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Digital Platforms as Supranational Regulators: Reconfiguring State Power in the Digital Era

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Abstract

This article examines that digital platforms are emerging as supranational regulatory actors, reshaping how states exercise authority in the digital era. In the context of globalized, digitalized and networked economies, technology conglomerates arguably consolidate forms of normative power that parallel certain state functions, thereby unsettling conventional understandings of sovereignty. Central to this process is data, treated as a strategic asset that allows platforms to influence social and economic behaviors through coercion, incentives, and more subtle persuasive techniques. The article also examines how states, facing the complexity of digital ecosystems, informally delegate regulatory functions to private actors, which generates structural dependence on platform infrastructures. This privatized form of functional sovereignty, grounded in data control and automated governance, raises important challenges that legal frameworks are only beginning to address, underscoring enduring power asymmetries that often privilege corporate interests over democratic pluralism.

Keywords

Digital Platforms, Supranational Regulation, State Power, Digital Sovereignty, Data Governance, Regulatory Delegation, Transnational Governance

1. Introduction

In recent decades, the political, economic, and social landscape has undergone unprecedented transformation, driven primarily by technological advances that have reshaped market operations, mediated relationships, and redefined social policy design and implementation. Scholars now conceptualize "contemporary capitalism" through multiple, overlapping lenses, including surveillance capitalism, informational capitalism, platform capitalism, data capitalism, cognitive capitalism, networked capitalism and algorithmic capitalism. This plurality of per-

spectives highlights the diverse logics through which value is now created and captured.

Despite this conceptual diversity, certain analytical convergences emerge globalization, digitization, economies of scale and scope, and an architecture of interdependence among political and economic actors constitute the backdrop to these structural shifts. Within this evolving socio-political and economic order, state sovereignty—long considered the uncontested monopoly of national authority—is being reconfigured in light of the rise of new actors, both domestic and international, capable of directly influencing decision-making processes.

Chief among these actors are digital platforms and large technology conglomerates, whose operational models exert profound and multifaceted influence over policy, public governance, and social behavior. This influence is so deeply embedded in the new capitalist paradigm that it exceeds conventional economic dominance, eroding the boundaries between public and private spheres and unsettling classical dichotomies of power, such as hard power and soft power, across multiple stakeholders.

Unsurprisingly, the pursuit of centralized control by platforms manifests in the creation of self-contained internal ecosystems—akin to "private states"—equipped with regulatory infrastructures: intricate internal rulebooks, dedicated decision-making bodies, and enforcement mechanisms that, in various respects, emulate the institutional design of the state. Within these digital ecosystems, data serve as the principal asset and strategic resource: through the collection, processing, and deployment of data, behaviors are measured, choices are influenced, and regulatory and social alignments are guided via personalization, gamification, and targeted advertising.

These "private states" inaugurate a regulatory landscape in which the presence of a traditional nation-state, or even of an institution formally established for that purpose, is no longer a prerequisite for the exercise of regulatory authority. Within the digital platform ecosystem, whose power rests primarily on economic foundations, it becomes apparent that, even in the absence of a formal public mandate or the legal personality traditionally associated with states, these entities establish genuine de facto governance regimes. They function as normative, regulatory, and decision-making authorities without formal procedural requirements, exerting cross-border influence and shaping—both directly and indirectly—the economic, social, and political dynamics of all actors participating in their digital ecosystems.

This phenomenon, particularly regarding the functions of supervision, control, and oversight, introduces a new dimension to the architecture of so-called "supranational regulation", challenging even the conventional understanding of who qualifies as a legitimate actor in international relations. In numerous cases, platforms possess regulatory power and enforcement capacity comparable to, or even exceeding, that of nation-states, yet they exercise such authority within private domains, frequently insulated from the scrutiny of formal institutions and from traditional legal control mechanisms.

The complexity of the relationship between digital platforms and nation-states becomes particularly pronounced when examined through the lens of de facto regulatory delegation. In certain instances, public power is compelled to rely on digital platforms to exercise regulatory authority, whether due to technical limitations or dependence on the ecosystem's infrastructure, including servers and the extensive datasets of individuals and organizations, which can be algorithmically processed and interpreted. This dynamic frequently exposes an informal transfer of power, as there exist regulatory gaps that these private, transnational actors are uniquely positioned to address, gaps that national public authorities often lack the capacity to fill.

