

Two Trusts and a Court: Adapting Legal Mechanisms for Building Trust in Technology Governance

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This article analyzes governance interventions designed by Facebook and Sidewalk Labs to address concerns about content governance and privacy, respectively. Using a comparative approach, we analyze how Sidewalk Lab’s proposed data trust for the Quayside Project—a smart city project in Toronto—and Facebook’s Oversight Board—an independent panel that makes content moderation decisions—are adapted from legal mechanisms that reflect what Luhmann describes as system trust. We also interrogate the use of intermediaries to shore up the trustworthiness of the companies with the public expert and lay publics. This article echoes existing research on the use of democratic models in attempts at technology governance strategies undertaken by companies and goes further to show how legal mechanisms of trusts and courts are being added to the repertoire of corporate tools for building trust.

Keywords: trust, privacy, content moderation, strategic communication

“Can Facebook’s Oversight Board Win People’s Trust?” (Latonero, 2020) read a *Harvard Business Review* headline, questioning the credibility of the board as a response to a “collapse of public trust” (para. 2). In response to widespread concerns about its content governance and outsized impact on free expression, Facebook (now Meta Platforms Inc.) had proposed and eventually established the Oversight Board, which has been described as “an investment in building user trust, which is a long-term strategy for continued economic growth” (Klonick, 2020, p. 2427). Another company, Sidewalk Labs, was facing similar questions about whether it could be trusted as it attempted to build a smart city in Toronto, Canada. Reddit users asked similar questions during an Ask Me Anything (AMA) session convened by Sidewalk Labs to answer people’s questions about the project: “How do you expect to convince people like me that you can be trusted?” (Ltrly_Htlr, 2019) and “Why should we trust you with our data?” (jwork127, 2019). Like Facebook, the company proposed an intervention—the Urban Data Trust—to address concerns about its

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data management practices. To address concerns about their operations, the companies proposed governance frameworks by borrowing from legal mechanisms, specifically trusts and courts.

In this article, we focus on paired case studies of such governance frameworks related to speech and privacy—two of the most salient issues in the debate over Big Tech’s economic and political power. The first case centers on the global controversy over Facebook’s data use and content moderation policies, which resulted in the creation of Facebook’s Oversight Board, an independent panel that makes content moderation decisions. The second case arises from local criticism of Sidewalk Labs’ collection and use of urban data in relation to its Quayside smart city project, which resulted in a proposed data trust. For each of these case studies, we interrogate publicly available documents to expound on the structure of the proposed interventions and argue that while both companies resorted to system trust and attempted to adapt the logic of legal trusts for their use, Facebook adopted a narrowly focused approach, used a traditional legal trust to guarantee the independence of its Oversight Board, and closely modeled the board after a traditional court of law. Sidewalk Labs, on the other hand, had to address a broader range of issues affecting data privacy and designed a more complex system in an attempt to guarantee proper handling of urban data. Furthermore, the companies’ proposed interventions offer insight into how they understand and attempt to use legal and democratic mechanisms to mitigate publicly articulated mistrust of their business models and intentions. Throughout the article, we refer to lay and expert audiences together as “public” and make specific references to each category where necessary.

This article also raises questions of symmetry between the concerns expert and lay publics had about the companies and the way the companies chose to respond to these concerns. The governance systems proposed by the companies did not completely respond to the concerns raised in the two cases we explore in this article. The degree of responsiveness varied between the cases, with Facebook’s strategy targeted toward narrowly defined concerns of an elite audience, while Sidewalk Labs grappled with varied concerns from a broader audience. Probing the companies’ responses to demands for accountability offers insight into its preferred governance frameworks, which has implications for the regulatory interventions that stakeholders are currently debating. We also note that the companies rely on experts and respected individuals, often professionals from institutions of higher learning and civil society groups, to signal the credibility of their corporate proposals for governance. These intermediaries are not implicated in corporations’ profit imperative and are therefore better positioned to inspire confidence in their commitment to protecting public interest. As we note in our analysis of the paired cases, the degree to which these strategies responded to trustworthiness concerns varied based on the accountability problem each company faced alongside the intended audience of its interventions. In the Facebook case, the interventions were narrowly calibrated to speak to concerns an elite audience of civil society groups, academics, and potential regulators might harbor about content governance. In the Sidewalk Labs case, the interventions were necessarily broader because they sought to address a myriad of concerns including privacy and urban planning, and because the company’s public engagement efforts were open to everyone.

