

## **Global Technology Regulation and Independent Review Mechanisms: Non-Governmental/Non-Private Sector Solutions to Big Data Problems**

By Carolyn Jew and Ken Rogerson, Duke University

-- DRAFT: NOT FOR CITATION WITHOUT AUTHOR PERMISSION --

Some people believe that big tech companies have power and maybe too much power (Raymond, 2020). Global attempts to regulate big tech have been as varied as there are nations, from the implementation of the General Data Privacy Resolution (GDPR) in the European Union to the Data Privacy Act in Singapore. Most big tech companies work to resist government intervention and rely on minimal self-regulation to assuage government desires to intervene (Lee, 2022). When big tech attempts self-regulation how well is it working? There are a number of substantive areas in which governments might want to regulate big tech: including misuse of user information, fraudulent consumer activity, and content moderation. One visible example of the latter is the Facebook Oversight Board (FOB), an entity set up to arbitrate Facebook's removal of content that it determines violates its policies and the producers of that content, especially when those producers feel their content has been mistakenly blocked.

What is the state of these attempts at self-regulation, particularly independent review mechanisms such as the Facebook Oversight Board? There are political tensions in this dance between business and government. For example, the FOB is international in scope, but countries have different laws, such as the criminalization of neo-Nazi speech in Germany while it is free speech in the US. In addition, the representation of voices, especially from the Global South, can be hampered because of access and resources. Individuals are at a particular disadvantage if they want to challenge big tech because of the resources that big tech companies have to fight complaints.

This project will perform an in-depth single case study about the promises and pitfalls of the FOB to potentially apply lessons learned to other current and future independent review mechanisms. What are the pros and cons of an entity like the FOB? Who is involved in the conversation? Whose voices are represented and whose are not? What can we learn from this experiment self-regulatory action?

### **Transparency, Complaints and Redress**

In the field of counseling and psychology, intervention is a tool used to help when individuals are not seeing the consequences of their actions (see "Therapeutic Intervention"). One key idea is to try to help the person better see how what they are doing is having a negative impact on others. This principle, applied to organizations, is often accomplished through boards. Both the private and non-profit sectors create board of directors (or groups of similar names) to help guide their actions. These groups represent the organization's shareholders or members and try to ensure that the organization acts in their interests (Duffy, 2022). Oversight boards are an

extension of this, but often focused on a single activity or topic, rather than the overall health of the organization/member relationship.

There has not been a lot of research on oversight groups and what little has been done is about the efficacy of government created groups and non-profit groups – in other words public sector organization (PSO) boards. “Little is known so far about boards in PSOs. While there is an abundant literature on boards, most studies relate to boards in private organizations” (van Thiel, 2015, 323). We are focusing on the public sector organizations for this project. Approaches to understanding public sector boards vary.

A first approach is a descriptive understand of their roles and relationships to the organizations with which they are connected. While boards may play different roles, they are also fluid and flexible (see van Thiel, 2015).

A second approach is to study whether the oversight mechanism is efficient at fulfilling its mandate. Through a study of how rates are set, Porse, et. Al. (2022) find that public utility commissions that set stormwater rates don't really have a large impact on the overall costs for citizens.

A third is to examine how much these commissions involved the “public,” defined in this case as citizens. Jackson (2021) focused on how much the California Public Utilities Commission included citizen voices and concluded that, “[a]lthough the CPUC is ahead of many other regulatory bodies in offering such opportunities to the public, the lack of substantive engagement and outreach frustrates ... advocates” (1).

A final approach is outcomes based, that is, is there evidence that the oversight board is having a positive impact on the organization. While it is challenging to find entire studies devoted to this, there are references to it, especially in research on health care organizations. “Such policies [of maintaining patient information confidentiality] are especially important in a managed competition model because of individual managed care plans' role in providing data for purchasers or the oversight board to monitor patient outcomes and other quality indicators” (Hillman, et. Al, 1993, p. 116).

So, there seems to be some space for deeper study of these mechanisms of accountability, how they work, and whether they fulfill their purpose.

Oversight groups – which may also be referred to as boards, advisory councils, advisory committees and citizen councils, among other terms – can be divided into four different general categories:

- Government oversight of government agencies
- Government oversight of the private sector

- Non-governmental/interest group oversight of both government and the private sector
- Private sector oversight of itself

Each category has its advantages and disadvantages.

First, government oversight of government agencies can include both institutionalized independent regulatory boards and ad hoc advisory boards. Each has the advantage of the weight of the branches of government and power of potential resulting legislation or regulation. Disadvantages include the time that it takes to do its work because of the slow speed of bureaucracies and the potential limited scope because it can be difficult for legislative factions to agree. Two historical examples of ad hoc boards from 1986 include the Tower and Rogers commission, which were created by executive order to investigate the sale of arms to Iran to fund support for a Nicaraguan opposition group and the explosion of the Challenger Space Shuttle, respectively. The Rogers Commission's work has had separate board review its work to assure that its recommendations were implemented at NASA (Aeronautics Space and Engineering Board, 1988).

Second, government agencies can require through rulemaking or the legislative branch through lawmaking that oversight agencies exist to monitor the private sector, which can include, as with the previous category, both existing government agencies and ad hoc groups. An advantage is the ability for governments to reign in private sector organizations that may be becoming too powerful. A disadvantage would be that often these types of groups do not have the legitimacy and resources needed to do their jobs. One example would state level public utilities commissions, which are designed to regulate "companies that provide electricity (including electricity resellers), telephone service (including payphone service and shared tenant service), natural gas (including gas resellers), water (including water resellers), wastewater, household goods movers, buses, brokers, and ferryboats" (NC Utilities Commission, N.D.).