Against this reorganization of power, a central question arises: can the traditional governance toolkit of the nation-state adequately regulate, restrain, or deter the conduct of these actors in domains that increasingly assume normative and regulatory functions?

To address this question, the article employs a literature review and a hypothetico-deductive analytical framework to examine the rise of digital platforms as de facto transnational regulators. The central hypothesis is straightforward: in the digital era, do platforms effectively exercise regulatory power, and if so, with what implications for state authority?

The analysis maps convergences and divergences, with particular attention to the Brazilian perspective, while also considering regional and sectoral variations relevant to debates on digital sovereignty, private regulatory authority, and the protection of fundamental rights. It investigates how private entities, though lacking formal state authority, operate as norm-setting actors by virtue of their control over essential informational infrastructures and their capacity to shape behavior on a global scale. The study examines the logics of surveillance capitalism and informational capitalism, the phenomenon of regulatory delegation, and the effects of content moderation and private data control on digital sovereignty and fundamental rights.

The article is organized into three main sections, alongside this introduction and a concluding section. Section I, "Data, Platforms, and the Centralization of Regulatory Power in Contemporary Capitalism," traces the transformations that enabled platforms to emerge as new centers of power. Section II, "Data as Power: Reconfiguring State Authority in the Era of Digital Platforms," analyzes the centrality of data and the business models underpinning these firms' dominance. Section III, "Digital Platforms as Global Regulators: Private Governance and Content Control," examines platforms' regulatory practices—particularly content moderation—and their implications for governance and fundamental rights.

2. Data, Platforms, and the Centralization of Regulatory Power in Contemporary Capitalism

The concept of contemporary capitalism is largely shaped by the profound transformations unleashed—and still driven—by the digital era upon political, eco-

nomic, and social structures. The emergence of new actors and the redistribution of power did not occur overnight; rather, they unfolded gradually, propelled by successive waves of scientific and technological innovation. This movement gained momentum through various forms of interaction, including inter-state cooperation, public-private partnerships, and collaborations among corporations, civil society, and academia (Silva, 2007).

In this scenery, technology has become the backbone of an increasingly complex society, integrating organizational sectors that once operated in isolation. Such integration has enabled the rise of new protagonists, actors capable of directly influencing decision-making processes across multiple domains of social life (Santiago & Andrade, 2018).

Moreno (2015) argues that, nowadays, communication and information platforms are not mere instruments but genuine vectors of social and political reorganization. Within these platforms, the individual is both an influencer and simultaneously subject to influence.

This perspective is echoed in the German report Competition Law 4.0 (Federal Ministry for Economic Affairs and Energy, Commission Competition Law 4.0., 2019), which underscores how the digital era—anchored in an interoperable network architecture—has redrawn economies of scale and scope. At the core of this paradigm lies a fundamental asset: data, the driver behind the ascent of platform-based business models.

At the epicenter of this socio-political and economic reconfiguration lies the use of data, whether personal, anonymized, or otherwise. Data have become the essential inputs for the creation and delivery of a wide array of products and services, especially within the Internet of Things (IoT) ecosystem. Crucially, the German report highlights that data differ radically from traditional economic inputs. Unlike commodities, data can be reused indefinitely and, from the same datasets, generate a virtually unlimited number of derivative products and services. Consistent with this reality, the European Union's Data Act (Regulation 2023/2854) defines data as products of interaction between at least two parties: the designers, manufacturers, or providers on the one hand, and the users of the connected products or services on the other. Within these "feedback cycles," data sharing and value creation become possible.

This centrality of data has catalyzed the development of platform-driven business models. As the German report notes, the economic actors' objectives are to establish or integrate into digital ecosystems encompassing multiple value chains and distribution networks. Digital platforms manifest in multiple forms, including advertising platforms (attention-oriented) or intermediation platforms (connection-oriented), bilateral or multilateral platforms, consumer-facing (B2C) or business-facing (B2B), among other variations.

Digital platforms may also be characterized by their business orientation and economic purpose, taking into account the often-non-linear interplay between their core products and the various actors that make up the value chain. In this

context, platforms can be distinguished, inter alia, as: "Communication Platforms", enabling the exchange of messages among users; "Content Platforms", dedicated to the production and circulation of digital material; "Social Media Platforms", typified by social and network-based interaction; "Payment Platforms", functioning as financial intermediaries; "Search Platforms", designed to facilitate the discovery and retrieval of information; and "Retail Platforms", serving as digital marketplaces for goods and services (e-commerce activities).

