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How Should States Respond to Challenges to Their Power and Control from Digital Platforms? How Can They React When Platforms are Under Another State's Jurisdiction or They Have Limited Means and Resources to Respond?

Digital platforms, a core element of the Web 2.0 Revolution, have become ubiquitous in modern times (Lehdonvirta, 2022, pp. 2-3). These platforms are "(re)programmable digital infrastructures that facilitate and shape personalised interactions among end-users and complementors, organised through the systematic collection, algorithmic processing, monetisation, and circulation of data," (Poell, Nieborg, and Van Dijck, 2019, p. 3). As a result of their outsized role, these entities have come to face increased scrutiny from both consumers and state actors suspicious of their challenges to state control and user rights. This essay seeks to consider the former, and the way states should respond to the challenges posed by digital platforms to their power. Further analysis will demonstrate that while states may differ in capacity and capabilities when responding to the threats posed by digital platforms, there remain opportunities for states to regain authority within the digital arena. More specifically, democratic states with a high capacity for regulation must proactively pursue forms of corporate governance which blend *ex post* enforcement and *ex ante* regulation, while low-capacity states must work to enforce international norms and reinforce digital infrastructure and systems against platform abuses in the face of regulation. More importantly, all states regardless of capacity would be wise to pursue domain and institutionally founded modes of authority which are better equipped to the cultural and historical structures of each state.

Given the expansive nature of the query at the centre of this paper, I have chosen to limit my analysis to solely democratic forms of governance, and more specifically, to non-

authoritarian practices. While the policies of authoritarian and dictatorial states are of interest, they are deserving of separate analysis given key differences in practice (Hintz & Milan, 2018, p. 3940). Similarly, while state participation in data surveillance is concerning, we are solely interested in *private* challenges to state power and not the transgressions of democratic states themselves (Dencik et al., 2019, p. 18; Hintz and Milan 2018). By extension, I have chosen to set aside the question of what is *ethical* within cyberspace in line with the above logic; the focus of this essay is on private challenges to state power, and the morality and justness of the actions of either the state or private entities are irrelevant to the larger claim being presented within this paper. That said, ethical considerations remain of importance, especially in relation to privacy-focused regulation. While the matter of digital sovereignty is discussed within this paper, I have largely focused on the dichotomy in power established by transnational corporations and the drawbacks this provides for states with limited jurisdictional authority rather than engage with the broader literature on the subject.

Defining State Power and Control

Before moving further, it is necessary to define state power and control. Weber's core operationalisation defines the state largely through its ability to, "Lay claim to a monopoly of legitimate physical force in the execution of its orders," (Weber, 2019, p. 136). State power and control, or *Herrschaft,* is most commonly defined as a "relationship of command and obedience, such that those subordinate to it can be expected to carry out an instruction regardless of its content" (Beetham, 1991, p. 35), although its deeper meaning remains nebulous since its closest translation, authority, implies legitimate power when coercion is an applicable tool for state use as well (Beetham, 1991, p. 35). The rest of this paper uses authority interchangeably with the terms power and control, all of which point to this broader definition of *Herrschaft* and its basis

in the monopoly on force by the state. Authority in this case could be control over markets, price setting, surveillance of the citizenry, the provision of social welfare, or the excess of other roles the state traditionally plays within daily life. This is a necessarily broad definition in line with the extensive powers afforded to governmental agents because of their legitimate and coercive power derivative from the state's monopoly on violence.

Importantly, state power, especially in democratic contexts, does require some underlying legitimacy or belief in the rightfulness of the state's instructions, which are established through legal-rational, traditional, or charismatic means (Tribe, 2019, p. 335). While this operationalisation of legitimacy within statecraft is imperfect and Weber's model does suffer from certain weaknesses (see Beetham, 1991), this paper is primarily concerned with the challenges of digital platforms to state authority. The basis of state authority remains of interest however given that the loss of legitimacy of the state is a viable route by which certain corporations may handicap state power.