Third, the creation of non-government, interest or citizen groups to provide feedback to various types of organizations. An advantage of this type of oversight is the corralling of passions and interests without the need for governmental approval. One very large disadvantage is the lack of resources. For example, local law enforcement agencies have created "police advisory boards" (Winter, 2021) and media organizations have instituted "community advisory boards" to provide feedback on news coverage (WNYC Radio, N.C.). This category can also include think tanks, advocacy groups, universities, and research organizations that focus on specific sectors or topics. In the tech world, this includes organizations such as the Electronic Frontier Foundation; Data and Society; the cyber arms of groups like New American, the Brookings Institute, and the Atlantic Council; the Center for Democracy and Technology; the Tony Blair Institute and others.

The final category of the private sector creating an internal oversight mechanism has fewer examples, because either 1) private sector companies don't usually choose to create such an organization or 2) they do create them but they and their activities are not publicized. The FOB is an example of this that overcomes both of these hurdles: it has been created and has been open about its activities. Note that the private sector very regularly engages other private sector consultants to solve problems, improve efficiency, and implement structural change. This project is focusing on public, transparent and non-profit options.

The ultimate goal of oversight groups is to introduce some transparency (Vakarelov and Rogerson, 2020) into the relationship between organization/company/government and its related members/shareholders/citizen so that the latter can feel they are making informed decisions and have some ability to call the organization out for bad actions.

### **Method**

The chosen method for this project is a single, in-depth case study, which is the right choice under the following conditions (see George and Bennett, 2005):

- The number of potential cases is small
- The number/type of sources is wide ranging (i.e. not a few data sets to put into a model)
- There may not be a lot of (enough) information about the potential case (depth not breadth) to do more rigorous analysis

The ultimate goal of single, in-depth case studies is to use the information potentially to engage in comparative case studies.

### Analytical Framework

This project will find, aggregate and analyze what the arguments and observations are for why the Facebook Oversight Board is good/bad, right/wrong, working/not working and a success/failure. Obviously, all of these dichotomies are on a spectrum and rarely will a conclusion at the ends of each spectrum reflect reality.

To do this, the project will analyze the development and evolution of the FOB in the context of 1) its structure and 2) its purpose. Van Thiel mirrors these categories which she calls "heuristics" by point out that "two heuristics can be used to describe or categorize what type of board we are studying, based on composition and function/role, but that only offers a rather static view. The dynamics of what goes on in the board room are still a black box and deserve much more attention and research" (van Thiel, 2015, 323). We hope to take van Thiel's challenge to give some attention to both of these and, also, provide some context for – as well as and kudos for and criticisms of – each.

One key argument we are trying to make is that, in this case, Meta/Facebook are attempting to imitate a public sector oversight board, rather than the private sector, third party auditing and consulting reviews that the private sector would normally use to provide insight for a company and its operations.

### *Structure*

There are a number of important structural characteristics for organizations to better understand how they function. There are the physical characteristics such as number of people, term length, review process, internal policy change mechanisms, etc. There are also non-mandated characteristics such as board member demographic and identity information.

### *Purpose*

Oversight boards seem to exist for three (sometimes overlapping) reasons: 1) as a reaction to public scrutiny (more cynically – for public relations purposes); 2) to mitigate a threat of government regulation and 3) a potentially sincere desire to improve the organization. These are manifest through the mission statement or mandate, the actual board work, the transparency of the decisions and the process, media coverage of the board's activities (including editorials and pundit observations), public opinion polls, as well as analysis and insight by other outside groups.

### **Facebook Oversight Board: Structure and Purpose**

Why study the Facebook Oversight Board? Choosing the Facebook Oversight Board is logical because it is the first and, as stated above, the most visible of this type of self-regulatory response.

Prior to the formation of the Facebook Oversight Board, Meta had for years expressed its discomfort with being the sole power to grant or deny access and use of its social media platform (Wong, 2019). It also sought guidance for local governments of other nations; and regarding online threats, content decisions, free speech, and other potentially controversial decisions that could not be made in real time.

In 2018, Zuckerberg introduced the idea of having a type of Supreme Court (Yurieff, 2020), comprised of independent experts, to establish rules and procedures by which these decisions would to be made; and then to review such cases. In May of 2020, the FOB was created to answer such questions, and was given the additional power to hone its own processes over time, such as determining the process of removing its members. The actual process of how a member is removed, and currently is not described on its website or within its mandate and by-laws.

According to the FOB charter, the Board would originally comprise of eleven experts selected by Facebook, drawn from politicians, academics, technology experts, and lawyers from around the world. The recommended maximum number is 40, although the charter allows for increasing its number based on some vague phrase implying necessity. It has risen from 20 to 23 members. Since its inception, the FOB has taken on 42 cases covering hate speech, violence, sexuality, dangerous individuals or organizations, regulated goods, bullying/harassment, and exploitation and abuse. On the FOB website's Transparency Center page, only two cases remain "pending", as of the writing of this paper. These cases are described, and their decisions

explained, with a comment suggesting that these decisions “may” affect Facebook’s future decisions.

### **The Facebook Oversight Board: Fans and Critics**

In order to analyze the FOB, the following section will dive deeper into the project’s analytical framework, starting with the board’s structure and following with the board’s purpose. In each section there will be sub-sections on the pros and cons of each concept, categorizing the kinds of feedback that people and organizations are giving.

#### *Analysis of Structure*

There are a variety of reasons that the FOB is unique and potentially a step forward in this model for oversight. As stated above, this type of board is a first in the big tech platform industry. For some, that is already something to applaud. “[A]t its core it is the most ambitious attempt yet to cut the Gordian knot of platform content moderation” (Douek, 2020).

#### *Praise for Structure*

First, the composition of the board is unique. As an extension of the description above about who is on the board, there is quite a bit of diversity in both board members and those who provide the board’s administrative support. Their perspectives are global and they represent differing identities. They are experts from a variety of fields. Trusted experts across a number of fields (academic and political leaders, human rights activists and journalists (Kang, 2021) who seem to be prepared to grasp the complex issues that the board is designed to tackle. The group could be seen a healthy example of a global “meeting of minds” to possibly set a precedent not necessarily for specific cases but for communication processes and exploration of how to handle differences.

