Regulating Social Media in the Global South

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ABSTRACT

In recent years, the disinformation crisis has made regulating social media platforms a necessity. The consequences of disinformation campaigns are not only limited to election interferences or political debates, but have also included fatal consequences. In response, scholars have generally focused on regulating social media companies in the United States without paying much attention to these companies’ global impact, particularly in the Global South. Lost in the quest to fight disinformation is addressing the social media companies’ neglect of consumer rights in the Global South.

Countries in the Global North, such as the United States, have the power to regulate social media companies should they choose to do so. However, the current power asymmetry between major social media companies and countries in the Global South limits the ability of many of such countries to have any meaningful bargaining power to advocate for their citizens’ consumer rights and their ability to manage misinformation campaigns in their sovereign territories. In some countries, it is even unclear if there is any political will from their respective government to advocate for consumer rights. This problem will not be resolved by relying on corporate social responsibility or corporate self-governance. Thus, this Article argues that unless countries in the Global South act collectively, they should not expect any major change from powerful social media companies in handling misinformation in their countries or promoting their citizens’ consumer

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rights. Regional treaties among countries, as a form of collective action, could push social media companies to be more attentive to their actions outside the Global North and bear responsibility in a transnational space. Ultimately, collective action in the Global South could inspire a global coalition and promote global accountability.

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I. INTRODUCTION

In Sri Lanka, disinformation on Facebook has had devastating consequences. In one post, a Muslim pharmacist was accused of plotting to use twenty-three thousand sterilization pills to sterilize the Buddhist (Sinhalese) population. A mob beat up a twenty-eight-year-old employee, “destroyed the shop, and set fire to [a] local mosque.” Following the false accusations, hateful posts took over Facebook, one of which declared, “[k]ill all Muslims, don’t even save an

2. Id.
3. Id.
infant.” While the company Meta (formerly known as Facebook) claims it responds to such false accusations and hate effectively, this is not the reality in many developing countries. For example, according to Facebook’s transparency report on governmental requests, it only took down a total number of nine items in Sri Lanka. Another example of Meta’s inaction or delayed actions in the Global South has been in the Philippines, another country struggling with misinformation and defamation. In the Philippines, the internet has become “an outlet for threats and deceit.” According to the New York Times, nearly 97 percent of internet users in the Philippines access the web through Facebook.

The social media company’s facilitation of the chaos is no surprise. After all, one of Facebook’s primary goals, similar to many other social media platforms, has been to promote engagement and increase time spent on the platform. Recently, the Wall Street Journal

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4. Id.
5. Shannon Bond, Facebook Is Rebranding as Meta — but the App You Use Will Still Be Called Facebook, NPR, https://www.npr.org/2021/10/28/1049813246/facebook-new-name-meta-mark-zuckerberg [https://perma.cc/ZK54-6FBd] (Oct. 28, 2021, 3:30 PM). In October 2021, Facebook changed its name to Meta. Id. The social media platform called Facebook will keep its name. Id. In this Article, when “Facebook” is used, the specific platform is intended. The company is referred to as Meta throughout this Article. Meta is the owner of Facebook and Instagram.
6. See id. (noting that despite numerous reports of the violent posts, Facebook only responded that it did not violate its community standards).
9. Id.
10. Id.
11. See Keach Hagey & Jeff Horwitz, Facebook Tried to Make Its Platform a Healthier Place. It Got Angrier Instead., WALL ST. J. (Sept. 15, 2021, 9:26 AM), https://www.wsj.com/articles/facebook-algorithm-change-zuckerberg-11631654215 [https://perma.cc/3T73-NU56]. Although, in 2018, the move to “time well spent” created an incentive for major social media companies to deploy features that allowed users to be more aware of their time on the platforms, like the “You’re All Caught Up” message on Instagram. Introducing “You’re All Caught Up” in Feed, INSTAGRAM (July 2, 2018), https://about.instagram.com/blog/announcements/introducing-youre-all-caught-up-in-feed
investigative series “The Facebook Files” revealed how Meta was aware of the drug cartels and human trafficking in developing countries that used its platforms to facilitate their horrific agenda, yet it failed to respond adequately, leaving many related posts on their platforms.12 A Meta (Facebook) whistleblower’s testimony before the US Senate further highlighted the company’s inaction in light of reports of various harms on its social media platforms.13

Social media platforms based in the United States have become private regulators due to a broad immunity embedded in section 230(c) of the Communications Decency Act of 1996 (CDA), along with companies’ ability to grant themselves via writing their own terms of use.14 Meta best demonstrates the risks of relying solely on self-regulation. According to a recent report, Meta is the number one social network for disinformation.15 The social media giant owns

13. Bobby Allyn, Here Are 4 Key Points from the Facebook Whistleblower’s Testimony on Capitol Hill, NPR, https://www.npr.org/2021/10/05/1043377310/facebook-whistleblower-frances-haugen-congress (Oct. 5, 2021, 9:30 PM) (noting that Facebook was aware about the harm of Instagram to teen girls including worsening eating disorder and body image issues).
Facebook, Instagram, Messenger, and WhatsApp, to name a few.\textsuperscript{16} Facebook alone has over 2.79 billion active users monthly.\textsuperscript{17} Additionally, Instagram has one billion users of its own.\textsuperscript{18} With such a large user base, the dangers and consequences of misinformation on its platforms are much more pronounced.\textsuperscript{19}

But how is this company regulated outside of the United States, more specifically, outside of the Global North? Many scholars have explored the ways that modern tech companies are influencing the internal affairs of other countries, including speech across borders.\textsuperscript{20} However, many of these articles focus on US First Amendment doctrine and pay little attention to the different sets of values protected by laws in other countries.\textsuperscript{21}

Furthermore, social media companies in the Global South have provided forums for speech not otherwise protected.\textsuperscript{22} The problem of suppressing free speech in some Global South countries is so profound that it sometimes overshadows other important issues not within the scope of free speech concerns.\textsuperscript{23} However, social media companies are long past the days of claiming to be only a force of promoting good in

\begin{itemize}
  \item \textsuperscript{17} Number of Monthly Active Facebook Users Worldwide as of 4th Quarter 2020, STATISTA (Nov. 1, 2021), https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/ [https://perma.cc/S888-Z7H7].
  \item \textsuperscript{18} Ashley Carman, \textit{Instagram Now Has 1 Billion Users Worldwide}, THE VERGE (June 20, 2018, 2:02 PM), https://www.theverge.com/2018/6/20/17484420/instagram-users-one-billion-count [https://perma.cc/5V6W-7ZZD].
  \item \textsuperscript{21} See Borders and Bits, supra note 20, at 197–98; Balkin, supra note 20, at 1154.
  \item \textsuperscript{22} See Ashutosh Bhagwat, \textit{The Law of Facebook}, 54 U.C. DAVIS L. REV. 2353, 2355–56 (2021).
\end{itemize}
the world. Meta, for example, is now a Delaware corporation. The seemingly “free” service it offers is based on a business model that strives to enhance profits by tracking and collecting users' data to target advertisements. One expert notes that we are living in the digital capitalism age where “a seemingly unlimited freedom to speak” comes with forfeiture of “the right to surveil and manipulate end-users.”

Some scholars have approached the issue by focusing on free speech from a human rights angle. They have noted that unifying around international freedom of expression standards “[is] virtually the only conceptual framework for assessing the boundaries of acceptable speech which transcends national law.” These discussions are


25. Facebook, Inc., Eleventh Amended and Restated Certificate of Incorporation (Form S-1/A) (Feb. 8, 2012).


The reality here is that if you want to build a service that helps connect everyone in the world, then there are a lot of people who can’t afford to pay. And therefore, as with a lot of media, having an advertising-supported model is the only rational model that can support building this service to reach people.

Id.


necessary and important. However, focusing only on freedom of speech fails to recognize and address the wide array of harm that can result from the lack of adequate supervision of social media companies in the growing attention market economy.\(^\text{30}\)

Other scholars advocate for an open-source approach.\(^\text{31}\) Michael Kwet, for example, has written that “digital colonialism” results from the prevalence of US-based social media platforms in the Global South.\(^\text{32}\) Criticizing the antitrust movement,\(^\text{33}\) he has proposed an open software model that would address some of the challenges and risks (such as data collection) that many people outside of the United States face using social media platforms.\(^\text{34}\) Some social media companies have also become interested in exploring decentralized platform governance.\(^\text{35}\) In 2019, Twitter announced an initiative called Bluesky to develop a decentralized standard for Twitter.\(^\text{36}\) The progress has been very slow, yet it remains a project to watch.\(^\text{37}\) In this approach, the advocates are thinking creatively to move the regulatory mechanism away from governmental control.\(^\text{38}\)

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32. Id. at 20–21.
33. Michael Kwet, Fixing Social Media: Toward a Democratic Digital Commons, 5 MKTS. GLOBALIZATION & DEV. REV., no. 1, 2020, at 1, 2.
34. Id. at 7.
38. See What You Need to Know About Decentralized Social Networks, supra note 35.
But the world, however, is messy and currently operated by governments and their interactions amongst one another. Finding a way to balance the power of private companies with that of governments requires an approach that involves both parties, rather than the elimination of one. As big data becomes even more central in modern societies, unchecked surveillance by social media companies (and other Big Tech companies, for that matter) will only further the power imbalance between the Global South and North, weaken national sovereignty in the Global South, and create a dependency on foreign social media companies for a country’s basic needs. Moreover, while social media companies claim to abide by local laws, as this Article illustrates, the reality is far more complex. In light of these concerns, the looming question is how international organizations or governments should contain the unwatched and ever-growing power of private social media companies, in the Global South, and promote consumer rights without giving up or hindering the benefit of free speech enabled by the platforms.

This Article argues that the problem of regulating social media platforms in the Global South goes far beyond content moderation. It illustrates some of the challenges that consumers in the attention economy face in the Global South when using social media platforms. Similarly, it addresses consumer rights in the new markets created by platforms. This Article argues that countries in the Global South should form coalitions to gain negotiating power and ensure citizens maintain access to their nationally established rights. Regional and global alliances between countries in the Global South can also test social media companies on their promises to promote freedom of expression when faced with the challenge of also offering consumer protections. Big social media companies will also be able to negotiate for their freedom of speech standards while accepting the obligation of protecting consumer rights. In the bigger picture, such coalitions and forums can

ultimately lead to global public accountability for companies working on such a scale.

Part II explores some of the impacts of social media companies in the Global South, particularly in collecting data, facilitating the violation of laws, and undermining privacy. Part II further illustrates how the lack of adequate regulatory regimes of social media companies in many of the countries in the Global South has impacted citizens’ rights.