Although each category of platform exerts distinct, and at times systemic, forms of influence over regulatory architectures, this article treats them in their more expansive configuration—as business models whose constitutive elements and operational logics collectively determine their economic, social, and juridical salience.

This approach is consonant with the position adopted by Brazil's antitrust authority, the Administrative Council for Economic Defense (CADE), which in its Competition in Digital Markets: A Review of Specialized Reports (CADE, 2020) characterizes digital platforms primarily by their reliance on network effect: the value of a platform's services grows as its user base expands, whether through positive direct effects among users of the same category or positive indirect effects across complementary user groups.

It is precisely against this backdrop—where public and private actors alike compete for access to the principal inputs of the digital economy, namely data, and operate on historically unprecedented scales—the potential for normative and jurisdictional conflict intensifies. Data, in this respect, are not merely operational resources but strategic instruments of governance and power.

Contemporary socio-political dynamics are reinforced by what Nye (2009) famously defined as smart power: the strategic combination of hard power—coercion and payment—with soft power—attraction and persuasion. At its essence, smart power reflects the ability to influence behavior to further one's own interests or those of third parties.

This power is amplified when the data involved are personal or sensitive. In these ecosystems, the ability to access, manipulate, store, and compile personal information consolidates as the foundational assets of power. For clarity, this article adopts the definitions set forth in Brazil's General Data Protection Law (Lei Geral de Proteção de Dados Pessoais—LGPD, Law No. 13,709/2018). Article 5 defines personal data as any information relating to identified or identifiable natural persons, while sensitive personal data refer to information revealing, inter alia, racial or ethnic origin, religious belief, political opinion, union or organizational membership, health condition, sexual life, genetic data, or biometric identifiers.

Digital infrastructures may be instrumentalized to exercise power in multiple forms: coercive power through surveillance mechanisms and the exploitation of informational asymmetries; attractive power by fostering engagement and connection; and compensatory power through monetization strategies (Galbraith, 1986; Cohen, 2019). These mechanisms enable data to guide social conduct and

even to underpin new regulatory dynamics.

Technology conglomerates such as Google, Amazon, Meta, Microsoft, and Alibaba may exemplify this phenomenon, potentially stretching the traditional boundaries of market power and reconfiguring the "nexus of reciprocal relations" among producers, consumers, and infrastructures. The business models inherent to such platforms are often referred to as the gig economy (Rahman & Thelen, 2019).

The gig economy transcends classical supply-and-demand logics, characterized instead by distinct investment strategies, fluid labor relationships, risk externalization onto workers, and the imposition of private governance, with proprietary rules and sanctions, within closed ecosystems (Rahman & Thelen, 2019).

Beyond its economic implications, however, a defining feature of the centralization of smart power in the digital era is the operation of platforms as de facto supranational regulatory infrastructures.

This form of private regulatory power—sometimes described in the literature as exercised by the "new governors" (Klonick, 2018)—operates through sophisticated apparatuses of internal rules, decision-making bodies, and enforcement mechanisms that mirror the structures of the nation-state. Here again, data remain central: to control data is to control the capacity to predict, model, and intervene in human behavior.

This capacity for enforcement, particularly in the realm of behavioral prediction, has given rise to the concept of surveillance capitalism, coined by Shoshana Zuboff (2019). The term captures how algorithms are deployed to make decisions that directly affect individuals' rights and opportunities, often by intruding into the deepest layers of personal intimacy (Frazão & Santos, 2020). The underlying premise is upfront: the greater the volume of data held by actors, the greater their capacity to exert influence (Frazão & Santos, 2020: p. 60, author's free translation):

> "Indeed, algorithms have been increasingly used for complex analyses, decisions, and diagnostics that, besides representing a true intrusion into individuals' intimacies, will impact their possibilities and access to a range of rights and opportunities. It is no novelty that algorithms today can decide who will receive credit and at what interest rate, who will be hired by a given company, the probability of recidivism of certain offenders, or even who might be harmed in specific situations, among countless other circumstances".

