATFORMS, CONTENT MODERATION, AND THE HIDDEN DECISIONS THAT SHAPE SOCIAL MEDIA* 7 (2018).

<sup>9</sup> See Katie Benner, Glenn Thrush & Mike Isaac, *Facebook Engages in Housing Discrimination With Its Ad Practices, U.S. Says*, N.Y. TIMES (Mar. 28, 2019), <https://www.nytimes.com/2019/03/28/us/politics/facebook-housing-discrimination.html>; Fair Housing Act, 42 U.S.C. § 3601.

accommodations laws to explicitly cover online businesses.<sup>10</sup> Still, these domains (e.g., housing, advertising) tend to have more solid grounding in current civil rights law, and both Facebook and Airbnb, as platforms organizing interactions between users, are bound by that law despite the aforementioned challenges.

Other domains of platform governance covered in the Facebook audit in particular are not fully grounded in existing law. Hate speech, for example, is not directly regulable under current interpretations of the First Amendment, and is primarily dealt with through platform self-regulation.<sup>11</sup> However, the moderation of such speech has been politically weaponized in the case of the Facebook civil rights audit, which the company announced alongside an “anti-conservative bias” audit, giving credence to accusations of discriminatory treatment levied by right-wing political figures.<sup>12</sup> This action cast antiracist civil rights as a partisan liberal issue, even as civil rights discourse was weaponized by conservatives to argue they were the victims of oppression by the platform.<sup>13</sup> Thus, the issue at stake for platform governance is often the problematic treatment of civil rights as a tradeoff with free speech.

## 2. Platform Governance Needs to Protect Civil Rights

As platforms emerge as powerful infrastructural players of the digital era, several scholars have drawn critical connections between civil rights and platform governance.<sup>14</sup> Based on these works, we argue that we must

---

<sup>10</sup> See David Brody & Sean Bickford, *Discriminatory Denial of Service: Applying State Public Accommodations Laws to Online Commerce*, LAWS.’ COMM. FOR C.R. UNDER L. 2-3 (Jan. 2020), <https://lawyerscommittee.org/wp-content/uploads/2019/12/Online-Public-Accommodations-Report.pdf>.

<sup>11</sup> See Katharine Gelber, *Freedom of Political Speech, Hate Speech and the Argument from Democracy: The Transformative Contribution of Capabilities Theory*, 9 CONTEMP. POL. THEORY 304 (2010).

<sup>12</sup> See Sara Fischer, *Exclusive: Facebook Commits to Civil Rights Audit, Political Bias Review*, AXIOS (May 2, 2018), <https://www.axios.com/2018/05/02/scoop-facebook-committing-to-internal-pobias-audit-1525187977>.

<sup>13</sup> Jeeyun (Sophia) Baik & Hamsini Sridharan, *Civil Rights Audits as Counterpublic Strategy: Articulating the Responsibility and Failure to Care for Marginalized Communities in Platform Governance*, INFORMATION, COMMUNICATION & SOCIETY (2023), <https://www.tandfonline.com/doi/abs/10.1080/1369118X.2023.2227685>.

<sup>14</sup> While we acknowledge that there exists a more extensive set of literature speaking about civil rights and platform governance, we only introduce and unpack several key pieces here for the purpose and space of this essay.

expand our understanding of civil rights in two specific areas of platform governance—speech governance<sup>15</sup> and data governance.<sup>16</sup>

### a. Speech Governance

Citron extends civil rights frameworks to the digital environment, arguing that there is a need for a pro-regulatory “cyber civil rights agenda” that offers redress for online harassment and is attuned to inequalities of power.<sup>17</sup> She argues that the seriousness of cyber harassment has often been dismissed due to assumptions that harassment in virtual spaces does not result in offline harm—assumptions that rest on a faulty separation of the physical and the digital.<sup>18</sup> Another obstacle to addressing online harm is the perception that any regulation threatens the First Amendment-protected “free speech” of abusive actors.<sup>19</sup> Recognizing such tensions, Citron suggests that “[w]e should assess the argument that free speech absolutism should trump civil rights concerns” in light of past movements that successfully integrated civil rights with the “foundational” values of American democracy.<sup>20</sup> To Citron, cyber harassment is not a meaningful contribution to civic discourse in itself, but rather has the effect of silencing the speech of others.<sup>21</sup> Updating civil rights law to protect women and marginalized groups from harassment thus is not a threat to freedom of speech, but rather preserves it.<sup>22</sup>

