

Social media and Responsible Communication: We need to talk

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Roadmap of presentation

- Key definitions
- Basic message
- Where we are now (using Facebook as an example)
- (Inadequate) responses so far
- What can/should we do
- How do we get there?
- Circling back and revisiting
- Conclusions

Key definitions: “social media” & “disruptive technologies”

- **social media** platforms are “internet based mechanisms that provide three specific technological affordances: 1. the intermediation of user-generated content; 2. the possibility of *interactivity among users and direct engagement with content*; and 3. the ability for an individual to articulate network connections with other users.....”“.....[t]hese common characteristics materialize in various types of information intermediaries: *social networking sites* like Facebook, *microblogging platforms* like Twitter, *content aggregation sites* like YouTube and Reddit, *reputation engines* like Yelp, mobile image messaging services like Snapchat, e-commerce sites like Etsy and virtual gaming platforms like Xbox Live.”DeNardis and Hackl (2015)
- A **disruptive technology/innovation** is one that displaces an established technology/practice, typically allowing a much larger group to have a capability or access to a resource that previously only a few had, and as a result previously accepted ways of behaving may be displaced or significantly challenged (Christensen, 1997)

Basic message

- The rowboat and the river
- “technological adolescence”
- McLuhan and tools
- An overarching principle, its value and its legal foundations
- Deconstructing a historical disruptive technology parallel
- The value of a disruptive, sustainable governance response
- Pieces of the disruptive susgov response?
- Next steps

Social media has many positives.....

- Norm conversations
- Has opened up the possibility for the powerful to be held accountable in a way never before possible, and given the voiceless an opportunity articulate their views
- The virtually instantaneous nature of communications allows for fast “distributed” responses in times of crises
- Has played an important role in sparking needed revolutions in repressive regimes around the world
- Has sparked a revisiting of how conventional business is undertaken, allowing for other players, new opportunities (media, accommodation, transportation)
- Has facilitated peer to peer disintermediated networking, sharing, collaborating, exchanging on a wide range of subjects across multiple jurisdictions

The evolving, multi-faceted impact of Facebook (1)

- Zuckerberg (2004), on why people provide FB with voluminous personal data:
 - *I don't know whythey 'trust me'dumb f***ks*
- more than **2.2B billion** people log in to Facebook at least once a month. 23 million Canadians have FB accounts. Facebook also owns Instagram (1.0 B users) and Whatsapp (1.5 B users).
- Facebook Messenger and Whatsapp now handle ~**60 billion messages a day**
- FB goal: ***How do we consume as much of your time and conscious attention as possible?*** Constant honing of “addictive” FB features. An estimated two to three global ***algorithm*** tweaks on Facebook every week (Time magazine story, 2014)
- Network effect: ***Scaling and growth are everything, individuals and their experiences are secondary to what is necessary to maximize the system.*** Katherine Losse, former Zuckerberg speech writer
- ***The short-term, dopamine-driven feedback loops that we have created are destroying how society works—no civil discourse, no coöperation, misinformation, mistruth--***C. Palihapitiya, ex of Facebook
- Confirmation bias/echo chamber/filter bubbles: ***Our findings show that users mostly tend to select and share content related to a specific narrative and to ignore the rest. In particular, we show that social homogeneity is the primary driver of content diffusion, and one frequent result is the formation of homogeneous, polarized clusters*** (2016 study)
- 2013 university study on ability to discern personality based on “likes”: ***with 10 FB “likes” an algorithm “knows you” better than a colleague; with 70, better than a friend; with 150, better than a family member; with 300, better than your spouse*** (pertaining to Big 5 personality traits: openness, conscientiousness, extroversion, agreeableness, and neuroticism)

The evolving, multi-faceted impact of Facebook (2)

- Surveillance society: Every time a FB user likes a comment, or chats or clicks or shares info, that data is used to ascertain what each user actually wants to see, thereby constantly constructing/adjusting a personalized info bubble, while in effect shielding users from “disagreeable” facts/views. ***Based on “likes”, FB advertisers and others can target highly customized ads, disseminate disinformation, ascertain political leanings, anticipate future purchases***
- Hollowing out of mainstream media: ***US newspaper ad revenue rose steadily from \$20B in 1950 to >\$60B in 2000, then plummeted to \$17B in 2015. The number of newspaper firms has decreased from 6200 in 2000 to ~4500 in 2014***
- In India, the largest market for FB’s WhatsApp service, hoaxes have triggered riots, lynchings, and fatal beatings
- In Sri Lanka, after a Buddhist mob attacked Muslims this spring over a false rumor, a Presidential adviser commented that, ***The germs are ours, but Facebook is the wind.***
- In Myanmar, fanned by social media, the Rohingya Muslim minority were subject to beatings, rapes, torture, eventually fleeing the country. ***A Genocide Incited on Facebook, With Posts From Myanmar's Military -- NY Times, Oct. 15, 2018***
- In October 2018, Facebook disclosed that ***Russian operatives*** had published about eighty thousand posts, reaching a hundred and twenty-six million Americans. Loss of trust, democratic
- **Truth decay (Kavanagh and Rich-Rand, 2018):** Presidential election, 2016: Trump voter suppression campaigns on FB, disinformation campaigns on FB, CIA-confirmed Russian electoral interference on FB: Theresa Hong, Trump campaign’s digital-content director: “**Without Facebook we wouldn’t have won.**”