Even though private entities are not formally endowed with state authority, they increasingly operate as de facto normative agents through their control over global informational infrastructures (Cohen, 2019; Farrell & Newman, 2023). Public authorities, in turn, in an effort to adapt, attempt to reclaim authority by engaging in massive data collection and formulating data-driven public policies. Paradoxically, this reconfiguration could generate structural dependence on the very platforms whose technological infrastructures have become potentially indispensable

to the functioning of the State (Bradford, 2023; Cohen, 2019).

Dunne (2020) characterizes this dynamic as a form of "de facto regulatory delegation". Overwhelmed by the speed and complexity of digital transformations, States may—albeit informally—transfer regulatory functions to platforms, acknowledging their technical expertise and infrastructures as necessary to enable public policy implementation at scale.

This potential delegation, nevertheless, does not occur in a vacuum; it exists alongside ongoing efforts by States to reassert their authority and mitigate risks associated with such informal transfers of power.

In contrast, it is equally important to recognize that nation-states, aware of this emerging dynamic, both at the national and regional or international level, have sought to preserve and reclaim regulatory authority still under their control, in an effort to mitigate a potential gradual and unprecedented erosion of traditional state authority. This endeavor replicates the pursuit of state-led countermeasures capable of imposing limits on the activities of private actors, including auditing and oversight mechanisms, even in predominantly commercial interactions.

A concrete example of this movement emerged through the legislative apparatus of the European Union, with the enactment of the Digital Services Act (DSA) and the Digital Markets Act (DMA). These instruments aim to confer greater responsibility on digital platforms for their actions and decisions, particularly in the regulatory sphere: the DSA focuses on protecting access to digital content and information, while the DMA seeks to enhance the competitiveness of digital markets, with special attention to so-called gatekeepers—that is, large platforms providing core platform services—representing a deliberate effort to shape digital governance in a more balanced and transparent manner.

Against this intricate backdrop, a pressing and fundamental question surfaces: who ultimately wields regulatory authority in the digital age? We are confronted with a truly unprecedented juncture in the history of governance and innovation, where the boundaries between public and private actors are increasingly porous and indeterminate. This challenge is heightened by the fact that States—traditionally the primary bearers of regulatory power—now rely on digital platforms operating under corporate logics, which can constrain their sovereignty and operational autonomy on a global scale.

Yet, this dynamic is not unidirectional. Nation-states continue to assert control, aiming to define the limits of private platforms' influence. Through legislation, policy initiatives, and oversight mechanisms, States seek to ensure accountability when platforms operate across borders with considerable technical and economic leverage. In this dual process, regulatory authority is both shared and contested, negotiated continuously between public mandates and private technological infrastructures, illustrating the evolving complexity of governance in the digital era.

3. Data as Power: Reconfiguring State Authority in the Era of Digital Platforms

As highlighted in the preceding section, data function both as resources and stra-

tegic assets that underpin the architecture of contemporary business, particularly for companies operating within the Internet of Things (IoT) ecosystem. By constructing massive datasets, digital platforms evolve into comprehensive infrastructures, attracting and coordinating the activities of myriad actors: sellers, advertisers, content creators, software developers, and consumers (Frazão & Santos, 2020).

A digital ecosystem's defining feature is its capacity to operate as a self-contained, self-sustaining universe. Within this environment, platforms dictate who participates, under which conditions, and according to what rules. While driven by market dynamics, platforms simultaneously assume a regulatory function, controlling the distribution and visibility of information in the contemporary public sphere (Coyle, 2019).

The greater the volume, diversity, and granularity of data collected, the more substantial a platform's political and economic power. This power manifests in the ability to tailor product and service offerings and, more critically, to anticipate and shape human behavior. Thus, the feedback loop between data and platforms becomes a self-reinforcing cycle of power, control, and influence.