Platforms, as online entities, may exploit loopholes in application of the laws in this context, as with the sustained contention over Section 230 of the Communications Decency Act (CDA), which exempts interactive computer services from legal liability for content produced by users, allowing them to regulate content (or not) on their own terms.<sup>23</sup> However, the extent to which platforms should be exempt from accountability for content moderation is increasingly coming into question, with highly politicized debates over the need to better moderate content that harms

---

<sup>15</sup> Brenda Dvoskin, *Representation without Elections: Civil Society Participation as a Remedy for the Democratic Deficits of Online Speech Governance*, 67 VILL. L. REV. 447, 465 (2022).

<sup>16</sup> Rob Guay & Kean Birch, *A Comparative Analysis of Data Governance: Socio-Technical Imaginaries of Digital Personal Data in the USA and EU (2008–2016)*, 9 BIG DATA & SOCIETY (2022).

<sup>17</sup> Danielle Keats Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61, 66 (2009).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 67.

<sup>20</sup> *Id.* at 96-97.

<sup>21</sup> *Id.* at 81.

<sup>22</sup> *Id.* at 97.

<sup>23</sup> Communications Decency Act, 47 U.S.C. § 230.

marginalized communities. There is also a need to refine where moderation is applied; for instance, one study suggests that conservatives, transgender individuals, and Black people face higher rates of content removal than other groups—but among conservatives, this was due to clear violations of policies on misinformation and hate speech, whereas for the marginalized groups, removals were due to expressions of their identities that fell under moderation “gray areas.”<sup>24</sup> The civil rights framework can help parse the distinction between the former harmful speech and the latter expressions of marginalized identity.

In pursuing a better incorporation of civil rights in platform governance, it is critical to comprehend the limitations of any governance framework that is U.S.-centric. Indeed, digital platforms themselves emulate longstanding tensions over speech regulation by attributing their ongoing lack of protections regarding harmful online speech to the narrow definition of civil rights in the U.S. context, which fails to address their global operations and impacts. For example, regulatory efforts to tackle harmful speech online through a civil rights framework have been rhetorically politicized as attacking the value of free speech in the U.S.<sup>25</sup> As we observed in the case of Facebook civil rights audit above, platforms can problematically handle civil rights as if it is a partisan liberal issue and frame it as a tradeoff with free speech, unless we articulate and expand our understanding of civil rights for speech online.

Other jurisdictions, such as Germany and the U.K., often have stricter regulations of hate speech than the U.S.<sup>26</sup> Facebook has *formally* complied with varying national laws while simultaneously steering users toward its centralized U.S.-based moderation practices through strategic interface design and public relations.<sup>27</sup> Therefore, we need to carefully revisit, articulate, and expand the civil rights framework in the context of

---

<sup>24</sup> See Oliver L. Haimson et al., Disproportionate removals and differing content moderation experiences for conservative, transgender, and black social media users: Marginalization and moderation gray areas, 5 Proceedings of the ACM on Human-Computer Interaction 1–35 (2021).

<sup>25</sup> See Jeeyun (Sophia) Baik & Hamsini Sridharan, *Big Tech Civil Rights Audits Should Be Mandated By Law*, Tech Pol’y Press (Jan. 10, 2022), <https://techpolicy.press/big-tech-civil-rights-audits-should-be-mandated-by-law>.

<sup>26</sup> Katharine Gelber, Freedom of political speech, hate speech and the argument from democracy: The transformative contribution of capabilities theory, 9 Contemp Polit Theory 304 (2010).

<sup>27</sup> See Soyun Ahn, Jeeyun (Sophia) Baik & Clara Sol Krause, *Splintering and Centralizing Platform Governance: How Facebook Adapted Its Content Moderation Practices to the Political and Legal contexts in the United States, Germany, and South Korea*, INFO., COMM’N & SOC’Y (2022) (manuscript at 21), <https://www.tandfonline.com/doi/abs/10.1080/1369118X.2022.2113817>.

platform governance so that the governance of harmful speech online is not stymied by the tension between civil rights and free speech in the U.S.

