

Black Feminist Antitrust for a Safer Internet

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Intersectionality calls attention to the unique policy needs of Black women. The current content moderation crisis must be addressed through antitrust policies that use a Black feminist framework. While online violence impacts many groups of people, social media platforms' failure to moderate abusive and hateful content puts Black women in disproportionately dangerous positions. Kimberlé Crenshaw created the word "intersectionality" to highlight that Black women have policy needs separate from white women's needs and Black men's needs.¹ The law's omission of Black women sometimes means excluding us from legal protection.² Similarly, social media sites, or platforms, do not incorporate policies that reflect Black women's experiences with racism, sexism, and misogynoir. Big Tech reform that does not use a Black feminist framework will fail to move platforms from protecting their own interests.

Policymakers crafted antitrust laws to address these types of power imbalances and to preserve the public interest. Antitrust policies with a Black feminist framework are needed to shift the power dynamics of platforms, foster better content moderation, and make the internet safer. Catherine Knight Steele coined the phrase "digital Black feminism" to describe a school of feminism that "deconstruct[s] white supremacist capitalist patriarchy within digital culture."³ Designing content moderation policies after incorporating digital Black feminist equities in online governance reform will create better platforms. In this chapter, I will outline the unique ways online attacks impact Black women, describe the power that allows platforms to ignore the content moderation crisis, and conclude with how Black feminist antitrust can tackle this problem. This chapter will focus on online violence as a result of race and gender. I use online violence to describe actual and

proposed attacks and harassment made on social media platforms against one person or a group of people. I will refer to the largest and most popular social media companies as dominant platforms because current legal definitions of monopoly have not expanded to include the companies that own Facebook, Instagram, Twitter, also referred to as X, and YouTube.⁴

THE STATUS QUO FOR BLACK WOMEN ONLINE

The current content moderation crisis doubly impacts Black women, reflecting platforms' choices to withhold protections. Platforms maintain an arbitrary requirement to respond to online violence which disregards Black women's needs. This contextual incompetence delays needed intervention putting Black women in avoidable danger. If platforms employed digital Black feminism, they would have mitigated current disinformation and misinformation campaigns.

Technology will preserve existing systems of discrimination without intentional design to the contrary.⁵ In a society that discriminates against women and Black people, Black women experience discrimination on multiple fronts.⁶ They can be subject to systemic racism; misogyny, or the hatred of women; misogynoir, misogyny rooted in anti-Black racism; or any combination of the three.⁷ Black women receive the worst online violence.⁸ They are 84 percent more likely to receive an abusive or problematic tweet.⁹ For example, a Black woman could receive an online comment with a racial slur, the threat of gendered violence, or a harmful stereotype about Black women. She could also receive a comment with two or three of those phrases. Malicious actors, often referred to as "trolls," a label which can diminish their danger, draw from this broader culture in their attacks.¹⁰ For this reason, the lack of content moderation enforcement largely endangers Black women.

Platforms allowed malicious actors to test the early tools of the online disinformation crisis and the alt-right in campaigns on Black women.¹¹ Users of 4chan, an anonymous forum website, planned two notable campaigns to attack Black women on Twitter in 2013.¹² These 4chan users seized upon a Twitter conversation in the #SolidarityIsForWhiteWomen Twitter hashtag to divide white and Black feminists.¹³ Mikki Kendall, a Black woman, used the #SolidarityIsForWhiteWomen hashtag to start a conversation in response to a male feminist admitting he built his career by opposing Black feminists. The 4chan users sought to derail this conversation by posing as Black women adding bad faith contributions. In a later campaign, 4chan users used those same fake Twitter accounts to launch the Twitter hashtag #EndFathersDay and spread the lie that Black women wanted to end Father's Day.¹⁴ According to the 4chan users, the goal of the #EndFathersDay campaign was to create distrust among Black Twitter users in preparation for a "proper attack."¹⁵ But Shafiqah Hudson and I'Nasah Crockett, Black feminists, identified that the trend's originators were not who they claimed to be. They led two different efforts to

combat #EndFathersDay.¹⁶ Hudson created the hashtag #YourSlipIsShowing to catalog suspected accounts pretending to be Black women. Crockett found and shared the 4chan post detailing the campaign on Twitter. Crockett knew firsthand smaller sites like 4chan and Reddit were places for malicious actors to gather and strategize attacks on Black women.¹⁷ Their leadership and contributions from other Twitter users ended this disinformation campaign.

