Global Perspectives on Digital Governance

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I. Introduction

The need to regulate and govern social media across borders remains an urgent priority even while the momentum to attain such governance has seemingly been displaced by the emergence of Artificial Intelligence and all the resources directed towards the challenges AI raises. On one hand, internal efforts at self-regulation have fallen by the wayside in response to economic imperatives. The largest social networking sites are aggressively cutting funding on trust and safety,[1] withdrawing their participation in independent research initiatives[2] and pivoting away from conducting public policy work[3] in developing markets while retaining these markets as central targets for company growth. On the other hand, international organizations charged with the regulation of these platforms appear caught between the desire to encourage taxable corporate growth and innovation, and the realization that left unchecked, social media present a clear and present danger to democratic world. This is all occurring within the context of various profound global political and economic transformations, including wars, the climate crisis, and various levels of post-pandemic upheaval. For regulators, particularly those working outside the global majority, the needs are clear – a pathway to the regulation of social media that allows citizens to use these platforms fairly and

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[1] Vittoria Elliott, *Big Tech Ditched Trust and Safety. Now Startups Are Selling It Back As a Service*, WIRED (Nov. 6, 2023), https://www.wired.com/story/trust-and-safety-startups-big-tech/.

[2] Richard Lawler, *Meta Reportedly Plans to Shut Down CrowdTangle, Its Tool That Tracks Popular Social Media Posts*, VERGE (June 23, 2022), https://www.theverge.com/2022/6/23/23180357/meta-crowdtangle-shut-down-facebook-misinformation-viral-news-tracker.

[3] Nkechi Ogbonna, *Twitter Lays Off Staff at Its Only Africa Office in Ghana*, BBC (Nov. 9, 2022), https://www.bbc.com/news/world-africa-63569525.

inclusively while restraining the negative outcomes they engender. It is the process of properly contextualizing and ordering responses to these needs that continues to falter.

This essay builds on prior work I have completed, mapping the challenge regulators are facing in their attempts to regulate social media.[4] While that research took a nationally agnostic position and assumed the somewhat equal capacity of various states and regional institutions to respond to the regulatory challenge, this essay looks more closely at the challenges faced by global majority nations. The goal of this essay is to provide a power analysis of the landscape of social networking sites that both maps the regulatory challenge and grounds it in the reality of power disparities that manifest in different loci. Zooming in on the challenges faced by global majority nations in this way does not imply that these challenges must uniquely be responded to by the nations of the global majority. Rather it indicates what key areas of concerted and coordinated global efforts exist, serving as a reminder that all the challenges created by these emerging technologies are connected.

II. Understanding Social Networking Sites

A brief discussion of the nature of social networking sites is important to framing the conversation on how they must be governed. The phrase "social networking site" or "social media" actually refers to an array of digital technologies that operates in distinct ways and implicates a variety of regulatory processes. This is also reflected in the sheer range of research that aims to bring order to knowledge about these sites and the impact they are having on public life across the globe. Broadly speaking, social media refers to digital technologies that organize and harness the networks of users on various platforms with the stated intent of improving communications across these networks but with business practices that work to monetize and profit off these networks. Many of the pioneering social networking sites in the world began as social projects of developers and coders that were curious about the networking power and interested in moving beyond the node-to-node approach of the earliest days of the internet. Arguably, the first and most enduring social media platforms are listservs that simply send out emails to large groups of recipients and allow for a form of interaction between users. These were subsequently developed into blogs which allowed for more open networks into which any user could engage. Finally, these coalesced into sites that combined

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[4] Nanjala NYABOLA, *Seeing the forest – and the trees: The global challenge of regulating social media for democracy*, 30 S. AFR. J. INT'L AFFAIRS 455 (2023).

the elements of blogging, broadcasting and managing a network in sites like LinkedIn and MySpace, where the user determined the reach and the depth of their networks.

