Tech Companies in the Digital Wars: Rebels or Stormtroopers?

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I. Introduction

Anu Bradford's *Digital Empires* offers a compelling overview of the three regulatory models that shape digital governance globally: the United States (US), China and the European Union (EU). In her book, she explores how these models, while incorporating the same three constitutive elements, namely markets, states, and rights, each place a different emphasis on these elements. The US model is market-driven, the Chinese model is state-driven, and the EU model is rights-driven. In promoting different regulatory approaches, these 'digital empires' engage in horizontal battles with one another, as well as in vertical battles with technology companies. Bradford meticulously unpacks, with clarity and precision, how these battles take place, the conflicts that are yet likely to arise, and the challenges that regulators face in the context of digital governance within each of these regulatory models.

Bradford convincingly demonstrates that while much attention has been devoted to the horizontal battle between the US market-driven model and the Chinese state-driven model, the relevance of the EU rights-based model should not be underestimated. She argues that the EU is not 'a bystander, caught between the two powers battling for technological supremacy', but 'has asserted itself […] as the most powerful regulator of the digital economy'

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(pp. 11-12). One of the key conclusions of the book is that, in light of the decline of the US market-driven model, prompted also by 'the tremendous success of the US tech companies' which 'may have sown the seeds of [its] demise' (p. 362), the US finds itself having to 'choose between joining forces with the EU or allowing China's influence to further grow' (p. 361). Bradford contends that a trend towards greater alignment between the US and the EU is on its way, with their horizontal conflict 'show[ing] signs of abating as the domestic preferences in the US are shifting toward those prevailing in the EU' (p. 387). Crucially, she argues that an alignment between the US and the EU in pursuing (at least some of) the goals of the rights-driven regulatory model could pave the way for a coalition of techno-democracies that could challenge techno-autocracies (pp. 387-393).

Throughout the book, a shiny spotlight is directly pointed at these digital empires. While tech companies are indeed big players in the tech wars analysed in the book, the light pointed at them seems somewhat dimmer. As a reader who wears 'international human rights law' spectacles, and who has devoted much attention to the role of tech companies themselves in shaping the regulatory approach towards content moderation, I found myself particularly captivated by the role that these companies have in the horizontal battles between these empires as well as in the vertical battles they engage in against these empires. While their role is mostly examined from the perspective of the empires themselves, a relevant question that would need to be unpacked more explicitly is how these companies strategically align (or disalign) with each of these empires' approaches to digital governance to their own advantage. Such a question becomes even more pertinent as, since the publication of the book in September 2023, the US has seen the beginning of a second Trump administration. In a short period of time, this administration has pulled away from the trajectory Bradford draws in the concluding chapter of the book. If, at the time of writing, 'the idea of a closer cooperation among techno-democracies [was] gaining momentum, in part because it benefit[ted] from strong political backing by the US government' (p. 390), such momentum seems now gone. Importantly, we are now witnessing shifting alliances between tech companies and these empires, with US tech companies moving away from the EU rights-driven model and openly siding with the Trump administration.

In this review, I therefore focus on how tech companies fit within the wider horizonal conflicts that Bradford analyses in her book. In particular, I argue that these shifts in tech companies' alliances with these digital empires exemplify how the companies are in fact leveraging the horizontal battles between these regulatory models to the benefit of their own vertical battles. As such, the alliances between tech companies and digital empires bear

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significant weight for the outcome of the horizontal battles between regulatory models. To illustrate these dynamics, I will take Meta as a case-study. I then conclude that these recent developments further weaken the US market-driven model while endangering the position of the EU rights-driven model, ultimately benefitting the Chinese state-driven approach. In this landscape, for the EU to succeed in its vertical battles against tech companies, it must enforce its rights-driven model rigorously and harness the power of these companies to enforce regulations.

II. The Rights-Driven Approach Awakens

As Bradford well describes in her book, tech companies had gradually shifted towards the EU rights-driven model. In her view, such a move had also negatively impacted the relevance of the US market-driven model. The alignment of tech companies with a rights-driven approach demonstrated, in fact, that 'even the tech companies themselves no longer believe[d] in the techno-libertarian ethos that underlies the American market-driven regulatory model' (p. 384).