According to Rahman and Thelen (2019: pp. 178-179), major technology firms exemplify a disruptive business model (Schumpeter, 1943), whereby value creation is driven not primarily by price competition but by the extraction and intensive utilization of data. These firms position themselves as central intermediaries and, fundamentally, as the arbiters of market participation rules:

> "The new vanguard firms of the twenty-first century—not just Uber but also Amazon, Google/Alphabet, Facebook, and others—represent a new type of platform-based business model that builds on the developments of the 1980s and 1990s but combines them with new features. Whereas the previous NOC model centered largely on "price-based competition among producers of relatively similar products", today's platform firms represent a new way to create and capture value.3 They do so, above all, through their capacity to extract and harness immense amounts of data in ways that allow them to operate as critical intermediaries and market makers. (…) Some of these platforms now exercise a level of market dominance that inspires comparison to classic monopolies of the nineteenth and twentieth centuries. But what is distinctive about them is the way they achieve market dominance: the goal for these firms is not so much direct ownership as control. Indeed, compared to the monopolists of yesteryear, today's platform firms in many ways exercise deeper control because of the way the platform's data and algorithms "structure the rules and parameters of action" that are available to participants on the platform.5 In this sense, as John Zysman and Martin Kenney point out, these platforms constitute "regulatory structures" that dictate the terms of interaction—between workers and employers, buyers and sellers, clients and contractors, creators and viewers, and advertisers and consumers."

In other words, these emerging actors embody a highly specialized form of smart power, capable of exerting control over engagement dynamics, often through a calibrated combination of coercive and persuasive mechanisms. Across employer-worker, consumer-advertiser, and content creator-audience relationships, platforms are uniquely positioned to define the rules of engagement (Culpepper & Thelen, 2020). Their influence extends beyond financial valuation, encompassing the scope of their control over information flows and their capacity to structure political, economic, and social interactions on a global scale. Engagement power closely aligns with the visibility and monetization opportunities that ecosystem participants can access.

Platforms that dominate entire value chains can exercise significant control over information—commercial or otherwise—affecting actors who increasingly rely on their systems (Dunne, 2020; Bradford, 2023). For instance, many firms may become economically reliant on Google and Meta for the distribution and monetization of their content, exposing structural asymmetries in these relationships. Such dependence is often reinforced by the creation of so-called "walled gardens", where interoperability is deliberately restricted, reinforcing the dominance of incumbent platforms, limiting market entry, and establishing de facto technological dependency (Klonick, 2018).

On the other hand, another pillar of platform power lies in the perception of "free access". Users' sense of zero monetary cost enhances the platform's image as innovative and efficient. This perception generates legitimacy and valuable symbolic capital, mobilizing users to continually engage with and defend the platform (Khan, 2017; Silveira, 2019). A clear illustration of this dynamic occurred with Uber's market entry in Brazil in 2014, notably in São Paulo, which prompted judicial scrutiny involving state taxi unions, app-based drivers, and socially organized claims emphasizing convenience and technological innovation.

Beyond engagement and symbolic capital, a further determinant of platform power is its transnational character. Platform operations and decisions transcend national borders, impacting globally dispersed user bases. By leveraging personalization protocols informed by personal and sensitive data, platforms adapt messaging worldwide and influence behavior through targeted attention, communication strategies, gamification, and related mechanisms.

Building on Strange's (1996) observation of transnational corporations as quasi-states, Klonick (2018) argues that platforms occupy an interstitial space between the State, individuals, and traditional publishers. They act as private infrastructures of discursive governance, mediating and moderating the digital public sphere while effectively redefining the boundaries of freedom of expression on a global scale.

Where information control was once a state monopoly, private actors now challenge this premise. In Brazil, the scale of this power is significant. According to DataReportal (2024), the country counts 187.9 million internet users, marking a 3.3% increase from the previous year. Meta platforms alone report 111.3 mil-

lion Facebook users and 134.5 million Instagram users. Although multiple accounts per individual are possible, these figures underscore the profound societal reach of these platforms and, in practice, their unprecedented communicative power.

Thus, the ascendancy of data transcend the influence of traditional economic inputs, simultaneously structuring social engagement, generating symbolic capital, and determining transnational dynamics, while reconfiguring the very architecture of societal organization. The rise of the gig economy exemplifies the transformative capacity of platform-based enterprises, redefining labor relations and contemporary lifestyles (Rahman & Thelen, 2019).

This exponential growth was facilitated by the operation of platforms within regulatory "grey zones", areas beyond the reach of conventional oversight mechanisms. In Brazil, these gaps enabled rapid consolidation and entrenchment of platforms' informal regulatory power. Legal frameworks governing algorithmic transparency, private content moderation, artificial intelligence, and disinformation were historically underdeveloped or absent.