Threatened by a growing “regulatory turn” (Flew, 2021) within national and regional governments and facing widespread criticism of their size and power (Wu, 2018), business models (Turow & Couldry, 2018; Zuboff, 2019), and role in facilitating the spread of disinformation (Bennett & Livingston, 2020) in an environment of distrust of media and expertise (Flew, 2022), Big Tech companies are exploring governance solutions that inspire public trust in their ability to self-regulate. While some of the strategies pursued by

Facebook and Sidewalk Labs recall established methods of responding to public criticism, such as creating systems that parallel existing legal structures (Klonick, 2017, 2020) or engaging intermediaries in regulatory frameworks to promote trust (Abbott, Levi-faur, & Snidal, 2017), the companies also turned to legal trusts as integral mechanisms in their efforts to persuade their audiences.

Legal trust structures allow the companies to benefit from positive connotations associated with this type of fiduciary arrangement (Fewer, Crothers, McPhail, & Perrin, 2020, p. 6). A trust treats technical ownership—administration of property—as separate from beneficial ownership (Long, 1922, pp. 432–433). Facebook established a legal trust to guarantee the financial and operational independence of the Oversight Board. Rather than have the company directly control the finances of the Oversight Board, an irrevocable trust was established to fund the board’s operations without undue influence from the company. Similarly, Sidewalk Labs proposed the creation of a Civic Data Trust and Data Review Board to make independent decisions about the collection and use of urban data—data collected in public spaces associated with the Quayside Project. These varied attempts at redesigning legal trusts to build public trust stand out as creative nonsolutions to the companies’ broader reputational problems. Rather than ask the public to take their word, the companies pointed to the endorsement and participation of respected individuals, such as lawyers and academics, as evidence of the trustworthiness of their proposed governance initiatives. This inability to lay direct claim to trust without intermediaries of experts and legal trusts underscores the gravity of the crisis and the precariousness of trust in technology companies.

The use of legal trusts in these cases is broadly consistent with research on intermediary models of regulation (Abbott et al., 2017). The “regulator–intermediary–target (RIT)” model, which expands regulation beyond a direct relationship between regulator and target, to include intermediation by third parties, focused on contexts where regulation had already been adopted. Nonetheless, it works as an explanatory model for the trust Facebook set up to guarantee the Oversight Board’s independence. It also explains the logic of Sidewalk Labs’ proposed data trust. However, the RIT model’s conceptualization of intermediaries focuses on a post-regulatory context and does not anticipate experts of the sort recruited in the paired cases.

This article contributes to the project of understanding how companies attempt to reassure key audiences of their commitment to responsible governance of critical issues such as speech and privacy. We examine how companies are trying to draw a connection between public trust and legal trusts. Specifically, we explore the legal foundations of the governance models proposed to manage content and data, highlighting the inseparability of corporate interventions from corporate reputation. In addition, we point to the distinctions in the strategies and outcomes of trust campaigns along two dimensions: The nature of the project—online platforms versus smart cities—and the scale of operations—global versus local. We note that while Facebook’s interventions were limited to a carefully defined audience of globally distributed experts, Sidewalk Labs was engaged with nonexperts due to the nature of its project and as a fulfillment of the public consultation requirement imposed by the City of Toronto.

Technology and Trust

There have been limited attempts to define trust in technology companies. Instead, existing research has focused on trust in online environments, including the development of user confidence in e-commerce transactions (Vishwanath, 2004; Woodall & Ringel, 2020), social interactions on the platform (Bilgri, 2018; Henderson & Gilding, 2004; Rosen, Lafontaine, & Hendrickson, 2011), and the capacity of media technologies to mediate trust (Bodó, 2021). In this article, we look beyond digital technologies and their capacity to inspire user trust, focusing instead on the credibility of the corporate actors behind these technologies. Rather than ask how platforms inspire (mis)trust, we are curious about the trust in the corporate owners of the platforms, which, with a few exceptions (Turow & Hennessy, 2007), has garnered scant attention. We explore how Facebook and Sidewalk Labs, in a bid to display trustworthiness, adapted legal mechanisms for creating content and data governance systems.