What makes a platform a social media site is a question of significant policy and research debate. For example, the European Digital Services Act[5] focuses its attempt at regulation on the size of the various platforms and therefore their ability to build and influence large networks of people. The DSA approach to regulating platforms therefore includes and excludes based on the size of the platform and its ability to enable specific practices, rather than on functionality. This approach includes the large well-known social media sites as well as numerous other platforms that in academic and policy research may not be considered social media like search engines and e-commerce platforms. The wide scope of the DSA does indeed represent the tendency by those who build digital platforms to incorporate similar functionalities to sites that were initially designed for different purposes and therefore similar underlying technologies. The ability to chat on Facebook Messenger for example replicates the functionality of WhatsApp and other messaging services, and being able to chat with people who have bought similar products on an e-commerce site is a functionality that is traditionally held by social media in the traditional sense.

The DSA therefore offers a useful entry point to defining social media when it comes to regulation and policy – don't focus on what the site says it does but focus on what it actually does, alongside the role that it occupies in the public sphere. Thus, the prevalence of traditional media companies using the tools of social media to create and disseminate news and information invites the regulator to think about regulating them like the media. This includes the implementation of laws on libel and censorship, but also includes accountability for the dissemination of misinformation. Similarly, the use of frontier technology like artificial intelligence and emotion monitoring technologies means that social media sites must also be regulated as technology companies, including regulations over unsanctioned experiments in the absence of informed consent. More importantly, none of the major social media sites operating in the world today are public benefit organizations – they are large multinational corporations that are vulnerable to the same abuses that MNCs in other markets are vulnerable to including transfer pricing, extractive value chains and expropriation of profits. As such, these companies must also be regulated as the large corporations they are including on issues of taxation and juridical accountability.

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[5] Adam Satariano, *E.U. Takes Aim at Social Media's Harms With Landmark New Law*, N.Y. TIMES (Apr. 22, 2022), https://www.nytimes.com/2022/04/22/technology/european-union-social-media-law.html.

An extra layer of complexity is created given the speed at which these companies are built and dismembered. Although the practice of using the internet to network across geographies is as old as the technology itself, the specific social media sites that are targeted by various regulatory regimes are less than forty years old. Of all the first-generation social media sites, only LinkedIn endures albeit through multiple iterations, and the new sites are generally embedded in larger conglomerates containing numerous companies that develop related technologies. For regulators, this means that they must be intentional about creating rules that respond to the broad challenge created by social media use and related practices, rather than responding to the individual challenges created by specific sites. This explains both the development of the DSA and the growing momentum in multilateral spaces to develop binding rules for digital technologies more broadly. It also creates a related challenge for researchers and policymakers, who must create opportunities for deeper philosophical and theoretical engagement with the question of what role social media should play in a utopic society. It is not enough to pass fines against these existing large corporations for specific infractions. Regulators must also think philosophically about what space social media should play in their society and create the rules that make that role possible.

III. Power and the States of the Global Majority

The key actor in the landscape of global digital governance broadly, and the regulation of social media specifically, remains the state. Regulation is an act of the state through various institutions and regulatory bodies. Oftentimes, regulation arises from legislation developed either by elected officials or from the bureaucracy of the state. But regulation can also occur through the judicial process of interpretation, where judges are able to provide definitive interpretations of the scope of a law during a legal proceeding. The ability of a State to develop meaningful regulation of social networking sites is therefore directly contingent on the internal politics of the state in question. Where the processes of decision making are compromised through unjust electoral processes, authoritarianism, or external influence, the actual process of regulation may also be severely compromised. In practical terms, this often occurs where large corporations influence electoral processes to ensure that bureaucrats within the regulatory processes are passing rules that work in their favor. But it can also be soft power exerted through untoward relationships between regulators and the corporations they are in charge of regulating, particularly where a "revolving door"[6] – i.e. former employees of

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[6] Suzanne Dovi, *The Ethics of the Revolving Door*, 12 Geo. J.L. & Pub. Pol'y 535 (2014).

digital companies joining government positions where they have regulatory power – exists between the state and corporations.