### **b. Data Governance**

Another area scholars have examined through the lens of civil rights is digital privacy (specifically, data privacy), arguing that privacy itself is a civil right.<sup>28</sup> For example, Li, while not limiting her arguments to platforms *per se*, extends Citron's cyber civil rights agenda to the "equal protection of privacy in both online and offline spaces."<sup>29</sup> Li also points out that some protected classes "may suffer from unequal access to privacy protections"<sup>30</sup> and notes that connected technologies have made data ecosystems "larger" and thus "more difficult to govern."<sup>31</sup> Looking at data privacy regulations in the U.S. and the E.U., Ku contends that the governance of information sharing, collection, and processing on and by social media platforms, which make decisions based on profiled identities, needs to be aligned with "civil rights and antidiscrimination laws," arguing that such alignments are weak in the current U.S. approach to data privacy.<sup>32</sup>

The collection and use of personal data by platforms often results in discriminatory harms such as the exclusion of marginalized populations from opportunities, or targeting with dubious messages and products.<sup>33</sup> Yet, data governance is largely framed in terms of individual choice, evading stricter scrutiny of data as corporate proprietary assets in the U.S.<sup>34</sup> While various states have introduced statewide data privacy laws, starting with California in 2018, these remain mostly opt-out based, making protection of data privacy and avoidance of data discrimination

---

<sup>28</sup> See Alvaro M. Bedoya, *Privacy as Civil Right*, 50 N.M. L. REV. 301 (2020); Tiffany C. Li, *Privacy As/And Civil Rights*, BERKELEY TECH. L.J. (forthcoming 2022), <https://ssrn.com/abstract=3851404>; Raymond Shih Ray Ku, *Data Privacy as a Civil Right: The EU Gets It?*, 103 KY. L.J. 391 (2014); Jeeyun (Sophia) Baik, *Privacy for All: Enshrining Data Privacy as a Civil Right in the Information Age* (July 15, 2021) (Ph.D. dissertation, University of Southern California) (on file with the University of Southern California Digital Library).

<sup>29</sup> Li, *supra* note 28 (manuscript at 15).

<sup>30</sup> *Id.* (manuscript at 21).

<sup>31</sup> *Id.* (manuscript at 23).

<sup>32</sup> Ku, *supra* note 28, at 392.

<sup>33</sup> Mary Madden et al., *Privacy, Poverty, and Big Data: A Matrix of Vulnerabilities for Poor Americans*, 95 74 (2017).

<sup>34</sup> See Matthew Crain, *The Limits of Transparency: Data Brokers and Commodification*, 20 *New Media & Soc'y* 88 (2018).

the responsibility of individuals.<sup>35</sup> The U.S. still does not have a federal data privacy law, in contrast with many other governing bodies, including the E.U., which has enforced the General Data Protection Regulation since 2018, addressing discrimination to some extent in the European context.<sup>36</sup>

Platforms' data-driven advertising-based business models reinforce harms disproportionately imposed on marginalized communities.<sup>37</sup> On the one hand, those that rely on advertising as their source of revenue (e.g., Facebook) try to grab user attention.<sup>38</sup> The inadequate moderation of extremist, harmful, or misleading content is thus often attributed to the motivation of platforms to capture user attention and thereby appeal to advertisers.<sup>39</sup> On the other hand, the ways targeted advertising works based on the use of personal data have resulted in many discriminatory cases, with well-known examples including Facebook's exclusion of communities of color from seeing housing, employment, and credit ads; the spread of voter suppression messages targeting Black voters on the platform; and Google's discrimination against women for high paying job ads.<sup>40</sup> Some of these discriminatory ad practices have been partially addressed with regard to specific protected areas (i.e., housing, credit, employment) and protected classes (e.g., gender, race, ethnicity, national origin) under civil rights laws. However, problems remain for proxy traits that do not necessarily adhere to the traditionally protected areas and

---

<sup>35</sup> Jeeyun (Sophia) Baik, Data privacy against innovation or against discrimination? The case of the California Consumer Privacy Act (CCPA), 52 *Telematics and Informatics* 101431 (2020).

<sup>36</sup> Chih-Liang Yeh, Pursuing consumer empowerment in the age of big data: A comprehensive regulatory framework for data brokers, 42 *Telecommunications Policy* 282 (2018); Raymond Shih Ray Ku, Data Privacy as a Civil Right: The EU Gets It? 103 *Ky. L.J.* 391 (2014).

