

Analyzing the Influence of Big Tech Through the Rawlsian Basic Structure

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ABSTRACT

In this paper, I attempt to contribute to recent debates around the influence of big tech corporations on liberal democratic systems by contextualizing the role of big tech within a Rawlsian conception of the basic structure. First, I narrowly critique Rawls's distinction between the basic structure and corporate associations, arguing that the unique characteristics of big tech warrant an exception. Then, I argue that within the Rawlsian understanding of the basic structure, big tech is a "macro-institution," with profound and coercive effects greater than the formal institutions of the basic structure. Finally, I discuss the implications for my argument, positing that big tech should not be considered a part of the basic structure but rather should be regulated by the state.

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INTRODUCTION

While the Internet was once considered a powerful tool of democracy, in recent years, technology companies that dominate the Internet have come under fire for practices that undermine democratic institutions. In particular, special attention has been directed towards big tech, a loosely defined category that refers to the most dominant and prestigious information technology companies— namely Amazon, Apple, Alphabet (Google), and Meta (Facebook). Increasingly, as evident by recent issues of misinformation, data privacy, and surveillance, the influence of big tech has spread to the public sphere to an alarming extent.

Much of the debate today regarding big tech has been in the policy arena and not in political philosophy. However, some of the most critical issues of big tech— free speech concerns, privacy matters— are core areas of study in political philosophy. Even more crucially, as big tech continues to affect and determine the parameters of traditionally government-regulated matters like free speech and privacy, the scope of political philosophy will radically change as well. In other words, as big tech rises in influence, the final arbiter of justice in democratic institutions will no longer rest with the people, by proxy of the state, but with private technology corporations. Therefore, it is essential to understand big tech through a political philosophy lens.

The most influential theory of liberal democracy in contemporary political philosophy is John Rawls's theory of justice. A central tenet of Rawls's theory is the basic structure, a collection of institutions that determine background conditions of justice in society. While Rawls does not delineate the institutions that belong to the basic structure in explicit terms, he does restrict the basic structure to the "main political and social institutions of society" of which corporations are not included (Rawls 1985, 10). However, a number of business ethics scholars have recently begun to question whether or not corporations should be considered a part of the

basic structure and, relatedly, should be bound by the principles of justice (Berkey, Singer, Blanc & Al-Almoudi).

In this paper, I focus narrowly on the role of big tech within the basic structure framework rather than corporations more broadly. Big tech— because of its vastly profound and coercive effects— should be considered separate from other corporations when evaluating its positionality within the basic structure. I argue that big tech should not just be considered a part of the basic structure, but should be understood as a “macro-institution,” with profound and, more critically, coercive accounts greater than the state.

The rest of this paper will proceed in four distinct sections. In section one, I will give an account of the basic structure, specifically focusing on Rawls’s understanding of how corporations fit into the basic structure. I will also bring in contemporary work from business ethics scholars that both support and contradict Rawls’s position. In section two, I will lay out the justifications for big tech as a macro-institution. I will highlight the profound effects of big tech on liberal democracy today as well as the uniquely coercive nature of big tech. I argue that big tech coercive power is greater than that of the state’s because it exhibits ‘bottom-up’ as well as ‘top-down’ coercive authority. Next, in section three, I will respond to likely objections to my argument. Finally, in section four, I will conclude by exploring the implications for my argument on current tech policy debates and how we should fundamentally understand big tech as a macro-institution.

CORPORATIONS AND THE BASIC STRUCTURE

Despite the fact Rawls’s theory of justice focuses heavily on the restructuring of economic opportunities within society, he fails to clearly specify whether corporations fall within his definition of the basic structure. Rawls broadly defines the basic structure as, “the way in which

the main political and social institutions of society fit together into one system of social cooperation...” (Rawls 1985, 10). As delineated by Rawls, the institutions that consist of “the main political and social institutions of society” include but are not limited to the constitution, an independent judiciary, a scheme of property rights, the structure of the economy, as well as the “family in some form” (Rawls 1977, 405). These institutions are responsible for securing just background conditions “against which the actions of individuals and associations take place” (Rawls 1977, 160).

Rawls was ambiguous in defining which specific institutions should be considered a part of the basic structure. Extrapolating from Rawls’s writings, Arash Abizadeh helpfully laid out the three conditions for inclusion into the basic structure that are widely accepted among thinkers today (Abizadeh 2007, 319). Institutions must 1) structure the terms of social cooperation in society 2) have a “profound and pervasive impact” 3) subject people to legal coercion. Much of the debate surrounding the basic structure has focused on the latter two criteria. Contemporary thinkers are largely split as to whether the institutions that make up the basic structure must have a “profound and pervasive impact” as well as the ability to subject people to *legal* coercion or if “profound and pervasive impact” is sufficient. Rawls himself seemed to de-emphasize the “profound and pervasive impact” criterium of the basic structure in his later works (Singer 2015, 76).

One critique to Rawls’s defined parameters of the basic structure was Susan Moller Okin who argued Rawls made a categorical error in failing to include the family within the basic structure. Okin argued, “Rawls’s failure to subject the structure of the family to his principles of justice is particularly serious... for the gendered family, and female parenting in particular, are clearly critical determinants in the different ways the two sexes are socialized” (Okin 1989, 97).

The family has a “profound and pervasive impact” on the individual as well as society and therefore, should be bound by Rawls’s principles of justice. In response to Okin, Rawls argued that while the family does have a “profound and pervasive impact,” the family as an institution falls within the umbrella of “associations” that act against background conditions of justice. Rawls’s response indicated that, under his conception of the basic structure, institutions must have “profound and pervasive impact” *but more importantly*, must be legally coercive in nature.

Another critique of Rawls’s conception of the basic structure comes from G.A. Cohen who challenges Rawls’s legal coercion criterium. Cohen argues that people are influenced by coercive beyond legal ones, therefore the legal coercion requirement of the basic structure seems arbitrary. As Cohen writes, “A society that is just within the terms of the difference principle, so I conclude, requires not only just coercive rules, but also an ethos of justice that informs individual choices” (Cohen 2008, 16).