Unfortunately, targets of gendered violence do not always get this level of community support which underscores the impact of platforms' failure to rein in violent conduct. Gendered violence means violence—threats or actual physical, sexual, psychological, and/or economic harm—against a woman because she is a woman.¹⁸ Online gendered violence includes misogynist slurs, death threats, and threats of sexual violence.¹⁹ In addition to women of color, women who are religious minorities and members of the LGBTQ+ community receive the most severe online violence.²⁰ About half of the women, Black people, and Hispanic people surveyed in a Pew study believe they received online harassment due to their gender, race, or ethnicity.²¹

Platforms will often refuse to respond to online violence unless there are specific threats of or actual physical violence.²² The distinction between online speech and real-world violence are incompatible with the lived experiences of women.²³ Without intervention, a troll's joke can quickly escalate into strangers sending death threats to one's home. This can quickly accelerate into someone showing up at one's home. In a Pew Research study, more women reported they were "extremely or very upset" by their most recent experience of online violence perhaps because they also reported more experiences with stalking and sexual harassment.²⁴ One study found 20 percent of women who experienced online violence were also survivors of stalking and physical assault.²⁵ Women were the victims of 70 percent of the Department of Justice's online stalking cases.²⁶ The stakes are too high for platforms to forgo moderating content until the violence moves offline.²⁷ The time from online action to real-world harm is often too short, forcing survivors of online violence to suffer harm while platforms wait for an established connection between the speech and impact.²⁸

Platforms have demonstrated that they will fail to respond with the appropriate urgency to online gendered violence if they wait for offline action. In 2014, malicious actors coordinated "Gamergate," the most notable online misogynist campaign. Trolls harassed, doxed, and threatened prominent women in the gaming community.²⁹ Organizing on 4chan led to mass online attacks and death threats. The physical safety of the women targeted by the Gamergate campaign was endangered by these actions quickly after online mobilization.³⁰ And platforms were ill-equipped to intervene in time.

Online violence against Black communities takes a different shape than gendered violence. Misinformation is errors in information while disinformation is intentionally misleading information.³¹ Malicious actors weaponize

misinformation and disinformation to disrupt progress for Black communities.³² For example, Russian accounts launched a disinformation campaign to suppress the Black vote during the 2016 US presidential election.³³ These accounts heavily targeted Black social media users and posted content to exploit existing racial division.³⁴ Black voter turnout declined for the first time in twenty years, in some part due to this campaign.³⁵ If platforms wait for a tangible result from online violence, it will undermine voting rights protections.

Online gendered and racist violence both exacerbates inequalities and punishes those who speak up about concerns. The most active women social media users are more likely to face online violence.³⁶ Twitter's failure to prevent this abuse discourages women from speaking up against misogyny and sexism.³⁷ Black communities are often punished for defending themselves from online harassment.³⁸ This means a Black woman posting about online misogyny is more likely to face online violence *and* more likely to be penalized by the platform for countering trolls.³⁹ Platforms do not adequately protect these communities. As a result, online violence drives women and communities of color from platforms.⁴⁰ This abuse impedes equal access to platforms and prevents the sharing of anti-racist and feminist content.⁴¹

Therefore, when we look at the experiences of women and Black people online, we can see that there is a false delineation between online and real-world harm. Online violence bleeds very quickly into tangible and physical impacts.⁴² Attempts to categorize online violence in this way hinders timely interventions to the detriment of Black women's safety. To construct solutions to online violence, the experiences of Black women must be met with responsive policies.

The scale of the Gamergate campaign was larger than platforms were prepared to address.⁴³ But platforms could have prepared for larger campaigns by installing procedures to mitigate violence to Black women or even discourage future misogynist campaigns in response to the smaller #EndFathersDay campaign. In fact, from #EndFathersDay to Gamergate, and from election misinformation to the attack on the Capitol, platforms have demonstrated that they will not act with the necessary urgency to prevent real world violence.⁴⁴ This puts Black women in danger of preventable violence.