From the outset, it is crucial to restate that countries of the global majority are not equally yoked in their experience of social networking platforms. This has everything to do with the fact that the major social networking sites in the world today are private companies operated for profit, and the few that are managed in a not-for-profit way have not yet gained the foothold in these nations in comparison to their larger counterparts. The profit motive by extension incentivizes growth, and this in turn triggers a constant search for new markets for possible expansion. This means that the States that present the highest potential for economic expansion – those in which the cost of investment could potentially easily be offset by super-profitability – hold tremendous influence over social networking sites and their owners by gatekeeping potential markets. Thus, India's relationship with X or Meta is substantively different from the relationship (if any) both platforms have with the Central African Republic. India is potentially the largest single English-speaking market for digital technologies in the world, and the Indian government has much greater leverage over the way these companies do business within their territory. Power is not distributed equally throughout the global majority. Rather, the amount of power a nation has to impact the technical and business decisions of the social networking site is almost always directly proportional to the size of the potential market it presents for the platform in question.

A meaningful typology of the states of the global majority recognizes that given the size of its domestic market and its own internal capacity to develop social media companies, as well as its bureaucratic capacity, will influence both its internal and external capacity to regulate social media companies. Thus, China would be at the periphery of the global majority given its significant regulatory capacity, large bureaucratic state, and immense domestic market that is only enhanced by its relative linguistic uniformity. Similarly, the lack of independence between the judiciary and the executive makes it difficult for a robust public debate on the scope of regulation to occur. Indeed, some of the large social networking sites that trigger the need for global regulation are Chinese, including Chinese-owned TikTok that maintains a distinct domestic presence in the app Douyin. In contrast, while India also presents a large domestic market, it has a far more fragmented linguistic terrain that impacts the potential growth of the market, and is to date a net consumer rather than a net exporter of social media platforms. This lack of alternatives in the context of a highly changeable bureaucratic context shaped by the interest of an increasingly strong and centralized executive makes India far more susceptible to interference by foreign companies for the latter's economic interests, particularly where those interests ally with the interests of the executive. To put it bluntly, while both

nations have a strong, centralized executive that has been regularly accused of authoritarianism and overreach, India is far more dependent on foreign social networking companies as business entities than China, which means the companies have more leverage to shape public policy in India than they do in China.

Other large nations of the global majority exist at various points of these factors. Brazil for instance presents a large, non-English-speaking, highly digitally connected market. The judiciary in Brazil is far more independent from the executive than it is in several majority world countries. With the exception of the Bolsonaro years, in the 21st century, Brazil was counted as one of the most significant democracies in the world. The judiciary plays a significant role in the regulation of social networking sites in Brazil and has handed down several decisions that have forced the parent companies to alter their business practices specifically in Brazil but also in other markets. For instance, in 2016 a judge in Brazil blocked the Meta-owned[7] messaging service, WhatsApp for several days because the site refused to cooperate with a criminal investigation. Similarly, Indonesia, which is the third most populous nation in Asia after China and India, banned e-commerce[8] on social networking sites in 2023, which in turn forced TikTok to end its retail operations in the country.

Another group of nations of the global majority has attempted to consolidate their distributed power through acting as regional blocs. The African Union, representing 54 nations and territories and some of the most significant linguistic market for European languages like French and Portuguese, is developing a policy network around trade and infrastructure that aims to increase the bloc's power to shape the behavior of social networking sites, as well as regulations on artificial intelligence, misinformation, and related practices. In 2023, the Association of African Electoral Authorities (AAEA) ratified a code of conduct for the use of social media in elections in Africa that included both the technical aspects of these sites and their political implications for democracy. This multilateral effort (of which I was a part) aimed to leverage the capacities of larger African countries like Nigeria, South Africa and Kenya that have been developing domestic policy on these issues to include smaller nations that are similarly affected by these sites but do not have the bureaucratic capacity to respond. The power disparity between social media sites and small governments is underscored in nations like the Central African Republic where social media companies have admitted that their platforms are

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[7] *WhatsApp Brazil: Judge Blocks Access to Messaging Service*, BBC (May 3, 2016), https://www.bbc.com/news/world-latin-america-36187028.