Given Abizadeh’s set criteria for the basic structure as well as Rawls’s responses to critiques of the basic structure, it seems fairly clear that Rawls does not consider corporations a part of the basic structure. In fact, in responding to Okin’s critique, Rawls compares the family, as an association, to other relevant associations including business entities (Rawls 1985, 162). This comparison indicates that Rawls considers corporations an association that acts against the backdrop of the basic structure, rather than a part of the basic structure itself. While Rawls could potentially agree that corporations have a “profound and pervasive impact” on the individual as well as society, he would likely argue that this is not sufficient for inclusion into the basic structure— corporations must prove to be legally coercive as well. Rawls’s test for whether an institution can legally coerce individuals is whether or not individuals can voluntarily exit said institution (Rawls 1985, 144; Singer 2015, 79). While one could argue that certain individuals or

groups of individuals do not have the ability to freely exit corporations, Rawlsian thinkers would argue that this does not apply to all individuals in a society. Furthermore, in a well-ordered society, as set by the basic institutions of the state, every individual would be able to voluntarily exit from a corporation.

The fact that Rawls himself does not consider corporations a part of the basic structure does not immediately end the debate. In recent years, business ethics scholars have begun to consider whether corporations *should* be considered a part of the basic structure, with some using Rawlsian modes of reasoning and others critiquing Rawls's overall way of thinking. One of those scholars is Abe Singer, who broadly argues that the fact that Rawls leaves out corporations from the basic structure represents a fundamental flaw in his theory of justice. If corporations exist outside of the basic structure, they are free to do whatever they want so long as they don't violate the law. This viewpoint endorses a bottom-up, libertarian interpretation of corporations, which states that corporations are created from voluntary contracts between individuals. (Singer 2015, 83; Orts 2013, 10). But, according to Singer, the problem with this interpretation is that it forgets that Rawls's argument only works within the ideal circumstances of a well-ordered society. Under a Rawlsian conception of the basic structure that excludes corporations from the basic structure, this libertarian understanding of corporations is justified. But in order for individuals to truly have voluntary contracts and the ability to freely exit corporations, just background conditions must be secured. The problem is that our society, as it exists today, has not secured just background conditions (through the large-scale redistribution of wealth and education opportunities that Rawls details in his theory of justice; Rawls 1971, xv). Therefore, if we adopt Rawls's basic structure framework for our decidedly non-ideal current society, we are

forced to regulate corporations through insufficient means— corporations themselves are not bound by direct principles of justice (Singer 2015, 84).

Two business ethics scholars, Sandrine Blanc and Ismael Al-Amoudi, propose a flexible understanding of the inclusion of corporations and the basic structure that seems to align with Singer’s primary critique. However, Blanc and Al-Amoudi differ from Singer as they believe the inclusion of corporations (or what they call corporate institutions) into the basic structure fits within the Rawlsian framework. Blanc and Al-Amoudi argue that the decline of the welfare state in Western countries over the past forty years prompts a reassessment of what should be included in the basic structure (Blanc & Al-Amoudi 2013, 498). Namely, they argue corporate institutions should be included in the basic structure. Blanc and Al-Amoudi broadly posit that if a society has a weak welfare state, corporate institutions must be a part of the basic structure since a weak welfare state indicates “just background conditions” have not been secured for individuals. Therefore, corporations cannot be formed by voluntary contracts. However, if a society has a strong welfare state, corporate institutions should not be considered a part of the basic structure as in this particular society, corporations are truly formed and governed by the voluntary actions of individuals.

While both Singer and Blanc & Al-Amoudi implicitly assume that corporations are only bound by principles of justice if they are included within the basic structure, business ethics scholar Brian Berkey does not hold this same assumption. Berkey argues that we should give up the notion that the principles of justice only apply basic structure institutions. The principles of justice should apply directly to corporations regardless of whether or not corporations are considered a part of the basic structure. Consider this hypothetical and explanation:

“For example, imagine that leaders at dozens of major corporations suddenly become convinced that the levels of poverty and inequality in the contemporary United States are deeply unjust, and successfully work to get their firms to voluntarily adopt policies that substantially increase employment opportunities for those living in poverty, as well as wages for those hired. As a result of these efforts, vast numbers of Americans are lifted out of poverty, income inequality is reduced to a notable extent, and there is a clear increase in the extent to which citizens are able to view and relate to each other as free and equal. For Rawlsians, these results cannot count as improvements with respect to justice, since they have not been brought about via changes at the level of the basic structure” (Berkey 2019, 34).

Whether or not corporations are a part of the basic structure is irrelevant— they should be required to voluntarily promote just-relevant values. Berkey lays out three justifications for this: 1) corporations can affect justice-relevant values more so than individuals 2) corporations do not have the same morally relevant interests as individuals since corporations cannot pursue personal projects or special relationships 3) there are some justice-related values that cannot be achieved by the state alone (Berkey 2019, 31).¹

Unlike the arguments of the thinkers I have listed above, the focus of this paper is not to determine whether or not corporations should be considered a part of the basic structure (or if that matters at all)—although I do briefly discuss my own argument to further my overarching thesis— but rather contextualize a specific subset of the broader corporations category, namely big tech, within the Rawlsian basic structure framework. I argue that the few corporations that constitute big tech (which I will define in the next section) differentiate themselves from the

¹ For a more detailed explanation, read p. 30-33 in *Rawlsian Institutionalism and Business Ethics* (Berkey, 2019)

traditional corporations as they not only influence, but oftentimes are the key arbitrator, of core democratic principles that the state has historically had sole control over. In other words, in certain areas, big tech has more of a “profound and pervasive impact” and is more coercive than the state. In addition, unlike the aforementioned business ethics scholars, I do not try to define if the institutions of the basic structure, in ideal theory, should be defined by its “profound and pervasive” capabilities or its coercive capabilities. Instead, I focus on non-ideal theory and the particular qualities of big tech as it relates to the Rawlsian parameters of the basic structure.