<sup>37</sup> Nathalie Maréchal, Rebecca MacKinnon & Jessica Dheere, Getting to the Source of Infodemics: It's the Business Model, (2020); Nathalie Maréchal & Ellery Roberts Biddle, *It's Not Just the Content, It's the Business Model: Democracy's Online Speech Challenge*, (2020).

<sup>38</sup> Vikram R Bhargava & Manuel Velasquez, *Ethics of the attention economy: The problem of social media addiction*, 31 *Business Ethics Quarterly* 321 (2021).

<sup>39</sup> Nathalie Maréchal, Rebecca MacKinnon & Jessica Dheere, Getting to the Source of Infodemics: It's the Business Model, (2020); Nathalie Maréchal & Ellery Roberts Biddle, *It's Not Just the Content, It's the Business Model: Democracy's Online Speech Challenge*, (2020).

<sup>40</sup> Jeremy B. Merrill, *Does Facebook Still Sell Discriminatory Ads?*, The Markup, Aug. 25, 2020, <https://themarkup.org/ask-the-markup/2020/08/25/does-facebook-still-sell-discriminatory-ads> (last visited Aug 28, 2020); Jeremy B. Merrill, *Google Has Been Allowing Advertisers to Exclude Nonbinary People from Seeing Job Ads*, The Markup, Feb. 11, 2021, <https://themarkup.org/google-the-giant/2021/02/11/google-has-been-allowing-advertisers-to-exclude-nonbinary-people-from-seeing-job-ads> (last visited Feb 19, 2023); Young Mie Kim et al., *The Stealth Media? Groups and Targets behind Divisive Issue Campaigns on Facebook*, 35 *Political Communication* 515 (2018).



classes,<sup>41</sup> as platforms these days affect all dimensions of people’s lives across physical and digital spaces. These issues necessitate our extended understanding and better application of civil rights in platform governance.

### 3. Navigating Limitations of and Alternatives to Civil Rights

As we seek to expand civil rights in the areas of speech and data in platform governance, we suggest that restricting our understanding of civil rights in platform governance only to the application of *existing* law risks naturalizing how “civil rights” were constructed in the past and limiting how they must evolve for the digital era.<sup>42</sup> We locate the importance of approaching civil rights as an *evolving* framework, as it is critical to imagine civil rights beyond the protections outlined by current laws when they fail to fully account for emerging problems—the problems of and on platforms. By evaluating civil rights against other frameworks proposed in the platform governance space, we can better navigate and overcome the limitations of adapting this framework to the digital context. While the Civil Rights Movement and the laws it engendered marked an important turning point in tackling inequality in the U.S., there have been critiques about whether civil rights adequately address the problems of racism and discrimination. These critiques remain salient for platform governance, where the extension of civil rights to speech and data governance is inflected by questions of the global scale of platforms (as discussed above) and the persistence of racism and other forms of systemic oppression.

There have long been critical debates over whether civil rights—and rights-based frameworks more broadly—are sufficient for addressing structural harms to marginalized communities. For instance, beginning in the 1970s, the school of critical legal studies posited that rights are “unstable and indeterminate,” arguing that the focus should instead be put on the “needs” of the oppressed.<sup>43</sup> However, writing from the vantage

---

<sup>41</sup> Sandra Wachter, *Affinity Profiling and Discrimination by Association in Online Behavioural Advertising*, (2019), <http://papers.ssrn.com/abstract=3388639> (last visited Nov 26, 2019).

<sup>42</sup> See generally Charles V. Hamilton, *Social Policy and the Welfare of Black Americans: From Rights to Resources*, 101 POL. SCI. Q. 239 (1986); RISA LAUREN GOLUBOFF, *THE LOST PROMISE OF CIVIL RIGHTS* (2007); Steve Valocchi, *The Emergence of the Integrationist Ideology in the Civil Rights Movement*, 43 SOC. PROBS. 116 (1996).