The Marco Civil da Internet (Law No. 12,965/2014), Brazil's landmark legislation establishing principles, guarantees, rights, and duties for internet use, enshrines the principle of network neutrality within its provisions. However, this obligation was not extended to digital platforms, leaving a regulatory gap that has potentially enabled practices such as self-preferencing, exclusivity, and technological lock-in.

This gap is exemplified in enforcement actions undertaken CADE. In particular, in the proceedings against iFood.com Agência de Restaurantes Online S.A. (Case No. 08700.004588/2020-47), the authority examined potential anti-competitive conduct in the national online food delivery marketplace. The scrutiny focused on whether the company was abusing its dominant position by imposing exclusivity commitments on registered restaurants. Consequently, a Settlement Agreement was executed prohibiting the establishment of exclusivity agreements—or any contractual measures with equivalent effect—with networks comprising 30 restaurants or more, as well as capping at 25% the platform's Gross Merchandise Value (GMV) tied to such commitments (CADE, 2023).

From a regulatory standpoint, Article 19 of the Marco Civil originally limited platforms' civil liability for third-party content to cases in which a specific court order mandated removal. However, in 2025, in Appeals Nos. 1,037,396 and 1,057,258 before the Brazilian Federal Supreme Court (STF), with general repercussion, the Court concluded that this provision was insufficient to ensure adequate protection of fundamental rights. The Court held that platforms must be held civilly liable for damages arising from third-party content in cases of criminal or unlawful acts if the content is not removed following an extrajudicial request, extending liability to fake social media accounts (STF, 2025).

Furthermore, STF (2025) recognized that platforms may be presumed liable for unlawful content, including paid advertisements and content disseminated through

artificial networks (chatbots or bots), with liability potentially arising irrespective of prior notice.

In this context, Brazilian legislative initiatives such as Bill No. 2630/2020 merit attention, as they seek to regulate algorithmic transparency and platform accountability, with a particular focus on mitigating the dissemination of misinformation and fake news. Similarly, labor legislation was slow to address app-mediated work, resulting in fragmented judicial responses and varying jurisprudential interpretations over time. Moreover, the protection of personal data was only effectively structured in 2018 with the enactment of the LGPD; by that point, digital platforms had already extensively exploited users' personal data without structured oversight or governance mechanisms.

All these regulatory gaps in Brazil mirror structural challenges observed globally. Khan's (2017) analysis of Amazon exemplifies this potential paradoxical dynamic: by acting simultaneously as marketplace platforms, direct suppliers, and logistics providers, Amazon could acquire structural power to influence algorithms, favor its own products, and exert market dominance through mergers and acquisitions. Regulators may hesitate to intervene, reasoning that free consumer services and innovation could generate diffuse market benefits (Khan, 2017).

Digital platforms assume a dichotomous character, being simultaneously open and accessible, yet organized around closed architectures under unilateral control. Cohen (2019) surpasses framework of "surveillance capitalism" and conceptualizes this emerging paradigm as "informational capitalism". Within this structure, nation-states predominantly respond reactively or adaptively to this new distribution of power, lacking the effective capacity to protect individual and collective rights.

Informational capitalism gives rise to a novel economic-legal ecosystem, in which markets are structured around the extraction of data, and actors capable of collecting extensive datasets emerge as the de facto regulators and architects of the market. Nation-states, in turn, due to rapid interconnectivity and systemic interdependence, may themselves become clients and dependents of these platforms in exercising traditional sovereign functions, including surveillance and governance (Cohen, 2019).

Consequently, countries acting in isolation are unable to impose effective limits on platforms' normative authority. This fragmentation fosters a form of privatized functional sovereignty, rooted in data ownership, technological infrastructure, and the regulatory automation capabilities of global corporations. To counter this regulatory inertia—especially acute in the face of rapidly evolving digital markets—states have increasingly pursued regional and international coordination, pursuing innovative and adaptive solutions to close regulatory gaps and reassert public oversight over digital governance.

4. Digital Platforms as Global Regulators: Private Governance and Content Control

Digital platforms increasingly operate as regulatory actors, implementing their

own normative systems—effectively a form of "private legislation". They blend instruments of hard power (such as technological infrastructures, algorithmic enforcements, and user exclusions) with mechanisms of soft power (including interface designs, algorithmic curations, and behavioral nudges) to redefine the rules of engagement, directly impacting fundamental rights.