BIG TECH AS A MACRO-INSTITUTION

While there are varying definitions of big tech, generally, big tech refers to the four largest and most influential technology companies in the United States— Alphabet (Google), Meta (Facebook), Amazon, Apple.² These four companies are also influential globally, dominating each of its respective sectors in Europe, Asia, and Africa. Google holds a 92.17% global market share in the search engine sector as of July 2020.³ In addition, it is a leader in a multitude of other sectors including email, web browser, video sharing, and mobile app. Amazon dominates the e-commerce marketplace and is also involved in other sectors, including film, e-books, and web services to name a few. Apple is dominant in the communication internet devices sector and was the first public US company to be valued at over a trillion dollars (Davies, 2018). As of January 3, 2022, Apple became the first company in the world to be valued at three trillion

² Sometimes Microsoft is included as well. Note, for the purposes of this paper, I will refer to Alphabet as Google and Meta as Facebook.

³ “Browser, OS, Search Engine Including Mobile Usage Share.” StatCounter Global Stats. Accessed February 21, 2022. <https://gs.statcounter.com/>.

dollars.⁴ Finally, Facebook reigns supreme in the social media sector, capturing 74.17% of the market share worldwide as of July 2020.⁵

To understand the influence of big tech within the basic structure framework, we must consider how the institutions and practices of big tech fit with Rawls's basic structure criteria. In order to do so, recall the three conditions for inclusion into the basic structure as laid out by Arash Abizadeh (extrapolated from Rawls's writings): **(1) Institutions that are necessary in order to maintain 'background justice' over time (2) profound and pervasive effects (3) coercive capabilities.** In this next section, I will not only show how big tech meets all three criteria, but also how big tech surpasses the state in its profound and coercive capabilities in a number of essential domains to become what I call a macro-institution.

Necessary to Maintain 'Background Justice'

This is the first, foundational condition an institution or practice must meet to be included within the basic structure. An institution or social practice should be regulated by principles of distributive justice when, without this specific institution or practice, the "compound effect of individual choices would lead to forms of inequality that threaten the equal standing and autonomy of citizens" (Gabriel, 4; Ronzoni, 226-256). The classic example that is often cited here is that a completely unregulated, free market— unbound by the principles of distributive justice— would leave some people badly off to the point where they have no choice in their own economic arrangements and would be forced to accept what is offered by economic institutions, no matter how unjust the opportunity.

⁴ Jack Nicas, "Apple Becomes First Company to Hit \$3 Trillion Market Value," The New York Times (The New York Times, January 3, 2022), <https://www.nytimes.com/2022/01/03/technology/apple-3-trillion-market-value.html>.

⁵ "Browser, OS, Search Engine Including Mobile Usage Share." StatCounter Global Stats. Accessed February 21, 2022. <https://gs.statcounter.com/>.

Both the practices of technology and the institution of big tech fits this first criterion. In his paper, *Towards a Theory of Justice for Artificial Intelligence*, Iason Gabriel argues that “in modern societies *background justice is increasingly mediated algorithmically*” (Gabriel, 5). Artificial intelligence (AI) systems nowadays determine the social service provisions people receive, whether individuals qualify for certain bank loans, and if people are eligible for insurance. According to Gabriel, “By making assessments or predictions based upon an individual’s past choices, and by providing decisions or recommendations that then shape that person’s opportunity set available in the future, these systems exert a strong influence on the unfolding relationship between individual choices and collective outcomes” (Gabriel 5). Big tech is the arbiter of many of these algorithms that determine background justice.

Profound and Pervasive Effects

Rawls considers the basic structure the primary subject of justice because “its effects are so profound and pervasive, and present from birth” (Rawls, *A Theory of Justice*, 82). While this is the extent of Rawls’s definition of the profound and pervasive effects, Gabriel expands further, “In particular, they (institutions and practices of the basic structure) shape the terms on which people can access the benefits of social cooperation, the development of their goals and aspirations, and occasions on which on which they encounter the coercive power of the state” (Gabriel, 5). Though Rawls reserves the basic structure to primarily institutions of the state, I argue that big tech not only fits this definition of profound and pervasive effects but is actually more profound and pervasive than the state in determining certain economic opportunities for individuals as well as impacting select fundamental rights.

Big tech increasingly determines not only which individuals are hired for job positions, but, more crucially, the industries and the *types* of jobs available to individuals. On the individual

hiring level, a significant majority of businesses (70%) will google an applicant and check an applicant's social media in deciding whether to hire an employee.⁶ Among those employers, a majority (54%) of them have stated that they have decided against hiring an employee because of their internet presence.⁷ In addition, the phenomenon of getting “cancelled” on social media will oftentimes derail an individual's career. While some might argue the act of getting “cancelled” is a result of human nature, not big tech, the widespread virality of getting “cancelled” is only possibly because of the intrinsic design of social media platforms like Facebook.

On a macro-level, big tech has fundamentally created, reshaped, and sometimes even decimated, hundreds of industries. The natural progression of all big tech companies follows a similar pattern. First, they become dominant in their original business, which are oftentimes sectors they created, like search for Google.⁸ Next, they begin to acquire companies in new sectors, adding revenue streams and fundamentally reshaping hundreds of tangential and seemingly unconnected industries. But this creation, reshaping, and destruction of sectors are not just the natural acts of private industry and of corporate strategy. These monumental acts not only affect the livelihoods of hundreds of millions of people working across a diverse range of industries, but more impactfully, billions of customers, who increasingly rely on these four companies for nearly every aspect of their lives.

While Amazon started out as an online bookstore, the company quickly became the most dominant e-commerce platform in the country and in several regions of the world. But not only as Amazon disrupted and reshaped the e-commerce world, it has branched out into sectors

⁶ [https://www.inc.com/melanie-curtin/54-percent-of-employers-have-eliminated-a-candidate-based-on-social-media-time-to-clean-up-your-feed-and-tags.html#:~:text=According%20to%20a%20survey%20by,social%20media%20profile\(s\).](https://www.inc.com/melanie-curtin/54-percent-of-employers-have-eliminated-a-candidate-based-on-social-media-time-to-clean-up-your-feed-and-tags.html#:~:text=According%20to%20a%20survey%20by,social%20media%20profile(s).)

⁷ Ibid.

