

Punishment Without Explanation Is Not Freedom

How American Platform Law Drifted Toward Digital Oligarchy — and Why It Will Ultimately Harm American Corporations

Abstract

In the United States, private digital platforms may permanently remove paying users, refuse to disclose the alleged violations, and deny refunds—while remaining fully compliant with existing law. This Essay argues that such practices are not aberrational but are the predictable outcome of American platform law’s structural commitments to contractual absolutism, mandatory arbitration, narrow consumer protection doctrine, and regulatory capture. Through an anonymized case study, the Essay demonstrates how American platform law has drifted toward a system of private governance best described as digital oligarchy. It introduces the concept of New Americanism to describe an emergent ideology that redefines freedom as contractual acquiescence rather than protected dignity. Finally, the Essay argues that this legal model is not only incompatible with meaningful liberty, but strategically self-destructive for American corporations, eroding trust, legitimacy, talent retention, and global competitiveness over time.

Introduction

In the United States, a private digital platform can permanently remove a paying user, refuse to explain the alleged violation, and deny a refund—while remaining fully compliant with the law.

This reality is often defended under the language of “freedom of choice,” “private market autonomy,” or “contractual consent.” In practice, however, it reflects a profound distortion of freedom itself: a legal system that increasingly protects unilateral private domination while stripping individuals of procedural dignity and meaningful recourse. Scholars of platform governance have increasingly observed that dominant platforms function less as neutral intermediaries and more as private governors exercising rule-like authority over users’ social and economic participation.¹

This Essay examines that distortion through an anonymized case study involving a major U.S. platform. It then situates the case within broader doctrinal trends in American contract law, arbitration jurisprudence, consumer protection regimes, and regulatory capture scholarship.

Finally, it argues that this legal model—while efficient in the short term—is strategically self-destructive for American corporations and corrosive to the legitimacy of American power more broadly.

I. A Case Study in Punishment Without Explanation

After permanently removing a user account, a major U.S. platform issued the following explanation (excerpted and anonymized):

“Your account has been permanently removed due to either or a combination of violations you’ve received against your account by other members, and/or our own independent determination.

As noted in our Terms of Service, [the platform] reserves the right to investigate and, if appropriate, suspend or terminate your account without a refund...

To protect members’ privacy, we will not disclose any further details about the reason for this ban.”

No specific conduct is identified.

No rule is cited.

No evidence is disclosed.

No explanation is offered beyond reference to contractual authority.

The punishment is total. The reasoning is opaque. The decision is final unless reversed at the platform’s discretion.

II. This Is Not an Exception — It Is the System Working as Designed

This communication is not anomalous. It is structurally typical of contemporary American platform governance, reflecting what scholars describe as private moderation systems operating with rule-making, adjudicatory, and enforcement powers absent public law constraints.²

A. Ambiguity as Policy

Phrases such as “either or a combination of violations” eliminate the possibility of meaningful understanding or defense, a feature widely criticized in content moderation scholarship for undermining proportionality and accountability.³

B. Unilateral Authority

Platforms assert independent determination without evidentiary disclosure or procedural obligation, reinforcing what has been described as unilateral private sovereignty over digital spaces.⁴

C. Privacy as a Shield Against Accountability

“Protecting members’ privacy” is invoked as a categorical justification for withholding all explanatory detail—even when no accuser is identified, a move scholars note collapses privacy into opacity.⁵

D. Contractual Finality Without Proportionality

Permanent exclusion and financial loss are imposed without warning, gradation, or explanation.

This is not a policy failure.
It is legal success by design.

III. Why American Law Permits Punishment Without Explanation

A. Contractual Absolutism

Once a user clicks “I agree,” U.S. courts overwhelmingly treat the relationship as voluntary and legitimate—even when the contract is non-negotiable, alternatives are unrealistic, and exit imposes substantial social or economic harm. The law of adhesion has long recognized this imbalance, yet continues to enforce such agreements with minimal scrutiny.^{6–9}

Formal consent substitutes for substantive freedom.