In contrast to our focus on technology companies, scholarly research on trust in the context of technology has largely attended to the relationships users have with their devices and software. Nissenbaum (2001) provides an in-depth analysis of the various meanings of trust, looking exclusively at technology rather than the corporate entities behind the technology. Similarly, Mezei and Verteş-Olteanu (2020) have identified two distinct but interrelated perspectives on trust in online spaces—system trust and content trust—focused on the technical functioning of online technologies and the veracity of online material. Other recent studies focus on the idea of trust as an aspect of the technology-mediated interpersonal relationships among media users. Along these lines, communication scholarship has explored social media-mediated trust among opinion leaders and seekers (Deley & Dubois, 2020), between voters and populist politicians (Enli & Rosenberg, 2018), and between governments and citizens (Starke, Marcinkowski, & Wintterlin, 2020), including trust in news (Vaccari & Chadwick, 2020) and endorsements (Mena, Barbe, & Chan-Olmstead, 2020). Although some scholars nod to the financial motives that drive platform operators broadly (Mezei & Verteş-Olteanu, 2020), trust in technology companies has not been extensively explored.

Among the limited discussions on the subject, Bodó (2021) briefly notes that tech companies face “structural hurdles” (p. 13) in their attempts to establish public trust and demonstrate their own trustworthiness. One such hurdle arises from the asymmetry of information between the companies and users of technology, which leave the latter in a state of limited knowledge despite technological dependence. The companies have also struggled with transparency in their operations and deployment of technical and policy governance mechanisms. Notwithstanding the transnational context of their operations, the companies obscure differences between governance contexts, effectively ignoring cultural contexts that call for differentiated governance approaches (Cotter, Medeiros, Pak, & Thorson, 2021; Siapera & Viejo-Otero, 2021). The nature of these companies’ business models has thus led to concerns about their unilaterally created rules and digital rights governance through their terms of service and content policies. These unilateral terms have the dual effect of making the companies the primary governors of certain practices while rendering them unaccountable to terrestrial governments (Klonick, 2017; Suzor, 2019). The combination of this absence of oversight and vast amounts of power over users of digital technologies has generated widespread skepticism, leading some Big Tech companies to launch trust campaigns (Latonero, 2020).

Some other scholars offer an alternative concept—reliance—as capturing users’ relationship to technology while proposing that trust cannot be applied to interactions outside of interpersonal relationships (Deley & Dubois, 2020). Literature in sociology expands the definition of trust in the field of communication beyond interpersonal relationships to include systems and institutions. Luhmann (2017) explains that companies benefit from system trust when people’s continual interactions with these businesses make trusting them easier and less costly than alternatives. System trust is built semiautomatically through “continual affirmative experience” (Luhmann, 2017, p. 55) and replaces individual forms, allowing people to expect functioning financial and medical systems. This focus on the system broadens the scope of trust beyond interpersonal relationships, and we argue that the interventions proposed by Facebook and Sidewalk Labs, through their adaptation of legal mechanisms, are consistent with Luhmann’s system trust.

The bid for public trust is not limited to technology companies. Corporations are generally increasingly cognizant of the need to develop and protect their “social license to operate”—the implicit contract between companies and the society in which they work (Demuijnck & Fasterling, 2016, p. 1; Gehman, Lefsrud, & Fast, 2017). Through that lens, the public displays of transparency and trust building by the tech companies that we examine are immersed in a wider practice of strategic communication, where transparency serves to organize communicative power rather than necessarily transfer it (Wood & Aronczyk, 2020).

Method

Our approach relies on paired case studies: Facebook Inc., a global company fielding widespread criticism, and Sidewalk Labs, managing a more localized sphere of influence. This approach is particularly useful when there are limited instances of the phenomenon sought to be studied and when the analysis will benefit from careful examination of a small number of cases (Collier, 1993), both of which hold true for this article. While Facebook is exclusively digital and the challenges it sought to address with the Oversight Board focused on speech, Sidewalk Labs’ Quayside Project was a smart city proposal that included physical environments and digital elements, which triggered specific privacy concerns and public consultation requirements. Moreover, Sidewalk Labs is a subsidiary of Alphabet, the parent company to global tech giant Google—with a long history of monetizing people’s data (Zuboff, 2019). Both Facebook and Sidewalk Labs were at critical junctures where they sought to inspire support for their operations and thus offer an excellent opportunity to compare corporate strategies for building trust in global and municipal contexts. Our examination of these contrasting contexts thus offers an analysis of the discourse that surrounds legal trusts as a solution to content and data governance concerns.