Part III discusses several solutions that commentators and companies have explored. It focuses on corporate social responsibility and the reliance on the corporate conscience to act. Part III illustrates that such reliance, despite its hype and optimism, is inadequate. Many times, corporations fail to take actions that can threaten their business models. This Part then discusses the Oversight Board, the so-called “Supreme Court.” It argues that the undemocratically chosen advisory board carries the stain of corporate authority. The Oversight Board’s limited jurisdiction in content moderation also renders it an inadequate tool for addressing many other business aspects of Meta’s operations in the Global South, such as data collection and privacy concerns.

Part IV argues that an effective response for countries in the Global South is only possible if action is taken collectively. This Article suggests collective action either through a regional treaty-based approach, the establishment of new international organizations, or the expansion of the authority of current international organizations. By forming alliances (similar to the early rise of international organizations after the wave of decolonization of Asia and Africa in the 1940–60s) countries in the Global South that suffer from a common problem and lack sufficient power to act alone can collectively push social media companies to invest more money in the accountability and transparency of their business and promotion of consumer rights.

Forming alliances can also be beneficial for the big social media companies and the promotion of freedom of expression enshrined in Article 19 of the Universal Declaration of Human Rights. With the global attention that such regional treaties bring about, countries will be vigilant not to have radical demands that may hurt their image and

44. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) (“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”).
reputation around the globe. More likely than not, countries will not demand strict compliance with their political agendas when negotiating with a social media company under a transnational spotlight, the way they may do so behind closed doors. Lastly, this Article recommends moving away from a one-size-fits-all approach and towards a standard by which social media platforms would consider regional, cultural, and social values, of a particular country, to reduce local tension.

II. THE IMPACT OF SOCIAL MEDIA IN THE GLOBAL SOUTH

The influence of social media platforms on the way people think, talk, and act is unquestionable. The popularity of these platforms also shows the degree to which social media companies have been successful. They have become not only a major channel of entertainment but also sources of news, family connections, commerce, group mobilization, and the epicenter of political debates.

This multidimensional nature of social media platforms has made it difficult for law and policy makers to agree on the best way to regulate them. For example, Meta currently provides free internet for
many countries in Africa and plans to expand its infrastructure. No one argues against connectivity, but should there not also be accountability? The following sections focus on some of social medias’ general impacts and then describes the consequences felt specifically by countries in the Global South.

A. Data Collection and National Security

Social media users are generating data like never before. As a result, scholars are discussing social media mining: a field similar to data mining but limited to social media platforms. Apart from the publicly shared data that users generate, social media companies can also collect sets of data to target advertisements and generate revenue. The companies are protective of such data sets as their business model depends on them. For example, in Facebook, Inc. v. Power Ventures, Inc., Meta sued Power Ventures (“Power”) to stop the company from accessing its users’ information. Power provided a platform through which its users, “Power users,” could access all of their


54. What can be publicly shared is up for debate. See, e.g., hiQ Labs, Inc. v. LinkedIn Corp., 938 F.3d 985, 989 (9th Cir. 2019) (addressing how hiQ, a data analytics company and rival of LinkedIn, sued to “obtain[] a preliminary injunction forbidding LinkedIn from denying [the company] access to publicly available LinkedIn member profiles” and used the scraped data to sell to its business clients).


57. Facebook, Inc. v. Power Ventures, Inc., 844 F.3d 1058, 1062 (9th Cir. 2016).
social media accounts’ contacts in one single platform.58 Power users could access each individual website by clicking on the links generated on the company’s website.59 This required the Power users to provide their username and password.60

Meta sent a cease and desist letter to Power to end its activities or sign its Developer Terms of Use Agreement required to enroll in Facebook Connect—a program that allowed third parties to register with Meta by agreeing to additional terms.61 Once Power declined, Meta issued, claiming that Power was, among other things, violating the Computer Fraud and Abuse Act of 1986 (CFAA).62 The US Court of Appeals for the Ninth Circuit agreed that Power had violated the CFAA by committing the act of computer trespass as defined by the CFAA.63 It concluded that Facebook had suffered losses within the meaning of CFAA which permitted the private right of action.64 The court ruled that:

[F]or Power to continue its campaign using Facebook’s computers, it needed authorization both from individual Facebook users (who controlled their data and personal pages) and from Facebook (which stored this data on its physical servers). Permission from the users alone was not sufficient to constitute authorization after Facebook issued the cease and desist letter.65

The court ruled, in part, granting damages for the period after which Power had received the cease and desist letter but continued to access Meta’s data.66

The extent to which social media platforms will go to protect their data is no surprise.67 Yet, the many ways that social media platforms may use the data they collect from users only made global headlines when the story of Cambridge Analytica broke.68

58. Id.
59. Id.
60. Id.
61. Id. at 1063.
62. Id. at 1062. Facebook also claimed that Power violated the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM), and California Penal Code section 502. Id.
63. See id. at 1065–66.
64. Id. at 1066.
65. Id. at 1068.
66. See id. at 1070.
67. See hiQ Labs, Inc. v. LinkedIn Corp., 938 F.3d 985, 990–92 (9th Cir. 2019) (discussing LinkedIn’s lawsuit against hiQ Labs to stop the company from using its data).
In March 2018, the New York Times reported that the data firm, Cambridge Analytica, misused personal data obtained from tens of millions of Facebook users to influence the 2016 US general elections.\(^6^9\) “Cambridge paid to acquire the personal information through an outside researcher who, Meta says, claimed to be collecting it for academic purposes.”\(^7^0\) The scandal put Meta in the spotlight.\(^7^1\) It was evidence that social media data can be used beyond product sales and services; it can impact national security.\(^7^2\) If such data can influence the US presidential elections or Brexit,\(^7^3\) despite the advanced security measures and democratic institutions in place in these countries, what kind of impact can data collected by social media giants have in countries where the social, economic, and political infrastructures are not as established?

National security is not limited to elections.\(^7^4\) The progress and growth of cities are also becoming dependent on data.\(^7^5\) Technologies that are enabling the use of so-called big data are creating opportunities for governments to remodel cities.\(^7^6\) The processing of big data “involves

\(^6^9\) Id.


\(^7^1\) See Confessore, supra note 68.

\(^7^2\) See id.


\(^7^6\) See, e.g., id. Although this Article only focuses on social media platforms, the threat of data collection from new data-driven technologies is not limited to social media platforms. For example, recently, Peloton’s internet-driven bicycle and exercise scheme created a buzz around security in the White House—specifically, the risks that this type of equipment posed to the President’s safety. See Schneier, supra note 74. What about the rest of us? And, from the angle embodied in this Article, what about the countries in the Global South? For further discussion on the cybersecurity implications of Peloton, see Sheryl Gay Stolberg, Biden Has a Peloton Bike. That Raises Issues at the White House., N.Y. TIMES,
mining the data for patterns, distilling the patterns into predictive analytics, and applying the analytics to new data.”

The availability and use of big data promise more accurate predictions for many aspects of life, including combating climate change and allowing many businesses to design their products with more accuracy and target their audience with efficiency. However, big data also “represents the de facto privatization of human subjects research, without the procedural and ethical safeguards that traditionally have been required.” Although many Big Tech companies have promoted ethical artificial intelligence (AI) use, lack of accountability and oversight of such companies continues to linger in many countries in the Global South. Nevertheless, the economic growth of countries will heavily depend on data that social media companies have collected for years. Having such a crucial asset in hand, such companies will have leverage over not only other private companies, but also governments who may not have recognized the potential importance of the data social media companies collect.

The value of data harvested from people in the Global South becomes even more important when one thinks about the structure of the flow of personal data cross-border. As Julie Cohen writes: “[d]ifferences in data protection obligations create incentives for organizations to collect and process data in jurisdictions with more lenient rules and to transfer data collected elsewhere to those


78. See id. at 1921.
79. See id. at 1925.
80. But see, e.g., Cade Metz, A Second Google A.I. Researcher Says the Company Fired Her, N.Y. TIMES (Feb. 19, 2021), https://www.nytimes.com/2021/02/19/technology/google-ethical-artificial-intelligence-team.html (discussing how some companies, such as Google, continue to battle internal quarrels over bias in A.I.); Cade Metz, Is Ethical A.I. Even Possible?, N.Y. TIMES (Mar. 1, 2019), https://www.nytimes.com/2019/03/01/business/ethics-artificial-intelligence.html (“Google, Microsoft, [Meta] and other companies have created organizations like the Partnership on A.I. that aim to guide the practices of the entire industry. But these operations are largely toothless.”).
82. See Wilson, supra note 75.
jurisdictions for processing."85 While many countries in the Global North have taken strong steps in protecting their citizens’ data, many countries in the Global South lack such protection.86 As it stands, for example, Meta processes the data of the citizens of many countries in the Global South (and elsewhere) in the United States.87 According to Facebook’s Statement of Rights and Responsibilities: “[U]sers and non-users who interact with Facebook outside the United States . . . consent to having [their] personal data transferred to and processed in the United States.”88

The risks in having personal data in the hands of a foreign company, in a foreign country, are worrisome and will fall on the shoulders of the citizens in the Global South over time.89 Countries in the Global North have been working on data and privacy issues for years.90 They have formed ever-evolving mechanisms such as the EU-US Privacy Shield, which continues to be improved and adapted to the new challenges of data privacy.91 For example, after General Data Regulation Protection (GDPR) became law,92 the Court of Justice of the European Union issued a judgment that declared the Privacy Shield inadequate protection.93 In contrast, there is mostly silence on these data mining issues in many of the countries in the Global South.94

85. Id. at 215.
86. See id. at 215–17. Many of the protective actions have involved trade agreements between countries that consequently apply to companies, such as the US-EU Privacy Shield. See id. at 216. For more information, see PRIV. SHIELD, https://www.privacyshield.gov/welcome [https://perma.cc/UXN7-EA27] (last visited Feb. 20, 2021).
88. Id.
89. See generally Bloch-Wehba, supra note 14.
90. See supra note 86 and accompanying text.
91. See supra note 86 and accompanying text.
94. See generally McCourt, supra note 53.
B. Protecting Privacy and Truth

Social media companies have also impacted privacy and the degree of its protection throughout the world. James Whitman’s article titled, *The Two Western Cultures of Privacy: Dignity Versus Liberty*, laid out the foundational difference between what privacy means for two western cultures: the United States and Western Europe. He notes on various examples of differences and asks: “If privacy is a universal human need that gives rise to a fundamental human right, why does it take such disconcertingly diverse forms?” Yet, he states, “all the evidence seems to suggest that human intuitions and anxieties about privacy differ.” The differences are not between two widely different cultures—they are “between the familiar societies of the modern West.” Although the article was written in 2004, the year Facebook was launched, it is even more relevant today. The rise of social media platforms magnified a clash of cultures that is now manifesting as clashes of courts and jurisdictions.