Second, after the initial member appointments in 2020, the board has sole control of nominating and choosing new members (Bylaws, 2022, Section 1.2.2, pgs. 7-8). This provision helps distance the board from Meta and potentially permits critics of the organization to participate. “Board members will vote on individual candidates, keeping in mind the diversity and expertise considerations stipulated by the charter” (Bylaws, 8).

Third, when the board makes decisions, it is very transparent about the decision and the process. Explanation of decisions given in several easily understood paragraphs, for each case of why something is taken down, or put back up, clearly explaining when some decisions pit one set of values against another, and how different values were prioritized. For example, the board has grappled with the personal safety of individuals or groups vs. the importance of allowing voices to be heard; personal information privacy vs. the legal requirements of intellectual property; and hate speech vs. free speech.

Fourth, the board has been praised for maintaining a working relationship with Meta and Mark Zuckerberg. In some cases, the board does not hold back in its criticism of the company, its decision-making processes, and its actions.

Fifth, it is recognizing its own limitations. For example, the board has instituted a policy of getting feedback from an independent organization if there are any situations that involve the Israeli-Palestinian conflicts (BBC News, 2021), but it is not clear how the independent review organization was chosen.

### *Criticism of Structure*

On the other hand, plenty of concerns have been raised about the board's function and structure.

### Caseload

First, one of the most common concerns is the number and types of cases the board reviews. There are only about 20 decisions per year, a probable fraction of all the potential cases (note that despite extensive searching, the number of all cases petitioned from which the FOB chooses its cases is not clear) and potentially many more are never even submitted. In addition, the cases that reviewed by the board come from one of two sources: complaints of users whose posts are taken down, or users who complain about another's posts (Harris, 2020). A further criticism is that the board can never receive petitions from people who feel that others' posts – not theirs – have been unfairly removed because those types of removals and not publicized.

### Loyalties

The board members are paid (Bylaws, 2022, Section 1.4.3, pg. 10) to allow independence from their previous positions, but that can elicit questions of loyalty. The amount of compensation is specific to each board and not public.

### Relationship with Meta

Even though Meta was the Board's creator and, as stated above, some have praised this, there are also a number of concerns about this relationship.

The board's decisions do not have enough weight to encourage change. Meta can, for example, simply respond that the "recommendation is not feasible" or state that the company is already doing the recommendation. There is no requirement for Meta to provide either explanation or transparency about its responses to decisions.

As a corollary to this, some of the recommendations are about Meta's internal policies (rather than the content in question), which are often not as transparent as they might be. For example, Meta concealed the decision-making processes for its Cross-Check (or X-Check) program, designed to allow prominent users to circumvent usual standards such as harassment or incitement to violence (Bobrowsky and Ryan, 2021). The company only informed the board after specifically asking whether former U.S. President Donald Trump's page or account had been subject to ordinary content moderation processes (Ziady, 2021).

Another example is the board's inability to affect how users distribute or track each other's data. For example, friends or enemies can screenshot and "turn in" each other to authorities

that may be autocratic and cracking down on “dissidents” so that a single retweet may constitute a potential attack on the stability of society. On its “recommendations” page, (June 4, 2021) the FOB said “Facebook should be clear in its Corporate Human Rights policy how it collects, preserves and shares information related to investigations and potential prosecutions, including how researchers can access that information” and received a “No further action” and “No further updates” response. A later FOB concern about “election fraud” and “risks of unverified rumors” (Jan. 13, 2022) received a similar response.

The board does not seem to be involved in the implementation of their recommendations. Once, they sent back their recommendation twice, when the issue came up again, (citation).

The board does not seem to be able to provide feedback about data integrity. For example, they don’t seem to be addressing concerns about the choice of sources upon which Facebook relies for confirming accurate information/news/truth/research. They haven’t been able to comment on the uses of such technology as chatbots when they are quoted, forwarded, or used as sources of information.

And finally, there little evidence that the FOB has any connection to high level Meta leadership, both about concerns and about potential appeals for their recommendation not being noticed.

#### No decisions about the past

The board is not allowed to retroactively look at problems or concerns from the past if new information is found, although there may be some effort in this direction (citation and more).

#### Politics and Democracy

There are also a few broad societal concerns. The FOB can only address specific posts, not Meta’s overall activities or impact. There is an overfocus on specific published words and not on bigger picture issues such as Facebook’s impact on democracy itself. Samantha Power (2023) has written, “Like inequality and economic privation, potentially dangerous digital technologies have not received nearly enough attention from most democracies. The role that such tools have played in the rise of autocratic governments and ethnonationalist movements can hardly be overstated. Authoritarian regimes use surveillance systems and facial recognition software to track and monitor critics, journalists, and other members of civil society with the goal of repressing opponents and stifling protests. They also export this technology abroad; China has provided surveillance technology to at least 80 countries through its Digital Silk Road initiative.”

The board isn’t involved in recommendations for national or international negotiations with governments over a variety of potential issues, including local data storage and management, privacy, content moderation specific to locales — laws, restrictions, manipulation, bans, filters, etc.

The board is not empowered – or equipped – to handle the potential political repercussions of users’ postings (including political imprisonment), nor even to parse out Meta’s possible role in warning and protecting its users, particularly those located in unstable or autocratic regions.



### Analysis of Purpose

“The board is an external body that people can appeal to if they disagree with Meta’s content enforcement decisions on Facebook or Instagram. We’re committed to implementing the board’s content decisions, and their recommendations help shape how we govern our policies” (Oversight Board, N.D.). The Facebook Oversight Board is the first of its kind, an organization voluntarily created and implemented by a powerful, far-reaching social media platform seeking additional input on big content decisions that could impact their more than 2 billion monthly users. It has persisted for almost three years.

### *Praise for Purpose*

While other big tech companies have attempted to create and sustain a similar type of organization, none has successfully persisted as the Facebook Oversight Board seems to be doing.

