

Opinion – Facebook's Oversight Board: A Matter of Scope and Power

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DANIEL A. DÍAZ, MAY 12 2020

Cambridge Analytica, InfoWars' conspiracy theories, Mueller report, Anti-Rohingya propaganda. This is a list of topics that show us that Facebook's steps have long escaped the field of technology and reached the field of domestic and international politics. This is reflected in the growing suspicion of big tech, all of which seems to be generating the first concrete reactions from the big ones. On May 5, 2020, Facebook announced the first members of its Oversight Board. For the hope of some and the scandal of others. This is an unprecedented decision-making body, which is being set up in a corporation that has been in the eye of the social and political hurricane for several years. Mark Zuckerberg expressed this when he commented in a letter that 'We are responsible for enforcing our policies every day and we make millions of content decisions every week. But ultimately, I do not believe private companies like ours should be making so many important decisions about speech on our own. That is why I have called for governments to set clearer standards around harmful content. It is also why we are now giving people a way to appeal our content decisions by establishing the independent Oversight Board.'

One of the analogies used to refer to this new body has been to describe it as a Supreme Court; such has been the case with media like Forbes and The Verge. Others have thought of it as a body of Corporate Governance that might even be able to overrule Zuckerberg's decisions. If that representation turns out to be precise that would be a good thing for all of us, as in theory the Corporate Governance aims 'to help build an environment of trust, transparency and accountability necessary for fostering long-term investment, financial stability and business integrity, thereby supporting stronger growth and more inclusive societies', this according to the G20/OECD's version. However, this is achievable only if this 'structure... make sure that the right questions get asked, and that checks and balance are in place to make sure that the answer reflects what is best for the creation of long-term, sustainable, renewable value', as underscored by Monks and Minow.

Let examine if this novel Board might be up to the expectations that raise its association with Corporate Governance. Its field of action refers to complaints regarding the publication of contents on Facebook and Instagram. That is when the company downloads content, and the person who generated it considers that decision to be inadequate, and after going through all the internal review instances, it reaches this committee. The committee decides if Facebook's decision is in line with the company's values and makes a decision that is binding on Facebook. Nevertheless, a decision that is restricted to particular content. By focusing its scope of action on reviewing decisions of an editorial nature, it is far from being able to be considered it a governing body. This would be tantamount to reducing Facebook to a company whose core business is the dissemination of content generated by third parties. The committee's scope is to decide on the content and generate policy recommendations. The decision of whether or not to implement these recommendations will depend solely on Facebook.

While the committee considers the possibility of reviewing decisions as a matter of urgency, the temporality of the appeal process, discussion, decision and implementation process may be harmless in generating preventive measures. The "solution" will come when the eventually damaged nature of the content is already irreversible. The risk is that these are merely measures to control reputational damage to the company, which puts such a decision in "external" hands. As was put by Kurt Wagner: 'Given the speed at which information can travel on Facebook, that means the Oversight Board will be more of a corrective solution to prevent a future issue, rather than a response

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team to quickly solve a current one.'

Although in his 2019 letter, Zuckerberg mentions the role of governments in establishing clear standards on harmful content, the option followed was to generate a corporate rather than a public mechanism. This sounds too much like Shoshana Zuboff's *The Age of Surveillance Capitalism*, when she says that to avoid coercive public regulation, the option for companies has been to encourage self-regulation schemes: 'The idea here is that the firms set their own standards, monitor their own compliance with those standards, and even judge their own conduct in order to 'voluntarily report and remediate violations'' (p. 108).

Zuckerberg says in the letter announcing the creation of this body: 'Just as our Board of Directors keeps Facebook accountable to our shareholders, we believe the Oversight Board can do the same for our community.' From a stakeholder analysis perspective, this single sentence reveals that the user/community position has not been the focus of the Board of Directors until now. But more worrying is the fact that the body whose focus will be the community has limited corporate powers and very narrowly focused scope.

If this Oversight Board is a solution, we must ask what problem it would be solving. One might suspect that there is a clear focus on recruiting very high-profile members, unquestionably in their individual career paths. The point is not that, but whether in their collegial version, as the Oversight Board, they will have the power to make decisions that will make a difference to the company's conduct. It seems that the aim is to build a source of legitimacy that will facilitate the maintenance of the operation. It is a concession, but a voluntary one whose final margin of interference in the company's policies remains in the field of the company. The business model seems to remain untouched and out of the scope of this novel Board.

In summary, it is difficult to say that, at first glance, this new Board lives up to the powers and capabilities of an appropriate corporate governance body. Nevertheless, having a Nobel Prize winner, a former Prime Minister, a former editor of *The Guardian* or a former judge of the European Court of Human Rights sounds like a great opportunity. No complaints. But we must be cautious, for this is not a solution, but a tool that promises, but whose results and scope remain to be seen. In a recent article, we analyzed how there are leaderships styles that seek to establish organizational structures that not only do not redistribute power but consolidate them in their position because they provide much-needed legitimacy. If this the case, we will need to wait for the Board to see their first cases in the coming months, and how its operation and decisions are processed and implemented by Facebook.

Either way, we need to bear in mind that it is not people's individual skills what really matters, but their collective abilities to exercise corporate check and balance – which also relies upon the scope and power that they actually held according to the design of the structure. That is the combination of ingredients that may or may not make a difference upon how behaves one of today's most powerful and influential corporations in the world.

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