Reflecting our understanding of the two cases as immersed in the strategic communication priorities of the companies involved, we collected public-facing documents, published as part of the process of assessing and building trust in their respective governance projects. For the Facebook Oversight Board, material collected included reports on public consultations over the governance of the Facebook Oversight Board, press call transcripts, calls for public proposals, proposed and finalized by-laws for the board, candidate review guides, blog posts, and public announcements. These documents covered events from the announcement of the creation of the Oversight Board in a blog post by Mark Zuckerberg in November 2018 to the announcement of the board’s first members in May 2020. We selected these documents from a larger

corpus as representative of Facebook's efforts to explain the board and its function, foundational for examining how trust was communicated by the company.

The documents analyzed in the Sidewalk Labs case were those considered to be critically relevant to the company's messaging its trustworthiness to undertake the Quayside Project. The most critical documents were the various volumes of the company's master innovation and development plan (MIDP)—a proposal explaining how the company planned to develop the Quayside into a smart city. Based on the anticipation leading up to the release of the MIDP and the subsequent renewal of pushback against the project based on the documents' contents, we identified the documents as a definitive source of Sidewalk Labs' messaging on the trustworthiness of its proposals. We also selected the reports on both rounds of Waterfront public consultation because they provided summaries of the public reactions to the MIDPs and offered important context for the explanatory attempts of the company in the supplementary documents analyzed. The Reddit AMAs offered a unique opportunity to observe the real-time responses of the company to unedited questions from members of the public. The documents included in our analysis are outlined in the appendix.²

We approached the paired cases from a critical discourse analysis perspective. The approach, as described by Meyer (2001), is consistent with our exploration of the processes and structures that resulted in the various texts in our corpus. It allowed us to interrogate the intervention of the companies within the broader sociopolitical climate of growing hostility to the dominance of technology companies, thus aligning with arguments for the relevance of critical discourse analysis to political economy issues (Fairclough, 2013).

Facebook's Oversight Board

Launched in 2004, Facebook has been at the center of concerns about privacy (Crain, 2021), misinformation (Iosifidis & Nicoli, 2020), and the size and power of online media in an increasingly "platformized" online environment (Flew, 2022). In this article, we focus on the company's content governance challenges. To stay ahead of threats of national regulation, Facebook has developed sophisticated self-governance regimes and participated in a network of informal and voluntary governance regimes (Gorwa, 2019). Facebook's need to secure public trust intensified after it was identified as central to Russian disinformation campaigns during the 2016 U.S. presidential election, unauthorized use of large amounts of user data in the Cambridge Analytica scandal, and the live-streaming of violent content during the attack on two mosques in Christchurch, New Zealand. Pressure mounted on the company during a series of global hearings with global governments that some observers describe as a "performance of apology" (Hall, 2020, p. 1). It was over this period that Facebook announced its plans to create its own "supreme court," which would be guided by normative values of human rights and due process. To sell lay and elite publics across the globe its plans for instituting an independent decision-making body, Facebook's proposal for the Oversight Board underwent extensive consultation with an elite audience, with workshops and roundtables held globally in 2019. These processes produced a draft charter, which was reviewed and amended to include public feedback. A key concern was the independence of the board and the need to shield it from retribution if the main company disagreed with its decisions. The documents included in our

² To ensure continued access, the documents analyzed in each case study have been archived at <https://archive.org/details/appendix-two-trusts-and-a-court>

analysis are drawn from Facebook's publicly available communications about the Oversight Board and are listed in the appendix.