### Stability and Longevity

Formed in 2016 under the direction of Patricia Cartes, Twitter’s Trust and Safety Council provided expertise and guidance on how Twitter could better combat hate, harassment and other harms but didn’t have any decision-making authority and didn’t review specific content disputes (O’Brien and Ortutay, 2022). It was disbanded shortly after the announcement by three of its members who resigned in protest (Dang, 2022), including former head of the council Yoel Roth, accompanied by comments by former CEO Jack Dorsey that undercut Elon Musk’s accusations against the council. The council’s mandate had included monitoring "Online Safety and Harassment, Human and Digital Rights, Suicide Prevention and Mental Health, Child Sexual Exploitation, and Dehumanization," and included such groups as the Anti-Defamation League, GLAAD and the National Center for Missing & Exploited Children” (O’Brien and Ortutay, 2022)

Google’s Advanced Technology External Advisory Council (ATEAC) dissolved in 2019 after just one week (Nieva, 2019) when 2,000 Google employees signed a petition by Googlers Against Transphobia and Hate which demanded one member be removed. This person replaced a member who had already resigned.

There are other examples of boards, like Microsoft’s Aether (“How Microsoft,” N.C.), which advises Microsoft leadership on the challenges and opportunities presented by AI innovations. But this type of board does not have the same purpose as the FOB.

### Community Standards

Another way that the board has some potentially positive influence is that it is able to lean on, and add to, Facebook’s Community Standards (Community Standards, N.D.), an evolving document that establishes the values of the company and company culture. [\(more here\)](#)

### Responsiveness and Transparency

The board works very hard to address tough cases, including human rights issues, bullying, violence, sexual exploitation and others (see Oversight Board Cases, N.D.). [\(more here\)](#)

Over time, Meta has evolved to address some criticisms. It has expanded the FOB board from 20 to 23 members. It has sped up its response time for many of its cases. It has clarified and improved its processes and transparency by providing readable paragraphs detailing of its decisions, reasoning, and stage of implementation. It makes claims that its decisions may now be extended to other platforms (such as Meta-owned Instagram), in cases in which the similarity is narrowly described. The website contains a single line that claims FB may use the decisions from these cases to affect how they handle future ones.

On its own website (“New Steps” 2020), separate from its case-by-case decisions, Facebook also now commits to not accepting political ads the week before an election; to remove posts that claim people will get Covid-19 if they vote; to provide information labels to posts that delegitimize the outcome of the election or discuss the legitimate voting methods will lead to fraud; and provide redirecting labels for posts that declare victory before the final results are in, leading them to Reuters and the National Election Pool.

### *Criticism of Purpose*

Many of the criticisms of the board’s purpose come from the oft cited analogy that it is similar to the U.S Supreme Court (see Yurieff 2020). This is a poor comparison on several dimensions.

### Supreme Court Analogy

The first is scale. The U.S. Supreme Court hears about 70-150 cases per year, selected from about 7,000 – 8,000 that arise ([citation](#)). The FOB so far has taken on 42 in almost 3 years—out of potential millions of complaints, generated from billions of users. On its own website, it counts over 1,000,000 cases in its first year of operation, with a steep increase each quarter. It does not state how many it received after June 2021, the previous of which they claim 2/3 were asking to have their hate speech or bullying restored. FOB states that at that time of reporting, Facebook answered 5/6 of FOB’s questions satisfactorily (“Oversight Board Demands,” 2021).

The second is topical scope. While the US Supreme Court has limited original jurisdiction, it may hear all cases arising from lower federal or state courts. FOB generally hears only about one post per case, limited to the seven general topics listed in its charter and bylaws, as they may arise from appeals on user posts. Also, the black leather laws are codified in volumes that fill libraries, and precedential case law even more. Whereas FOB relies on Facebook’s evolving but very new Community Standards and its charter and by-laws' mention of human rights. Even the definition of “free speech” seems inconsistently understood, interpreted, and applied.

Facebook has capacity not only to interpret, but to suppress or amplify through up- or down-ranking, making recommendations through “target” or “micro-marketing.” Without some curating, the content would be a firehose of posts. Facebook’s own internal research in 2016 found that “64% of all extremist group joins are due to our recommendation tools” and that a Facebook team told senior executives that the company’s algorithms exploit the human brain’s

attraction to divisiveness” (Horwitz, 2020). “If left unchecked,” Facebook would feed users “more and more divisive content in an effort to gain user attention & increase time on the platform.” Zuckerberg and other senior executives largely shelved the basic research, according to previously unreported internal documents and people familiar with the effort, and weakened or blocked efforts to apply its conclusions to Facebook products (Horwitz, 2020).

The third is the process of case identification. Because algorithms make most of these and other decisions for Facebook, the mechanism is difficult to compare. It is challenging to know what users might not have seen or how groups of users may vary in what content they do see. There is no “class action” case, except for the identity categories presumed and articulated by FOB itself.

The fourth is the range of activity under consideration. As mentioned above, FOB cases generally arise from two situations: 1) users whose posts have been removed and 2) users who are offended by another’s post. This leaves a vast swathe of activity conducted on and by Facebook that could result in harm, such as the stages of product development from design and planning through testing and implementation, into which coders and other FB employees could incorporate their own biases.

More specifically, there is a concern about how the board focuses on the way that a few words are phrased or associated with an image and then potentially emerge as a coordinated campaign. The reason this is important is because the purpose of FOB is to make decisions regarding content, free speech, threats, and other potentially controversial decisions, the channels are severely limited to narrow conceptions of loci of activity and harm.

The issue is exacerbated because the range of content can be contained on different local servers in different locations, influenced by local restrictions including manipulation, bans, filters, firewalls, privacy standards, blocking content outright, and varying stances on the “right to be forgotten” (get GDPR reference).

This ties into the structure discussion above about the lack of global norms and legal or regulatory frameworks that embed democratic values into tech design and development. Even in democratic countries, programmers often have to “define their own professional ethics on the fly, developing boundaries for powerful technologies while also trying to meet ambitious quarterly goals that leave them little time to reflect on the human costs of their products” (Power 2023; see also Chakravorti 2022).