Today, based on the US Supreme Court decision in *United States v. Alvarez*, the US Constitution protects falsehood. In *Alvarez*, the Court wrote that “the Government has not demonstrated that false statements generally should constitute a new category of unprotected speech” under the First Amendment. Hence, false statements are also protected speech. As Whitman notes, all institutions are “shaped by the prevailing legal and social values of the societies in which we live.” Such protection is also rooted in US legal and social values. But is protecting falsehood the prevailing approach outside of the

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95. See generally Confessore, supra note 68.
97. Id. at 1154.
98. Id. at 1155.
99. Id.
101. See Klonick, supra note 14, at 1609.
103. Id.
104. See id.
105. Id.
United States? Moreover, how does this protection affect social media companies, their content moderation, and in return, the right of citizens in countries outside of the United States? For example, a common theme evident in the history of Facebook, Twitter, and YouTube is that “American lawyers trained and acculturated in American free speech norms and First Amendment law oversaw the development of company content-moderation policy.”

Legal scholars in the early days of social media, noted that social media companies reached out to lawyers for advice on content moderation. Kate Klonick comments in an interview with a lawyer and former employee of Google that in 2006, Google hired lawyers to be in charge of “creating and implementing content-moderation policies.” Facebook, too, was on the same track. According to Klonick’s interviews with Facebook’s former Head of Content Policy and Safety, Facebook hired twelve lawyers in 2009, five years after the site’s launch, to create its community standards; a project which the lawyers recognized was “not a cultural neutral mission.”

Twitter initially took a different path and decided not to have any form of internal content moderation process. However, it too later reversed course. Currently, Twitter maintains “The Twitter Rules,” and its enforcement mechanisms on a separate web page.

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107. Klonick, supra note 14, at 1621.
108. Id. at 1618–20.
109. Id. at 1619 & n.139.
110. Id. at 1620.
111. Id. at 1620 & n.147.
112. Id. at 1621.
113. See id.
recognizes, in its guidelines and principles, that its global commitment is “in the United States Bill of Rights and the European Convention on Human Rights.”\(^{116}\) But it further notes that the commitment is also informed by “additional sources” including its Trust and Safety Council, composed of organizations from around the world,\(^{117}\) and “works such as United Nations Principles on Business and Human Rights.”\(^{118}\)

The idea of US-based companies being rooted in US laws and norms should come as no surprise. All institutions are “shaped by the prevailing legal and social values of the societies in which we live.”\(^{119}\) Cultural norms and their legal implications are widely different from one region to the other.\(^{120}\) This is true even between societies that appear to share many cultural and legal institutions.\(^{121}\) For example, US tort law is heavily rooted in the English common law of torts.\(^{122}\) After the American Revolution, “the new states enacted ‘reception statutes’ that explicitly incorporated English law into their laws.”\(^{123}\) Laws change over time and diverge from their historical foundations in response to emerging values.\(^{124}\) Even today, “no other Western industrial democracy has adopted rules that are as hard on defamation plaintiffs as those of the United States.”\(^{125}\)

An interesting example in torts is the phenomenon known as libel tourism.\(^{126}\) The narrow possibility of a successful defamation
lawsuit in the United States encouraged plaintiffs, outside of the country, who believed they had been defamed by an American speaker to file their lawsuits outside of the US court system. Plaintiffs instead searched for jurisdictions that would protect their libel claims against the would-be US defendants. The United Kingdom, for example, became a hotspot for many defamation suits, when such lawsuits would be unsuccessful if commenced in the United States.

As one commentator noted, it seemed as though a national threat to the US Constitution had commenced, and as a result, the United States acted swiftly. Consequently, Congress passed the Securing the Protection of Our Enduring and Established Constitutional Heritage (SPEECH) Act in 2010 to counter libel tourism.

The measures taken to counter libel tourism in the United States and the United Kingdom demonstrate how protective some countries are of their values and the lengths they are willing to go to uphold them. If values can contrast so strongly even between two countries so similar in many ways, such as the United States and United Kingdom, what about the difference of values between countries in the Global South? How does the protection of falsehood in the US legal culture, reflected in many of the social media companies’ content moderation policies, translate in countries with a different set of values?

The difference in the degree of reputation protection in some of the Muslim majority countries in the Global South can serve as an example of the difference in values and what level of reputational protection should be granted to citizens. Though by no means can such a topic be covered in only a few paragraphs, the example below provides context for why a one-size-fits-all approach by social media

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128. *See Lester, supra note 127*, at 185.
129. *See id.*
130. *See Shapiro, supra note 121.*
131. *See id.*
companies cannot be successful.\textsuperscript{135} To find the right approach, culturally sensitive methods require an understanding of values on privacy, honesty, and truth.\textsuperscript{136} The holy book in Islam, the Qur’an, draws a comparison between backbiting and eating the dead flesh of another human—your brother.\textsuperscript{137} It states:

\begin{quote}
O you who believe! Shun much conjecture. Indeed, some conjecture is a sin. And do not spy upon one another, nor backbite one another. Would any of you desire to eat the dead flesh of his brother? You would abhor it. And reverence God. Truly God is Relenting, Merciful.\textsuperscript{138}
\end{quote}

This verse also further enjoins Muslims from spying on one another.\textsuperscript{139} While some acts are only prohibited and commission of the act is sinning, which is a matter between the sinner and God, there are prohibited acts that the Qur’an has ensured compliance by laying out worldly punishment.\textsuperscript{140} As it pertains to this discussion, once the backbiting takes an outward form and amounts to slander, for example falsely accusing women of unchastity,\textsuperscript{141} it is sanctioned by punishment.\textsuperscript{142}

\textsuperscript{135}. See Professor Anupam Chander on Regulating—and Decolonizing—the Internet, supra note 50.

\textsuperscript{136}. See Douek, supra note 28, at 51–52, 54–55.

\textsuperscript{137}. Qur’an 49:12.

\textsuperscript{138}. Id.

\textsuperscript{139}. Id.

\textsuperscript{140}. See id.; see also Qur’an 24:4. Punishment in Islam falls into two major categories: Hadd (plural hudūd) and Ta’zir. Nazir Ahmad Zargar, Islam Classifies Punishments in Three Ways - Hadd, Qisas and Tazir Hadd, NEW AGE ISLAM (Jan. 29, 2021), https://www.newageislam.com/islamic-ideology/dr-nazir-ahmad-zargar/islam-classifies-punishments-three-ways-hadd-qisas-tazir-hadd/d/124175 [https://perma.cc/WY7V-FW46]. Hadd refers to punishments for acts against the right of God. See id. The extent of such crimes is outlined and fixed in the Qur’an. See id. Ta’zir, on the other hand, refers to crimes as outlined by the government and the judge, depending on the legal system. Id. Governments can layout such crimes and punishments in their penal code according to the needs of the society. See id. These crimes can vary from time to time. Adultery is a type of hadd. Id. False accusations of adultery are also considered hadd, with a fixed punishment outlined in the Qur’an. See id. The differences between hudūd and taz’ir are prolific and beyond the scope of this Article. See Intisar A. Rabb, Islamic Legal Maxims as Substantive Canons of Construction: Hudūd-Avoidance in Cases of Doubt, 17 Islamic L. & Soc’y 63, 65–66 (2010), for a general discussion on the role of doubt in Hudud.

\textsuperscript{141}. THE STUDY QURAN: A NEW TRANSLATION AND COMMENTARY 1261 (Seyyed Hossein Nasr, Caner K. Dagli, Maria Massi Dakake, Joseph E. B. Lumbard & Mohammed Rustom eds., 2017). Interestingly, in the United States’ common law tradition, accusing a woman of unchastity constitutes slander per se and does not require proof of special damages. GOLDBERG & ZIPURSKY, supra note 125, at 316–17.

\textsuperscript{142}. See Qur’an 24:4.
The Treatise On Rights of Imam Sajjad, the great-grandson of the Prophet,\textsuperscript{143} has a section on the Right of the Tongue.\textsuperscript{144} It states:

And the right of the tongue is that you consider it too noble for obscenity, accustom it to good, direct it to politeness, do not use it except in situations of needs and benefits of the religion and this world, and refrain from any meddling in which there is little to be gained; and there is no security from its harm that accompanies its small benefits. It is the witness to and the evidence of the existence of the intellect. The demonstration of an intelligent person’s intellect is through his reputation of good speech. And there is no power but in God the High, the Great.\textsuperscript{145}

The importance of imposing obligations and rights for words is consequently seen in the laws of many Muslim-majority countries.\textsuperscript{146} One study examined the defamation laws of six Arab countries: Egypt, Jordan, Kuwait, Lebanon, Libya, and the United Arab Emirates.\textsuperscript{147} The study found that all six countries have criminal charges as penalties for libel or slander.\textsuperscript{148} Iran is another Muslim-majority country with criminal penalties for defamation.\textsuperscript{149}

In the Anglo-American tradition, too, defamatory statements were historically considered an element of incitement of violence.\textsuperscript{150} In medieval English law, insulting a person was a sin punishable by the church.\textsuperscript{151} In the United States, the transition from a sin to a crime, and
recently to a civil action, did not come overnight. In 1917, the United States, through the Espionage Act of 1917, imposed criminal liability, inter alia, for speech critical of the First World War. Even the US Supreme Court in Schenck v. United States, authored by the famous Justice Holmes, upheld the Act against the First Amendment free speech constitutional claims. The Sedition Act of 1918 further reinforced criminal liability until Congress repealed the Act in 1920. To this day, more than twenty US states continue to impose criminal liability for the common law tort of libel.

This Article does not advocate for the criminalization of defamation. Criminalizing online libel will not solve the problem of online hate speech and defamation. Yet, outright freedom to defame, based on US law and the protection of false speech it offers, is also not the way to go in the eyes of many nations outside of the United States. Each country’s right to self-determination should be respected. Countries in the Global South should be given the time, if desired, to naturally evolve their ideas, norms, and priorities rather than being coerced by an outside force or a fake push; unlocalized pressure will only

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152. See id. There are jurisdictions, in the United States and abroad, that continue to impose criminal sanctions for harm to one’s reputation. See Friedersdorf, supra note 149; Duffy & Alkazemi, supra note 134, at 202–04.


154. Schenck v. United States, 249 U.S. 47, 48–49, 53 (1919). The cases the Supreme Court heard fall into two categories: the first group includes cases decided in March 1919, and the second group encompasses those decided from late 1919 through the 1920s. Neil Richards, INTELLECTUAL PRIVACY: RETHINKING CIVIL LIBERTIES IN THE DIGITAL AGE 33 (2015). It was not until the second series of cases that Justice Brandeis and Justice Holmes began vigorously dissenting and raising free speech concerns. See id.