⁸ <https://www.washingtonpost.com/technology/interactive/2021/amazon-apple-facebook-google-acquisitions/>

including the grocery arena with the acquisition of Whole Foods Market, the television and movie industry with Amazon Studios, security systems with acquisition of Ring, and hundreds of other industries. In addition, Amazon Web Services (AWS) has a 5.8% market share in web hosting across the globe, second only to GoDaddy Group.⁹ Not only does Amazon employ 1 out of every 153 employees in the United States, fundamentally impact the consumer choices of billions of individuals around the world, but Amazon, in many cases, is responsible for the internet.¹⁰

Google built the search industry but, more critically, is responsible for the creation of the online advertising business. Nearly 40 percent of all online advertising revenue in the United States goes to Google, thanks to Google's acquisition of DoubleClick.¹¹ In addition, Google has expanded into a multitude of industries with the acquisitions of companies like YouTube, Android, Writerly (now Google Docs), DeepMind, and cloud computing companies like Alooka and Looker. Individuals, whether they want to use Google or not, are almost forced to do so given the sheer dominance of Google.

Apple, the most valuable company in the world, fundamentally transformed the consumer electronics industry with the launch of the iPhone. There are over 1 billion iPhones in active use worldwide and 1.65 billion Apple devices in active use overall.¹² However, Apple has also

⁹ "AWS Market Share: Revenue, Growth & Competition (2022)," Kinsta®, January 27, 2022, <https://kinsta.com/aws-market-share/#:~:text=There%20are%20Over%209%20Million%20Live%20Websites%20Using%20AWS&text=9%20million.,%2C%20Facebook%2C%20and%20the%20BBC>.

¹⁰ Dominick Reuter, "1 Out of Every 153 American Workers Is an Amazon Employee," Business Insider (Business Insider, July 30, 2021), <https://www.businessinsider.com/amazon-employees-number-1-of-153-us-workers-head-count-2021-7>.

¹¹ Kevin Schaul Chris Alcantara, "How Big Tech Got so Big: Hundreds of Acquisitions," The Washington Post (WP Company, April 21, 2021), <https://www.washingtonpost.com/technology/interactive/2021/amazon-apple-facebook-google-acquisitions/>.

¹² Jacob Kastrenakes, "Apple Says There Are Now over 1 Billion Active iPhones," The Verge (The Verge, January 27, 2021), <https://www.theverge.com/2021/1/27/22253162/iphone-users-total-number-billion-apple-tim-cook-q1-2021>.

reshaped a number of other industries including but limited to the music industry, virtual assistant industry (Siri), the health care industry, the artificial intelligence industry, and the television and movie business.

Finally, Facebook, dominates the social media industry and has acquired other companies (i.e. Friendster and Instagram) as a way to shore up their dominance. In the United States, 69 percent of adults say they use Facebook.¹³ Outside of the social media space, Facebook has dominated the communications industry with acquisitions of companies like WhatsApp and Kustomer, a business communication software for customers on social media. Internal communication streams like Facebook Messenger have also secured Facebook's position as one of the sole arbiters of communication between individuals.

It is extraordinarily difficult, likely impossible, to find a single employed individual whose job and career has not been profoundly and pervasively affected by big tech. In addition, besides the magnitude of big tech, these four companies have profoundly exacerbated inequality, both within the United States and between entire polities (this latter point I will elaborate on later in the section). Inequality between individuals within democratic structures is a main concern of Rawls, "This structure favors some starting places over others in the division of the benefits of social cooperation. It is these inequalities which the two principles are to regulate" (Rawls, 82). The rapid growth of big tech has physically changed the landscape of major US cities, gentrifying large swaths of the country and forcing low-income and middle-class individuals out of neighborhoods, cities, even states. While this issue is most prominent in the San Francisco

¹³ Brooke Auxier and Monica Anderson, "Social Media Use in 2021," Pew Research Center: Internet, Science & Tech (Pew Research Center, January 31, 2022), <https://www.pewresearch.org/internet/2021/04/07/social-media-use-in-2021/>.

Bay Area, big tech has also gentrified other cities like Austin, Boston, and Seattle.¹⁴ Racial geographic segregation has also consequently increased as predominantly white and Asian employees of big tech companies have displaced largely black and Latinx communities in urban areas.

Outside of the geographical inequalities that have developed as a result of big tech, the enormous profits of big tech have also shown little signs of trickling down to benefit the least advantaged individuals of society. Despite record high big tech share prices, critics have argued that big tech companies are paying out too much to shareholders, putting them ahead of employees.¹⁵ In addition, the fact that more goods and content are offered for free online means that online advertisements are the only way to generate revenue, disproportionately benefitting large companies like Google and Facebook.¹⁶

In sum, it is vital to recognize that the impacts of the sheer magnitude of big tech as well as the inequality generated by big tech are all concerns present from birth, a critical part of Rawls's definition of what is considered to be profound and pervasive. Big tech has fundamentally shaped the places people are born and live, the economic opportunities of individuals, the products consumers are able to purchase, and the overall ability for individuals to climb the socioeconomic ladder.

While impressive and large in scope, the profound and pervasive economic effects of big tech is not necessarily out of the scope of private industry. What is, however, unique to big tech is its effects on fundamental rights that have traditionally been in the purview of the state. For the

¹⁴ Robin Zabiegalski, "The Tech Industry Is Forcing Gentrification in Major US Cities- What Can We Do to Fix This?," The Tempest, March 11, 2019, <https://thetempest.co/2017/05/01/now-beyond/tech-money/tech-industry-gentrification/>.

¹⁵ "Big Tech's Big Problem – Its Role in Rising Inequality," The Guardian (Guardian News and Media, August 2, 2015), <https://www.theguardian.com/business/economics-blog/2015/aug/02/big-techs-big-problem-rising-inequality>.

¹⁶ Ibid.

sake of argument, I will focus on, in my opinion, the two most influential rights that are largely determined by big tech: privacy and free speech.

While some philosophers believe there is no intrinsic right to privacy (Judith Jarvis Thomson), the increasing intrusion of technology into our day-to-day lives perhaps warrants an inclusion of a right to privacy within our list of basic liberties. Furthermore, Rawls would likely agree that an individual's right to privacy is inherently intertwined with a person's ability to decide what is most beneficial for his or her own life. As Gabriel elaborates, "Given Rawls's concern with the ability of citizens to pursue a conception of the good life that is free from unwarranted interference, the basic liberties may now include protection against invasive forms of surveillance or behavioural manipulation" (Gabriel, 8).