Tech companies' move towards a rights-driven model is to be situated in the context of the so-called techlash that had hit the sector from 2016 onwards. As also widely discussed in the book, the scandals that involved major tech companies resulted in vocal calls for regulation.[1] Interestingly, in this context, tech companies themselves began to call for regulation. In 2018, Mark Zuckerberg declared, through a note on his personal Facebook profile, that he believed 'the right regulations will also be an important part of a full system of content governance and enforcement' and that 'everyone would benefit from greater clarity on how local governments expect content moderation to work in their countries'.[2] He added that the company was 'working with several governments to establish these regulations […] including *hopefully* the European Commission to create a framework for Europe'.[3] Such a belief was reiterated other times, including in 2020, when in another Facebook note he stated that he did not think 'private companies should be

1 For an overview of the drivers of platform regulation, see, e.g., Robert Gorwa, *The Politics of Platform Regulation: How Governments Shape Online Content Moderation* (1st edn, Oxford University Press 2024).

2 Mark Zuckerberg, 'A Blueprint for Content Governance and Enforcement', Facebook, 15 November 2018, <https://www.facebook.com/notes/mark-zuckerberg/a-blueprint-for-content-governance-and-enforcement/10156443129621634>, last access 25 August 2020.

3 Zuckerberg, 'A Blueprint' (n. 2), emphasis added.

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making so many important decisions that touch on fundamental democratic values' and he hoped to get clearer rules for the internet.[4]

Calls for regulation were also accompanied at Meta by an explicit commitment to international human rights law and the framework offered by the United Nations (UN) Guiding Principles on Business and Human Rights.[5] The creation of the Oversight Board[6] can also be seen as part of this commitment. The Board is empowered to interpret Meta's content policies and values, and must also consider the impact of the company's content decisions in light of human rights norms protecting free speech.[7] The Oversight Board, which has been compared to a 'de facto international human rights tribunal',[8] has taken an active role in translating the application of international human rights law for the company's implementation in their content moderation practices.[9]

Meta's commitment to human rights has been characterised as a co-optation of the language of human rights.[10] The international human rights law framework has also been deemed inappropriate for regulating these issues,[11] with Meta's engagement potentially amounting to cosmetic compliance.[12]

4 Mark Zuckerberg, 'Every New Year of the Last Decade I Set a Personal Challenge', Facebook, 9 January 2020, <https://www.facebook.com/zuck/posts/10111311886191191>, last access 8 April 2023.

5 Meta, 'Corporate Human Rights Policy', Human Rights, <https://humanrights.fb.com/policy/>, last access 24 July 2024.

6 Facebook, 'Establishing Structure and Governance for an Independent Oversight Board | Facebook Newsroom', <https://newsroom.fb.com/news/2019/09/oversight-board-structure/>, last access 28 October 2019.

7 'Oversight Board Charter', February 2023, Art 2, <https://www.oversightboard.com/wp-content/uploads/2023/11/3427086457563794.pdf>, last access 4 August 2025.

8 Laurence R. Helfer and Molly K. Land, 'The Facebook Oversight Board's Human Rights Future', Cardozo Law Review 44 (2023), 2233-2301.

9 Stefania Di Stefano, 'Translating and Developing International Human Rights Law in the Online Sphere: The Role of Meta's Oversight Board', in: Irene Couzigou (ed.), *International Law and Technology Change: Testing the Adaptability of International Law* (Elgar Publishing, forthcoming), available at SSRN: https://papers.ssrn.com/abstract=4920875, last access 10 November 2024.

10 See, for example, Evelyn Douek, 'The Limits of International Law in Content Moderation', UC Irvine Journal of International, Transnational, and Comparative Law 6 (2021), 37-76; Barrie Sander, 'Freedom of Expression in the Age of Online Platforms: Operationalising a Human Rights-Based Approach to Content Moderation' Fordham Int'l L. J. 43 (2020), 939-1006.