158. Whitman, supra note 96, at 1160–61. The creation of the Advisory Board was an attempt to tackle this issue. See infra Parts III, IV.
backfire if attempted without the support of necessary social institutions.159

The dilemma here is that social media companies, such as Meta, are not governing their content in “a” country; instead, they are reaching various jurisdictions outside the United States that each has its own legal and social values.160 Initially, Meta saw no difference in the individual places; rather, there were “just people with different nationalities all interacting in many shared forums.”161 Regional rule would make cross-border interactions and communities largely incoherent and moderation very hard if not impossible.”162 That too, however, changed with the GDPR and Meta’s own actions.163

Initially, Meta’s users, regardless of their location, were globally subject to the company’s Terms and Policies in the United States.164 However, this changed when Meta opened an office in Dublin.165 Taking advantage of Ireland’s low corporate tax rate,166 Meta incorporated Facebook Ireland Ltd., now changed to Meta Platforms Ireland Ltd,167 as a subsidiary and its international headquarters.168 From that point forward, all users outside of the United States were subject to the Terms of Use of Meta Platforms Ireland Ltd.169 Yet, when the GDPR took effect, the protections it offered to EU citizens seemed too stringent for Meta to grant to all of its users.170 Hence, Meta decided that users

161. Id.
162. Id.
164. See Klonick, supra note 14, at 1631, 1634.
165. See id. at 1634.
166. Ingram, supra note 163.
168. Ingram, supra note 163.
169. Id. Facebook’s Statement of Rights and Responsibilities indicates:
If you are a resident of or have your principal place of business in the US or Canada, this Statement is an agreement between you and Facebook, Inc. Otherwise, this Statement is an agreement between you and Facebook Ireland Limited. References to “us,” ‘we,’ and ‘our’ mean either Facebook, Inc. or Facebook Ireland Limited, as appropriate.

Statement of Rights and Responsibilities, supra note 87.
outside of the European Union would be once again subject to the US headquarters’ terms of services.\textsuperscript{171} Even after the UK referendum and the decision to leave the European Union, Meta took no chances, and subjected UK users to California’s terms and conditions.\textsuperscript{172} Google, too, took a similar approach.\textsuperscript{173}

In spite of the above, the story is not all gloomy. Meta has taken steps to abide by national laws in different countries.\textsuperscript{174} It now has offices in seventy cities worldwide, including in the Middle East, utilizing content moderators who speak the local language and better understand contexts of different posts.\textsuperscript{175}

Additionally, there are ways to report defamation or harassment through Meta.\textsuperscript{176} On the surface, these reporting options are good measures, however, the reporting system is not efficient.\textsuperscript{177} In the defamation reporting section of the website, one question asks if the individual has a court order establishing the unlawfulness of the reported content.\textsuperscript{178} Rarely do users succeed at recognizing who is attacking them, let alone suing them.\textsuperscript{179} In cases where someone seeks a declaratory judgment for offensive content, Meta can be persuaded to take down the content in that geographical location.\textsuperscript{180} However, if Meta
is not persuaded, then the user is bound by the decision, unless they are among the lucky few whose case gets heard by Meta’s Oversight Board—another creation of Meta that aims to be the final arbiter.\footnote{181}{OVERSIGHT BOARD, https://oversightboard.com [https://perma.cc/X7TG-VAKS] (last visited Feb. 21, 2021).}

Twitter users, on the other hand, must accept Twitter’s decisions regarding a disputed post without any sort of analog to the Oversight Board.\footnote{182}{Hateful Conduct Policy, supra note 115. Facebook’s Oversight Board is sometimes referred to as Facebook’s Supreme Court. Kate Klonick, Inside the Making of Facebook’s Supreme Court, NEW YORKER (Feb. 12, 2021), https://www.newyorker.com/tech/annals-of-technology/inside-the-making-of脸书的最高法院 [https://perma.cc/WJR4-2EQG].} It is important to reemphasize here that if Twitter users in the United States must commit to Twitter’s decisions, it is because it is permissible under US law for Twitter, as a private company, to require its users to commit to its decisions.\footnote{183}{See Amber Phillips, No, Twitter Is Not Violating Trump’s Freedom of Speech, WASH. POST (May 29, 2020), https://www.washingtonpost.com/politics/2020/05/29/no-twitter-did-not-violate-trumps-freedom-speech/ [https://perma.cc/7HEQ-F5QQ]. For example, by relying on state action doctrine and not expanding First Amendment rights to private companies, US users are bound by Twitter’s decisions. Id. Another contributing factor to the status quo is 47 U. S. C. § 230(c). See Ryan Tracy, Section 230: What It Is, and Why Politicians Want to Change It, WALL ST. J., https://www.wsj.com/articles/section-230-what-it-is-and-why-politicians-want-to-change-it-11616664601 [https://perma.cc/27UN-Q6UF] (Mar. 25, 2021, 9:22 AM).} It is not by the force of nature but rather by the various US laws and regulations that protect private companies.\footnote{184}{Id.} Should citizens conclude that this status quo is detrimental, they have the option of voting for representatives who will advocate otherwise and change the laws.\footnote{185}{Id.} They can also sue the companies in the United States and hope for a change through the courts.\footnote{186}{Id.} So what about citizens in the Global South? They are bound by the companies’ decisions, period.\footnote{187}{See Maya Villasenor, Revisiting Section 230: The Implications Are International, COUNCIL ON FOREIGN RELS.: NET POL. (Nov. 16, 2020, 11:09 AM), https://www.cfr.org/blog/revisiting-section-230-implications-are-international [https://perma.cc/W8X6-TXWD].}
III. CURRENT OPTIONS AND DEBATES

To control the rising power of social media companies in the United States, scholars and advocates have put forward numerous proposals. Some scholars, such as Lina Khan, have helped spark an antitrust movement to break up Big Tech’s monopoly. Under such approach, Meta will no longer own and operate Instagram, Whatsapp, and Facebook (among others). Others, such as Jack Balkin, have relied on the fiduciary duties and advocated for an information fiduciary theory. Following this theory, social media companies have a fiduciary duty towards their users too, as compared to only their shareholders.

Scholars have also argued for repealing section 230(c) of the CDA, which gives social media companies immunity over users’ activities. These proposals address Meta’s power structure within the United States; they are not a response to the rising tensions in the Global South.

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188. For example, see Lina M. Khan, Note, Amazon’s Antitrust Paradox, 126 YALE L.J. 710 (2017).
189. See generally id.
191. See Khan, supra note 188, at 793.
193. See id. Critics of this approach have argued that corporate laws and fiduciary duties do not allow the theory to be effective towards users. See, e.g., Lina M. Khan & David E. Pozen, A Skeptical View of Information Fiduciaries, 133 HARV. L. REV. 497, 504–05 (2019).
194. 47 U.S.C. § 230(c)(2) (“No provider or user of an interactive computer service shall be held liable on account of—(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).”).
195. See, e.g., Olivier Sylvain, Intermediary Design Duties, 50 CONN. L. REV. 203, 208 (2018) (“The CDA immunity doctrine, born over two decades ago, is at odds with the world as it is today. Internet intermediaries are structuring online content, conduct, and the entire networked environment in ways that the current doctrine does not contemplate. The consequences of this failing are troubling and require reform.”); Danielle Keats Citron & Benjamin Wittes, The Internet Will Not Break: Denying Bad Samaritans § 230 Immunity, 86 FORDHAM L. REV. 401, 401–04 (2017).
actions of their own. The EU members passed the GDPR, which imposed one of the strictest legal frameworks on companies—including social media companies—for protecting data, privacy, and local laws, among others.

China, a country in the Global North, has taken a completely different route. China’s approach has been called the “Great Firewall,” banning all major social media companies such as Meta, YouTube, and Twitter. By relying on local products, China has promoted national apps. For example, WeChat, a Chinese social media company, currently has more than a billion users.

However, this is not the ideal approach. Each social media company offers a unique set of features. The ability to easily connect and interact with other people beyond geographical borders is one of the highlights of a modern, globalized world. Restricting citizens’ access to such global products and services by allowing and promoting only national versions of such products will, in effect, deprive citizens of their rights to enjoy and access the internet. However, providing local counterparts is acceptable if the national and foreign platforms can compete and give the customer a choice.

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199. Lee & Liu, supra note 197, at 126–27.

200. See id.

201. See id. at 149. Beyond social media companies, China has also taken other measures to control technology and the internet. China’s Digital Silk Road is China’s major move in this regard. For more information, see Assessing China’s Digital Silk Road Initiative, COUNCIL ON FOREIGN RELS., https://www.cfr.org/china-digital-silk-road (last visited Feb. 21, 2020).


204. Id.


The next Section discusses several possible avenues for countries in the Global South.

A. Private Regulations, Corporate Social Responsibility, and the Oversight Board

In 2019, the Business Roundtable (BRT) redefine[d] the purpose of a corporation.\footnote{Business Roundtable Redefines the Purpose of a Corporation to Promote ‘an Economy that Serves All Americans’, BUS. ROUNDTABLE (Aug. 19, 2019), https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans [https://perma.cc/W5SV-69CG].} Since 1997, the BRT’s position has been that corporations exist to serve shareholders.\footnote{Id.} The new statement, however, announced that “[w]hile each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders.”\footnote{Id.} Those who believe corporations should bear more responsibility for what happens in their communities welcome the shift of companies committing to all stakeholders, rather than the traditional shareholder primacy.\footnote{See Elizabeth Dilts, Top U.S. CEOs Say Companies Should Put Social Responsibility Above Profit, REUTERS, https://www.reuters.com/article/us-jeff-bezos-business-roundtable/top-us-ceos-say-companies-should-put-social-responsibility-above-profit-idUSKCN1V91EK [https://perma.cc/78FF-PHG2] (Aug. 19, 2019, 11:03 AM).} A list of 181 CEOs signed the statement, which included big names such as Apple’s Tim Cook and, at the time, Amazon’s Jeff Bezos, although Meta’s CEO, Mark Zuckerberg, was missing.\footnote{Statement on the Purpose of a Corporation, BUS. ROUNDTABLE (Aug. 19, 2019), https://s3.amazonaws.com/brt.org/BRT-StatementonthePurposeofaCorporationJuly2021.pdf [https://perma.cc/UJU3-NUQ3].}

The “belief that corporations have a responsibility towards society,”\footnote{Mauricio Andrés Latapi Agudelo, Lára Jóhannsdóttir & Brynhildur Davidsdóttir, A Literature Review of the History and Evolution of Corporate Social Responsibility, 4 INTL’L J. CORP. SOC. RESP., no. 1, 2019, at 1, 1.} or in modern terms, corporate social responsibility (CSR), is not a new concept. As a category of corporate governance,\footnote{See Brian Jones, Ryan Bowd & Ralph Tench, Corporate Irresponsibility and Corporate Social Responsibility: Competing Realities, 5 SOC. RESP. J. 300, 301 (2009), for a more in-depth discussion on competing definitions of corporate social responsibility.} CSR has become more popular in recent decades due to shifting norms and expectations.\footnote{See Ronen Shamir, Socially Responsible Private Regulation: World-Culture or World-Capitalism?, 45 LAW & SOC’Y REV. 313, 313 (2011).} In the 1990s, consumer groups “began to invoke the notion of CSR in order to convey their normative expectations from
corporations, often in respect to the latter’s commercial operations in underregulated countries.”