In the digital age, where so much of our lives are online, our right to privacy is equivalent to our right to data. And our data is largely and disproportionately owned by big tech companies. Big tech companies not only have access to basic information like users' names, addresses, and contact information, but also the contents of emails, text messages, call logs, photos, videos, documents, and calendars.¹⁷ Big tech companies like Facebook and Google also track individual's precise location through IP addresses.¹⁸ Facebook has even asked large U.S. banks to share financial data about customers in order to boost user engagement on the platform.¹⁹ Big tech companies top the list of companies that collect the most data— Facebook is number one,

¹⁷ "What Data about You Can the ... - The New York Times," The New York Times, accessed February 21, 2022, <https://www.nytimes.com/2021/06/14/technology/personal-data-apple-google-facebook.html>.

¹⁸ Tom Calver and Joe Miller, "What Tech Giants Really Do with Your Data," BBC News (BBC, July 5, 2018), <https://www.bbc.com/news/business-44702483>.

¹⁹ Emily Glazer, Deepa Seetharaman, and AnnaMaria Andriotis, "Facebook to Banks: Give Us Your Data, We'll Give You Our Users," The Wall Street Journal (Dow Jones & Company, August 6, 2018), <https://www.wsj.com/articles/facebook-to-banks-give-us-your-data-well-give-you-our-users-1533564049>.

with Instagram a close second. Google products also make the top 30 list.²⁰ Given the lack of a cohesive US national policy on privacy, big tech companies have become arbiters of privacy in the online US state. Privacy, particularly in the United States, is largely determined by big tech, not the state.

The public square has changed dramatically due to the emergence of big tech and social media, namely the largest social media platform, Facebook. Prior to the invention of the internet, speech was dictated by traditional publishers of media, like newspapers and magazines. These gatekeepers of speech were the primary arbiters of truth and discourse in the public sphere. The proliferation of social media platforms like Facebook turned this traditional model of speech on its head. Social media has fundamentally reshaped not only where people speak, but also the ways in which people speak. A speaker is no longer reliant on a traditional publisher to express their opinion—they can reach an audience directly, eliminating the middleman. In the United States, a short clause of the Communications Decency Act of 1996 called Section 230 has had a massive effect on free speech on the internet, fundamentally shaping internet free speech regulation for nearly 30 years. Essentially, Section 230 provides immunity to online intermediaries giving platforms almost unilateral control over the speech on their platforms. This subsequently has drastically increased the influence of social media companies, resulting in profound and pervasive effects on the status of free speech in the United States.

Big Tech as More Profound and Pervasive than the State

As I have previously detailed, Rawls does not consider private corporations (presumably including big tech) a part of the basic structure. Specifically, Rawls understands institutions of

²⁰ “Big Brother Brands Report: Which Companies Might Access Our Personal Data the Most?,” Clario Tech, Clario Cybersecurity, Clario Software, We Are Clario, accessed February 21, 2022, <https://clario.co/blog/which-company-uses-most-data/>.

the state to be basic structure institutions, “By major institutions I understand the political constitution and the principle economic and social arrangements. Thus, the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are example of major social institutions” (Rawls, 6). Presumably Rawls would posit that big tech falls under the social institutions category— as private technology companies are derived from the legal protection of competitive markets and private property— which are governed by the major political institutions of the basic structure. However, I refute Rawls’s (likely) characterization. Based on what constitutes profound and pervasive effects of the basic structure institutions— which I have extrapolated to be (1) they must influence individual’s life prospects (2) define individual’s rights and duties (3) must be profound and present from birth— I argue that big tech not only meets Rawls’s laid out criteria for inclusion into the basic structure, but surpasses the state in its profound and pervasive as well as coercive effects (which I will elaborate on in the next section).

Individual life prospects are largely shaped by the economic opportunities afforded to individuals. Big tech has systematically acted to weaken the state’s abilities to fair wages and decent working conditions by crushing efforts to unionize. The most prominent example of big tech union-busting is Amazon, which has continuously and successfully prevented the creation of unions within its company while simultaneously avoiding legal liability.²¹ Amazon working conditions have drawn international attention as warehouse employees cite unfairly short breaks, high injury rates, and arbitrary firings at any point.²² *Also include a point about increase in*

²¹ David Streitfeld, “How Amazon Crushes Unions,” The New York Times (The New York Times, March 16, 2021), <https://www.nytimes.com/2021/03/16/technology/amazon-unions-virginia.html>.

²² “I’m Not a Robot’: Amazon Workers Condemn Unsafe, Grueling Conditions at Warehouse,” The Guardian (Guardian News and Media, February 5, 2020), <https://www.theguardian.com/technology/2020/feb/05/amazon-workers-protest-unsafe-grueling-conditions-warehouse>.

contracting work, spreading to other industries, undermining work conditions (e.g. FB and contracted content moderators)

The massive economic reshuffling caused by big tech is not just limited to the confines of the United States or any one state but rather its effects are international, transforming industries around the globe and forcing entire economies to change. For example, cobalt mining is an integral part of the Democratic Republic of Congo's (DRC) economy. Demand for cobalt, which is an essential component in smartphone and electric vehicle batteries, has skyrocketed in the past few years.²³ While this increased demand on its face may seem to benefit the lives of individuals in the DRC, the vast majority of the wealth has gone to large, multinational mining corporations, which have been accused of numerous human rights abuses and violating international child labor laws.²⁴ Through the actions of big tech, specifically Apple, which created the smartphone industry, the economy of the DRC as well as the lives of individuals in the DRC has been fundamentally altered.

Big tech as an institution has largely dictated the rights and duties of individuals, specifically in the areas of privacy and free speech. Big tech has sought to exploit the privacy rights of individuals by purposefully undermining the state where its regulation is weak. While privacy rights are largely standardized and protected in the European Union, in the United States, privacy laws are fractured by state, ultimately giving big tech the power to set norms and laws for effectively the entirety of the internet-connected US citizenry.

At varying times in the last two decades, big tech has worked both with and against the state to undercut individual right to privacy in the United States. In the post-9/11 era, the focus of

²³ NatashaTurak, "Apple's Potential Mining Play Is about More than Money, Industry Experts Say," CNBC (CNBC, February 22, 2018), <https://www.cnbc.com/2018/02/22/apples-potential-cobalt-mining-play-is-about-more-than-money-experts.html>.

