

Freedom of Expression and other Human Rights in the Regulation (and Self-Regulation) of Social Media

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In this lecture I will provide an analysis of the human rights responsibilities of social media companies, a defense of the importance of their self-regulation in the overall ecosystem of law and regulation (with particular reference to the experience of the Meta Oversight Board), and a discussion of some of the major challenges that bodies such as the Oversight Board face in bringing greater human rights accountability to social media platforms.

Increased concerns over the large scale social impacts and risks of social media are leading to a plethora of new initiatives around the world aimed at regulating social media companies, with European countries leading the way. While many of these attempts contain constructive approaches to the challenges posed, they also are necessarily insufficient, have major structural costs and limitations, and pose certain risks to freedom of expression and other human rights in their own right. Even with more robust public intervention, therefore, an important role remains for private, independent, mechanisms for self-regulation in the overall ecosystem of law and regulation regarding social media.

The Oversight Board – created by Facebook (now Meta Platforms) to render decisions and policy recommendations relating to difficult and significant content moderation problems on Meta’s social media platforms – represents a unique and innovative experiment in independent, non-state, mechanisms for fostering greater fulfillment of the human rights responsibilities of companies in the technology sector. The lecture will provide an overview of the Oversight Board’s mandate, structure, and functioning, as well as a general assessment of its both its achievements and its limitations in the first three years of its operation, and specific examples of its work.

Notwithstanding many promising signs of the Oversight Board’s positive impact on platform accountability, some very hard questions remain about the role that it, and any bodies similar to it in the future, can and should play in the regulation of social media overall. First, there are important conceptual and practical limits on the applicability and fitness of international human rights norms and principles to this area. Second, there are institutional legitimacy questions relating to democratic lawmaking and subsidiarity that need to be acknowledged. Addressing these challenges will be essential to fashioning an effective and comprehensive approach to regulation and to the protection of human dignity and liberty in the digital information environment.