11 See, for example, Brenda Dvoskin, 'Expert Governance of Online Speech', Harv. Int'l L. J. 64 (2023), 85-136; Rachel Griffin, 'Rethinking Rights in Social Media Governance: Human Rights, Ideology and Inequality', European Law Open 2 (2023), 30-56.

12 Stefania Di Stefano, 'Diligence Raisonnable en Matière de Droits Humains et Réseaux Sociaux: Conformité Cosmétique et Fausses Promesses?', in Sarah Jamal and Javier Tous (eds), *Réseaux sociaux et droits de l'Homme: quel(s) droit(s), pour quelle protection ? Actes du colloque des 7 et 8 décembre 2022*, (Pedone 2024), 167-196.

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Nonetheless, such an engagement with rights-driven approaches to digital governance has without doubt strengthened the appeal and relevance of the EU model. This approach also testifies how, 'in a world of shifting public consciousness and intensifying regulatory scrutiny, tech companies aim to strike a more conciliatory tone' (p. 385).

III. Reforging Old Alliances: the (US) Empire Strikes Back?

Yet, the developments of the past few months also lend truth to the claim that 'the conciliatory rhetoric often belies continuing attempts to shape the regulatory environment in ways that allow these companies to preserve their core business models' (p. 385). Since the beginning of the second Trump administration, tech companies have adopted a hostile approach to rights-driven models. This is exemplified by Mark Zuckerberg's announcement, in January 2025, that he will 'protect free expression worldwide' by working with President Trump to push back on regulation.[13] In his video announcement, Zuckerberg accuses foreign governments, including the EU, of 'going after American companies' and of enacting an 'ever-increasing number of laws institutionalising censorship'.[14] Such a positioning stands in stark contrast with the earlier calls for regulation and the previous alignment with the EU rights-driven model.[15]

In moving towards an open challenge to regulation, tech companies are seeking to create an alliance with the US in order to fight their vertical battle against the EU. This 'newfound' alignment with the US market-driven model is evidenced by the language used by Zuckerberg, which recalls the main elements of the US Internet Freedom Agenda: the nonregulation principle and the anti-censorship principle (pp. 265-276). Yet, the framing of these principles amounts to a distortion of language.[16] In his speech, in fact,

13 Mark Zuckerberg, 'It's Time to Get Back to Our Roots Around Free Expression. We're Replacing Fact Checkers with Community Notes, Simplifying Our Policies and Focusing on Reducing Mistakes. Looking Forward to This next Chapter', Video,| Facebook, 7 January 2025, <https://www.facebook.com/watch/?v=1525382954801931&ref=sharing>, last access 3 April 2025.

14 Zuckerberg, 'It's Time' (n. 13).

15 Stefania Di Stefano, 'Zuckerberg's "Updated" Recipe for Meta: "Prioritize Speech" and Neglect Human Rights', OpenGlobalRights, 23 January 2025, <https://www.openglobalrights.org/zuckerbergs-updated-recipe-for-meta-prioritize-speech-and-neglect-human-rights/>, last access 3 April 2025.

16 Rebecca Hamilton, 'Unpacking the Meta Announcement: The Future of the Information Ecosystem and Implications for Democracy', Just Security, 8 January 2025, <https://www.justsecurity.org/106156/unpacking-meta-announcement-democracy/>, last access 3 April 2025.

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Zuckerberg repeatedly and consistently conflates content moderation with censorship. However, as also underscored by Rebecca Hamilton, while both content moderation and censorship can shutter speech, 'just like two different instruments playing the same note have a different quality, so too, the term content moderation has a different quality than the word censorship'.[17] Content moderation refers to the process of reviewing content to determine its alignment with existing company policies and standards. Censorship, on the contrary, refers to 'suppression of speech that, when done unlawfully by the government, can violate the U.S. Constitution, or international human rights law'.[18] As such, '[r]eplacing 'content moderation' with 'censorship' degrades our understanding of both terms.'[19]