[8] *TikTok Ends Retail Business in Indonesia After Ban on Social Media Shopping*, ASSOCIATED PRESS (Oct. 4, 2023), https://apnews.com/article/indonesia-tiktok-ecommerce-ban-china-62e5ef9f366d8cfd4a94427393bb5aba.

being used to disseminate state-sponsored misinformation but the nation states have been unable to demand accountability beyond the internal processes of the site. By working as a bloc, African nations are increasingly able to address this power imbalance.

Despite these differences, there are some similarities that exist within states of the global majority . The most important is that most social media companies do not exist as legal entities within most of the jurisdictions of the majority world. As MNCs, social media companies and their parent holding companies are generally domiciled in their countries of origin – mostly the United States but also China for TikTok and WeChat. In recent history, this has meant that where systemic violations were recorded in specific territories, the state in question did not have the jurisdictional capacity to demand accountability. Some states like India have tried to address this gap by passing data localization laws[9] that require digital companies that process data to operate within the country and that there must be a local entity that is liable for violations of privacy. Other nation states are dependent on the domestication of international rules governing social media companies, for example the secondary impacts of the EU General Data Protection Regulation. Social media companies argue that localization policies stifle innovation and reduce incentives for the companies to operate within the global majority. For regulators, this is where the ability to analogize to other businesses can be useful. Similar arguments have been made concerning food services companies like Coca Cola or Nestlé and eventually localization of production was forced through with no significant detriment to the company's bottom line.

A more urgent uniting concern is that authoritarian and non-democratic regimes may use the impetus for localization to curb freedom of speech and democratic practices undertaken online. This has been the case in Russia for example, which was one of the first countries to demand wide-ranging localization[10] across various digital services. On paper, the interests of the Russian government explicitly align with the desire for more oversight over these large corporations that do have significant track records of significant harm. But over time, it has become clear that the intent behind the wave of social media regulation in Russia has been to suppress the ability of Russian people to connect, organizes and demand democratic changes in their society online. Similar approaches can be

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[9] Anand Raghuraman, *India's Data Localization Pivot Can Revamp Global Digital Diplomacy*, ATLANTIC COUNCIL (Dec. 5, 2022), https://www.atlanticcouncil.org/blogs/southasiasource/indias-data-localization-pivot/.

[10] Matthew Newton, *Russian Data Localization Laws: Enriching "Security" & the Economy*, HENRY M. JACKSON SCH. INT'L STUD. (Feb. 28, 2018), https://jsis.washington.edu/news/russian-data-localization-enriching-security-economy/.

found in several countries of the global majority. While Nigeria's ban on Twitter[11] was presented as an effort to control the reach of then-Twitter, the action was explicitly taken after the site took down a tweet from then-President Buhari that the site argued amounted to misinformation. Regulatory intent is hard to identify in the language of the rules and must be interpreted from the political and social context in which the rules are passed. This is why a specific understanding of the national and regional political contexts is crucial to a complete understanding of the regulatory framework. Similar language deployed in disparate contexts can lead to disparate outcomes.

Another characteristic of the countries of social media in the countries of the majority world is the lack of digital infrastructure and investments in building locally facing technologies. The most egregious example of this is the dearth of content moderation in non-dominant and non-European language, even while large multinational social media companies continue to expand into these States as markets. The most benign outcome of this lack of investment is the inability for these sites to provide adequate responses to complaints raised by users over various violations. At the extreme yet far from rare end is the inability to monitor and respond to hate speech particularly in volatile contexts, exacerbating conflict and leading to violence. These are the charges leveled against Facebook in Myanmar[12] and Ethiopia,[13] where the absence of robust content moderation allowed hate speech in local languages to proliferate, that experts argue fueled ethnic violence in both countries. The sites argue that it is too expensive to conduct content moderation[14] to the extent that regulators have demanded in response to these events, but for regulators it is worth recalling that between them, the largest social media companies in the world are also some of the most profitable corporations and their senior leadership some of the richest people on earth. From the perspective of business regulation and ethics therefore there is a justice argument to be made that companies should not be permitted to operate in any jurisdiction until they are able to make the necessary investments to protect users in those countries.

