What is the Relationship of Digitalisation, Social Media, and the Liberal Script?

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Liberal principles have governed the internet since its inception. The multistakeholder model of governance, in which companies, academics, experts, NGOs, and citizens are involved in consultations on Internet regulations, is a version of the liberal script. With the deepening digitalisation, this script, on which Big Tech companies have a big influence, is increasingly under pressure. A wave of worldwide data and social media regulation directed against the perceived privatisation of Internet and data governance is leading to its redefinition.

PRINCIPLES OF LIBERAL INTERNET GOVERNANCE

Internet governance is a prime example of multistakeholder governance, which became popular in the 1990s. With the *zeitgeist* of that decade embracing economic liberalism, the integration of private companies into governance processes, and the introduction of the principle of self-regulation by private actors in many areas of governance, private Internet companies became significant actors in this governance.

In 1998, ICANN, under contract to the US Department of Commerce's National Telecommunications and Information Administration (NTIA), became the centre of a network of Internet governance institutions and congresses involving companies and civil society organisations. It became responsible for the allocation of domain names, the definition of Internet protocols (IP) and, in part, the management of root servers, while the organisation responsible for this until 1998 – the Internet Assigned Numbers Authority (IANA) – became part of ICANN and took care of top-level domain (TLD) names such as .com or .org (Thomas 2020). The traditional US approach to

governments and markets has shaped Internet governance ever since, with an emphasis on "minimal government intervention", a "minimalist, consistent and simple legal environment", equal participation of the private sector in governance, which in practice means its leadership, decentralised and bottom-up governance structures, and "consistent global governance principles" (Singh 2009: 100). It was a political decision by the US to give less power than ICAAN to a specialised UN agency – the International Telecommunication Union (ITU) – that had existed since 1865. Other organisations, such as the Internet Engineering Task Force (IETF), the Internet Governance Forum (IGF), the World Wide Web Consortium (W3C) and the International Organisation for Standardisation Maintenance Agency (IOSMA), are entrusted with the governance of the technologies that make up the Internet.

As for the governance of Internet intermediaries or platforms, Section 230 of the US Communication Decency Act (CDA), in force since 1996, has set the liberal script in this area for the next decades. According to the CDA, platforms are not liable for the content published by their users. This provision has long been considered crucial to business innovation in the platform economy. Despite the lack of liability, Section 230 allowed platforms to police the content provided by users and remove illegal posts. Thus, the section encouraged platform companies to moderate content, but without making them liable for the content, their incentives to do so were weak. All in all, Section 230 was perceived as a guarantee of free speech on the Internet. In the 1990s, the Internet was idealised as a vehicle for freedom of expression worldwide, and this narrative remained central to many Internet policies.

THE CORPORATISATION OF INTERNET GOVERNANCE

The multistakeholder model of Internet governance cannot be said to be non-democratic. It involves different stakeholders, including the third sector and citizens' representatives, and gives them a voice in matters that concern them and where they are active. However, the participation of governments in the process is limited. As a result, non-state actors, especially companies, are more potent in global Internet governance than in democratic processes within national states.

For ICANN, governments play a largely advisory role. A Government Advisory Committee (GAC) and an At-Large Advisory Committee (ALAC) have been

established for this purpose. This confinement of governmental action to advisory tasks contrasts with the definition of the Internet as a public good and access to the Internet as a human right. Unlike business and civil society, governments have the most significant resources, will, and legitimacy to provide Internet infrastructure. A constraint on their participation in Internet governance is not self-evident (Thomas 2020: ch. 5).

Nevertheless, many actors in the multistakeholder governance process seem genuinely convinced of the desirability of limiting "government intervention". ICANN's ALAC met in 2014 to discuss multistakeholderism when emerging powers expressed dissatisfaction with the model. It concluded:

> Many members of the group had encountered situations where governments claimed that they believed they were above multistakeholder models. The argument usually stressed is that democratically elected bodies claim to represent the public interest. However, the group felt that not all governments are democratically elected and not all act in the public interest (ICANN n.d. as cited in Thomas 2020).

In view of the limitations with regard to the influence of governments on global Internet policy, business actors are likely to exert a great deal of influence on it (Gurstein 2014; Taggart/Abraham 2023; Thomas 2020). They are more potent than NGOs and technical and academic experts involved in Internet governance processes. Indeed, some scholars question why the civil sector legitimises the multistakeholder model by its presence (Gurstein 2014). Thus, they perceive multistakeholderism as a cover for private sector dominance (Gurstein 2014; Taggart/Abraham 2023).