THE ABUSE OF PLATFORM POWER

Platforms abuse their power to the detriment of Black women. Platforms have either chosen to ignore the harm their sites amplify or developed business models to profit from this violence.⁴⁵ They use their insulation to craft vague content moderation policies. These vague policies allow platforms to demonstrate insufficient effort as an attempt against online violence.⁴⁶ But their power affords them the choice to ignore violations of civil and human rights.⁴⁷ This power imbalance leaves Black women at the mercy of the platform's whims and in danger of misogyny online.⁴⁸

Platforms make content moderation decisions to preserve their position in the online ecosystem. The architects and current custodians of the internet designed it to benefit those with power.⁴⁹ But platforms have too much power which allows them to wield outsized influence over American culture and economy.⁵⁰ Dominant platforms expanded their control of the social media market over the last two decades as antitrust enforcers allowed them to acquire other companies.⁵¹ Dominance as the largest or only site performing a particular service, such as microblogging or photo-sharing, insulates platforms from responding to pressure from government regulation and public campaigns.⁵² Dominant platforms will continue to allow hate speech and online violence to flourish if this business model goes unchallenged.⁵³

Platforms profit by promoting engagement over safety. Twitter thrives on controversy and anger to drive engagement, or to increase the time users spend on the platform scrolling through, posting, or reacting to posts.⁵⁴ Facebook allowed hate speech and groups to thrive on its platform rather than make changes that might decrease engagement.⁵⁵ Platforms make more money with inflammatory content, which their algorithms promote and moderators selectively ignore.⁵⁶ Content moderation that ignores racial and gender violence is part of a larger economy that profits from racism.⁵⁷

Additionally, platforms do not perform content moderation in an equitable way. Current moderation policies do not do enough to punish those targeting Black women.⁵⁸ On the other hand, platforms will use their discretion to punish Black users and activists raising racial justice concerns.⁵⁹ The enforcement is more likely to be used against Black women than malicious actors.⁶⁰ Platforms cannot be trusted to regulate themselves and need external guardrails to protect Black women.⁶¹

When platforms ignored attacks on Black women, online violence metastasized.⁶² The coordinated attacks in the #EndFathersDay hashtag demonstrate how dominant platforms amplify what starts on smaller sites.⁶³ Black women will be subject to content with misogynoir even if they purposefully avoid certain websites. Malicious actors use the reach of dominant platforms to spread fringe ideologies which increases the scale and possibility of harm to Black women.⁶⁴ While we cannot lose hope for improvements, we must acknowledge our current culture of misogynoir. One way to address this reality is to limit the spread of online violence.

To address the broken status quo, Black women need policies that challenge the power that is refraining from content moderation. Despite a majority of Americans labeling online violence a serious matter, platforms are not implementing serious enforcement.⁶⁵ Independent developers demonstrate that solutions are feasible to prevent the spread of online violence.⁶⁶ While those tools are important, individual actions cannot solve structural problems. We need communal solutions like the ones developed by Black feminists rallying under the #YourSlipIsShowing

hashtag.⁶⁷ Fixing this failing content moderation system requires restructuring social media to curb violence with Black women in mind.⁶⁸

BLACK FEMINIST ANTITRUST

Antitrust enforcement using a Black feminist framework will redistribute the power withholding content moderation. Antitrust inherently restricts corporate power. But the prevailing theory of antitrust undermines this aim. Antitrust reform needs to reject this theory and address the idiosyncrasies of digital markets. A Black feminist antitrust framework will disrupt the way market power preserves online violence and focus existing antitrust tools on addressing the lived experiences of Black women.

Antitrust policy challenges power imbalances. Antitrust policies naturally restrict corporate power.⁶⁹ The first American antitrust law, the Sherman Act, prohibited companies from abusing their power by unfairly raising prices or withholding business.⁷⁰ The Clayton Act, the next major American antitrust law, outlawed mergers—the combination of two companies—and acquisitions—the purchase of a company or parts of a company—that would create a monopoly or reduce competition.⁷¹ Historically, antitrust enforcement improved quality of life.⁷² Antitrust policies responded to the consolidation of companies during a period of expanding inequality.⁷³ Congress designed these bills to break up monopolies’ undemocratic influence over economics and society. If antitrust ought to equalize society, using it as a tool to advance racial equity is within its purpose.⁷⁴

However, the current interpretation and application of antitrust laws and policies reinforce inequality.⁷⁵ The prevailing antitrust theory, the consumer welfare standard, limits enforcement unless the merger between two companies will harm consumers.⁷⁶ For example, antitrust regulators can allow two competitors to merge if there is a chance this will reduce costs for consumers. The merger can advance even if it will hurt conditions for workers.⁷⁷ Strict application of the consumer welfare standard has led to consolidated markets, fewer small businesses, and poor labor protections.⁷⁸ New policies must respond to the impact of monopolies and dominant platforms on more than prices for consumers.⁷⁹ Reorienting antitrust policy around restoring “a fair and democratic society” requires a racial equity framework.⁸⁰ Making racial equity a goal and providing strong enforcement mechanisms will ensure an online ecosystem that protects Black women from online violence.