Jurisdiction and Capacity in the Context of State Power

Critically, state authority is largely derivative from its territorial boundedness. While states hold supreme power and the legitimate monopoly on violence within the bounds of their country, this authority is *independent from that of other sovereigns* (Woods, 2018, p. 360). As such, the exercise of state control is deeply intertwined with the concept of jurisdiction, which, "describes the limits of legal competence of a state . . . to make, apply, and enforce rules of conduct upon persons (Currie, 2017, p. 69). Currie expands upon this definition by distinguishing between *prescriptive* jurisdiction, which refers to states' ability to make law, and *enforcement* jurisdiction, which outlines states' ability to enforce said laws (Currie, 2017, p. 69). Critically, most modern definitions of jurisdiction are deeply tied to notions of territoriality,

which serve to anchor such discussions (and notions of sovereignty more generally) in physical space (Ryngaert and Zoetekouw, 2017, p. 185).

Digital technologies pose a unique challenge to regulation. Modern platform-centric companies are highly powerful, transnational corporations with communications that tend to pass through multiple constituencies, or which can even be split across jurisdictions (Zimmermann, 2014, p. 2). While the specific practices of digital platforms and the challenges they pose are expanded upon in the following section, the impact of the cross-jurisdictional authority of these companies is largely dependent on the disparity between what I have termed as 'high-capacity' and 'low-capacity' states. High-capacity countries constitute those in which most digital companies are based and draw their revenues, and have the ability to exercise both *prescriptive* and *enforcement* jurisdiction over major technological corporations. For instance, since nearly 80% of Google's revenue comes from the United States and the EMEA Region, the two areas have a far greater inherent set of capabilities (Pichai and Porat, 2024). By contrast, 'low-capacity' states are not afforded these same advantages and face additional challenges when attempting to regulate digital companies. As such, it is wise to consider each category given the incongruity in capabilities and the potential outcomes any state can pursue.

The Challenge of Digital Platforms to State Control

Given their jurisdictive implications, it is important to further clarify the challenges posed by digital platforms to state authority. As such, we must first consider corporate practice within the Fifth Technological Age and the nature of economic markets to further elucidate the difficulties they pose to all states. Utilising this framework, we can then further outline concrete challenges unique to low-capacity and high-capacity states respectively.

General Frameworks of the Web 2.0 Era

The modern digital platform largely draws its shape and inspiration from technological developments in the late 1990s which allowed for greater personalisation, data tracking, and ease of use, commonly defined as Web 2.0 (O'Reilly, 2005). More importantly, the expansive nature of the internet, combined with these advancements, served to produce a unique series of network effects which fundamentally shape the market and consumer habits (Hindman, 2018, p. 36). What is less clearly noted is that these network effects, more than sociological, are technologically ingrained within the modern Web—the Internet, "Not only imposes information (in the form of programmed instructions), but it also produces information," (Zuboff, 2015, p. 76). This in turn has produced a nexus of what has become commonly referred to as 'surveillance capitalism' or, more aptly, 'data capitalism', which "Places primacy on the power of networks by creating value out of the digital traces produced within them," (West, 2019, p. 21). Data capitalism, more than simply a facet of the Internet, operates at the centre of modern business and shapes corporate practice. More specifically, the natural inclination of the market towards data surveillance has served to accentuate the advantages of companies which act as the intermediaries in two-sided markets, as well as platforms which are able to effectively leverage statistical and algorithmic analysis to increase their stickiness and user buy-in (Hindman, 2018, p. 7). While two-sided private markets pre-date the Web 2.0 paradigm, the addition of technologies like Cookies provided companies which connected consumers and producers with unique advantages (West, 2019, p. 28). With the implementation of rating and reputation systems and algorithmic technologies, the accumulation of data allowed companies to, "Improve transactions and thereby make consumers better off," while vendors were able to use this data, "to figure out how best to serve their customers," (Mayer-Schönberger et al., 2018, p. 2). This in

turn, as Khan notes, serves to continually reinforce company dominance within a marketplace, and by extension, transform the market into a 'winner-take-all' system since dominance ensures control over the stream of data, and network effects permeate throughout the data economy (Khan, 2017, p. 785). Digital platforms are unique from past challenges to state authority in large part due to the "Pervasiveness of personal data extraction," within their business practices and the inherent advantages it provides given the models of growth they pursue (Chapdelaine and McLeod Rogers, 2021, p. 26).