The fifth is even narrower remedies. Perhaps the closest analogy is that the FOB can only respond to something like an order of “cease and desist” -- for a single post. The following types of activities will potentially fly under the radar: repeat offenses, sweeping action, collective misdeeds, indirect harms emerging from direct use or manipulation of Facebook, downstream harms, cumulative harms, neglect, impact of advertising rather than posts, or uses of products acquired from smaller tech companies that do not receive the same level of scrutiny.

In addition, there is no effective “pre-bunking” or ability to anticipate events before they occur (from political elections to internal downsizing of various departments, or if the ownership of reliable news or health information sources changes), and create plans to handle events unless they have already arisen via one user’s complaint about a single post. While Meta can ask FOB specifically to respond to their concern, once again, such action can only arise after the fact.

The sixth is independence. Judges in any level of court, and attorneys involved, are allowed to recuse themselves when there is a potential conflict of interest. While the FOB in theory has such independence from Meta itself in selecting cases and requesting external research on external datasets or external subject matter, other aspects of FOB remain in question (some of which were discussed above): conducting internal research, and expressing recommendations, the judgment of whether FOB’s recommended action is feasible, whether it is already being done by Meta, or how it should be implemented, is entirely administered by Meta itself.

In addition, the evidence, usually uncovered by the attorneys representing the aggrieved parties, is held tightly by Meta—algorithms, internal research, products and processes and communication unknown to FOB, the work of various departments such as accounting or marketing or business strategy (citation).

Implementation of the remedy is even more mysterious. While the decision is explained publicly, whether, and how, and how soon, the actual change made (in either algorithm or its outcome in terms of any true long-term impact), is invisible to the FOB itself. There is no returning to “court” to complain whether the decision was carried out effectively (except whether a post was restored or removed), and its impact on future users.

The seventh would be amusing if it were applied to the US Supreme Court. Members of FOB create their own processes in handling how to remove a fellow member before the end of their term (citation). No further comment here, but to leave this possibility to the imagination of the reader, and to suggest that in a healthy democracy, well considered dissent is crucial. Conversely, no comment as to life tenure of the US Supreme Court, but to applaud the FOB’s term limits, and presuming the current balance of members serves them well, to applaud the capacity for selecting their own replacements at the end of their term. Even the 3-year term limit, blindingly fast for the US Supreme Court, seems reasonable for an industry that likewise advances at blinding speed. So long as the gerontocracy does not extend to the social media and data industry through its replacements.

While this FOB effort puts the other tech platforms to shame in its ability to stay viable, functional, cohesive, and transparent, and certainly the work they are tasked to do, does embody critical thinking applied to their specifically articulated roles, nevertheless FOB is by no means akin to the US Supreme Court.

#### Other Criticisms

Almost immediately upon its creation, outside sources questioned the intent and ability of the FOB to make real change and address the larger questions at hand. Organizations including the

Center for Humanitarian Dialog (CHD) and the Real Facebook Oversight Board (RFOB) (see Pegoraro, 2020), objected via live press conference (Citizens TV, 2020), calling for “independent, external oversight and regulation of Facebook and its platforms now,” to protect its users and global democracy. It also asserted that FOB’s myopic focus on single posts was a mere distraction from the larger impact of Facebook’s algorithms and advertisements that amplify hate speech, misinformation, and other harmful content that its business model supports.

Marietje Schaake, a member of both CHD and RFOB, and is also a Dutch former member of the European Parliament, and the international policy director at Stanford University’s Cyber Policy Center, policy fellow at Stanford’s Institute for Human-Centered Artificial Intelligence and president of the CyberPeace, suggests in a podcast interview with Molly Wood (2021), that other Big Tech pretends to have governance such as Microsoft opening up a channel with the United Nations, as if it were its own nation.

Other organizations such as the Global Project Against Hate and Extremism, likewise spoke out against the actual, much larger effects that Facebook is fueling, that utterly undermine anything its own oversight board might be able to address or counteract (Beirich and Via, 2021).

On March 3, 2023, FB responded to some of its major criticisms (“Meta Tweaks” 2023), such as agreeing to “fine-tune” its X-Check system, previously concealed from its own FOB, that allows about 6 million celebrities and politicians far greater latitude to violate company posting policies. The finetuning consists of being more careful about who to include on the list, to “better account for human rights interests and equity”. This sort of privileged practice which Gajda (2022) points out, has always been in the domain of powerful white men, occasionally defended as “free speech.”

As stated above, in response to concerns about Facebook and elections, the organization promised to do some things (“New Steps” 2020). Some of the proposed actions were implicit (if not explicit) admissions that implicated political advertising money and other benefits they have previously received for promoting such election-related content in the first place. And, further, some of these proposed actions have yet to be implemented, such the addition of labels to those accounts which still hold privileged status through the X-Check system.

FOB neither frames what free speech means, nor influences what “the platforms choose to do with that content, which voices they decide to amplify, which groups are allowed to thrive and even grow at the hand of the platforms’ own algorithmic help”, and were some restricted oversight body able to examine data, they would not find FB a neutral body”, says Yaël Eisenstat, a Visiting Fellow at Cornell Tech’s Digital Life Initiative, studying technology’s effects on civil discourse and democracy. In 2018, she was Facebook’s Global Head of Elections Integrity Operations for political ads. Previously, she spent 18 years working around the globe as a CIA officer, White House advisor, diplomat, and the head of a global risk firm (Eisenstat, Yaël, 2022).

The same holds true for Sophie Zhang (Hao, 2022) and her ability to contrast her job reducing false likes for personal vanity, while leaving untouched the same "scripted inauthentic activity" of politicians around the world who would create multiple accounts that inflated their popularity, particularly before elections. All this highlights the focus of this double standard that undermined democracy while policing trust of individuals' petty ego. And the snarl of confusion between the pages integrity team and the newsfeed integrity team, meant that the issue could not be adequately addressed at all.