The evolving, multi-faceted impact of Facebook (3)

- *The informational underpinnings of democracy have eroded [through disinformation and suppression on Facebook]..... But the point isn't that a Republican beat a Democrat. The point is that the very roots of the electoral system—the news people see, the events they think happened, the information they digest—had been destabilized* (Madrigal, 2017)
- According to Zuckerberg, **privacy is no longer a “social norm”** (2010)
- In December 2017, Facebook announced **Messenger Kids**, a new app aimed for persons under 13 years of age
- **God only knows what it's doing to our children's brains** -- Sean Parker, FB's first president, now a “conscientious objector”
- *American Journal of Epidemiology* 3 year FB study: **higher FB use correlated with self-reported declines in physical health, mental health, and life satisfaction.**
- **Persuasive technology**: 2012: FB data scientists fed sad/happy posts to 700,000 FB users: were able to see how users responded: Conclusion: emotion can be covertly manipulated by social platform operators. 2nd conclusion: **every day, FB and other social media platforms are in effect conducting a live socio-psychological social experiment and its users are the unwitting guinea pigs**
- In December 2017, after years of perfecting addictive features, Facebook acknowledged evidence that **heavy use can exacerbate anxiety and loneliness**
- Anti-competitive effects: “triple jungle canopy” of social media giants makes **possibility of new entry competitor unlikely**: Google, Amazon, Apple, Facebook, and Microsoft have collectively bought over 436 companies and startups in the past 10 years

Boat-patching responses (1)

- In 2011, FTC-Facebook settlement, FB put under FTC supervision for putting in place an effective privacy approach
- In 2017, EU's antitrust unit, fined Google \$2.7B, later tacked on additional \$5 billion for anticompetitive behaviour
- January 1, 2018, German *Network Enforcement Act* (the “Facebook Act”) takes effect, aimed at combating agitation and fake news in social networks, gives platforms 24 hours to take down identified problematic hate speech posts
- March, 2018, Cambridge Analytica/Facebook scandal breaks: the FTC conducting a probe, could lead to millions of dollars of fines for Facebook
- March, 2018, the Privacy Commissioner of Canada opened an investigation re: alleged unauthorized access and use of Facebook user profiles.
- Facebook now has 20,000 content moderators, working 24/7, in 50 languages
- In an effort to better regulate their own platform, in the first quarter of 2018, Facebook deleted 865 M posts, 2.5 M hate speech posts removed, 1.9 M terrorist content posts, 3.4 M graphic violence posts
- April 2018 Washington hearings:
 - Orrin Hatch, the 84 yr-old Republican demands to know how Facebook makes money if “users don’t pay for your service.” Zuckerberg replied, “Senator, we run ads.”
 - “Your user agreement sucks,” Senator John Kennedy (Republican). “I don’t want to vote to have to regulate Facebook, but by God I will. A lot of that depends on you.”
 - “Facebook is a virtual monopoly and monopolies need to be regulated,” Lindsay Graham (Republican)
 - “The status quo no longer works.” Senator Chuck Grassley of Iowa (chair of Judiciary Committee)

Boat patching responses (2)

- In September, 2018, Google, Facebook, Twitter face EU fines over extremist posts-Sept 2018 BBC
- In November, 2018, Facebook ***Data Transparency Advisory Group*** provides its first interim report (FB also has had “Marketer Advisory Groups” since 2012)
- In November, 2018, Facebook **announces plan to create an independent body** to make decisions about what kinds of content FB users will be allowed to post
- “For now, Facebook is making do with a Rube Goldberg machine of policies and improvisations” Evan Osnos, New Yorker, Sept, 2018
- In May, 2018, EU General Data Protection Regulation (GDPR) came into force
- In October, 2018, Canadian federal government proposing amendments to election laws to decrease likelihood of foreign interference in elections, and to improve transparency re: social media political advertisements
- In November, 2018, Google accused by 7 countries of GDPR violations
- In November, 2018, Canadian federal government announces half a billion dollars in assistance for “trusted” media sources
- On November 27, 2018, a **multi-country “grand committee”** -- including Britain, Canada, Argentina, Ireland and Australia – called on Facebook to testify (Zuckerberg did not show up, but a senior FB executive did)



and Responsible Communication (1)

The proposed general principle of responsible communication and its related conceptual framework draws for inspiration on certain ideas and principles found in law.