The nature of the market and the pre-eminence of a select group of companies within it does not necessarily imply a challenge to state authority. Rather, the above provides explanatory power for both the entrenchment of these major companies and their actual threat to state control. digital platforms have come to dominate the economic landscape by *assuming the role of the state itself* (Lehdonvirta, 2022, p. 210). Due to rollbacks in governmental regulation and two-sided market forces, digital enterprises have been allowed to largely self-regulate the conduct of users on their platforms, whether through reputational, punitive, or other means (Lehdonvirta, 2022, pp. 7-9). Since companies face challenges in maintaining social order, managing scale and economies of scope, and can efficiently engage in central planning, there is a prerogative for private entities in the digital space to desire internal governance (Lehdonvirta, 2022, p. 206). Private companies have advantages that the state does not when engaging in this process, in that they can necessarily focus on resource extraction (namely, through data) in a way which, "Alone lifts Google, and other participants in its logic of accumulation, out of the historical narrative of Western market democracies," (Zuboff, 2015, p. 80). The role of the state, in essence, is being replaced by the digital platform as governor and judge (Lehdonvirta, 2022, p. 210).

Challenges to High-Capacity States

High-capacity states like the U.S. and the EU face unique challenges from digital corporations. Companies like Amazon, Google, and Facebook have inherent advantages due to their data superiority which, "Allows them to profit from outdated laws and inexact rules that fail the fit-for-purpose test when it comes to regulating digital environments and activities." (Green and Le, 2022, p. 89). Additionally, digital platforms can leverage their built-in advantages outlined above to directly chafe at specific elements of state authority, such as market regulation (Lehdonvirta, 2022, pp. 2). At the same time, the basic structures of digital platforms allow them to expand their impact into additional economic arenas such as journalism, stifling competition and expanding their dominance (Hartmann, 2021, p. 103). While companies typically refrain from more expansive attacks on state authority, high-capacity states still struggle because of these factors and oftentimes remain hesitant to exercise sovereignty over digital companies, especially since state control is equally likely to constrain innovation or expression if not properly exercised (Chapdelaine and McLeod Rogers, 2021, p. 9).

Challenges for Low-Capacity States

Low-capacity states bear similar burdens to high-capacity states, but face additional challenges given that they often lack the requisite *prescriptive* or *enforcement* jurisdiction over digital platforms and are more susceptible to the network effects that propel digital companies. In the case of the former, the fragmentation of data across multiple servers and the largely virtual shape of digital space limits the capability of companies to respond (Zimmermann, 2014). This is only exacerbated by the fact that corporate employees, self-regulatory efforts, and company data centres are themselves often abroad and operate under a distinct jurisdiction, limiting the ability of states to effectively regulate company action (Woods, 2018, p. 26). Additionally, if the

company is deeply connected to high-capacity states, this can also threaten foreign relations with that state, leading certain countries like Australia to refrain from harshly regulating applications like WeChat, which shares deep ties with the Chinese government (Su, 2022, p. 177). Lacking an effective market cap, low-capacity states are further exposed as companies may choose to utilise their relative dominance of the market and role as platforms to challenge governmental regulation. Meta, for example, has resorted to pulling news coverage of any kind from its platforms, including that of governmental agencies, in protest of policies that the company dislikes (Flew et al., 2023, p. 12; Bossio et al., 2022, p. 141). Google, meanwhile, even threatened to revoke regional access to its search function in response to the Australian government's attempts to institute the NMBC (Bossio et al., 2022, p. 141).

Together, these examples illustrate the willingness of digital platforms to directly engage with low-capacity states in ways which they would not with high-capacity nations. This is not meant to imply that companies like Google *always* comply with the demands and regulations set forth by states with larger capabilities as digital corporations have eschewed said regulations and accepted fines instead in prior instances (Bayer et al., 2021, p. 581). That said, the *manner* by which platforms challenge low-capacity states goes far beyond what they are capable of pursuing in countries like the United States. Digital platforms can more easily deny services if states produce limited amounts of revenue, can more easily ignore regulatory action, and are able to utilise their complex transnational structures to obfuscate claims and effectively sidestep any attempts at lower-capability state control. While companies must respect the sovereignty of high-capacity states, digital platforms can more directly challenge governmental control in situations where policy options are constrained and in the case of low-capacity states, the purity of authority is heavily diluted when compared to their better-reinforced counterparts.

Potential Approaches to Reinforcing State Authority

Contemporary academics have provided an extensive set of possible options which democratic states could use to better ensure the ascendancy of state power over digital platforms. I have outlined four potential macro-level approaches below before considering specific regulatory frameworks which have been applied in low-capacity and high-capacity states respectively.