[More here...](#)

## Reflections

While there is further research to be done, this review provides an initial glimpse into the tensions inherent in the Facebook Oversight Board. The board has shown a willingness to evolve with the following caveats: it is unclear whether the evolution is internal to the FOB or encouraged (forced?) by Meta. That said, there are some recommendations for change that are being proposed.

Because of these and other reasons, numerous sources say self-regulation efforts are not sufficient, sometimes recommend the use of **other independent organizations** (Rodrigo, 2021), Zapisi (2021), Schneider (2022), Haugen (2022), Chakravorti (2021, 2022), Melton (2022), Tellado (2022), Blackman (2022), Karanicolas (2019), Anonymous #1 (2022), Anonymous #2 (2022), Anonymous #3). As a caveat, rather than advocating for any one independent group, it might be necessary to create new independent organizations for research, formulating guidelines, processes, standards and values, methods of interacting with nations' laws and cultures, whistleblower support, checks on implementation, etc. Others suggest that even government regulation is no effective measure and recommend the creation, involvement, or specific use of the work of independent organizations (O'Sullivan, 2019), Klein (2023), Bradley. 2023).

As a corollary, the FOB might **partner with other organizations** to do its work, as it did with the Israeli-Palestinian conflict mentioned earlier. Schneider palette of privacy choices, Jaya Kasibhatla of Unfinished Live points to a learning curve built from multiple intervention communities that address concerns for responsibility (machines making decisions not an "answer;" interpretive commitment required ([citation](#))).

Another suggestion is to **expand the capacity of the board** even further. The speed at which Big Tech moves, and the inability of courts to reprimand in a way that alters their strategy or business models, imply that legal solutions cannot be the primary driver of ethical behavior.

Provide a deeper understanding of the **context in which the board is making its decisions**. Data is the "new oil" of business (Javornik, 2018) and as such, is the domain of almost every business today. It's just that, for social media platforms, that is their primary or sole business. The concern of data privacy in general is because AI has become so powerful, even stripped of every

PII (personal identifying information) data analysts and their tools are capable of re-identifying the individual (Gajda, 2022; Anonymous #3) such personal and easily identifiable content gets repackaged, sold, passed around, leaked or stolen, there is currently no organization that tracks and protects how it is combined, used, or will be used in the future. For example, brain scans today may not say as much as what we learn about neuroscience in the future but the “data” is already “out there” even without the permission of the people who don’t realize what might be on the horizon medically (Anonymous #5, 2022).

There must be **room for dissent and feedback**. Different interest groups must be able to speak to each other in a safe forum to understand what effect Big Tech’s decisions are having in not only content moderation of single posts. Even then this does not even begin to cover how its availability and use to train AI, may impact outcomes much further downstream from an immediate user audience.

Treating the medium/channel more as a **public good**. Can make decisions about content moderation (and deplatforming?) because FB is not a public sphere for govt action (as opposed to Merkel’s fears of the extent of FB power imbalance)--maybe we need a public internet rather than having a private company take this role. FOB still relevant for making content moderation decisions guidance (can’t be too afraid to do anything)--we do need to nuance FB

While responsive to some public criticisms, it has become clear that without such independent organizations having the capacity to publicly air and address these concerns, and the contributions of whistleblowers to expose Meta’s behavior, it is unlikely Meta would follow its own established standards of conduct.

There is more space for both conversation and analysis, with potential comparative case studies both to different types of oversight organizations and, hopefully, to future similar ones.

## Bibliography

Aeronautics Space and Engineering Board (1988), "Committee on Shuttle Criticality Review and Hazard Analysis Audit," National Academy Press, <https://ntrs.nasa.gov/api/citations/19880010818/downloads/19880010818.pdf>. Accessed: 27 February 2023.

Clegg, Nick (2021). "Referring Former President Trump's Suspension From Facebook to the Oversight Board." <https://about.fb.com/news/2021/01/referring-trump-suspension-to-oversight-board/>. Accessed 6 March 2023.

Anonymous Interview #1 (founder of two tech startups) in discussion with author, June 2022.

Anonymous Interview #2 (former tech product line manager and Congressional staffer) in discussion with author, July 2022.

Anonymous Interview #3 (former Google marketer) in discussion with author, September 2022.

Anonymous Interview #4 (member of RTI International) in discussion with author, February 2023.

Anonymous Interview #5 (college student required to provide personal brain scan in order to participate in class) in discussion with author, April 2022.

Anonymous Interview #6 (medical doctor, addictions expert) in discussion with author, March 2023.

Beirich, Heidi and Wendy Via (2021). "Democracies Under Threat: How Loopholes for Trump's Social Media Enabled the Global Rise of Far-Right Extremism." *Global Project Against Hate and Extremism*. [https://globalextrémism.org/wp-content/uploads/2022/01/GPAHE\\_Democracy-under-threat.pdf](https://globalextrémism.org/wp-content/uploads/2022/01/GPAHE_Democracy-under-threat.pdf). Accessed: 7 March 2023.

BBC News (2021). "Israel-Palestinian Facebook posts need 'bias' review." 14 September 2021. <https://www.bbc.com/news/technology-58558982>. Accessed: 4 March 2023.

Blackman, Reid (2022). Unfinished Live Conference, Sept 21-24, 2022.

Bobrowsky, Meghan and Ryan Tracy (2021). "Facebook Oversight Board Launches Review of Company's XCheck System" Wall Street Journal. Sept. 21, 2021. <https://www.wsj.com/articles/facebook-oversight-board-launches-review-of-companys-xcheck-system-11632246934>. Accessed: 4 March 2023.



Bradley, A., (attorney, lecturer on ethics of democracy) in discussion with author, February 2023.

Bylaws, Facebook Oversight Board (2022). [https://about.fb.com/wp-content/uploads/2020/01/Bylaws\\_v6.pdf](https://about.fb.com/wp-content/uploads/2020/01/Bylaws_v6.pdf). Accessed: 5 March 2023.

Chakravorti, Bhaskar (2021). "How to Close the Digital Divide in the U.S." *Harvard Business Review*. <https://hbr.org/2021/07/how-to-close-the-digital-divide-in-the-u-s>. Accessed: 7 March 2023.