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[11] Emmanuel Akinwotu, *Nigeria Lifts Twitter Ban Seven Months After Site Deleted President's Post*, GUARDIAN (Jan. 13, 2022), https://www.theguardian.com/world/2022/jan/13/nigeria-lifts-twitter-ban-seven-months-after-site-deleted-presidents-post?CMP=share_btn_url.

[12] Chad de Guzman, *Meta's Facebook Algorithms 'Proactively' Promoted Violence Against the Rohingya, New Amnesty International Report Asserts*, TIME (Sept. 28, 2022), https://time.com/6217730/myanmar-meta-rohingya-facebook/.

[13] Billy Perrigo, New Lawsuit Accuses Facebook of Contributing to Deaths From Ethnic Violence in Ethiopia, TIME (Dec. 14, 2022), https://time.com/6240993/facebook-meta-ethiopia-lawsuit/.

[14] Evelyn Douek, *More Content Moderation Is Not Always Better*, WIRED (June 2, 2021), https://www.wired.com/story/more-content-moderation-not-always-better/.

This includes providing adequate content moderation in as many languages as is necessary. Social media sites are increasingly turning to AI to fill this capacity gap but given that AI can only be trained on media that exists, and that even the largest languages of the global majority do not produce enough material to train an LLM in both standard and contemporary forms of these languages, evidently AI will not be able to adequately perform this function for the foreseeable future. The content moderation conundrum therefore persists even while the growth of these multinational companies persists alongside it.

IV. Digital Citizens

The final and perhaps most critical actor in social media regulatory space is the citizen. The word citizen is chosen here deliberately in rejection of the "user" which diminishes the political role that social media sites play in the countries of the global majority. A "user" is a person who interfaces with a social media site from a primarily technical position, and whose relationships to these technologies is primarily dictated by the terms of the company that is offering the social media sites. Note that a "user" is not necessarily passive. A "user" may be in a mutually constitutive relationship with social media, meaning that they have as much power to shape the technology as they are shaped by it. Consider the fact that social media sites were initially designed to enable people to connect socially, but it was the efforts of users that turned them into politically potent spaces where protest could be mobilized and accountability demanded.[15] Even so, a "user" is one who is defined within the context of the technical relationship i.e the possibilities that are made possible by the very nature and capacities of the site itself. Users can usurp, reorient and redirect technical capacities but they cannot remake them.

"Citizen" is also preferred over the notion of a "consumer" which presumes that the main means through which accountability can be attained online is through the business relationship between the person and the social media company. It is important to note that most people who use social media sites do not necessarily think of themselves as consumers because these sites are made available free at the point of use, with the profits accrued through advertising and the monetization of data. A consumer relationship necessarily implicates the exchange of money, and in the absence of that exchange, regulators have struggled to adequately respond to the complex challenges that arise from these sites, particularly in relation to the harms to democracy. The consumer framing presumes a power dynamic between

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[15] Nanjala Nyabola, Digital Democracy, Analogue Politics: How the Internet Era Is Transforming Politics in Kenya (2018).

the person and the social media site that does not exist in many of the countries of the global majority – that is a person empowered through rich knowledge of both the product and the obligations that the company has towards them. It assumes mechanisms of redress and consumer protection that often do not exist in the global majority. The notion of a consumer inherently constrains our ability to understand the relationship that people in much of the global majority have with digital technologies because for the most part, these are emerging markets that receive investments based on their latent market power rather than their actual power. People of the global majority do not have the same economic levers over these companies that people in the global minority do. Even the United States, which has historically regulated social media sites through agencies that focus on consumer protection like the Federal Trade Commission (FTC), are increasingly supplementing this approach and using language that recognizes a more complex relationship as in the White House Comprehensive Framework for Responsible Development of Digital Assets (2022).[16]