<sup>43</sup> PATRICIA J. WILLIAMS, *ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR* 148 (rev. ed. 1992).

point of critical race theory (CRT), Williams counters that rights discourse can in fact be useful: “The vocabulary of rights speaks to an establishment that values the guise of stability, and from whom social change for the better must come (whether it is given, taken, or smuggled).”<sup>44</sup> To Williams, rights are a tool for obtaining meaningful formal protections for vulnerable groups in the face of structural oppression. However, other CRT scholars have questioned whether legal protections have successfully eliminated racial injustice. Bell argues that “lax enforcement,” “difficult-to-meet standards of proof,” and “the increasing irrelevance of antidiscrimination laws to race-related disadvantages” often dilute the efficacy of civil rights law.<sup>45</sup> Such persistent injustice and inequality imply that while civil rights are necessary for deconstructing structural oppression as encoded in law, legal protections may not have been sufficient for achieving racial justice.

Brown further suggests that the emancipatory efficacy of rights depends on the specificities of historical and social circumstances.<sup>46</sup> Where in one situation they may be liberatory, in another, they may become “a regulatory discourse, a means of obstructing or co-opting more radical political demands, or simply the most hollow of empty promises.”<sup>47</sup> Such co-option and subversion has, in fact, happened, as with the mobilization of civil rights in service of neoliberal marketizing logics in cases such as *Citizens United v. FEC*, which treats corporations as a disenfranchised class.<sup>48</sup> Meanwhile, since the 1990s, the language of civil rights has been deployed by conservative and liberal actors to advance “color-blind” policies and cast discussion of racism as itself racist<sup>49</sup>—a trend we observed in tech companies’ equivocations between racism and anti-conservative bias.

Considering these limitations of rights-based frameworks, civil rights frameworks should be considered in relation to other proposals for addressing platform harms. Alternatives to the civil rights framework in platform governance include frameworks such as civil liberties and human rights, as well as movements beyond liberal, legalistic mechanisms via racial justice, and restorative justice frameworks. These

---

<sup>44</sup> *Id.* at 149.

<sup>45</sup> DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE 5 (1989).

<sup>46</sup> WENDY BROWN, STATES OF INJURY 97 (1995).

<sup>47</sup> *Id.* at 98.

<sup>48</sup> WENDY BROWN, UNDOING THE DEMOS: NEOLIBERALISM’S STEALTH REVOLUTION 154-158 (reprt. ed. 2017).

<sup>49</sup> Safiya Noble, *The Logics of (Digital) Distortion*, 28 ACM INTERACTIONS, Nov.-Dec. 2021, at 41, 41-45.

are not mutually exclusive, but each suggests different ways of framing harm and assigning responsibility.

The civil liberties framework tends to emphasize the protection of freedom of expression over restriction of harmful speech on platforms. The contrast between civil rights and civil liberties recalls older debates over the governance of harmful speech, such as those engaged by CRT scholars in arguing for the need for stronger protections against “assaultive speech.”<sup>50</sup> In contemporary platform governance debates, Dvoskin distinguishes “speech regulationists” — advocates who use the idiom of civil rights to call for restriction of speech to protect marginalized groups from harm — from “speech protectionists” — advocates who mobilize the First Amendment and international human rights laws to argue for stronger protection of free expression as a means of protecting marginalized groups from censorship.<sup>51</sup> As Citron’s “cyber civil rights agenda” establishes, these are not necessarily opposing poles.<sup>52</sup>

Mobilization of the human rights framework—resting on international human rights law—has also emphasized freedom of expression.<sup>53</sup> In contrast with both civil rights and civil liberties, which rest on U.S. law, the human rights perspective is a universalizing one, applying international standards to platforms with global operations. In this context, the emphasis on free expression works to protect marginalized and oppositional groups from censorship under more authoritarian regimes than that of the U.S. (e.g., Myanmar and the Philippines<sup>54</sup>). Thus, the human rights framework presents the advantage of accounting for international and transnational harms perpetuated by digital platforms, which the U.S.-based civil rights framework cannot fully account for. Citizenship in the nation-state has historically been the basis for civil

---

<sup>50</sup> See MARI J. MATSUDA, CHARLES R. LAWRENCE, RICHARD DELGADO & KIMBERLÉ WILLIAMS CRENSHAW, *WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT I* (1st ed. 1993).

<sup>51</sup> Brenda Dvoskin, *Representation without Elections: Civil Society Participation as a Remedy for the Democratic Deficits of Online Speech Governance*, 67 VILL. L. REV. 447, 465 (2022).