CSR has now “become associated with transitional regulatory frameworks,” which “signal[s] a major relocation of political authority.”

CSR is broader than just environmental protection measures and includes delivering social benefits and ethical standards.

One example of such a voluntary CSR tactic is the Oversight Board. Meta announced in 2018 that it would create an independent oversight board. The board was created to, in simple terms, “help Facebook [now known as Meta] answer some of the most difficult questions around freedom of expression online: what to take down, what to leave up, and why.” To ensure the Board’s independence, Meta created a trust that would fund the Oversight Board. The Board has corporate trustees and individual trustees appointed by Meta. To guarantee autonomy, the Oversight Board, as an entity, was established as a Delaware limited liability corporation.

As for the Board’s members, Meta selected an initial group of twenty individuals who had the ability to select additional members and grow the Board to forty individuals. Meta also emphasized the

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215. Id.
216. Id.
217. See Jones et al., supra note 213, at 302.
219. See Kate Klonick, The Facebook Oversight Board: Creating an Independent Institution to Adjudicate Online Free Expression, 129 YALE L.J. 2418, 2425–27 (2020), for a complete account of how the Board came to be.
221. Id. at 2467–68.
222. Id. at 2468.
diversity of the members and stated in its charter that “[f]or the board to serve its purpose effectively, members must possess and exhibit a broad range of knowledge, competencies, diversity, and expertise.”[225]

An important aspect of the Board’s independence allegedly lies in its power to determine its own docket.[226] In other words, Meta is the defendant in all actions, and the Board selects “its cases from those appealed by users.”[227] The Board also has the ability to issue policy recommendations and changes to the Community Standards for Facebook.[228]

The first round of decisions by the Board was announced in January 2021 and included controversies from across the globe.[229] The Board applied Facebook and Instagram’s Community Standards, Values, and lastly, a touch of human rights instruments as its standard of review.[230] Take the Board’s decision on an image widely circulated in 2015 of a drowned three-year-old Syrian toddler whose body was found on the shores of Turkey.[231] A Facebook user in Myanmar, the country notoriously known for the genocide against Rohingya Muslims,[232] used the image and posted it in a Facebook group to say that the user lacked empathy for the child’s death.[233] The post allegedly implied that the child would have possibly grown to be a Muslim man and, according to the Board’s translator, “[t]hose male Muslims have something wrong in

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225. Oversight Board Charter, supra note 224, at 3.


227. Klonick, supra note 219, at 2465.


233. Oversight Board Decision, supra note 230.
their mindset.” Facebook had initially removed the post; however, the Board overturned Facebook’s decision. The Board stated that, among other things, Facebook’s translator used a different translation. Facebook’s translator had translated the comment as “[i]t’s indeed something’s wrong with Muslims psychologically.” The Board ruled that the comment did not amount to hate speech “within the relevant Community Standard.”

While the Board seemed to sympathize with the context and Facebook’s awkward situation in having played a role, although not intentionally, in the Rohingya’s Muslim genocide, it sided with Facebook’s users. It is doubtful that this decision, even though it was decided by an “independent” body separate from that of itself, would help with Meta’s reputation and its challenges in the Global South, including in many Muslim-majority countries.

In citing its decision and compliance with Human Rights Standards, the Board states:

The Board acknowledges that online hate speech in Myanmar has been linked to serious offline harm, including accusations of potential crimes against humanity and genocide. As such, the Board recognized the importance of protecting the rights of those who may be subject to discrimination and violence, and who may even be at risk of atrocities. Nonetheless, the Board concludes while some may consider the post offensive and insulting towards Muslims, the Board does not consider its removal to be necessary to protect the rights of others.

The Board “recogniz[es] the harm of online hate speech” but clearly stops at that threshold. Although the Board has tried to make globally recognized instruments of human rights part of its decisions, the Board applies them against the backdrop of Facebook’s Community Standards. The Board has a globally diverse group as the body of the Oversight Board; however, the Board members are part of what is legally a Delaware corporation (incorporated by another Delaware

234. Id.
235. Id.
236. See id.
237. Id.
238. Id.
239. Id.
241. Oversight Board Decision, supra note 230.
242. Id.
243. See id.
corporation (Meta), paid through a trust that this latter corporation has created to help the Delaware corporation (Oversight Board).244

Moreover, the parameters set out by Meta’s bylaws charge the Board with very limited jurisdiction, though Meta has left open the option to reassess the bylaws and potentially amend its current limitations.245 There are currently three categories not eligible for the Board’s review: content types, decision types, and services.246 Article 1.2.1 of the bylaws notes the restrictions on review for the following: “Content types: content posted through marketplace, fundraisers, Facebook dating, messages, and spam. Decision types: decisions made on reports involving intellectual property or pursuant to legal obligations. Services: content on WhatsApp, Messenger, Instagram Direct, and Oculus.”247 These restrictions leave many problems unaddressed related to social media platforms’ presence in the Global South.248

More importantly, the Board has no legal authority globally.249 A company cannot simply undertake authority over the internal affairs of a country—for example, what content in a country should be visible and what should not—by announcing a board.250 Skepticism toward

244. See Oversight Board Charter, supra note 224, at 3; Evelyn Douek, The Facebook Oversight Board’s First Decisions: Ambitious, and Perhaps Impractical, LAWFARE (Jan. 28, 2021, 11:23 AM), https://www.lawfareblog.com/facebook-oversight-boards-first-decisions-ambitious-and-perhaps-impractical [https://perma.cc/387B-HYDH] (“It is not clear how the FOB should reconcile applying Facebook’s private set of rules and values with paying attention to the public law body of rules known as international human rights law. These cases do not answer the thorniest parts of this question. Instead, in every case, the FOB first assessed Facebook’s decisions against Facebook’s own standards and then separately against international human rights law. But in all of them, the FOB came to the same conclusion under each set of norms, and in no case did the FOB confront the question of what happens if Facebook’s rules conflict with international human rights law. This interesting ‘jurisprudential’ question of the FOB’s ultimate source of authority has been kicked down the road for now.”).


246. See id. at 19.

247. Id.

248. See Douek, supra note 226 (criticizing the narrowness of Facebook’s Oversight Board’s jurisdiction).


CSR is strong outside of the United States, especially in the Global South. Critical studies that examine CSR from a postcolonial perspective see CSR “as a set of Western-centric discourses and practices that do not take into account the peculiarities of the Global South and quite often create more harm than benefit in Southern communities.” CSR initiatives are laudable; however, they should not be viewed as sufficient measures. Corporations are businesses that need regulations. For better or worse, the lack of ability to effectively regulate such companies in the Global South has also prompted some countries to take different measures, including blocking platforms altogether.

B. Blocking Social Media and Promoting National Alternatives

An extreme measure that governments may take in response to frustration caused by the social media platforms’ lack of abidance of national laws and regulations, and the sense of threat from the presence of foreign corporations, is banning or blocking access. Countries in the Global South are not the only governments contemplating blocking social media as an option. For instance, with the rise of TikTok in the United States and national security concerns, the US administration announced plans in 2020 to ban TikTok in the United States. Although a federal judge ruled that the TikTok ban could not go into

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253. Id.


256. See Shahbaz & Funk, supra note 46.

257. See Press Release, U.S. Dep’t of Com., Commerce Department Prohibits WeChat and TikTok Transactions to Protect the National Security of the United States (Sept. 18, 2020), https://content.govdelivery.com/accounts/USDOC/bulletins/2a14c6c [https://perma.cc/N9VV-TSFR].

effect, the case showed that blocking foreign apps is an option on the table in the minds of politicians in the Global North, even if only as a warning mechanism.

It is important to recount the plan to ban TikTok in the United States for national security concerns. Meta and Twitter are both US-based companies and are therefore subject to the jurisdiction of the United States. The US government has the ability to request user information from these companies and impose its laws through the US court system. When the United States faced a foreign company it did not fully trust, it was quick to react to it. This distrust of a government toward foreign platforms is exacerbated when a country’s policies are not aligned with those of the United States where the big social media platforms are mainly based. This lack of trust can cause some countries in the Global South to have a love-hate relationship with the platforms.

On the other hand, social media companies have also resorted to restricting access to their platforms in response to adverse government action. This approach made headlines in a dispute between Meta and Australia on a new proposed law that would have required Meta to pay for news content. Meta did not agree with the Australian law at the time and failed to reach an agreement with the Australian government. In response, Meta banned “publishers and people in

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263. See Isaac & McCabe, supra note 260.
264. See id.
267. Id.
268. See id.
Australia from sharing or viewing Australian and international news content.”

While some countries have left platforms open and unregulated, others have banned the platforms altogether, or have blocked a certain platform while leaving the others accessible. African countries are increasingly relying on blocking access to social media platforms, or blocking the internet altogether. In the Middle East, Iran has currently taken a middle-ground approach blocking Facebook and Twitter but leaving Instagram and WhatsApp accessible. As a result, Instagram, although owned by Meta, gained one-of-a-kind popularity in Iran. However, that may change as Iran’s parliament is considering taking the extreme measure of eventually banning all foreign applications and service providers should they not abide by Iranian laws.

But is blocking an ideal approach to counter the unwanted impact of such platforms? The most important reason why blocking is not a good tool for countering the influence of social media platforms in a country is its implication on limiting the freedom of expression. Scholars have primarily focused on studying the limits on freedom of expression and the right to free speech when it comes to governmental blockage of a platform. Acknowledging the importance of the attention given to free speech, this Section contributes to the reasons why blocking is not the right approach by viewing the issue from the standpoint of users as consumers and how restricting platforms takes a heavy toll on them.

270. See Giles & Mwai, supra note 255.
271. Id.
275. See Shahbaz & Funk, supra note 46.
276. See id.
Iran is an interesting case for this study. Instagram and WhatsApp are owned by Meta and continue to operate in Iran, while Facebook remains blocked. It is important to note that due to US imposed sanctions, Meta does not have the legal capacity to officially operate in Iran and conduct business; it does so however, unofficially. Based on the latest polling released in Iran, more than 73.6% of people above the age of eighteen use social media platforms. Among this number, 64.1% use WhatsApp, and 45.3% use Instagram. The national platforms EITAA and Soroush have 4.8% and 4% of the users in the country, respectively.

Several factors have led to the popularity of Instagram in Iran. First, as mentioned above, the only non-Iranian social media platforms currently accessible without proxy are Instagram and WhatsApp. Next, Instagram’s user-friendly interface has also made it a popular app among all ages. Sanctions have also limited the official presence of many tech companies in Iran. Consequently, there is a lack of access to many popular online shops, such as eBay and Amazon, and an overwhelming presence of small shops on Instagram.
The accessibility of Instagram across the country has enabled small businesses to grow into powerful brands and maintain healthy revenue. This has also contributed to an emerging group of influencers who work tirelessly to advertise these local products.

