

The regulated capacity of the state and the emergence of state violence on digital platforms

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Abstract

States are increasingly delegating their regulatory functions to social media platforms in order to censor information, and the risk of a state retreat from the normal regulatory space has been extensively discussed. However, little is said about what this means when the state becomes a user of the same platform from which it retreats as a regulator – and more importantly relies on its user capacity to configure and repress public opinion. Against this backdrop, this paper asks how we go about understanding and contextualizing the evolving nature of state wrongdoing (the violation of fundamental rights and freedoms) on social media platforms and the state’s consequent dereliction of duty?

The paper examines the evolving aspects of state activity on social media platforms and the state’s resulting capacity for human rights violations. It differentiates between two taxonomies of state violations, which it categorises as conventional and contemporary forms. The two taxonomies are based on two conditions that relate to the state’s capacity to cause or contribute to violations and the nature of the subsequent harm that results from these violations. Conventional state violations include those that directly emanate from a state’s regulatory, legislative and adjudicative capacity and authority. Meanwhile, contemporary state violations arise from a state’s capacity as a social media user (its de facto regulated capacity) through its officials’ or institutional accounts on these platforms. While violations in both cases can be seen as forms of the suppression of fundamental rights and freedoms, the nature of harm in contemporary violations is more profound, as they invisibly target cognitive liberty by configuring public opinion and perception, suppressing and intimidating the emergence of critical mass and hence crushing the growth of a self-determined society.

Most platform-focused scholarships emphasize and articulate the state suppression of digital freedom in the context of conventional state violence. This observation, while intuitive, is incomplete and leaves out the emerging state capacity as a social media user that is subtly at play as a constraining force of digital freedom. The paper therefore assesses social media state wrongdoing that mainly arises from its user capacity. It argues that three interlinked dynamic changes enable such violations. These are firstly, the erosion of legislative duty that results from the retreat of the state from public regulatory space, which is often referred to as collateral censorship through the deputization or delegation of the censorship role to platforms; secondly the erosion of contractual duty that facilitates the emergence of the de facto regulated state capacity as the state becomes a media user that is subject to a platform’s set terms, rules and standards, and thirdly the consequent reproduction of power through the state-business nexus that leads to the use of its regulated capacity for the violation of rights. The paper argues that the changing dynamic represents a process by which power reproduces itself by linking state and corporate power and interests (i.e., power and profit maximization) to the detriment of the people. This demands a revisiting of the mainstream contextualization and understanding of state responsibility for digital wrongdoing. The paper draws on the notion of state responsibility in BHR scholarship as well as the Afro-centric conception of human rights that is inherently people-centric.