Chakravorti, Bhaskar. (2022) Unfinished Live Conference, Sept 21-24, 2022.

Charter, Facebook Oversight Board (2019). [https://about.fb.com/wp-content/uploads/2019/09/oversight\\_board\\_charter.pdf](https://about.fb.com/wp-content/uploads/2019/09/oversight_board_charter.pdf). Accessed: 5 March 2023.

"The Real Facebook Oversight Board - Press Conference" (2020). *Citizen's TV: YouTube*. [www.youtube.com/watch?v=R36qQRsXWQk](http://www.youtube.com/watch?v=R36qQRsXWQk).

Collins, Ben and Michael Cappetta (2018). "Facebook Announces Content Oversight Board as Zuckerberg Responds to Lobbying Crisis." *NBC News*. <https://www.nbcnews.com/tech/tech-news/facebook-announces-content-oversight-board-zuckerberg-responds-lobbying-crisis-n936806>. Accessed: 5 March 2023.

"Community Standards." <https://transparency.fb.com/policies/community-standards/>. Accessed: 6 March 2023.

"New Steps to Protect the US Elections" (2020). <https://about.fb.com/news/2020/09/additional-steps-to-protect-the-us-elections/>. Accessed: 7 March 2023.

Dang, Sheila (2022). "Twitter Dissolves Trust and Safety Council." *Reuters*. <https://www.reuters.com/technology/twitter-dissolves-trust-safety-council-2022-12-13/>. Accessed: 7 March 2023.

Douek, Evelyn (2020). "What Kind of Oversight Board Have You Given Us?" *Chicago Law Review Blog*. <https://lawreviewblog.uchicago.edu/2020/05/11/fb-oversight-board-edouek/>. Accessed: 4 March 2023.

Duffy, Clare (2022), "Twitter board recommends shareholders vote in support of Musk acquisition," *CNN Business* (June 21, 2022). <https://www.cnn.com/2022/06/21/tech/twitter-board-musk-acquisition-shareholder-vote/index.html>. Accessed: 4 March 2023.

Eisenstat, Yaël (2022). "How to Hold Social Media Accountable for Undermining Democracy." *Harvard Business Review*. <https://hbr.org/2021/01/how-to-hold-social-media-accountable-for-undermining-democracy>. Accessed: 7 March 2023.

Elliott, Vittoria (2022). "Tech Industry Layoffs May Undo Workforce Diversity Gains." *Wired*. <https://www.wired.com/story/tech-layoffs-diversity/>. Accessed: 7 March 2023.

Fang, Lee (2022), "Major Media Outlets That Use Invasive User Tracking Are Lobbying Against Regulation." *The Intercept*. <https://theintercept.com/2022/02/01/surveillance-data-collection-ads-news-media/>. Accessed: 26 February 2023.

Gajda, Amy (2022). *Seek and Hide: The Tangled History of the Right to Privacy*. Viking Press: New York.

George, Alexander L. and Andrew Bennett (2005). *Case Studies and Theory Development in the Social Sciences*. MIT Press.

Haugen, Frances (2022). Unfinished Live Conference, Sept 21-24, 2022.

Javornik, Marko, et al. "Data Is the New Oil." *Lecture Notes in Mobility*, Springer International Publishing, Dec. 2018, [https://doi.org/10.1007/978-3-319-99756-8\\_19](https://doi.org/10.1007/978-3-319-99756-8_19).

Kaplan, ?? (2022). Unfinished Live Conference, Sept 21-24, 2022.

Hao, Karen (2022). "She Risked Everything to Expose Facebook. Now She's Telling Her Story." *MIT Technology Review*, 10 Jan. 2022, [www.technologyreview.com/2021/07/29/1030260/facebook-whistleblower-sophie-zhang-global-political-manipulation](http://www.technologyreview.com/2021/07/29/1030260/facebook-whistleblower-sophie-zhang-global-political-manipulation). Accessed: 5 March 2023

Harris, Brent (2020). "Oversight Board to Start Hearing Cases." <https://about.fb.com/news/2020/10/oversight-board-to-start-hearing-cases/>. Accessed: 6 March 2023.

Hillman, Alan; Greer, William R and Goldfarb, Neil (1993). "Safeguarding Quality In Managed Competition" *Health Affairs*, 12:110-122.

Horwitz, Jeff, and Deepa Seetharaman (2020). "Facebook Executives Shut Down Efforts to Make the Site Less Divisive." *Wall Street Journal*. <https://www.wsj.com/articles/facebook-knows-it-encourages-division-top-executives-nixed-solutions-11590507499>. Accessed: 7 March 2023.

"How Microsoft Drives Responsible." <https://www.microsoft.com/en-us/ai/our-approach?activetab=pivot1:primaryr5>. Accessed: 7 March 2023.

Jackson, Christopher Tonnu (2021), "Putting the Public in Public Utilities Commissions," *Issues in Science and Technology*, 38, 1:23-25.

Kang, Cecilia (2021). "What Is the Facebook Oversight Board?" *New York Times*, 5 May 2021. <https://www.nytimes.com/2021/05/05/technology/What-Is-the-Facebook-Oversight-Board.html>. Accessed: 4 March 2023.

Karanicolas, Michael (2019). "Squaring the Circle between Freedom of Expression and Platform Law." *Pittsburgh Journal of Technology Law and Policy*. 20: 177-211.

Klein, Gil (former president of the National Press Club) interview with author, February 2023.

Wood, Molly (2021). "Is The Facebook Oversight Board Something We Really Need?." Interview with Marietje Schaake on Marketplace. <https://www.marketplace.org/shows/marketplace-tech/is-facebook-oversight-board-something-we-actually-need/>. Accessed: 7 March 2023.

Melton, Mimi Fox (2022). Unfinished Live Conference, Sept 21-24, 2022 and "Mission — Code2040." Code2040, [www.code2040.org/mission](http://www.code2040.org/mission).