Due to sanctions, Iranian businesses cannot purchase official advertisements on Meta’s platforms. Instead, influencers replace those targeted advertisements. However, in countries like Iran, influencer advertisements have little to no oversight regarding the quality and accuracy of products offered. This is a nightmare for consumers in the Global South. Needless to say, not all influencers are

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289. See Hadi Farnoud, Why Ecommerce Is the Next Big Thing in Iran, MEDIUM: IRAN STARTUPS (June 5, 2014), https://medium.com/iran-startups/why-ecommerce-is-the-next-big-thing-in-iran-d5cb017efa08


292. See Issie Lapowsky, When Google Serves Ads in Iran, Advertisers Pay the Price, WIRED (May 15, 2019, 2:03 PM), https://www.wired.com/story/google-ads-sanctioned-countries-iran/


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bad actors. They are helping businesses grow. Nevertheless, some influencers may use deceptive advertising tactics such as dark patterns to trick the user into thinking the influencer is not an advertiser but rather an actual personal user of a product. Without proper oversight, many influencers do not disclose their partnerships for advertisements in Iran. This is unlike the strict regulation from the Federal Trade Commission (FTC) in the United States that requires social media influencers to disclose advertisements or the Advertising Standard Authority (ASA) in the United Kingdom, which published “Influencer’s Guide to Making Clear that Ads are Ads.” Iran and many other countries in the Global South remain an open field for influencer manipulation and little consumer protection.

Moreover, many of the products and services advertised on Instagram are those which would otherwise be illegal to advertise according to Facebook’s own policies. For example, gambling is illegal in Iran. Facebook’s policies also restrict gambling advertisements on its platform, stating:


294. See Reza, supra note 292.


Ads that promote online gambling, and gaming where anything of monetary value (including cash or digital/virtual currencies, e.g., bitcoin) is required to play and anything of monetary value forms part of the prize, are only allowed with our prior written permission. This includes games where purchases are required to continue game play and/or provide advantage in winning prizes, in cases where the prize is of monetary value. Authorized advertisers must follow all applicable laws, including targeting their ads in accordance with legal requirements. At a minimum, ads may not be targeted to people under 18 years of age.302

Nevertheless, a series of fraudulent advertisements for online gambling caused a crisis in Iran.303 Many Iranian users reported fraud as they were unable to redeem their money due to fake Instagram accounts and bank account numbers that claimed to be authentic gambling services.304 Some influencers who live outside Iran, such as singers,305 take advantage of the gambling ban in Iran by advertising and promoting their gambling sites on their Instagram pages with no governmental oversight or regulation to access users based in Iran.306 Meta’s neglect and failure to address such advertisement issues are only to the detriment of users and provide more incentives for governments to advocate for shutting down a platform such as Instagram.307 Of course, this would be an unhelpful response and result in depriving the citizens of the benefits of such platforms.308

302. See Advertising Policies, supra note 300.
304. See id.
307. See Facebook Response on Advertising: A Failure to Acknowledge Responsibility, PRIV. INT’L (Sept. 24, 2020), https://privacyinternational.org/news-analysis/4171/facebook-response-advertising-failure-acknowledge-responsibility [https://perma.cc/FT8W-GDLH]. At times, Facebook takes local, culturally sensitive laws seriously. For example, Facebook does not allow advertisements of alcohol in countries in which alcohol advertisement is prohibited. See, e.g., Advertising Policies, supra note 300 (“Ads that promote or reference alcohol must comply with all applicable local laws, required or established industry codes, guidelines, licenses and approvals, and include age and country targeting criteria consistent with Facebook’s targeting requirements and applicable local laws. Note that our policies prohibit ads promoting or referencing alcohol in some countries, including but not limited to: Afghanistan, Brunei, Bangladesh, Egypt, Gambia, Kuwait, Libya, Lithuania, Norway, Pakistan, Russia, Saudi Arabia, Thailand, Turkey, United Arab Emirates and Yemen.”).
Meta’s lack of oversight is also evident from the misinformation in health advertisements on the site. For example, cosmetic surgeries in Iran are not a luxury anymore. Currently, Iran ranks as the twenty-seventh country in the world for the most plastic surgeons. Instagram has, unfortunately, only exacerbated the craving for plastic surgeries by facilitating mental health issues related to body image, a negative impact not confined to Instagram alone. However, without proper oversight from Meta on these advertisements in the Global South, unauthorized advertisements on nose jobs, injections, Botox, and similar procedures offering before-and-after pictures have taken over many Iranian Instagram users, regardless of age.

These advertisements are against Facebook’s own policies. Facebook’s Prohibited Content policy on advertisements states: “Ads must not contain ‘before-and-after’ images or images that contain unexpected or unlikely results. In addition, ad content must not imply or attempt to generate negative self-perception in order to promote diet, weight loss, or other health-related products.” An example of a

310. See generally Nahid Mozaffari Niya, Majid Kazemi, Farrokh Abazari & Fazollah Ahmadi, Iranians’ Perspective to Cosmetic Surgery: A Thematic Content Analysis for the Reasons, 8 WORLD J. PLASTIC SURGERY 69, 70 (2019).
315. Advertising Policies, supra note 300. See Dr. Hamidreza Hosnani (@dr.hosnani), INSTAGRAM, https://www.instagram.com/dr.hosnani/, for one example of an account that posts before-and-after images of nose jobs and boosts over 220,000 followers. You can find many more accounts by simply running a search on Instagram of “nose job” in Farsi. INSTAGRAM, https://www.instagram.com/ (follow “Instagram” hyperlink; then search “nose job” in Farsi [نحوه جراحی نوزده]).
316. Advertising Policies, supra note 300.
prohibited advertisement on Facebook’s site is a hair growth treatment with a before-and-after picture. Although such an ad is banned by Facebook’s policies, running a search in Farsi with the keywords “hair transplant” continues to generate many advertisements from doctors in Iran performing the surgery.

The crisis that resulted from such advertisement in Iran prompted the Ministry of Health and Medical Education (MOHME) of Iran to issue a statement on the illegality of such advertisement by doctors on social media platforms. MOHME announced that any such advertisement from doctors requires permission from the Iranian Medical Council. The presence of troubling ads on Meta’s platforms in Iran also suggests that Meta is either not prioritizing users in certain countries or is not prioritizing actions against unauthorized ads when it is not getting paid for the ad.

The examples here are not confined to Iran. Without enough motivation, social media companies will not allocate their limited resources to the countries in the Global South. What should these

317. See id.
318. See id. Not every before-and-after ad is problematic. This Article focuses on the types of ads that are exaggerated, false, misleading, and cause body image issues.
321. See How Doctors Advertised on Instagram Was Announced, supra note 320.
322. See Shannon Bond, Just 12 People Are Behind Most Vaccine Hoaxes on Social Media, Research Shouts, NPR, https://www.npr.org/2021/05/13/996570855/disinformation-dozen-test-facebooks-twitters-ability-to-curb-vaccine-hoaxes [https://perma.cc/CC37-ZPWK] (May 14, 2021, 11:48 AM) (explaining how after the COVID-19 pandemic, anti-vaccination campaigns on Facebook created a crisis in the United States). When such disinformation campaigns run wild on Facebook in a country like the United States, where Facebook dedicates so much of its attention and resources, the depth and severity of COVID-19 disinformation campaigns in non-English speaking countries in the Global South is unimaginable. See id.
323. See id.
countries do? A total ban of such platforms is not what any country would want. Overall, citizens worldwide enjoy the many benefits of global connectivity through social media platforms such as Instagram that have a one-of-a-kind presence in the world. Blocking such a platform is hurtful in many ways, as explained earlier. Keeping in mind that the livelihood of many small businesses relies on a platform like Instagram, countries should instead find ways to balance their own interests with the presence of foreign global social media platforms. The next Part looks at the success of GDPR in Europe and how countries in the Global South can be inspired by taking similar collective actions.

IV. REGIONAL ALLIANCE

One successful example of social media oversight has been the EU’s GDPR. This Part briefly explains GDPR’s success and then discusses similar approaches that are possible in the Global South.

A. GDPR and Social Media

The European Union initiated the GDPR in 2016 to limit the power of Big Tech, protect consumers’ rights, and place an oversight system. The GDPR took effect in 2018 and centralized the data protection authority in the European Commission. The EU members’ national regulators continue to have enforcement authority but lack the power to impose new substantive requirements; they cannot lower

Id. But, the disturbing encounter does not end there. Id. She continued to inquire about his dad’s age, his mom’s age, their locations, and other personal information, all just to ask the boy, “Are you not scared that your parents would see this live?” See id. The boy innocently responded, “They won’t see it, they are sleeping.” See id.; More Horrific Consequences than the Controversial Live of a 14-Year-Old Boy on Instagram, IRANIAN STUDENTS’ NEWS AGENCY (Dec. 19, 2020), https://www.isna.ir/news/99092921962/ [https://perma.cc/3PD9-EGKS].

326. See Berger, supra note 308.
327. See id.
330. See id.
European data protection standards, or attempt to raise them.\footnote{Tsukayama, supra note 328.} The details of the many protective measures that GDPR offers EU citizens, from data privacy to the right to erasure, are outside the scope of this Article.\footnote{See GDPR, supra note 92. See also OneTrust DataGuidance & Future of Pri. F., Comparing Privacy Laws: GDPR v. CCPA (2019), for a helpful guide on comparing the GDPR with the California Consumer Privacy Act of 2018 (CCPA).} However, this Section will recount the case of \textit{Eva Glawischnig-Piesczek v. Facebook Ireland Limited} to demonstrate how EU’s GDPR has empowered citizens and local laws as it applies to social media platforms.\footnote{See Case C-18/18, Glawischnig-Piesczek v. Facebook Ir. Ltd., ECLI:EU:C:2019:821, ¶¶ 105–09 (Oct. 3, 2019).}

When a Facebook user shared an article from an Austrian online news magazine, the link created a “thumbnail” of the original site, which contained a photograph of Ms. Eva Glawischnig-Piesczek.\footnote{Id. ¶ 12.} The user also published a comment about Glawischnig-Piesczek. Glawischnig-Piesczek, a public person and a member of the National Council of Austria, chair of the parliamentary party [The Greens] and the federal spokesperson for that party, informed Meta Platforms Ireland, which operates Facebook in the European Union, of the issue by letter and requested that content be taken down.\footnote{See id. ¶¶ 10, 13.}

When Facebook ignored the request to remove the comment, Glawischnig-Piesczek sued Meta Platforms Ireland in the Commercial Court of Vienna.\footnote{See id. ¶ 14.} Following the court’s ruling in favor of the plaintiff, Facebook disabled access to the content in Austria.\footnote{See id. ¶ 15.} On appeal, the Higher Regional Court of Vienna approved the lower court’s ruling but added that Facebook was obligated to remove the dissemination of allegations of equivalent content only “as [it] regards to those brought to the knowledge of Meta Platforms Ireland by the applicant in the main proceedings, by third parties or otherwise.”\footnote{Id. ¶ 16.} Both parties appealed to the Supreme Court of Austria.\footnote{Id. ¶ 19.}