Sidewalk Lab's Data Trust

Operating on a much smaller scale than Facebook's global operations, our second case study, Alphabet-sub subsidiary Sidewalk Labs launched the Quayside Project in Toronto. Sidewalk planned to develop a smart city project—a 12-acre urban environment whose design and functionality would be informed by data. The project was to be completed in partnership with Waterfront Toronto, a local organization administering revitalization projects along the Toronto waterfront. As Sidewalk Lab's development plans unfolded, some concerns emerged. In addition to the usual fears about gentrification that arise with new developments in cities, there were concerns about the company's U.S. domicile as well as the privacy threats posed by large-scale data collection and use that was an inextricable part of the project. Sidewalk Labs attempted to quell some of these fears by conveying the company's disinterest in data brokerage and targeted advertising as a revenue source for the project (DanDoctoroff, 2019). However, this response did not quell curiosity about its revenue model and data management plans ("How Much Will You," 2019; "Will There be," 2019).

Amid growing skepticism about the project, Sidewalk Labs embarked on a public consultation process required by Waterfront Toronto, a significant part of which was dedicated to discussing an Urban Data Trust—the company's proposed solution to people's suspicions about its data management plans. Notably, Sidewalk Labs' audience was not narrowly defined. Unlike Facebook's consultation process, Sidewalk Labs participated in sessions that were open to the general Toronto public. The company went further in its consultation process by holding six AMA sessions on Reddit. Like Facebook's Oversight Board, the Urban Data Trust was proposed as an independent body. In its multivolume MIDP, Sidewalk Labs explained how the body would set guidelines for data use in relation to the project, pointing to the implementation of similar initiatives in Estonia and Spain. The MIDP and other documents released by the company form the corpus of data for our analysis of Sidewalk Labs' design of the Urban Data Trust.³

Results

To position themselves as trustworthy actors, Facebook and Sidewalk Labs defined their respective content governance and privacy issues in terms of a principle at stake (such as transparency, data protection, or free expression) and then proposed systems to protect that principle. These systems, while similar in their adaptation from legal mechanisms, varied in the degree of sophistication and the dimension in which they were oriented toward elites. Facebook closely modeled its intervention after the U.S. Supreme Court and created a legal trust to guarantee its independence. Sidewalk Labs introduced more complexity into its model by proposing the Civic Data Trust, which merged elements of an adjudicatory body with a legal trust.

³ Unlike Facebook, which eventually launched its Oversight Board, Sidewalk Labs' proposed Urban Data Trust was not implemented. The company abandoned the Sidewalk Toronto Project in a public announcement on May 7, 2020, citing global uncertainty and the Toronto real estate market. It is unclear what role public distrust played in the cancellation of the project.

Facebook relied primarily on system trust by establishing the Oversight Board to make decisions about content governance on the company's platform. The company used the metaphor of the Supreme Court to explain how the Oversight Board would function. It provided a detailed description of the board's process from the receipt of an appeal about a content issue to the delivery of a decision and its implementation. To establish its integrity, Facebook set up a trust to fund the board's operations and ensure its independence from the company (Oversight Board, 2020). The company also published extensive rules and procedures according to which the board would operate (Oversight Board, 2020) and co-opted third parties into the proposed system to provide feedback on the process (Facebook, 2019, p. 5) and serve as board members (Oversight Board, 2020, Article 1). The candidate review guide in particular reveals that the experience and professional reputations of the members were crucial to the vision for the Oversight Board. As outlined by the company, potential members of the board were expected to demonstrate experience in digital content, impartiality, and collegiality (Harris, 2019). The company also reported that it sought global input on the establishment of the Oversight Board. It organized roundtables, convened workshops, conducted one-on-one discussions with experts, and solicited 1,200 public submissions. Through this consultation process, Facebook drew advocacy groups and experts into the construction of a narrative that depicted the board as a collective solution offered by stakeholders.

Sidewalk Labs' Urban Data Trust required parties interested in urban data collected through the Quayside Project, including Sidewalk Labs, to apply to a body of adjudicators. The data trust framework was pitched to Torontonians as a well-researched solution to address privacy risks associated with the project. In developing the data trust proposal, the company drew from similar systems in Estonia and Spain and emphasized its commitment to privacy by design, which was intended to reinforce the company's expertise in current data protection trends. Amid concerns that it sought to own and exploit data collected through the Quayside Project, Sidewalk Labs clarified the trust model to indicate that it would receive no special treatment from the proposed data trust (Dawson, 2018). The company also played up its relationship with fellow subsidiary, Google. It pointed to the company's "unique capabilities" and history of driving economic growth in cities such as New York, Chicago, Austin, and Los Angeles (Sidewalk Labs, n.d., p. 441). Like Facebook, the company cited its collaboration with respected third parties, setting up a Data Governance Working Group, which included privacy experts such as Ann Cavoukian, the former privacy commissioner of Ontario.

