

THE SHIFT

Facebook's 'Supreme Court' Tells Zuckerberg He's the Decider

The company tried to punt its Trump dilemma to a panel of experts. On Wednesday, the experts punted back.



By Kevin Roose

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There's a saying plastered on the walls of Facebook's headquarters in Menlo Park, Calif.: "Nothing at Facebook is somebody else's problem."

It's one of the social network's bedrock principles — the idea that, instead of offloading hard challenges to others, Facebookers should roll up their sleeves and do it themselves.

So it was a bit of poetic justice that on Wednesday, the Facebook Oversight Board — a newish panel of experts charged with ruling on some of the company's hardest calls on content moderation — rejected the company's attempt to outsource one of the thorniest tasks in its 17-year history: deciding what to do about former President Donald J. Trump.

Mark Zuckerberg, the company's chief executive, had hoped that the board — a group of roughly 20 lawyers, scholars and former politicians — would render up-or-down verdicts on such questions.

Instead, the group handed down another message: Mr. Zuckerberg, this problem is yours to fix.

Technically, the oversight board upheld Facebook's decision to restrict Mr. Trump from posting on Facebook and Instagram after the Jan. 6 insurrection at the U.S. Capitol, which was fueled by election disinformation that Mr. Trump shared on his social media accounts.

But the group also criticized Facebook for seeking to "avoid its responsibilities" by giving Mr. Trump "the indeterminate and standardless penalty of indefinite suspension," rather than making a permanent decision about whether to reinstate him, suspend him for a finite period or bar him permanently. And it punted the decision about Mr. Trump's accounts back to the company, saying that Facebook would have to issue a final verdict within six months.

A poster on the walls of Facebook's headquarters.

The board's decision to uphold Facebook's suspension of Mr. Trump was a relief to many at the company, where some employees were privately worried that they would soon face pressure to allow Mr. Trump to run wild on their platform again. On Wednesday, the company released a statement saying it was "pleased the board has recognized that the unprecedented circumstances justified the exceptional measure we took."

But the board's refusal to settle the larger question of Mr. Trump's Facebook future was a setback in Mr. Zuckerberg's yearslong quest to extricate himself from the center of a global free speech debate, and delegate the responsibility of deciding what Facebook's 2.7 billion users can and can't post to a more willing set of referees.

When Mr. Zuckerberg first pitched the idea of a "Facebook Supreme Court" several years ago, he promoted it as a way to make the company's governance more democratic, by forming an independent body of subject matter experts and giving them the power to hear appeals from users.

"I think in any kind of good-functioning democratic system, there needs to be a way to appeal," Mr. Zuckerberg told Ezra Klein in a 2018 Vox podcast.

The oversight board also served another purpose. For years, Mr. Zuckerberg had been called in as Facebook's policy judge of last resort. (In 2018, for example, he got personally involved in the decision to bar Alex Jones, the Infowars conspiracy theorist.) But high-profile moderation decisions were often unpopular, and the blowback was often fierce. If it worked, the oversight board would take responsibility for making the platform's most contentious content decisions, while shielding Mr. Zuckerberg and his policy team from criticism.

It's hard to imagine a dispute Mr. Zuckerberg would be more eager to avoid than the one about Mr. Trump. The former president rode Facebook to the White House in 2016, then tormented the company by repeatedly skirting its rules and daring executives to punish him for it. When they finally did, Republicans raged at Mr. Zuckerberg and his lieutenants, accusing them of politically motivated censorship.

Facebook faced plenty of pressure in the other direction, too — both from Democrats and civil rights groups and from employees, many of whom saw Mr. Trump's presence on Facebook as fundamentally incompatible with their goal of reducing harmful misinformation and hate speech. No matter what Mr. Zuckerberg and his team decided, they were sure to inflame the online speech wars and make more enemies.

Before the decision on Wednesday, Mr. Zuckerberg and other Facebook executives did everything they could to convince a skeptical public that the oversight board would have real teeth. They funded the group through a legally independent trust, filled it with hyper-credentialed experts and pledged to abide by its rulings.

But for all its claims of legitimacy, the oversight board has always had a Potemkin quality to it. Its leaders were selected by Facebook, and its members are (handsomely) paid out of the company's pockets. Its mandate is limited, and none of its rulings are binding, in any meaningful sense of that word. If Mr. Zuckerberg decided tomorrow to ignore the board's advice and reinstate Mr. Trump's accounts, nothing — no act of Congress, no judicial writ, no angry letter from Facebook shareholders — could stop him.

That paradoxical setup — an oversight board with no legally enforceable powers of oversight — created tension even before the decision on Wednesday. The board has overturned Facebook's decisions in the majority of the cases it has reviewed so far, and Facebook has pushed back in several instances.

In February, the company rejected the panel's call to be more lenient with users who posted endorsements of Covid-19 treatments that contradicted the advice of health officials, such as a user who endorsed the use of hydroxychloroquine and azithromycin to treat the virus. Facebook responded by saying that it would do no such thing, and that it disagreed with the oversight board's assessment that such posts did not create an imminent risk of harm. (Technically, Facebook was allowed to ignore the board on this point because its statement was a nonbinding recommendation, rather than an official decision. But since this is all corporate Calvinball anyway, I'm not sure the distinction means much.)

Don't get me wrong: I'm not saying the oversight board is a useless experiment, or that nothing productive will come from it. From what I know, the board is composed of thoughtful people who care deeply about fairness and free expression, some of whom are agitating for a bigger remit.

I'm not suggesting that Mr. Zuckerberg's making these calls on his own is a good thing, or that the U.S. government would be better at drawing the boundaries of online speech than a corporate advisory panel.

I'm also not saying that other social media platforms are better than Facebook at governing themselves in a transparent and consistent way. YouTube, for example, has said only that it will reinstate Mr. Trump's account at some unspecified date in the future, when it presents less risk of fomenting violence.

What I am suggesting is that all of this — the oversight board, the 9,000-plus public comments it received while deliberating on Mr. Trump's case, the six-month deadline Facebook now faces to render a final verdict — is a weak substitute for actual accountability, or a process that would meaningfully reduce the power Mr. Zuckerberg and his peers have over the online speech of billions of people.

Whether you agree with the oversight board's decisions or not, let's not kid ourselves about who's really in charge of Facebook. The social network is still a "Mark Zuckerberg production," and no quasi-judicial verdict will change that.