The Supreme Court of Austria referred to the European Court of Justice to interpret the relevant EU laws applicable to the case.\footnote{Id. ¶ 20.} The Court asked whether an EU Member State could:
1. order a host provider to remove information which it stores, the content of which is identical to the content of information, which was previously declared to be illegal, or to block access to that information, irrespective of who requested the storage of that information;

2. order a host provider to remove information which it stores, the content of which is equivalent to the content of information, which was previously declared to be illegal, or to block access to that information; and

3. extend the effects of that injunction worldwide.\footnote{See id. ¶ 22.}

Under EU law, “service providers have a duty to act, under certain circumstances, with a view to preventing or stopping illegal activities.”\footnote{Id. ¶ 40.} The limited liability of intermediary service providers does not exclude “injunctions of different kinds,” including issued “by courts or administrative authorities requiring the termination or prevention of any infringement, including the removal of illegal information or the disabling of access to it.”\footnote{Id. ¶ 45.} The law also gives the Member States the ability to “apply duties of care” to service providers as specified by national law to “detect and prevent certain types of illegal activities.”\footnote{Id. ¶ 48.} The European Union also notes that it is imperative to ensure that the rules “are consistent with international rules.”\footnote{Id. ¶ 58.}

As to the first question listed above, the court noted that although based on Article 15(1) of the GDPR, a “general obligation” on host providers is prohibited, and a specific obligation for a specific case is not against the EU law.\footnote{Id. ¶ 34.} For example, as in the case at hand, when a certain user takes their request to a court in a Member State, and the court declares the content in question illegal, the web host can be directed to act upon the court’s ruling.\footnote{See id. ¶ 35.} In this case, the court continues to say that it is also permissible for the court to order the host provider to block access to not only the content itself, but also to “the content of which is identical to the content previously declared to be illegal, or to remove that information, irrespective of who requested the storage of that information.”\footnote{Id. ¶ 37.} This, to the court, is not a general obligation.\footnote{See id.}
On the second issue, the court noted that to prevent “the person concerned having to initiate multiple proceedings in order to bring an end to the conduct of which he is a victim,” the “injunction must be able to extend to information, the content of which, whilst essentially conveying the same message, is worded slightly differently, because of the words used or their combination, compared with the information whose content was declared to be illegal.” The court goes on to explain the meaning of the same message. It stated that while the order cannot impose an obligation on the host provider to generally monitor the information or actively seek facts or circumstances related to the illegal content, the host provider can, for example, watch out for the name of the person or other elements “properly identified in the injunction.”

Lastly, the court ruled that there was no prohibition on an injunction of this nature to have a worldwide effect. Therefore, as long as the injunction is “consistent with the rules applicable at international level,” as are the EU rules, its global effect is not a problem.

This case illustrates that enforcement of the EU’s judgment is not a challenge for the parties because Meta Platforms Ireland Ltd’s location enables the court to effectively enforce its judgment. This kind of lawsuit, where a user can successfully sue Meta, is a luxury not available in other parts of the world. In many countries in the Global

350. Id. ¶ 41.
351. Id.
352. See id. ¶¶ 42–45.
353. Id. ¶ 42.
354. Id. ¶ 45.
355. Id. ¶ 50.
356. Id. ¶ 50–51.
357. See id. ¶ 58.
South, it is impossible to sue (or effectively sue) any major social media platform in their own countries. The previous Sections explained how the Oversight Board was proposed to remedy similar issues; however, as discussed, it is not adequately effective as it lacks binding authority and appears to be more of a corporate social responsibility tactic. The Oversight Board also lacks authority to issue rulings whose implementation would violate the law of any given country. Moreover, there is content that cannot be submitted to the Board as indicated in the Board’s bylaws.

In an op-ed in the Washington Post, Zuckerberg stated:

> [e]ffective privacy and data protection needs a globally harmonized framework. People around the world have called for comprehensive privacy regulation in line with the European Union’s General Data Protection Regulation, and I agree. I believe it would be good for the internet if more countries adopted regulation such as GDPR as a common framework.

Whether this remains a genuine statement can be tested by countries in the Global South.

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360. See Arun, supra note 218.

361. See Announcing the Board’s Next Cases and Changes to Our Bylaws, supra note 229 (highlighting that since starting to accept “cases in October 2020, more than 220,000 cases have been appealed to the Board”); Board Decisions, supra note 229 (noting that the Board has decided eighteen cases thus far). The limited number of cases that the Board accepts, intending to emulate the “Supreme Court” and exercise limited jurisdiction, is inadequate to respond to the global need. See Klonick, supra note 182.

362. See Oversight Board Bylaws, supra note 245.

363. See id.

B. Coalitions in the Global South: Transparency, Participation, and Trust

For years now, as one expert notes, US-based social media corporations have “impose[d] their policies on the world’s people, design[ed] their platforms to lock consumers into their walled gardens, manipulate[d] with addictive interfaces that maximize profit, and sp[ied] on each person every second of the day, inside their platforms and out.”\(^{365}\) This Article argues that in response, governments in the Global South should participate in a collective form to effectively oversee social media companies’ activities in their territories. Regional alliances between countries that face shared emerging risks such as unlimited data collection or privacy breaches can make the oversight a reality.\(^{366}\) Governments can create new international organizations or expand the scope of existing organizations where possible to specifically address the challenges of the social media companies’ activities in their territories.\(^{367}\) Initiating an international network for this purpose, a forum like G20,\(^{368}\) is a great starting point.

The digital revolution, specifically the rise of social media platforms, necessitates a new harmonization on a global scale.\(^{369}\) Historically, new international problems have given rise to new multinational organizations.\(^{370}\) The rise of communication technology in the nineteenth century required harmonization and regulation on a global scale.\(^{371}\) Economic crises also led to the creation of international

\(^{365}\) Kwet, supra note 359, at 60 (proposing an open, softer model to social media platforms, analogous to efforts from the free software movements, that would address the challenges and risks many people outside of the United States face when using social media platforms).

\(^{366}\) Id. at 4.

\(^{367}\) Id. at 69.


The G20 was born in 1999 as a consultation forum between finance ministers and central bank governors of the world’s major economies. Following the 2008 economic crisis, it became a forum between Heads of State and Government, aimed at improving coordination on the main global issues.


\(^{371}\) See id. at 38 (discussing the establishment of the International Telecommunication Union after the Second World War, which was responsible for the telegraph, telephone, radio, and later, the treaty that established what became the Universal Postal Union).
organizations such as the World Trade Organization (WTO) and later agreements on intellectual property issues.\textsuperscript{372}

Such transnational coalitions can promote transparency from countries, clarity in approach, and the much-needed global conversations at governmental levels.\textsuperscript{373} Transparency means that countries will be less inclined to take extreme measures in blocking access to a platform altogether.\textsuperscript{374} It is true that autocracies are also members of the United Nations.\textsuperscript{375} Nevertheless, the global stage creates a soft accountability mechanism.\textsuperscript{376} Having a global audience and a podium to respond to such actions means positive “peer pressure.”\textsuperscript{377}

This is especially important from a human rights perspective. There are countries in the Global South that lack the political will to provide access to such platforms for their people.\textsuperscript{378} Coalitions can serve to address this challenge of autocratic countries in the following way: in the face of growing coalitions in the region, the pressure will build in a positive way to provide a force for such countries to join coalitions.\textsuperscript{379} Even if the country’s intention of joining the dialogue is only for good publicity, it will have positive outcomes for their citizens who would otherwise lack access to social media companies.\textsuperscript{380} In the long term, their presence in the conversation can mean greater transparency in the actions governments are doing (or not doing) to create, uphold, or promote the rights of their citizens while creating a powerful position towards Big Tech.\textsuperscript{381} It will also provide a means for conversation within a country, which will inevitably lead to reform and social change, should


\textsuperscript{374} See Graham-McLay & Satariano, supra note 369.


\textsuperscript{376} See Graham-McLay & Satariano, supra note 369.

\textsuperscript{377} See id.

\textsuperscript{378} See David Bamman, Brendan O’Connor & Noah A. Smith, Censorship and Deletion Practices in Chinese Social Media, FIRST MONDAY, Mar. 2012.

\textsuperscript{379} See Donaldson & Kingsbury, supra note 373, at 141.

\textsuperscript{380} See Graham-McLay & Satariano, supra note 369.

\textsuperscript{381} See id.
the people become frustrated with their government’s actions and inactions.\footnote{382}

The new coalitions share the same threats and have a better understanding of regional risks.\footnote{383} It is important to note that the difference between this proposal and the current status quo—the United Nations—is that powerful countries in the Global North no longer have veto powers or power to prioritize their own interests instead of the interests of the people who live in the Global South.\footnote{384} Nor are the Big Tech companies the only private power that countries in the Global South would need to say yes to their wishes or turn a blind eye to their harmful activities to be able to benefit from their positive features.\footnote{385}

While there may be disagreements about the best approach for content moderation,\footnote{386} such coalitions can provide a negotiating table and promote a voice of reason from both sides of the table: Big Tech and countries in the Global South. By partnering with Meta or Twitter, such coalitions can create their own methods of adjudication and accountability, even, if desired, similar to the Oversight Board, with one big difference: genuine influence, trust, and authority.\footnote{387} Like any negotiation, it takes time and a lot of back and forth, but once the parties have reached an agreement, the product will have a much greater impact than any one-sided corporate decision.

The coalitions will also be helpful in the case of the rise of new apps that gain global attention.\footnote{388} There is always room for new platforms: TikTok emerged despite the popularity of Facebook, Instagram, and Twitter.\footnote{389} Clubhouse, an audio chat platform, is also gaining attention.\footnote{390} There will surely be new platforms in the future.

\footnote{382}{See Kwet, supra note 359, at 81.}
\footnote{383}{See Rittberger et al., supra note 43, at 46.}
\footnote{385}{See Graham-McLay & Satariano, supra note 369.}
\footnote{386}{See id.}
\footnote{387}{Board Decisions, supra note 229.}
\footnote{389}{See id.}
Instead of waiting for a disaster to happen, such platforms can have preassigned rights and obligations in each region and work from there. Moreover, countries in the Global North that are also dealing with consumer rights and protection issues can have the opportunity to align with coalitions in the Global South and further move forward with their policies on social media platforms.

Such coalitions, similar to the GDPR enforcement mechanism, should ideally include agreements for the body to have authority to guarantee enforceability. However, even without full enforceability power for their decisions, coalitions have served a positive role on the transnational level. For example, the Non-Aligned Countries were formed in the aftermath of World War II and decolonization. The member states formed a union in 1961, it currently holds 120 member states. The African Union has also been helpful in Africa, though not perfect, as it strives to be a place for common voices and goals for the people of Africa.