Discussion

Overall, a few themes stand out in the companies' adaptation of legal mechanisms of trusts and adjudicatory systems to remedy concerns about content governance and privacy in their operational models. First, the systems proposed by the companies were selectively responsive to their trustworthiness problems. Rather than engage with broader concerns about the connection between public interest and company operations, the companies defined the issues they sought to address—content governance and privacy—and proposed systems in response to those specific questions. Second, the companies borrowed from broad democratic models of governance to design their public engagement processes. While the scale and inclusiveness of the companies' efforts varied, both companies attempted to gain support for their interventions from expert and lay publics.

Partially Responsive Systems

Facebook's public documents discussing the Oversight Board were overwhelmingly concerned with establishing the expertise of the board members, reinforcing the integrity of the initiative, and explaining the system supporting it. In these texts, Facebook emphasized that the board selected its own members, published rules for the removal of board members, and required that Facebook comply with board decisions within 90 days and publish a written statement about how it had done so. The company also emphasized the narrow scope of the Oversight Board remit. According to Facebook, the Oversight Board would make judgments only about permitting or removing content. Facebook is required to apply the judgment to the specific case considered by the Oversight Board but not necessarily to similar cases. The company stated that the board "is not designed to hear decisions about News Feed ranking or artificial intelligence, although these are pressing and important issues" (Facebook, 2019, p. 6). The narrow focus of the Oversight Board reduced concerns about the board to whether it would be a credibly independent institution for evaluating decisions related to individual content moderation. In addition to the narrowly defined jurisdiction of the board, the company instituted an irrevocable legal trust to address concerns about financial ties to the company. Despite the careful framing of the board's operations around a potentially robust system for adjudicating content issues, broader questions about Facebook's ability to contribute to healthy public discourse, or its interest in doing so, were left unanswered.

In its own case, Sidewalk Labs proposed a system for data management. Unlike the Oversight Board's legal trust, which guaranteed financial independence, Sidewalk Labs' data trust was meant to address more complex public concerns over data collection, surveillance, housing, the ambitious nature of the project, geopolitical relationships, and a range of other concerns through a rare governance structure adapted from a traditional legal trust. To help cultivate trust among Torontonians, Sidewalk Labs authored a series of documents to reassure the public that its system for responsible data use and open standards would allow fair competition and limit surveillance (see documents in the appendix). However, when Waterfront Toronto identified public concerns with the Sidewalk Toronto Project in its Round One Feedback Report, a major theme was not the efficacy of Sidewalk Toronto's systems but a "lack of trust in Sidewalk Labs (and their sister-company Google and their parent company Alphabet)" (Waterfront Toronto, 2019, p. 10), particularly regarding collecting public data. These issues and suspicions that urban data would be exploited for profit were not sufficiently addressed by the proposed Urban Data Trust (DanDoctoroff, 2018, para. 4; SidewalkToronto, 2019).

A key issue that persisted despite the companies' efforts to pitch their interventions was the audiences' inability to reconcile their corporate reputations with a selfless commitment to public well-being. In Sidewalk Lab's case, it was specifically the paradox inherent in juxtaposing their parent company's highly profitable commodification of personal data with claims of disinterest in monetizing urban data. At one of the company's AMAs on Reddit, Sidewalk Labs' chief executive officer (CEO) had to answer questions such as: "How will you generate revenue from this project moving forward?" (gammadeltat, 2019). In Facebook's case, the question can be reframed to ask whether the establishment of the board notwithstanding, the company would prioritize public interest over corporate profits. In sum, the companies' focus on proposing adjudicatory systems appeared insufficient to address concerns that their profit orientation was fundamentally counter to public welfare.