<sup>52</sup> Citron, *supra* note 17.

<sup>53</sup> David Kaye (Special Rapporteur), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/HRC/38/35 (Apr. 6, 2018).

<sup>54</sup> See *The Social Atrocity: Meta and the Right to Remedy for the Rohingya* (2022), <https://www.amnesty.org/en/documents/asa16/5933/2022/en/> (last visited Feb 19, 2023); Miranda Sessions, *An Independent Assessment of Meta’s Human Rights Impact in the Philippines* Meta Newsroom (2021), <https://about.fb.com/news/2021/12/metahumanrights-work-philippines/> (last visited Feb 19, 2023).

rights. Civil rights and human rights have been counterposed on that basis at times, as when the Civil Rights Movement in the U.S. navigated solidarity and tension with international struggles for liberation and human rights.<sup>55</sup> Indeed, following World War II, Arendt distinguished civil rights from human rights, suggesting that the former apply to those incorporated into a national political framework as citizens, whereas the latter rely on shared humanity and could apply to the stateless.<sup>56</sup> For this reason, however, the human rights framework lacks the enforcement mechanisms of state-based legal frameworks, relying instead on softer guidance to states and corporations.

As with Bell's critique of the inadequacy of civil rights legislation to achieve racial justice offline, legalistic frameworks based on rights and liberties may not go far enough towards undoing inequality and achieving justice for marginalized communities online.<sup>57</sup> Accordingly, the civil society group Color of Change, which advocated for the Airbnb and Facebook civil rights audits, has shifted its rhetorical emphasis from the language of civil rights to the language of racial justice.<sup>58</sup> Others, meanwhile, critique the reliance in platform governance on the Western criminal justice model, which historically has not protected the interests of marginalized communities. Schoenebeck and Blackwell, for instance, suggest that restorative and transformative justice frameworks can complement other approaches to addressing platform-mediated harm by emphasizing repair, centering the needs of victims, and foregrounding accountability and rehabilitation for those who commit harm.<sup>59</sup>

These debates do not invalidate the civil rights framework. Rather, we suggest that by embracing the nature of civil rights as always actively contested and negotiated, we can critically engage with and navigate how protections should be framed for digital environments in order to effectively address structural oppression. We can better embody civil rights in platform governance only when we understand how it is situated

---

<sup>55</sup> See generally THOMAS BORSTELMANN, *THE COLD WAR AND THE COLOR LINE: AMERICAN RACE RELATIONS IN THE GLOBAL ARENA* (rev. ed. 2003); MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (rev. ed. 2011).

<sup>56</sup> HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 372 (1948).

<sup>57</sup> BELL, *supra* note 45.

<sup>58</sup> Press Release, Color of Change, Color of Change Unveils New Racial Equity Framework to Hold Tech Companies Accountable to Racial Justice Commitments (June 16, 2021), [https://colorofchange.org/press\\_release/color-of-change-unveils-new-racial-equity-framework-to-hold-tech-companies-accountable-to-racial-justice-commitments](https://colorofchange.org/press_release/color-of-change-unveils-new-racial-equity-framework-to-hold-tech-companies-accountable-to-racial-justice-commitments).

<sup>59</sup> Schoenebeck & Blackwell, *supra* note 1.

within and connected to other visions available for tackling structural racism and discrimination.

### **Conclusion**

In this essay, we reviewed how civil rights relates to debates over platform governance, arguing for an extended understanding of civil rights beyond the current legal protections offered by U.S. civil rights laws. We looked at the Airbnb and Facebook civil rights audits to examine how platform governance currently incorporates civil rights and provided an overview of scholarship in this area. Based on this, we suggest expanding civil rights in two specific areas: speech governance and data governance. We explored not only the meaningful protections civil rights have secured but also the longstanding critiques of rights-based frameworks, and of the limits of civil rights in particular. Navigating criticisms of and alternatives to the civil rights framework in platform governance debates, we further illustrated how applications of civil rights in platform governance remain a site of struggle for protecting marginalized groups from harm. Ultimately, we argue that incorporating civil rights in platform governance entails embracing civil rights as an evolving *process* full of negotiations, tensions, and alternative visions, rather than a static set of laws. Civil rights are a framework where the politics of belonging and the politics of accountability are contested, and it will not be an easy one to achieve but worth the fight.