From engagement to content oversight, platforms independently set rules for algorithmic visibility, security standards, interoperability, and sanctioning mechanisms. These decisions occur largely outside institutional moderation and without meaningful democratic accountability (Srnicek & De Sutter, 2016; Van Dijck, Poell, & De Waal, 2018).

This constitutes a novel regulatory regime: norms command high social acceptance and considerable operational efficacy, with their grounding in private contractual arrangements rendering them largely immune to legal contestation. In practice, the governance of these platforms often eludes traditional mechanisms of accountability and constitutional oversight mechanisms.

As Klonick (2018) emphasizes, content moderation operates as the principal vehicle through which platforms inscribe and project their institutional values. When platforms such as YouTube, Facebook (Meta), or X (formerly Twitter) function as central intermediaries of public discourse, they inevitably act as arbiters of what may be said, shared, or suppressed. This normative power extends beyond mere content filtering: it defines which voices—whether creators, advertisers, or ordinary users—attain visibility and relevance within the digital ecosystems.

To sustain this model, each platform may develop bespoke governance agendas that are frequently opaque and technocratic. Decisions as to whether to privilege unrestricted freedom of expression or to advance democratic objectives may, in turn, be influenced by corporate culture, market positioning, and strategic imperatives.

Three primary factors shape the normative architectures of digital platforms, particularly concerning content moderation: i) sensitivity to freedom-of-expression norms; ii) corporate responsibilities as expressed through institutional policies; and iii) balancing user expectations with economic viability (Klonick, 2018: pp. 1617-1618).

The resulting dichotomy extends past mere access to platform participation; it encompasses decentralized engagement in public discourse while concentrating control over content moderation in the hands of a limited number of actors. This occurs notwithstanding the underlying platform infrastructures and codified rules for public debate (Gillespie, 2018).

On certain platforms, mainly communication and social networks, internal committees hold sole authority over content takedowns, removing the profiles of public figures, and restrict the reach of social movements. These decisions frequently occur with little transparency or minimal formal procedural safeguards (Klonick, 2018: p. 1601):

"Though it might appear that any internet user can publish freely and in-

> stantly online, many content-publication platforms actively moderate the content posted by their users. Yet despite the essential nature of these platforms to modern free speech and democratic culture, very little is known about how or why these companies curate user content."

A critical concern is the global application of platform rules, which may overlook local contexts and potentially conflict with national laws and cultural norms. In politically fragile environments, content moderation can serve as a potent tool of control, manipulation, and social influence, verging on de facto private censorship aligned with platform interests at the expense of dissenting voices (Cohen, 2019).

Dunne (2020) notes that through platform design—including classifications, filtering mechanisms, UXs, and algorithmic prioritizations—combined with user interactions, platforms could function as de facto gatekeepers of markets and public discourse, assuming roles traditionally reserved for sovereign states.

The significance of this shift lies in the transfer of core public powers—organizing civic spaces and regulating information flows—to private entities guided primarily by commercial interests. Such transfers may escape robust public scrutiny, as users, enticed by narratives of free access, innovation, and efficiency, might engage either knowingly or unknowingly (Dunne, 2020: pp. 4-5):

> "By selecting (and enforcing) the platform policies and rules that delimit the parameters of competitive interaction within their own ecosystems, online platforms essentially 'regulate' these spheres, and thus themselves can be classed as 'regulators'. In contradistinction to the archetypal public regulator, however, platforms-as-regulators 'have regulator-ness thrust upon them,' an essentially incidental side-effect of their business models and the services provided. The report interprets 'rule-setting' in a broad fashion, ranging from platform design choices (rankings, search filters etc.), to rules that determine the relationship between the platform and its users (regarding payment, sharing of information, proscription of certain activities on the platform etc.), to rules that police interactions *between* users (setting prices, etc.). The relevance of this function can be gleaned from two extended quotations extracted in the chapter, which refer to large online platforms as 'quasi "gatekeepers" to markets and consumers' and as 'resembl[ing] nation-states' in terms of the complexity of the governance issues that they face. The regulatory nature of such conduct is thus the anticipated impact of these rules on 'the interactions [those platforms] host'. Moreover, while the report focuses on competition policy, there are hints that the authors may be equally concerned with regulation as a broader social phenomenon, concluding that '[a]s platforms act as regulators, they gain an impact on individuals, firms and society that reaches beyond "pure" market power.'