In ***Grant v. Torstar*** (SCC, 2009) the Supreme Court of Canada recognized a defence to the tort of defamation referred to as the **defence of responsible communication** on matters of public interest. The defence is intended to assist in striking the proper balance between rights of free expression, as protected in the **Charter**, and the rights of privacy and protection of reputation.

Two conditions must be met for the defence of responsible communication to apply:

- the matter must be one of public interest.
- ***the defendant must show that he acted responsibly, in that he showed diligence in attempting to verify the allegedly defamatory comments, having regard to the totality of the circumstances.***

In determining whether a defendant has acted responsibly, courts should consider (among other things):

- the seriousness of the allegation
- the public importance of the matter
- the urgency of the matter
- the status and reliability of the source
- whether the plaintiff's side of the story was sought and accurately reported
- whether inclusion of the defamatory statement was justifiable
- whether the defamatory statement's public interest lay in the fact that it was made rather than its truth ("Reportage")

Law and Responsible Communication (2)

Other laws also have a bearing on the general principle of responsible communication as practiced on social media:

- misleading advertising/disclosure laws (accuracy)
- privacy laws (especially the lynchpin concept of consent)
- negligence laws (reasonable care duty)
- defamation law/anti-slapp laws (balancing freedom of expression and protection of reputation)
- discrimination law tort
- contract (e.g., *Bhasin v. Hrynew*)
- constitutionally protected freedom of expression
- human rights/discrimination laws (including criminalized hate speech)
- lobbying laws (accountability, transparency)
- competition law (addressing market power)
- broadcasting/telecommunication laws
- fiduciary/trust laws

Responsible communication: a first draft

- While recognizing the central importance of freedom of expression in facilitating a vital marketplace of ideas that allows democracy and innovation to flourish, when communications of public interest are undertaken on social media platforms (characterized by virtually instantaneous transmission of facts and opinion with little disintermediation), such communications should be undertaken in a responsible manner, which variously respects the rule of law and the value of accuracy, accountability, transparency, honesty/good faith, and the need to protect personal information
- The state and non-state regulation of social media platforms, as well as their design and operation, as well as the public interest-oriented communications undertaken on social media, should be undertaken in a manner that aligns with the above-stated principle of responsible communication

Responsible communication vs motor vehicle safety

- 1900 – 2000: reduction in MV deaths “represents the successful public health response to a great technologic advance of the 20th century”--the motorization of America. Six times as many people drive today as in 1925, and the number of motor vehicles in the country has increased 11-fold since then to approximately 215 million. The number of miles traveled in motor vehicles is 10 times higher than in the mid-1920s. Despite this steep increase in motor-vehicle travel, **the annual death rate has declined from 18 per 100 million vehicle miles traveled (VMT) in 1925 to 1.7 per 100 million VMT in 1997--a 90% decrease**
- *motor-vehicle safety efforts gradually introduced over time*: energy-absorbing steering wheels, shatter-resistant windshields, safety belts/air bags, crash resistant car chassis improvements, auto light improvements, road improvements, traffic safety laws and drinking and driving laws (and enforcement of same), licensing, driver education, vehicle inspections.
- Still to come: addressing environmental issues, driverless cars.....
- The combination of laws (public sector), design improvements (private sector), and driver attitudes (civil society) has gradually, incrementally addressed automobile problems, but only after 3,613,732 motor vehicle fatalities in the United States from 1899 to 2013.
- *In effect, the principle of “responsible motor vehicle conduct” has been articulated and operationalized through this combination of government, private sector and civil society action. But can we afford a 100 year incremental experiment?*

Sustainable governance: a disruptive state/non-state regulatory response to a disruptive technology

Sustainable governance: the fast evolving, multi-jurisdiction environmental, social and economic problems of the 21st century can only be effectively addressed by harnessing the unique regulatory capabilities of each of the public sector, the private sector and civil society, using a combination of rule instruments, processes, institutions and actors – sometimes operating collaboratively and at other times operating in more of a check-and-balance/competitive manner (Webb, 2005).

Government roles....

private sector roles.....

civil society roles.....

Circling back and revisiting.....

- *My position is not that there should be no regulation. The real question, as the internet becomes more important in people's lives, is what is the right regulation.* Mark Zuckerberg (2018)
- The rowboat and the river
- “technological adolescence”
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- An overarching principle, its value and its legal foundations
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