B. Arbitration as Structural Shield

Mandatory arbitration clauses, reinforced by Federal Arbitration Act jurisprudence, remove disputes from public courts, eliminate precedent, restrict discovery, and deter claims through cost and opacity. Supreme Court decisions such as *AT&T Mobility LLC v. Concepcion*, *American Express Co. v. Italian Colors Restaurant*, and *Epic Systems Corp. v. Lewis* have entrenched this framework, privileging corporate efficiency over collective accountability.^{10–14} Scholars have described this trend as the privatization of justice itself.¹⁵

C. Narrow Consumer Protection Doctrine

Federal Trade Commission authority and state consumer protection statutes focus on fraud, misrepresentation, and unauthorized billing—not arbitrary exclusion, opaque moderation, or denial of explanation.¹⁶⁻¹⁸ As a result, procedural unfairness remains largely unregulated in platform contexts.¹⁹

Unfair treatment remains lawful so long as it was disclosed *ex ante*.

IV. This Is Not Freedom — It Is Oligarchy by Contract

Freedom is not merely the absence of regulation. It requires rights, reciprocity, and procedural protection.

Consent without bargaining power, meaningful alternatives, or due process is not freedom. It is submission formalized as choice, a phenomenon long critiqued in contract theory and moral economy scholarship.²⁰

What American platform law increasingly protects is not liberty, but unilateral private power insulated by contract.

V. Corporate Capture and the Distortion of Legal Norms

This transformation did not occur accidentally. Regulatory capture scholarship has demonstrated how sustained lobbying, campaign finance, and institutional entanglement allow regulated entities to reshape legal standards in their favor.²¹⁻²⁴ In the platform context, corporate discretion is framed as efficiency, regulatory restraint as freedom, and oversight as innovation risk.

This is not market freedom.
It is a politically engineered imbalance.

VI. New Americanism: Platform Power and the Rewriting of Freedom

This Essay describes this convergence as New Americanism: an emergent governing ideology in which private platforms exercise quasi-sovereign authority, while law redefines freedom as contractual acquiescence rather than protected dignity.

A. Platform Governance as Private Sovereignty

Platform governance literature increasingly recognizes that dominant platforms govern populations rather than merely provide services, setting norms, adjudicating violations, and enforcing sanctions without constitutional due process.²⁵

B. Adhesion Contracts and the Fiction of Consent

Adhesion contract doctrine has long acknowledged the coercive nature of standardized agreements, yet courts continue to treat platform consent as dispositive, rendering dependency and lack of alternatives legally invisible.²⁶

C. Arbitration and the Privatization of Justice

FAA-driven arbitration jurisprudence fragments justice into private, non-precedential proceedings, preventing systemic correction even where systemic harm exists.²⁷

D. Regulatory Capture as Political Economy

Scholars of capture explain how corporate influence reshapes oversight institutions, transforming law into deference rather than constraint.²⁸

VII. From Citizens to Subjects

When platforms can exclude individuals from essential digital infrastructure, punish without explanation, retain payment without service, and face no meaningful external review, the relationship ceases to resemble a market exchange.

It begins to resemble feudal authority—where access is permission-based, protection is conditional, and appeal is discretionary.²⁹

Users are no longer rights-bearing citizens.
They become revocable participants.

VIII. Human Rights as the Missing Foundation

The right to dignity, explanation, fair process, and proportional punishment is not ideological. It is civilizational. Political economy and sociological scholarship have long emphasized that legitimacy depends on reciprocal restraint by power.³⁰

Yet American platform law increasingly treats these principles as negotiable when corporate power is involved.

This is not freedom.

It is the privatization of sovereignty.

IX. The Long-Term Cost to American Corporations

Corporate reliance on legal immunity produces long-term strategic harm.

First, consumer resentment manifests as deferred exit rather than protest, consistent with Hirschman's theory of exit over voice.³¹

Second, brand legitimacy erodes as fairness gives way to fear.

Third, emotional debt compounds silently, weakening loyalty.

Fourth, exit cascades are sudden rather than gradual.

Fifth, internal moral decay drives principled talent away.

Sixth, regulatory backlash becomes inevitable.

Finally, global credibility declines as American platforms lose soft power abroad.³²

Legal compliance does not equal strategic sustainability.

Conclusion

Freedom without limits on power is not freedom. It is domination by contract.

American platform law chose efficiency over dignity, discretion over explanation, and corporate autonomy over procedural justice. That choice may be legal, but it is not sustainable.

Because trust, once lost, does not return by contract.

Footnotes (Bluebook)

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