

**Social Network Sites as Arenas for Crafting Human Rights:  
Toward an Application of Public Law Norms**

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Social Network Sites (SNSs) have become an integral part of the lives of many, and now play a key role in diversified cyber-related conflicts. I maintain that these platforms have taken the form of digital arenas in which human rights are being crafted and allocated. Alongside the benefits afforded by these arenas, their emergence produces a troubling human-rights regime, often characterized by disproportionate, non-transparent, inconsistent, or discriminatory decision-making processes.

The emergence of these arenas relies upon two dimensions. The **first** relates to the broad spectrum of rights affected by SNSs, which consists of civil-political as well as economic-social-cultural rights. SNSs' impact on this wide range of rights largely depends upon their role as a means to support relationships, and upon the powerful social dynamics this role entails. These dynamics propel informational and communal resources, which make available information in all areas of life on the one hand, and mutual help, social support and collective action on the other.<sup>1</sup> The **second dimension** focuses on the control acquired by SNSs over these various rights. It is created and maintained through diverse practices that are incorporated in SNSs' operation. I focus on eight major groups of such practices: (1) surveillance; (2) profiling; (3) cooperation with governments; (4) cooperation with private actors; (5) censorship, which might be

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<sup>1</sup> Ellison, N., & Vitak, J. (2015). Social media affordances and their relationship to social capital processes. In S. Sundar (Ed.), *The handbook of psychology of communication technology* (pp. 205-227). Boston, US: Wiley-Blackwell. See also Johnson, T., J. Zhang, W., Bichard, S. L. & Seltzer, T. (2011). United we stand? Online social network sites and civic engagement. In Z. Papcharissi (Ed.), *A networked self: Identity, community, and culture on social network sites* (pp. 185–207). New York, US: Taylor & Francis

performed ex-ante, real-time, and ex-post; (6) expulsion of users on an individual or collective basis by suspending accounts and closing groups down; (7) interfering with content and with users' choices; and (8) practices related to the security and reliability of information. The control SNSs exert over the human rights of their users is rooted in their intermediary nature and is reinforced by these platforms' increasing reliance on Artificial Intelligence tools.

Together, these two dimensions result in SNSs' overarching, somewhat holistic, influence over the human rights of their users. This sweeping influence echoes the traditional task and responsibility of the state in this regard, as reflected in the social covenant and in the state's fiduciary role, and highlights a salient public attribute of SNSs.<sup>2</sup> Such public character might justify application of public law norms to SNSs, thus urging them to take a more user-oriented, balanced and accountable approach. Moreover, embracing public standards in the context of SNSs may also contribute to empowering users, enabling them to calibrate their expectation of SNSs, and encouraging them to engage in securing their interests within these important online avenues. The said public norms could be applied through various legal channels, among which are the "State Action" requirement and parallel doctrines in different jurisdictions.

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<sup>2</sup> Fox-Decent, E. & Criddle, J. (2010). The Fiduciary Constitution of Human Rights, *15(4) Legal Theory*, 301-336, and Fox-Decent, E. & Criddle, J. (2016), *Fiduciaries of Humanity: How International Law Constitutes Authority*. NY, US: Oxford University Press (p. 95).