With the rise of Web 2.0, private platform companies – information intermediaries – have become even more critical actors in Internet governance. Indeed, many aspects of Internet governance have been privatised. They privatised freedom of expression by exercising quasi-censorship of content and applications and blocking websites (DeNardis 2014: 158–161). In this context, platforms govern reputation by establishing reputation systems and moderating hate speech (DeNardis 2014: 168–171). They also manage privacy by collecting and sharing personal data with companies, albeit mostly anonymised (DeNardis 2014: 162–167).

BIG TECH GOVERNANCE PRACTICES AND CHALLENGES TO LIBERAL VALUES

The privatisation of internet governance and platform companies' management of citizens' constitutional rights result from the principle of self-regulation enshrined in the US and other countries' legislation. According to Section 230 of the CDA, Big Tech companies providing social media are not liable for the content users post. However, they can moderate it according to self-imposed ethical guidelines. In theory, content moderation is limited to what is necessary to ensure freedom of speech.

Freedom of speech is the most frequently cited argument favouring platform self-regulation. Some legal experts and activists against state surveillance argue that regulating social media may limit this freedom, especially in countries notorious for censoring public media, such as India. However, Big Tech companies restrict this freedom even without legal regulation. Governments worldwide often ask social media platforms to remove certain content, and the platforms usually comply. In non-democratic regimes or regimes working to undermine democracy, this often means opposition content. Platforms prefer to retain large markets in Turkey or India, for example, rather than not comply with such requests.

In democratic countries, in contrast, platforms do not take enough action against disinformation. There, too, governments are asking platforms to remove content. However, anti-misinformation policies are a delicate issue in democracies valuing freedom of speech. In the US, a federal appeals court ruled on 15 September 2023 that the government and the FBI cannot force social media to remove content deemed misinformation, demonstrating that such practices sit uneasily with existing social media regulation and the constitutional rights of citizens.

When platforms do intervene, such as during the COVID-19 crisis when they removed events by anti-restriction activists, they have acted against freedom of speech and assembly and have been criticised for doing so. Overall, the problem with self-regulation is that private entities decide when to promote freedom of speech and when to restrict it, when to comply with government demands and when not, and society has no control over this.

Platforms also regulate privacy. They track users' behaviour in many ways, like other companies whose products we use on smartphones and computers. Although this data is then sold anonymously, certain combinations of data make it highly likely that users' gender, ethnicity, religion, political views or sexual orientation can be identified. Citizens still need to understand the implications of the ubiquity of tracking and are voluntarily using programmes that have in the past enabled data breaches or outright surveillance, such as WhatsApp. As consumers, they often benefit from the precise targeting of online advertising. Overall, however, they lack information about what data private companies collect, how they do it and how the market for data works. What is clear is that this new model of data-driven online commerce limits our right to privacy. Given that privacy is one of the most essential values of a liberal democracy, the privacy practices of platforms should be subject to greater scrutiny and regulation.

POST-SNOWDEN: CHANGES TO THE MULTISTAKEHOLDER MODEL

When Edward Snowden revealed US government surveillance practices involving private US companies, including platform companies, the moment seemed ripe to reform the multistakeholder Internet governance model. Many countries have been outraged by this surveillance and have taken steps towards so-called digital sovereignty, increasing their independence from global digital corporations and closing gaps in internet regulation. Both authoritarian Russia and China and democratic Brazil and India have frequently expressed dissatisfaction with multistakeholder governance, favouring corporate power and limiting governments' power to regulate their information space. Russia and China, followed by other countries, lobbied for the 'internet sovereignty' of national governments and demanded more power for the ICU. However, the only change to the multistakeholder model of Internet governance that took place at this point was to limit the institutional link between the US government and the ICANN. The contract between ICANN and the National Telecommunications and Information Administration (NTIA) of the US Department of Commerce was not renewed. Since then, the ICANN has become more accountable to the multistakeholder community, which is empowered to take legal action if it disagrees with decisions made by the ICANN (2016).