Competition/Antitrust Law. Antitrust and competition law, while relatively antiquated, remain highly prevalent given the expansive nature of many modern corporations, and as such remain a capable tool to regulate digital platforms' challenges to state authority. This approach largely focuses on breaking apart monopolistic firms into smaller entities *ex post*, allowing for greater competition within the market and preserving state authority by diluting companies' influence over consumers (Lehdonvirta, 2022, p. 220). However, Mayer-Schönberger and colleagues note that this may not be entirely effective since the structural elements of the marketplace mean that the product itself may be diminished in the process (Mayer-Schönberger et al., 2018, p. 4).

Vertical Breakup. American Federal Trade Commission Chair Lina Khan has advocated for a focus on vertical integration, which remains functionally derivative from antitrust law but is centred on the scrutinization of mergers and the breakup of vertically integrated practices, such as Amazon's privileging of its own goods on its platform (Khan, 2017, p. 792; Lehdonvirta, 2022, p. 222). This retains the core of the business itself—such as Amazon's marketplace or Google's search algorithm—while preventing companies from entering other markets in which businesses depend on the digital platform to survive. This could also involve the breakup of company's entries in additional markets, like Amazon Prime Video, to ensure that big

corporations cannot leverage their existing data stream to achieve success at the behest of smaller companies in other digital fields (Lehdonvirta, 2022, p. 222). Unfortunately, the challenge remains that the breakup of companies could inadvertently damage both the existing product and the newly created entity since the former loses a data stream and the latter has no customer base from which to form one (Mayer-Schönberger et al., 2018, p. 4).

Public Utilities. Another potential approach is to, "Accept that [online platform markets] are inherently monopolistic or oligopolistic and regulate them instead." (Khan, 2017, p. 790). This largely focuses on utilising another facet of competition law which can label certain industries as 'public utilities', which in turn necessitate greater oversight through both *ex-ante* regulation and *ex post* enforcement (Khan, 2017, pp. 785-786). This approach does little to constrain the monopolistic power of the company itself, and does not challenge the nature of the entity, instead attempting to move state authority into a different context rather than diminishing the power of the platform. Furthermore, public utilities usually refer to infrastructure while platforms are largely institutional, posing a challenge if attempting to pursue a public utilities approach through preexisting legislation, especially within the United States (Lehdonvirta, 2022, p. 224).

Data Sharing Approach. Another limited but novel option is to allow for information sharing, and more specifically, require dominant platforms to share their data with other businesses and their vendors. Setting aside the potential privacy issues of such an approach when dealing with personal information—which is a large requirement—this approach does not have the drawbacks that other methodologies incur (Mayer-Schönberger et al., 2018, pp. 4-5). Still, it would likely fail as a singular methodology and instead acts as an example of the general pursuit of new and novel approaches to digital technologies well-adapted to the importance of data as a

critical resource in the current technological age. This contrasts with the more historically legal-based methodologies noted earlier which oftentimes lack this more contemporary structuring.

Approaches in High-Capacity States

High-capacity states have typically focused their efforts towards utilising larger institutional structures in order to regulate technological corporations. The United States, in which a majority of digital platforms are incorporated, has largely utilised a competition-law based approach unified with the concept of vertical breakup, effectively combining novel and traditional methodologies for asserting state control (Oremus, 2023). The Legislative Branch has also begun to more proactively pursue policy prerogatives, with bills proposed that would introduce greater liability for technology companies under Section 230 or protectionary measures that would serve to support local journalism against the abuse of digital platforms (Hartmann, 2021, pp. 104-110). Europe, meanwhile, has established stringent *ex ante* regulations in addition to *ex post* approaches, fining Google 2.4 billion euros for anticompetitive practices and opening a sweeping antitrust investigation into Facebook's utilisation of social media data within its advertisements, integrating elements of the vertical breakup and data-sharing approaches (Bossio et al., 2022, p. 139). These examples, while limited, point towards the reliance of states with existing capacities on traditional, economically founded frameworks to address potential challenges.