²⁴ Ibid.

government, particularly the national security agencies, was not on privacy, but rather security. High-level public officials immediately identified big tech as a potential resource for the government's surveillance needs. Shoshanna Zuboff, author of *The Age of Surveillance Capitalism*, characterized the government's interest in big tech, namely Google, post-9/11, "The elective affinity between public intelligence agencies and the fledgling surveillance capitalist Google blossomed in the heat of emergency to produce a unique historical deformity: *surveillance exceptionalism*. The 9/11 attacks transformed the government's interest in Google, as practices that just hours earlier were careening toward legislative action were quickly recast as mission-critical necessities" (Zuboff, 115). As early as 2002, agencies like the NSA and the CIA began working with Google to improve their own surveillance capabilities. By late summer 2003, Google was awarded a \$2.07 million contract to install a Google-like search engine within the NSA (Zuboff, 117). The relationship between the NSA and Google continued for years as government agencies sought to circumvent the Constitution, which prevented the state from acting on its surveillance agenda in the same private technology companies could (Jack Balkin, *The Constitution in the National Surveillance State*). Given their mutually shared interests in surveillance—and arguably violating the right to privacy of American individuals—the state had no incentive to regulate the growing power of big tech. By working with the state, big tech not only established itself as on the same playing field as the government but expanded its abilities to determine the rights of individuals which consequently lessened the state's abilities to determine what privacy rights individuals possess.

Furthermore, in incidents where the state has tried to regulate big tech, big tech has simply steamrolled the state with copious amounts of money and resources, an army of lawyers, and a number of corporate misdirection strategies, including simply pretending to fix the issue. One

prominent example is in 2012, when the Federal Communications Commission (FCC) launched an investigation into Google Street View, a street-mapping operation which thousands of citizens across a number of countries argued violated their right to privacy. The FCC repeatedly sent Google letters of inquiry and “demand letters,” all to be ignored and misled by Google. The company continued to operate Street View illegally for six years, between 2007 and 2013, before 38 state attorney generals managed to get a settlement from Google (Zuboff, 146). However, the Street View project was not simply abandoned; it was redirected into a number of features in Google Maps (Zuboff, 151). Increasingly, the state, even when it tries to protect privacy, is unable to do so due to the rise of big tech.

Social media is instrumental to public discourse in the United States and around the world. In the United States, Section 230 hands over the title of free speech arbiter from the state to big tech companies. The First Amendment, which ensures one of the most expansive conceptions of free speech in the world, does not exist on social media platforms like Facebook. For example, while the Supreme Court has struck down almost all state regulation of hate speech and political speech, private tech corporations like Facebook are able to freely ban speech as they see fit. In our society, where our speech environment is largely dependent on access to these private social media platforms, the First Amendment, and by extension, the state, no longer profoundly shapes individual free speech rights.

While in this section I have simply focused on a few cases of how big tech has profoundly and pervasively affected individual economic livelihoods and a few fundamental rights that have been profoundly shaped by big tech, it is important to note that the COVID-19 pandemic has deepened big tech’s effects into the aforementioned areas in addition to dozens of new spaces. Disciplines including but limited to education, healthcare, criminal sentencing, were reliant on

big tech and its products to function in a remote world. Google products like Gmail and Google Chat became even more essential to work. In order to go to school, students were increasingly reliant on Apple products like iPads and Macs. Facebook became crucial for socialization as people were reliant on the platform, Instagram, Facebook Messenger, and WhatsApp to connect with others. Finally, Amazon delivered food and home products to individuals at home when going to the grocery store was considered a dangerous act. Much of these profound and pervasive effects will continue post-pandemic, further solidifying big tech as a macro-institution.

Coercive Effects

Rawls posits that the institutions that comprise the basic structure must have legally coercive powers. This stipulation inherently limits the basic structure to only institutions of the state (setting aside Rawls's inclusion of the family in the basic structure which clearly does not have legally coercive capabilities). In fact, Rawls further argues that a coercive power is essential to ensuring equal liberty between individuals. Any inequality that develops from the foundational point of equal liberty must be freely consented to by individuals—a choice only available if there is a coercive power ensuring free choice, “It seems possible to consent to an unequal liberty only if there is a threat of coercion which it is unwise to resist from the standpoint of liberty itself” (Rawls, *A Theory of Justice*, 182).

The most notable critique of Rawls's legally coercive stipulation comes from G.A. Cohen. Cohen argues that one cannot restrict the basic structure to only legally coercive institutions because the effects of justice spread beyond just formal institutions, “Just as you can ask whether legislators act justly when they create a certain coercive structure, so you can assess for their justice the deliberate daily sustaining acts of the informal structure in which its participants engage” (Cohen 135). In other words, individuals can enact equally as strong coercive forces on

one another as the state can on citizens. The legally coercive prerequisite of the basic structure therefore seems arbitrary.

Big tech is certainly not legally coercive in the same sense as the state. Facebook cannot enact a law and, more importantly, cannot legally mandate users to follow said law. However, big tech has coercive powers— in some disciplines— stronger than that of the state. The state is only coercive because of its legal mandate, a *top-down* authority. I argue that big tech utilizes a dual *top-down* as well as a *bottom-up* coercive power to both overtly and subtly limit the choices of its users, which, given the scope of big tech, encompasses billions of individuals.

Furthermore, I argue that big tech did not become coercive by accident. Rather, big tech leaders purposefully mirrored the *broad coercive outline* (to use Cohen's term) of the state and combined that coercive influence with acts of corporate strategy to coerce individuals.

Top-Down Coercive Authority

Big tech is able to enact top-down coercive authority because of its sheer amount of resources, power, and influence. This top-down coercive authority is actualized through three different measures: (1) weakening the state's coercive authority (2) offering free or cheap services, particularly in developing polities (3) weaponizing their monopoly power. Big tech weakens the state's legal coercive power through a process known as *regulatory entrepreneurship*, which is a corporate strategy that involves purposefully acting to undermine a law that regulates a core economic competency of a company (Elizabeth Pollman). Big tech corporations are particularly adept at using regulatory arbitrage to circumvent regulatory laws due to their immense resources and international scope. By weakening the state's coercive power to limit the influence of big tech, big tech becomes stronger, forcing users to continue using big tech products even if, in an

ideal world, they would choose not to. And as I have demonstrated in the prior section, big tech products have a profound and pervasive effect on the lives of individuals.