The word "citizen" is not without its limitations given that its etymology is explicitly rooted in the relationship between the person and a physical geography, and that most people who use social media are united in ways that transcend physical geography.[17] Citizen also assumes political power that certain populations, particularly those who are unable to effectively participate on digital spaces like persons with disabilities or those who do not speak dominant languages. However, the word "citizen" significantly unites the technical and political relationships that have characterized people's use of social media. A citizen is a person who is in a reciprocal relationship with the terrain of which they are a citizen; one from whom certain behaviors can be expected but more significantly one who can demand certain behavior from those that govern the terrain. In the digital context, this means both those who develop and deploy digital technologies and those who regulate them. A citizen is a person who has rights as well as obligations, and many of these rights are immutable, inseparable and prefigure the existence of the specific terrain. Basically, a digital citizen is a person who has digital rights, and these rights are not conferred upon them based on the preferences and whims of the specific

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[16] *Fact Sheet: White House Releases First-Ever Comprehensive Framework for Responsible Development of Digital Assets*, WHITE HOUSE (Sept. 16, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/16/fact-sheet-white-house-releases-first-ever-comprehensive-framework-for-responsible-development-of-digital-assets/.

[17] Nanjala NYABOLA, *Citizenship, African Languages and Digital Rights: The Role of Language in Defining the Limits and Opportunities for Digital Citizenship in Kiswahili-Language Communities*, *in* DIGITAL CITIZENSHIP IN AFRICA 209 (2023).

digital technology that they use, but because they are a person making use of these technologies.

The notion of the digital citizen deployed in this way gives the regulator the greatest latitude to focus on the rights relationship between the person and the digital technology in the global majority. It allows the regulator to precede digital harms that exist and those that do not yet exist by forcing the regulator to home in on the wellbeing of the person in relation to digital technologies. It allows the regulator to not just see the inequalities that are embedded in the way the digital technologies are developed and deployed, but also the disparities that are preconfigured into the technologies because of the way a specific society is structured. More importantly, it allows the regulator the ability to develop rules that will pertain as much to technologies that exist today and those that do not yet exist, by developing a baseline of conduct that centers on protecting people in the present and in the future.

V. Practical Magic: Bringing All the Actors Together

Ultimately, the function of the regulator in the context of global digital governance can be summarized as bringing order to the various relationships that exist between the different actors within the regulator space for the benefit and welfare of the digital citizen. With this particular vision in mind, the regulator can then focus on rulemaking that advances the interests of the digital citizen as a person who is embedded in a specific social and political context, rather than an abstract entity like a "user" or a "consumer" that is necessarily reduced to either a technical or a commercial relationship. The goal of the regulator can include creating an enabling environment for business and innovation, but with a focus on the digital citizen, it also creates an imperative on them to privilege the experiences of the person over those of the corporation which is arguably the main function of regulation. This approach also allows the regulator to address the power imbalances that exist between these groups of actors by centering on the experiences of the actor who has the least power – the digital citizen – and maintaining the balance between the remaining actors.

There are, of course, other actors that may be implicated in this regulatory landscape. The United Nations for example is increasingly involved in the regulation of digital technologies including social media primarily through coordinating states and providing technical capacity for regulators in various contexts. In this analysis, regional organizations like the EU and AU are contemplated as state actors but the reality of their structures can be nuanced

further. National governments are also able to pick and choose what elements of the regional structure they need to implement in order to structure their regulatory frameworks to suit various priorities at different moments. Other providers of digital infrastructure also have significant power over the capacities of social media sites. This includes mobile phone operators in various countries of the majority world because the vast majority of people connecting to social media in the world are connecting through their phones. The ability to implement government actions like social media or internet shutdowns depends greatly on these intermediaries that may include state or state-owned monopolies.

Nonetheless the underlying principle stands. The path to meaningful regulation of social media that will endure past this moment in history and meaningfully protect the interests of the people of the global majority passes through a process of defining our collective ambitions for these sites and the role we expect them to play within our societies. This means reframing the demands we are making of these sites away from purely technical or business-related interests towards a more holistic understanding of the contexts in which they are deployed. For regulators in the global majority, this presents the best opportunity of addressing the power imbalances that exist within the terrain of digital technology.