Approaches in Low-Capacity States

The general frameworks outlined earlier in this section are often criticised as nonapplicable to low-capacity states. While this belief does hold merit considering the inherent strengths of digital platforms over the given subset of countries, contemporary examples point to potential promises for states without extensive leverage over digital companies. Australia

recently instituted the News Media and Digital Platforms Mandatory Bargaining Code (NMBC), which empowers both local and national journalism outlets to negotiate with corporations for compulsory payment for the use of their content on digital platforms (Flew et al., 2023, p. 9). While both Google and Facebook—the two companies targeted by the ACCC—pushed back harshly against the Code, their efforts largely backfired, inadvertently initiating greater discussion about the bill and the value of reliable news media resources (Bossio et al., 2022, p. 144). While the two companies were able to eventually negotiate to an agreement in which the Australian government does not apply the bill to them, they were forced to make large concessions with major media companies in the process and remain under the threat of application (Bossio et al., 2022, p. 144). Canada's Online News Act, meanwhile, takes a similar approach but places greater emphasis on the public interest, in line with outstanding law within the country (Geist, 2021, p. 292). It places stringent standards on digital corporations, provides no remit for platforms, and includes an auditing structure which will further ensure compliance. Each of these approaches, while similar to those taken by high-capacity states, pursues regulation through a unique methodology which centres on empowering additional actors while limiting the operating space of the companies themselves (Flew and Wilding, 2021, p. 61). Furthermore, these approaches raise a broader question about how our current paradigms may be ineffective at addressing the challenges raised by digital platforms.

Beyond the Dichotomy: State-Specific Regulation as a Response to Digital Challenges

Chapdelaine and McLeod Rogers presciently note in their assessment of digital platform regulation that "[There is] need [for] a systemic response. This response affects a global world but needs to be sensitive to regional or localized trends . . . [it] needs to be citizen informed rather than imposed by any group," (Chapdelaine and McLeod Rogers, 2021, p. 25). While the

varied influence of digital platforms has produced a two-tiered system of regulation, the promising outcomes in Australia and recent Canadian efforts point towards the possibility for domain and situation-specific policymaking which is effectively equipped to the needs of the country in question and its internal structures. Efforts like the NMBC and its novel approach to emphasising bargaining power may not be effective in additional contexts, but by exercising its authority with intention, the ACCC was able to effectively re-establish state authority in an arena in which such control had largely been devoid (Flew et al., 2023, p. 7). Rather than pursue solutions centred in antiquated governance structures, low-capacity states must pursue pointed plans of action which target specific policy outcomes and directly challenge platform authority while retaining the advantage in both message and outcome. At the same time, they would be wise to work with high-capacity actors to ensure global regulatory regimes are established and provide broader oversight for companies beyond jurisdictional boundaries.

While high-capacity countries face less limitations and have more inherent opportunities for regulation, a singular approach will always be imperfect given the multimodal nature of the market (see Khan, 2017, p. 786; West, 2017). As such, the most effective method of regulation will necessarily be similarly multimodal (Colangelo, 2020, p. 962). Since only some platforms can likely be characterised as public utilities, such an option should only be taken in those cases. Meanwhile, antitrust law should largely focus on, "reducing barriers to entry, lowering switching costs, and encouraging interoperability and consumer engagement," (Colangelo, 2020, p. 962) while novel methodologies like data sharing may be potentially useful *ex ante* tools by which states can increase competition and decrease platform challenges to broader state authority. Importantly, this system remains cognizant of the nature of the market itself rather than producing irrational frustrations with corporate practices derivative from economic structures. At

the same time, high-capacity actors must pursue more aggressive outcomes which reinforce the policy structures of lower-capacity states. Without the two working in concert, digital platforms will be able to retain authority and outcomes will remain diminished. As Bayer and colleagues note, “There is considerable responsibility on the European Union and those states which lay the groundwork for . . . [the] regulatory regime,” (Bayer et al., 2021, p. 582).

Conclusion

Overall, this analysis has served to demonstrate that to effectively respond to challenges to state power and control from digital platforms, democratic governments with high regulatory capacity must pursue a multimodal approach which tailors its efforts to the specifics of each platform and the socioeconomic and political impetuses of the market. Meanwhile, low-capacity states must pursue domain-specific outcomes best equipped to the explicit needs and institutions of their own state. Specifically, it has explained the need to differentiate between the capabilities of states in the regulatory arena, the origins of platforms’ dominance as a result of the paradigm shift of Web 2.0, and the specific threat this emergence has posed to state control for both low- and high-capacity countries. Furthermore, it provides a series of potential solutions before advocating for the multifaceted approach which is better equipped to preexisting market forces. While this unfortunately does not provide a singular global model best equipped to all states, it offers a case-by-case solution which will better fit states with less resources or regulatory strength at their disposal. In an ironic sense, it is only through the exercise of its authority that the democratic state may anchor its power and control against the threat of monopolistic platforms in the digital arena.

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