Another way that big tech is more coercive than the state is that big tech's coercive power is not restricted to one jurisdiction. Big tech operates in nearly every country in the world and can therefore be coercive across geopolitical borders. Outside of the United States and other developed countries, big tech exhibits even more coercive authority. For example, in developing countries like Pakistan, Indonesia, and the Philippines, Facebook is synonymous to the internet. Facebook lets low-income individuals in these polities to use a limited version of Facebook and browse some other website without data charges.²⁵ By doing so, Facebook forces individuals to use its product—which generates revenue for the company—if people want access to the internet. Since most individuals would consider the internet essential to the lives of individuals and inherently tied to one's prospects in life, to use Rawls's term (Rawls, *A Theory of Justice*, 36), individuals are subjected to Facebook's coercive authority out of necessity.

Finally, big tech utilizes its monopolistic status to coerce individuals to use big tech products. This mirrors Rawls's argument that politically favored individuals are able to use the coercive abilities of the state to their advantage, "Political power rapidly accumulates and becomes unequal; and making use of the coercive apparatus of the state and its law, those who gain the advantage can often assure themselves of a favored position" (Rawls, *A Theory of Justice*, 199). In a parallel sense, big tech CEOs like Mark Zuckerberg and Jeff Bezos are able to use their companies' massive wealth and large market share to buy competitors or undermine them with anti-competitive practices. For example, Amazon used data from third-party sellers on

²⁵ Justin Scheck, Tom McGinty, and Newley Purnell, "Facebook Promised Poor Countries Free Internet. People Got Charged Anyway.," *The Wall Street Journal* (Dow Jones & Company, January 24, 2022), <https://www.wsj.com/articles/facebook-free-india-data-charges-11643035284>.

its platform to launch competing products.²⁶ In other cases, big tech companies simply buy competing companies in order to protect its own market share and safeguard its own influence and power. In addition, big tech companies distribute their products for free or at little cost, pricing out potential competitors. For example, YouTube, owned by Google (Alphabet), has a near-monopoly on video sharing because its platform is completely free to users. However, these anti-competitive practices don't just have an economic effect. Because users rely on an extraordinarily small number of companies for a wide-ranging set of services, big tech companies have ownership of enormous amounts of data. This means that big tech also has a monopoly on our data and, by extension, individual privacy rights. In the absence of comprehensive data privacy laws, big tech controls where and when individuals have a right to privacy. To use big tech products— a near necessity because of the widespread nature of big tech in our society— individuals must “buy into” big tech-set privacy policies. The same goes for free speech; in order to communicate on social media platforms— the public square of our digital age— individuals must “buy into” speech policies set by big tech.

Bottom-Up Coercive Authority

The bottom-up coercive capabilities of big tech have no Rawlsian parallel but is rather unique to big tech and its practices. Big tech not only uses its magnitude and power to coerce individuals, but also algorithms and mind-hacking techniques to keep users addicted to their products. For example, Amazon uses its own search algorithm to boost its own products, not only increasing the profitability of their company, but also fundamentally limiting individual autonomy and coercing customers to buy their products. Similarly, Google search algorithms are

²⁶ Dana Mattioli, “Amazon Scooped up Data from Its Own Sellers to Launch Competing Products,” *The Wall Street Journal* (Dow Jones & Company, April 24, 2020), <https://www.wsj.com/articles/amazon-scooped-up-data-from-its-own-sellers-to-launch-competing-products-11587650015>.

designed to promote Google products. Google buys millions of its own search ads to boost their products, like Nest, to the top of the search results.²⁷ Furthermore, social media critics have argued that platforms like Facebook and Instagram use psychological tools, so-called mind hacking, to coerce individuals to remaining on their platforms, thereby increase ad revenues. Features like vibrating notifications and the ‘like’ button on Facebook keep individuals engaged and addicted to the platform.

Some may argue that the examples I have used as proof of the bottom-up coercive authority of big tech is more indicative of the profound and pervasive capabilities of big tech rather than its coercive functions. Under a tradition conception of coercion, I concede that criticism may be valid. While there is no universally accepted definition of the philosophical concept of coercion, most notable thinkers generally believe that coercion is the use of a particular kind of a power to gain an advantage— the most obvious example being the state’s monopoly on the use of violence.²⁸ This is contrast to how coercion is used in colloquial speech to describe less overt forms of influences like social pressure or the manipulative effects of marketing. Given this distinction, the bottom-up coercive authority of big tech is likely coercive in the colloquial sense, rather than the philosophical sense.

Yet, I argue that big tech’s coercive capabilities should be sufficiently coercive in the philosophical sense as well. The philosophical definition of coercion is too narrowly conceived to properly encompass what coercion looks like in the digital technology age. In other words, coercion in philosophy is still thought of in relation to formal institutions and individuals—

²⁷ Jack Nicas, “Google Uses Its Search Engine to Hawk Its Products,” *The Wall Street Journal* (Dow Jones & Company, January 19, 2017), <https://www.wsj.com/articles/google-uses-its-search-engine-to-hawk-its-products-1484827203>.

²⁸ Scott Anderson, “Coercion,” *Stanford Encyclopedia of Philosophy* (Stanford University, October 27, 2011), <https://plato.stanford.edu/entries/coercion/#20tCenVie196>.

today, third-party factors (like algorithms) play an equal, if not greater, role in acts of coercion. There is much more that needs to be written to fully explain this argument, certainly more than what I have room for in this paper. Nevertheless, this is a start to the argument that big tech is more coercive than the state, with coercion being defined more expansively.

LIKELY OBJECTIONS TO BIG TECH AS A MACRO-INSTITUTION

While I posit that my argument for big tech as a macro-institution is not at odds with Rawls's basic structure framework (which I will elaborate more on in the next part), strict Rawlsians will likely have objections to my characterization of big tech as a macro-institution. Rawlsians would likely have two primary critiques: (1) Big tech cannot be more profound and pervasive than the state because the state governs many more domains than big tech (2) Big tech cannot be more coercive than the state because the state has a monopoly on violence, the source of its sanctioning (coercive) power. However, I argue that these objections are refutable.