Nieva, Richard (2019). "Google Shuts down AI Ethics Council after Controversy over Members." CNET. <https://www.cnet.com/tech/tech-industry/google-shuts-down-its-newly-formed-ai-ethics-council/>. Accessed: 5 March 2023

North Carolina Utilities Commission (2023,) "What does the NC Utilities Commission Regulate?" <https://www.ncuc.gov/Consumer/whatwedo.html>. Accessed: 26 February 2023.

O'Brien, Matt and Barbara Ortutay (2022). "Musk's Twitter Disbands Its Trust and Safety Advisory Group." ABC News. <https://abcnews.go.com/Business/wireStory/musks-twitter-dissolves-trust-safety-council-95112860>. Accessed: 7 March 2023

O'Sullivan, Michael (2019). *The Levelling: What's Next After Globalization*. Public Affairs: New York.

"Oversight Board Cases." <https://transparency.fb.com/oversight/oversight-board-cases/>. Accessed: 6 March 2023.

"Oversight Board Demands More Transparency from Facebook." (2021) *Oversightboard.com* <https://oversightboard.com/news/215139350722703-oversight-board-demands-more-transparency-from-facebook/>. Accessed: 7 March 2023.

Pegoraro, Rob (2020). "Facebook's 'Real Oversight Board': Just Fix These Three Things Before the Election." *Forbes*. <https://www.forbes.com/sites/robpegoraro/2020/09/30/facebooks-real-oversight-board-just-fix-these-three-things-before-the-election/?sh=499d9f7b1e6c>. Accessed: 7 March 2023

Porse, Erik; Kerner, Maureen; Shinneman, Joel; Kaplan, Jonathan; Stone, Samuel; et al. "Stormwater utility fees and household affordability of urban water services" *Water Policy*, 24, 6: 998-1013.

Power, Samantha (2023). "How Democracy Can Win: The Right Way to Counter Autocracy." *Foreign Affairs*, March/April 2023. <https://www.foreignaffairs.com/united-states/samantha-power-how-democracy-can-win-counter-autocracy>. Accessed: 4 March 2023.

Raymond, Chris (2020), "Americans Say Nation's Big Tech Companies Have Too Much Power." *Consumer Reports*, 24 September 2020, <https://www.consumerreports.org/consumer-protection/big-tech-companies-have-too-much-power-americans-say/>. Accessed: 26 February 2023.

"Meta Tweaks Its Controversial 'cross-check' System for VIPs" (2023). *Reuters*. [www.reuters.com/technology/meta-tweaks-its-controversial-cross-check-system-vips-2023-03-03](http://www.reuters.com/technology/meta-tweaks-its-controversial-cross-check-system-vips-2023-03-03). Accessed: 7 March 2023.

Rodrigo Cetina Presuel (2021). "*Un estira y afloja. La definición de las reglas para la libre expresión en las plataformas de redes sociales.*" *Juridicas CUC*, 17, 1:499-556.

Schneider, Nathan (2022). Unfinished Live Conference, Sept 21-24, 2022.

"Therapeutic Intervention" (N.D.), *Psychology Today*. <https://www.psychologytoday.com/us/therapy-types/therapeutic-intervention>. Accessed: 26 February 2023.

"The Oversight Board | Transparency Center." *Transparency.fb.com*, [transparency.fb.com/oversight/](https://transparency.fb.com/oversight/). Accessed 5 Mar. 2023.

Vakarelov, Orlin and Kenneth Rogerson (2020). "The Transparency Game: Government Information, Access, and Actionability," *Philosophy and Technology*, 33:71–92.

Van Thiel, Sandra (2015). "Boards of public sector organizations: a typology with Dutch illustrations." *The International Journal of Public Sector Management*. 28, 4/5:322-334.

Vukcevic, Ivana (2021). Facebook Oversight Board's Decision on the Indefinite Suspension of Donald Trump's Account." *Pravni Zapisi*. God. XII, br. 1. <http://pravnizapisi.rs/wp-content/uploads/issues/1-2021/PZ%202021-01%20-%2013%20Vukcevic.pdf>

Wells, Georgia, and Stu Woo (2023). "TikTok Tries to Win Allies in the U.S. With More Transparency." *Wall Street Journal*. <https://www.wsj.com/articles/tiktok-tries-to-win-allies-in-the-u-s-with-more-transparency-11673836560?st=fg49e2oxmpobxaa>. Accessed: 7 March 2023.

“What Is the Oversight Board?” <https://www.facebook.com/help/711867306096893>. Accessed: 6 March 2023.

Winter, Deena (2021), “Does Minneapolis need another police advisory board?” The Minnesota Reformer, 10 November 2021. <https://minnesotareformer.com/2021/11/10/does-minneapolis-need-another-police-advisory-board/>. Accessed: 26 February 2023.

WNYC Radio (N.D.) “Community Advisory Board.” <https://www.wnyc.org/outreach/cab/>. Accessed: 26 February 2023.

Wong, Queenie (2019). “Facebook Outlines Rules for Content Oversight Board That Can Overrule Zuckerberg.” *CNET*. <https://www.cnet.com/news/politics/facebook-outlines-rules-for-content-oversight-board-that-can-overrule-zuckerberg/>. Accessed: 5 Mar 2023.

Yurieff, Kaya (2020). "Facebook Finally Reveals Who Will Serve on Its Version of a Supreme Court." *CNN*. <https://www.cnn.com/2020/05/06/tech/facebook-oversight-board/index.html>. Accessed: 5 March 2023.

Ziady, Hanna (2021). “Facebook kept its own oversight board in the dark on program for VIP users.” *CNN Business*. October 21, 2021. <https://www.cnn.com/2021/10/21/tech/facebook-cross-check-oversight-board/index.html>. Accessed: 4 March 2023.

“How Microsoft Drives Responsible.” <https://www.microsoft.com/en-us/ai/our-approach?activetab=pivot1:primaryr5>. Accessed: 7 March 2023.