In the context of "surveillance capitalism," Zuboff (2019) observes that users simultaneously function as consumers and as raw material for platform systems.

Most users do not critically examine terms of service and remain unaware of how their data are collected, processed, and stored, thereby perpetuating profound asymmetries of power.

These asymmetries may be further entrenched by platform architectures designed to maximize user engagement, generating digital lock-in effects. The longer users persist within these ecosystems, the more data they generate, potentially magnifying the platforms' influence across other actors in the value chains.

Interoperability also plays a pivotal role in fostering innovation. When deliberately restricted, it may incentivize users to remain tethered to specific ecosystems and associated products or services, giving rise to genuine technological dependencies.

In sum, digital platforms have effectively instituted their own normative regimes, diverging from conventional state-based regulatory frameworks. These governance mechanisms frequently operate afar the reach of public control and are sustained by ongoing innovations that could, in principle, challenge the sovereign authority of the State.

A pressing question persists, for which no definitive answer yet exists: how should societies respond when contemporary regulators lack democratic legitimacy or popular mandates to exercise authority? One potential approach involves developing regulatory frameworks—at the supranational level, or at least nationally—that ensure public accountability applies consistently to all private actors wielding significant social, economic, or regulatory influence.

In this setting, isolated national efforts may be insufficient to address the speed and scale of digital transformations. Coordinated regional or international initiatives—such as the European Union's DSA and DMA, or multilateral discussions facilitated by the WTO and OECD—could establish harmonized standards and oversight mechanisms. These measures may help moderate regulatory fragmentation, curb the functional privatization of authority, and foster a more balanced and accountable system for governing global digital platforms.

5. Conclusion

This article aims to demonstrate how digital platforms have emerged as the new supranational regulators, creating power dynamics that challenge traditional state structures. The rise of these actors represents not merely new economic forces but a profound reconfiguration of sovereignties and normative authorities in the digital era.

In brief, the first section highlighted that contemporary capitalism, driven by technological innovations, has transformed data into both strategic resources and core assets. It illustrated how control over extensive data repositories grants their holders multifaceted powers capable of predicting, influencing, and even shaping social behaviors on broad scales.

The second section examined how the business models of digital platforms transcend purely economic logics, entering the regulatory sphere. It argued that

major technology conglomerates have developed enforcement capacities rivaling those of states, benefiting from de facto "regulatory delegations." Faced with the complexities of digital governance, states have, at times, informally delegated regulatory functions to these companies, occasionally assuming the roles of clients rather than controllers.

Finally, the third section analyzed how these powers manifest in the private governances of discourse through content moderation and engagement rules. Platforms establish the rules of the game, directly impacting fundamental rights such as freedoms of expression. While these decisions are private, they produce significant public consequences, shaping political debates and social cohesions.

The analysis suggests potential shifts in regulatory logics. In a model where state governances may coexist with—and at times be supplanted by—private regulatory frameworks operating on global scales, traditional accountability mechanisms could require recalibration.

This ever-evolving scenario, lacking straightforward solutions, may require careful reflection on the potential roles of law. Legal frameworks might need to be mobilized to support the development of regulatory models capable of promoting the protection of fundamental rights, democratic pluralities, and collective welfare in digital environments.

What was once primarily a pursuit of solutions at the national level now tends to evolve toward a search for coordinated, harmonized, and transboundary responses, capable of rebalancing the business models of digital platforms, particularly with regard to their auditing and oversight capacities in the face of potential abuses of power. Issues of a private nature are thus increasingly entering the agenda of a more attentive and proactive international law, with room for the involvement of supranational governance bodies, such as the World Trade Organization (WTO), the Organization for Economic Co-operation and Development (OECD), and the United Nations Conference on Trade and Development (UNCTAD), as well as regional structures, including the European Union, Mercosur, and the Association of Southeast Asian Nations (ASEAN), among others.

The paramount challenge for law and society could be to restore certain balances. One of the fundamental tasks of our era may be to ensure that technological innovations serve not only market advancements but, above all, contribute to the potential promotion and protection of the common good.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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