In response to the first likely objection, I agree with the latter of the critique—that is, the state's governing power affects more domains than big tech. That is undoubtedly true. For example, the state has more governing power in areas like criminal justice than big tech. However, in the specific domains I have focused my argument on—privacy and speech—big tech is more profound and pervasive than the state for the reasons I listed in Part II. My argument is not that big tech is uniformly more profound and pervasive in its effects compared to the state, but rather big tech is more profound and pervasive in this limited capacity.

Despite my stipulation, I also argue that big tech's profound and pervasive governing power is only going to grow due to catalytic global events (the COVID-19 pandemic) and technological advances (Web 3.0 and the metaverse). For example, while I argue that the state has more governing force over the criminal justice system than big tech (at least in the present day), the

pandemic has forced thousands of court hearings online, affecting millions of people's lives.²⁹ In addition, as the metaverse continues to grow and become established in day-to-day lives, some experts have called for a 'meta jurisdiction' to govern crimes that happen within the metaverse.³⁰ While big tech may not yet be a macro-institution in the criminal justice domain, as big tech continues to grow and centralize its power, big tech as a macro-institution may become a reality across a multitude of areas.

Per the second likely critique, strict Rawlsians would likely argue that big tech is not more coercive than the state because big tech does not have the force of law. Furthermore, even if big tech was as coercive as the state, it cannot be more coercive as the state is the final coercive authority since it has a monopoly over the use of force (police power). I argue that the fact that big tech is not an institution of the state does not immediately preclude big tech from being a strong coercive authority equivalent or beyond the state. As Cohen showed, entities outside of the state can be equally, if not more, coercive than the state; it is therefore arbitrary to define the basic structure based on its coercive capabilities.

In addition, I argue that big tech is more coercive in certain domains because big tech weakens the coercive authority of the state. Big tech does so through practicing regulatory entrepreneurship, which I detailed in Part II, but also by actively working with the state's police power. Big tech has an enormous amount of data on billions of people— everything from phone calls to messages to driving routes.³¹ Law enforcement requests for this data have tripled since 2015.³² At first glance, this seems to strengthen the state's coercive power as it is far easier for the police

²⁹ <https://www.pewtrusts.org/en/research-and-analysis/reports/2021/12/how-courts-embraced-technology-met-the-pandemic-challenge-and-revolutionized-their-operations>

³⁰ <https://thehill.com/opinion/technology/583529-why-we-need-meta-jurisdiction-for-the-metaverse>

³¹ <https://apnews.com/article/how-big-tech-created-data-treasure-trove-for-police-e8a664c7814cc6dd560ba0e0c435bf90>

³² Ibid.

to surveil suspects. However, in actuality, this increases the coercive nature of big tech and weakens the coercive capabilities of the state as the state is increasingly reliant on big tech to do its job. In other words, the *effectiveness* of the state's coercive power is becoming progressively dependent on the ubiquitous nature of big tech. Ultimately, big tech's coercive power is only going to grow as big tech continues to collect more and more data from billions of its users.

IMPLICATIONS FOR RAWLS AND BIG TECH REGULATION

While some Rawlsians may think that my argument for big tech as a macro-institution significantly alters Rawls's basic structure framework, I argue that my argument is aligned with Rawls's basic structure framework. However, my argument *does* have major implications for the regulation of big tech. Ultimately, I posit that the very existence of big tech as a macro-institution of the Rawlsian basic structure is a justification for the state to strongly regulate big tech so that big tech is no longer a macro-institution.

First, it is important to emphasize that Rawls's theory of justice— and therefore his basic structure framework— is an ideal theory, a theory that offers a prescriptive guide to what an ideal society based on perfect normative assumptions. The existence of big tech as a macro-institution of the basic structure is a non-ideal theory argument abstracted from Rawls's ideal theory. If Rawls's two principles of justice applied to our society in perfect form and just background conditions were secured for every individual so that there was no disadvantaged or advantaged group, big tech would not be a macro-institution. However, it is still useful to utilize Rawls's ideal theory framework when examining non-ideal situations.

Therefore, this distinction between ideal and non-ideal theory is what allows my argument to exist within the Rawlsian basic structure framework. That is, I agree with Rawls that corporations *should not* be included within the basic structure and be bound to the principles of

justice. Big tech *should not* be a part of the basic structure, much less a macro-institution of the basic structure. Forcing corporations to be democratically structured, essentially to become institutions of the state, would eliminate the notion of a private market (a plausible option for some but out of the scope of this paper). However, in our non-ideal reality, big tech is a macro-institution because of the failure of the state to secure just background conditions and regulate big tech. Big tech, like other companies, should be regulated by the state as to become a part of the social fabric that the basic structure institutions govern. In other words, big tech should no longer be *big*.

This argument ultimately presents a philosophical justification for the regulation of big tech. As for the specific regulatory measures that the state should take, that is a complex calculus that several scholars have detailed more closely. Broadly speaking, the regulatory measures should be sufficiently strong and widespread to prevent big tech from subverting and weakening the regulatory forces of the state. This will likely require nations to closely coordinate regulatory measures as to prevent jurisdictional gaps and supranational organizations like the United Nations to take action. In the United States, a decent starting point would be to sufficiently fund antitrust efforts against big tech, weakening the monopoly power of big tech. Also necessary is the passage of a comprehensive and effective national privacy law, giving individuals back their right to their own data. These starting regulatory movements alone are extraordinarily complicated and their passage will likely be politically contentious. However, I believe they are necessary for the health of our democracy.

CONCLUSION

In this paper, I have argued that big tech should be considered a macro-institution of the Rawlsian basic structure. This is because big tech is (1) has more profound and pervasive effects

than the state in certain areas and (2) is more coercive than the state because big tech exhibits both top-down and bottom-up coercive authority. I then laid out the implications for my argument, showing that my thesis is compatible with the Rawls's basic structure framework. Finally, I argue big tech must be regulated by the state and fall below the basic structure, in accordance with the Rawlsian basic structure. Ultimately, this paper presents a philosophical justification for the regulation of big tech as a vital action for a just society.

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