The Organization of Islamic Cooperation has also provided a table for voices that would not otherwise hear one another. Formed in 1969, it now has fifty-seven member states. For example, the League of Arab States (also called the Arab League) was formed in 1945 in Egypt by its seven founding members. Over the years, additional Arab states joined the League, which aims to work on many goals, including economic, cultural, and social welfare matters. Although

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391. See $5 Billion Penalty Press Release, supra note 358.
394. Id.
395. Id.
398. Id.
the League made adjustments after the Arab Spring, it still remains a functioning body today.\textsuperscript{401} As of now, each member has one vote, and decisions are binding on only those states that vote for them.\textsuperscript{402}

Not all unions are a success however.\textsuperscript{403} Union of South American Nations (UNASUR) is an example of an attempt to form an alliance in South America.\textsuperscript{404} Though it started strong in 2008 with twelve states,\textsuperscript{405} most countries have now suspended their membership.\textsuperscript{406} UNASUR had initially even hoped to move for a common currency but later moved away from the proposal when the EU faced a crisis with Argentina.\textsuperscript{407}

As evidenced above, there are challenges that undermine the idea of having a collaboration between countries in the Global South.\textsuperscript{408} Many countries in the South do not have the monetary resources to support such actions.\textsuperscript{409} Moreover, countries in the past have made false promises to international institutions, making a mockery of such unions.\textsuperscript{410} The degree of respect and the importance of the rule of law

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\begin{itemize}
\item \textsuperscript{401} See Arab League, supra note 399.
\item \textsuperscript{402} See id.
\item \textsuperscript{405} Nathaniel Parish Flannery, Explainer: What Is UNASUR?, AMS. SOC’Y/COUNCIL OF THE AMS. (Nov. 30, 2012), https://www.as-coa.org/articles/explainer-what-unasur [https://perma.cc/WZJ2-QD8F]. The member states were: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Suriname, Peru, Uruguay, Venezuela, and Paraguay. Id. In 2012, Paraguay’s membership was suspended after internal conflicts in the country and its president’s impeachment. See id.
\item \textsuperscript{408} See RITTBERGER ET AL., supra note 43.
\item \textsuperscript{409} See id.
\item \textsuperscript{410} See, e.g., League of Nations, supra note 403 (describing Japan’s broken promise to the League of Nations to remove troops from Manchuria, which Japan instead annexed as a puppet state).
\end{itemize}
also varies in developing countries.\textsuperscript{411} This can make it difficult to take collective action.\textsuperscript{412} At times, adding a powerful state to the alliance with positive influence in a certain region or among certain countries can help address some of the challenges.\textsuperscript{413} The country is not meant to have a form of authoritative voice but would be part of the coalition to serve as a consultative voice or motivational force when needed.\textsuperscript{414}

It is important to keep in mind that there is no perfect solution. Many alliances fail.\textsuperscript{415} Many have little impact, especially in the Global South.\textsuperscript{416} Some are even difficult to form in the first place.\textsuperscript{417} However, countries that want to make a change should consider these forms of alliances as a strong option in achieving their goals, such as promoting citizens’ rights and privacy, and protecting data. Citizens can also be involved in advocating for such alliances.\textsuperscript{418}

Countries in the Global South need the presence of a company like Meta for various reasons that go beyond entertainment.\textsuperscript{419} At times, the company is an internet provider and a means for economic prosperity.\textsuperscript{420} Because of the influence these companies have, countries


412. See, e.g., RITTBERGER ET AL., supra note 43, at 46 (describing the difficulty in getting countries to obey the orders of international courts).

413. See id. at 30 (noting that from realist theory, “the presence of a powerful state, willing to bear the costs of the creation of international organizations, is also often a requirement for cooperation”).

414. See id.

415. See, e.g., Burges, supra note 406 (discussing the failure of UNASUR).

416. See, e.g., id.

417. See, e.g., RITTBERGER ET AL., supra note 43, at 38 (describing the difficulty in forming an international organization to facilitate cooperation between postal systems).

418. See, e.g., id. at 46 (“Civil society actors were also decisive in the elaboration of the European Social Charter of 1961 and the negotiation of numerous additional protocols to the ECHR.”).


420. See id. This highlights a stark contrast to countries in the North that may not be as concerned if a social media platform threatens to leave the market. See id. For example, Google’s Project Dragonfly, which allegedly was going to offer censored search results in China, was terminated. See Google’s Project Dragonfly ‘Terminated’ in China, BBC NEWS (July 17, 2019), https://www.bbc.com/news/technology-49015516 [https://perma.cc/8U8Y-CAVT]. For China, there is no major risk if a company like Google leaves. See Jeb Su, Confirmed: Google Terminated Project Dragonfly, Its Censored Chinese Search Engine, FORBES (July 19, 2019, 4:31 AM), https://www.forbes.com/sites/jeanbaptiste/2019/07/19/confirmed-google-terminated-project-dragonfly-its-censored-chinese-search-engine/?sh=2e0cb0527e84 [https://perma.cc/DGB8-DFGZ].}
should also be able to impose sanctions for breaches of their citizens’
rights. With collective actions and coalitions, such sanctions and
oversight on the activities of Big Tech companies can be made possible.421 In return, companies can also bargain for a higher degree of
freedom of expression in such countries, should they be sincere in their
intentions for promoting freedom of speech,422 and not merely driven by
the opportunity to profit from a wider user base in the name of freedom
of speech.

There may be those who are rightly hesitant about the
involvement of governments.423 This distrust is exacerbated by the
involvement of governments with different constitutions and power
dynamics, many of which are unfortunately autocratic.424 Even in the
United States, with a two-hundred-year-old Constitution, many
commentators and scholars are reluctant to fully delegate power to
regulate social media companies to the government concerning a range
of issues.425

Yet, however old and outdated a government is, it is what we
have to work with to be able to keep a balance between private power
and public oversight.426 Democratic or autocratic, governments and
ruling parties will not last forever; as times change, people change, and

As a result, companies may not have as much leverage to promote freedom of expression. See id. However, many countries in the South need these platforms and are willing to embrace the platforms and whatever freedom of speech comes with them in order to help the economy in their respective country. See Wallace, supra note 419. Thus, negotiations in these situations are more effective and beneficial for both sides, with an emphasis on consumer rights and also the platform’s ability to pursue its ordinary function as a forum for speech. See id.


422. See id.

423. See, e.g., Wallace, supra note 419 (describing concerns that governments will surveil internet access provided by Facebook’s Free Basics program).

424. See id.

425. See e.g., Jonathan Zittrain, A Jury of Random People Can Do Wonders for Facebook, ATLANTIC (Nov. 14, 2019), https://www.theatlantic.com/ideas/archive/2019/11/let-juries-review-facebook-ads/601996/ [https://perma.cc/2VTQ-JJRU] (arguing that similar to juries, a group of random people should vet ads and decide which ads are false or misleading because the public can’t agree on what they want and “we don’t trust anyone to give it to us”).

426. See Edward O. Wilson, Sociobiologist, Debate at the Harvard Museum of Natural History (Sept. 9, 2009), https://www.oxfordreference.com/view/10.1093/acref/9780191826719.001.0001/q-or-o-4d-00016553 [https://perma.cc/EPP9-MERH] (“The real problem of humanity is the following: we have Paleolithic emotions, medieval institutions, and god-like technology.”).
with them, their ideas and governments are remodeled.\textsuperscript{427} Despite any future social and political progress, the companies will be there, unchanged in their ways, if countries take no action.\textsuperscript{428}

The form and shape of the government should ultimately be up to the people to decide to change, reform, and reshape. Social media companies can play an important role in amplifying the voice of the people.\textsuperscript{429} But social media companies should also be willing to guarantee other rights, including consumer protection rights, that many countries in the Global North enjoy.\textsuperscript{430} It would be naïve to leave the presence of profit-driven companies unchecked and unregulated.\textsuperscript{431} Harmful aspects of social media platforms should not be neglected at the expense of ordinary citizens and profit-making machines who preach humanitarian goals but fail to act when tested. The role of Meta in Myanmar’s genocide is one too many.\textsuperscript{432} In 2020, Meta posts also fueled the Ethiopian bloodshed, serving as another tragic example of how lies spread on social media platforms can claim lives absent any accountability.\textsuperscript{433}

The idea of putting aside the government as a regulatory body altogether to respond to the crises social media companies have caused is at odds with the way our modern world functions.\textsuperscript{434} With governments, even malfunctioning ones, there is a level of delegation and involvement of citizens who would otherwise have no say whatsoever in the way these companies are harvesting their data, influencing their communities, impacting their rights and remedies, and profiting from their activities and surveillance.\textsuperscript{435} Instead, when


\textsuperscript{430} See Menn, supra note 173.

\textsuperscript{431} See Zittrain, supra note 425.

\textsuperscript{432} See Gilbert, supra note 24.

\textsuperscript{433} See id.; The New Yorker Radio Hour & Radiolab, supra note 24.

\textsuperscript{434} See Bloch-Wehba, supra note 14, at 28.

faced with governments with extreme and outrageous suppression of free speech and citizens’ rights, such international coalitions in partnership with Big Tech can propose a proper response to the ways social media platforms would ideally operate in such territories. In the long run, the coalitions proposed in this Article can lead to accountability of private companies to the global public.

V. CONCLUSION

Accountability for the actions of social media platforms that operate on the international level remains limited. With no congressional hearing to subpoena Meta’s or Twitter’s CEO, many countries in the Global South are mainly left with the companies’ own self-regulation endeavors. The digital revolution and the rise of social media platforms necessitate a new harmonization on a global scale that includes countries with developing economies in the decision-making processes. This Article argues that countries in the Global South should form alliances that can balance the power between them and the powerful social media companies. Such coalitions provide transparency and prompt conversation from both sides. They could also effectively protect consumer rights while simultaneously promoting free speech in the Global South without sacrificing other rights. In addition, the coalitions can serve as a starting point for creating a forum at the global level to address and balance the relationship between social media platforms as private regulators and states, promote corporate accountability and transparency, and eventually provide a stage for accountability to the global public.

436. For example, Taliban gaining control in Afghanistan in August 2021 has led to grave concern about how social media platforms are used in Afghanistan and the best way to respond to the humanitarian crisis there. See, e.g., Paul Mozur & Zia ur-Rehman, How the Taliban Turned Social Media into a Tool for Control, N.Y. TIMES (Aug. 20, 2021), https://www.nytimes.com/2021/08/20/technology/afghanistan-taliban-social-media.html [https://perma.cc/3UY4-XDHW].

437. See Arun, supra note 218.

438. See id.


440. See supra Part IV.

441. See Donaldson & Kingsbury, supra note 373.

442. See supra Part I.

443. See supra Part IV.