Current antitrust law and policies are also insufficient to address the dominance of social media platforms. The legal definition of monopoly has not evolved to encompass the largest social media companies, although their size grants them massive amounts of political and economic influence.⁸¹ A finding of monopoly power, an estimated control of 90 percent of a specific market, is required to trigger antitrust action.⁸² However, companies can still act in ways that have

historically been considered monopoly power without that much control of the market. Defining a market for social media companies which operate in nontraditional ways presents another hurdle to antitrust case law.⁸³ It is unlikely that existing antitrust policies can address the power of platforms.⁸⁴ Antitrust reform must reflect the ways corporations have evolved since the first anti-monopoly laws.⁸⁵

A Black feminist analysis is crucial to make antitrust policy more responsive to the issues outlined in this chapter. Antitrust reform can shift power and make online spaces more democratic.⁸⁶ The power systems that allow online violence are nominally race-neutral. Therefore, race-neutral antitrust policy will not challenge this harm.⁸⁷ To ensure antitrust can be a tool for racial and gender justice, changes need to be made to laws and policies.⁸⁸ Regulators must apply antitrust laws with the goal of achieving racial equity.⁸⁹

Black feminist antitrust reform uses existing antitrust policies with a racial equity framework. A race-conscious antitrust agenda will challenge platforms' concentrated power and respond to the online violence Black women face. It is crucial that antitrust remains in the toolbox to create better content moderation online.⁹⁰ Antitrust laws need to have strong enforcement mechanisms to be effective.⁹¹ Four tools that will be the most effective in restructuring the internet are (1) merger review, (2) structural separation, (3) interoperability, and (4) data portability.

Merger review allows antitrust enforcers to block mergers that will reduce competition in a market.⁹² Black feminist merger review would examine how a proposed merger will impact Black communities—including workers and small business owners—and prevent a merger that will likely cause harm.⁹³ For example, allowing a platform with a lax content moderation policy and a platform with strong policies to merge will likely lead to an overall lax policy that harms Black women. Merger review should also look back at mergers that currently impede competition and consider reversing that merger.⁹⁴

Structural separation, or breakups, bolsters competition by dividing a monopoly into small companies. Platforms argue breakups are too complicated to perform, but breakups are possible and easier than platforms claim.⁹⁵ Breaking up a platform like Facebook will reduce the reach of online violence. Larger platforms struggle to manage the volume of content that users upload because they do not invest in moderation.⁹⁶ With the right incentives, such as regulation, platforms will innovate ways to scale moderation to the number of users. Smaller platforms with appropriate incentives will facilitate better content moderation. This will prevent online violence from smaller platforms, like 4chan, from being shared to communities that opted out from exposure.

Finally, competition cannot thrive if smaller new platforms cannot interface with dominant ones. Dominant platforms lock in users by making it difficult to try alternatives.⁹⁷ Interoperability requires dominant platforms to make certain systems open for third parties, like competitors, to use.⁹⁸ Data portability requires

dominant platforms to make it easy for users to move their information to other sites.⁹⁹ To restructure the internet, new competitors need support to challenge existing platforms. Interoperability and data portability will boost alternatives by reducing the costs of creating a new platform interface or difficulty of moving their online connections to a new platform. We have not experienced robust interoperability or data portability from dominant platforms.¹⁰⁰ Although they provide this option, it is not user-friendly or streamlined. Legislation can lift the arbitrary limits that platforms put on interoperability and data portability and make it easier for users to try new sites. Bolstered interoperability and data portability will support the growth of competitor platforms seeking to create inhospitable spaces for online violence.

Antitrust enforcement under this Black feminist framework will alleviate the harm of online violence. Breaking up dominant platforms will reduce the scale of harm of online violence. Removing market insulation will incentivize dominant platforms to enforce their content moderation policies. Supporting alternatives will give Black women the ability to choose the platform that best aligns with their values. There is no one solution for online violence. But antitrust can create an ecosystem that responds to the needs of Black women.

CONCLUSION

A shift in power is needed for Black women to thrive online. To make the internet a better place for Black women, we must redesign the internet and dismantle white supremacist patriarchal systems. Antitrust with a Black feminist framework is key to curbing rampant online violence. Black feminist ideals can also usher in a key aspect of Black culture—bringing “pleasure and joy” to what was formerly considered “painful.”¹⁰¹

NOTES

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59. Díaz & Hecht-Felella, *supra* note 46, at 9; Guynn, *supra* note 38.
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88. See Vaheesan, *supra* note 75.
89. See Slaughter, *supra* note 51, at 3.
90. See Wu, *supra* note 69, at 23.
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