THE LATEST WAVE OF DATA AND SOCIAL MEDIA REGULATION

The embrace of multistakeholderism by Internet governance organisations and the distancing of the US government from ICANN failed to transform governance and the Internet itself. Social media continued to dominate and govern users' internet experience. As a result, many countries decided to introduce data and social media regulations at the national or supranational level. Countries such as China, Indonesia, Nigeria, Russia, Kazakhstan and Vietnam introduced data localisation requirements for all data; Australia, Canada, New Zealand, Taiwan, Turkey, Venezuela and South Korea for some types of data, such as financial or government data. Data protection laws began to proliferate. On 25 May 2018, the General Data Protection Regulation came into force in the EU. The Japanese Data Protection Act followed it, the only law the EU considers equivalent to the GDPR. In July 2023, India adopted its Digital Personal Data Protection Act after many years of debate.

Social media regulation was the next step to 'digital sovereignty'. On 25 August 2023, the EU's Digital Services Act (DSA) came into force for major platforms such as Google, Facebook, TikTok, Snapchat, Booking.com and others. It is expected to influence social media regulation around the world. It requires platforms to be more transparent about the ads and allow users to opt out of personalised recommendations. They should make it easier for users to report illegal content and improve their regulation of content moderation. Terms and conditions should be more accessible and written in plain language. Targeting children and adults based on sensitive information is prohibited. In addition, platform companies must continue producing transparency reports, assess the systemic risk they pose, and take measures to reduce this risk.

The new social media regulation in the EU is widely seen as finally tackling the problems of algorithmic hate speech, disinformation, manipulation and incitement to anger and hatred, as well as protecting minors and minority groups. However, the extent to which platforms will comply with the regulation is still an open question, as aspects of the 2018 General Data Protection Regulation have not been enforced. The EU claims to protect small and medium-sized businesses and only impose a regulatory burden on big players like Meta. However, a digital rights activist, Max Schrems of the European Centre for Digital Rights NOYB, has shown that Facebook/Meta did not comply with the GDPR.

In the US, Democrats like Barack Obama and Hilary Clinton applaud the DSA, but there is no similar legislation yet. Nevertheless, the CDA's Section 230 is under pressure. Joe Biden campaigned for its repeal. However, freedom of speech is highly valued in American politics, and the perception that social media guarantees this freedom dominates the discursive sphere. Even as voices emerge in the debate to show that a profit-driven, algorithmic platform cannot and should not define free speech in a republic, attempts at regulation are often dismissed as restricting this fundamental political right.

In India, a democracy that has been a critical ally of the US but is currently pursuing an independent geopolitical course, the free speech argument has dominated the debate on social media regulation as much as the state surveillance argument. Given the populist leanings of the current Indian government and its restrictions on media freedom, there were legitimate fears that social media regulation would further restrict freedom of expression. India is the country with the most internet shutdowns in a year. In addition, the Indian government makes tens of thousands of requests yearly to Meta or X (Twitter) to remove specific content, often only critical of the government but by no means illegal. The government even considered making social media companies liable for content posted by users, a taboo in the West. In the end, changes were made 2023 to the social media regulations from 2021 – the Intermediary Guidelines and the Digital Media Ethics Code – to make them stricter. The government will set up a fact-checking unit to review content on platforms. The latter must inform users if this unit finds the content, especially those related to government affairs, false or misleading. They must also try to prevent such content from being posted and facilitate user complaints by appointing a complaints officer. Such rules are considered "bad practices" by digital rights organisations and are reminiscent of social media regulation in Russia and other authoritarian regimes.

DATA AND SOCIAL MEDIA REGULATION AND THE LIBERAL SCRIPT

Internet governance has been shaped by the US understanding of regulation and markets, with business interests involved in the multistakeholder governance model, with business contributing significantly to the spread and growth of the Internet, and with a bias against government 'intervention'. As internet technologies developed and social media came to dominate the

Internet, the level of regulation provided by this model proved insufficient to ensure democratic and liberal values such as privacy and freedom of speech. Accordingly, many countries have decided to de-privatise Internet governance and citizens' constitutional rights and strengthen national regulation of data and the public space created by social media. This de-privatisation does not mean that the current model of Internet governance has ceased to be liberal. Just as market regulation is necessary to ensure that markets function according to social and ethical principles, Internet regulation can improve social media's functioning in accordance with the public interest and the protection of privacy and freedom of expression. The argument that the recent regulation of social media restricts freedom of speech does not hold since freedom of speech in conventional media is similarly restricted by considerations of security and ethics. On the contrary, the latest wave of Internet, data and social media regulation has a chance to ensure that Internet-related constitutional rights of citizens and liberal values are genuinely protected.

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