The strategic use of the constitutive language of the US market-driven approach also signals a cessation of the vertical battles between tech companies and the US administration.[20] Yet, it is unclear whether an alliance between the US administration and US tech companies will allow the US market-driven model to strike back. As argued by Erik Tuchtfeld in his review in this symposium, the US market-driven model itself is eroded by the Trump administration, which has proven to be not 'an ally in the battle against digital authoritarianism, but rather the very concrete incarnation of it'. If the US market-driven model is weakened by the erratic developments unfolding in the US, the EU rights-based model is also at risk of being dangerously undermined in this landscape. Crucially, these developments confirm that the vertical battles between governments and tech companies are not to be underestimated, and that US companies in particular 'may occasionally feel that they are more powerful than the [Western] national governments trying to regulate them' (p. 164).

The corporate shift towards the EU rights-driven model was perhaps an attempt to strike a conciliatory tone, but it was also a strategic move aimed at avoiding full responsibility for the scandals tech companies had been involved in. Calls for 'clearer rules for the internet' and claims that tech companies should not be 'arbiters of truth' ultimately shift the responsibility of content moderation entirely on governments. The embrace of the EU model can therefore be seen as a 'weaponised incompetence' move, implying that it was also the lack of regulation that led to those scandals. It is also important to recall that, in that historical context, tech companies were

17 Hamilton (n. 16).

18 Hamilton (n. 16).

19 Hamilton (n. 16).

20 For an overview of the role of vertical battles as a potential system of checks and balances, see Erik Tuchtfeld's review in HJIL 85 (2025), 931-939.

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suffering from deep reputational damage and were therefore unable to take a combative stand against the EU (p. 382).

In finding an ally in the US government, such a combative stand is once again within reach. This alliance, however, directly undermines the creation of a coalition of techno-democracies that could counter the rise of techno-autocracies. The alliances that tech companies forge with these empires in the technology battlefield bear significant consequences for the outcome of the horizontal battles between the US, the EU and China. They also confirm that 'the question surrounding vertical battles is […] not whether governments, as a general matter, can control tech companies, but whether *democratic governments* can do so' (p. 393). As the US model now leans towards an emphasis on state control and techno-nationalism, it is rather the state-driven model that strikes back, establishing itself as the most effective for fighting vertical battles with tech companies.

IV. Conclusion

Digital Empires offers a much-needed framework for understanding the current tech wars between the US, the EU and China. As these battles continue to unfold, it is crucial to direct a brighter spotlight at tech companies' strategic choices and the alliances they forge in the battlefield. Tech companies, in fact, in an effort to preserve their core business models, are actively leveraging the horizontal battles between these digital empires. The alignment (or disalignment) of US tech companies with the EU rights-driven model is an example of the strategic alliances pursued by them. The embrace of this model came at a moment of significant trust deficit, and the alliance with the EU regulatory model (and the de-escalation of those vertical battles) represented the most conducive pathway to the preservation of tech companies' business models.

Yet, with the re-election of Trump, US tech companies have shifted towards reforging a newfound alliance with the US administration in order to fight their vertical battle against the EU on more solid grounds. While presenting themselves as *rebels* against the EU digital empire, tech companies may instead be becoming the new *stormtroopers* of the US digital empire. If these strategic choices are beneficial to tech companies' business models, they also represent a significant threat to the wider geopolitical battle between democracy and autocracy. These moves may significantly undermine the relevance and effectiveness of the EU rights-driven model but also fail to restore trust in the US techno-libertarian approach, which is currently leaning towards techno-nationalism.

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The ultimate beneficiary of this state of affairs is neither the US tech industry nor the US market-driven model, but the Chinese state-driven model. In this context, the vertical battle between the EU and tech companies becomes even more critical. The horizontal war between techno-democracies and techno-autocracies will be determined by the outcome of these vertical battles. In this shifting landscape, the strategies of tech companies in the technology battlefield deserve more scrutiny. Crucially, the success of the EU will be determined by its ability to remain committed to the rights-driven values that guide its approach and 'follow through with more potent enforcement' (p. 380), but also by its ability to harness the power of tech companies to enforce its digital regulations.

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