Borrowing Democratic Governance Structures

In designing their interventions, both companies turned to mechanisms based on established principles of democratic governance, including public consultations and adjudicatory bodies. The choice to address the problem of public trust through democratic governance mechanisms marks a shift from the tendency to fix problems in technology with even more technology, which Nissenbaum (2001) argues has limited effects on trust. While private companies are not, in theory, held to the same democratic standards as governments and have often characterized themselves as an exception to existing governance regimes, the necessity of safeguarding the trust of stakeholders has incentivized the creation of extensive processes for adjudicating rights and governing novel technological products.

Facebook's public consultation model was not mandated by legislation. Yet, the company solicited input from the public regarding its plans for an oversight board, suggesting a desire to shore up the legitimacy of the initiative through demonstrable public buy-in. The company held 28 workshops and roundtables across Africa, Asia, Europe, and the Americas, received more than 1,200 public consultation submissions, and facilitated personal discussions with about 250 unidentified people. The outcome, according to the company, supported the establishment of the Oversight Board. "People want a board," Facebook reported in its Global Feedback and Input on the Facebook Oversight Board on Content Decisions (Facebook, 2019, p. 5). The reported desire for a board was qualified by expectations that members would be independent of Facebook and drawn from diverse backgrounds as well as operate according to clear procedural rules, all stipulations that the company could easily follow. In essence, Facebook strategically embarked on a public consultation process to build public support for its proposed interventions.

In contrast, one of the criteria mandated by Waterfront Toronto for evaluating Sidewalk Labs' MIDP was public engagement, which Sidewalk Labs attempted to fulfill through a series of public consultations. The company published a Public Participation Strategy Report to demonstrate how it exceeded legislated public engagement requirements. It had conducted public roundtable meetings, open workspaces, as well as co-design sessions and workshops with various demographics and organized a Residents' Reference Panel, a Fellows program, and topic-specific advisory groups of local experts. In addition, the company CEO, Dan Doctoroff held an AMA—a public forum where people can ask questions and receive answers from Sidewalk Labs publicly—on Reddit. Rather than creating a narrative that people wanted a technology-forward municipal development district, Sidewalk Labs' public consultation became an opportunity for members of the public to express their distrust of the project and its connections to Big Tech.

We are worried that if your company does ultimately lie to us, abuse our trust, or ruin a very tangible and permanent part of our city, that we will not see any justice for the wrongdoings. Large corporations are notorious for receiving light or non-existent penalties for their crimes, and Alphabet is about as large as they get (ie: endless resources to throw at the problem until it goes away). ("I Think There," 2019, para. 4)

The company emphasized its separate identity in response to posts such as the above, saying for instance: "I'd also note that we as a company operate independently from Google and other Alphabet companies. And again, we have committed to not sharing personal data with third parties (including

Alphabet companies) without explicit consent” (DanDoctoroff, 2019). However, it is not clear that such responses shifted the perception of skeptics.

The companies clearly differed in their public engagement strategies. While Sidewalk Labs held in-person consultations that were open to anyone, Facebook was selective in its workshops and roundtables, engaging with expert publics—such as civil society groups—and leaving only its circumscribed online survey open to lay publics (“Facebook,” n.d.). Through this restrictive process, it reflected existing scholarship that has treated Internet governance policy making as elite discourse (Epstein, 2013). Despite this variation in participation models deployed by the companies, neither model addressed the limitations of public consultations, which have been found to promote participation among segments of the public that already display high levels of public engagement (Michels, 2019). Facebook’s restricted participation approach extended invitations to already politically engaged members of the public such as academics, journalists, policy makers, and activists.

Although Sidewalk Labs adopted an arguably more open approach, for instance using Reddit to answer freeform questions as opposed to Facebook’s closed form, the company proposed such complex mechanisms for building trust and sharing relevant information with the public that critics viewed it as an attempt to frustrate public efforts to engage with the details of the company’s plan (Haggart, 2019). This criticism aligns with other observations that public trust is often sought by emphasizing “visibility over intelligibility” (Moore, 2018, p. 416), which in this case would capture prioritizing the release of documents over people’s capacity to understand them. Given the complex governance solutions and exclusionary engagement methods adopted by both companies, the learning curve for people unfamiliar with issues of content regulation, surveillance, privacy, and trusts would be steep. In both cases, the public consultations appeared to engage both lay and expert publics but prioritized elite groups either through process restrictions as seen with Facebook or content complexities as seen with Sidewalk Labs.

Variations on the Legal Trust

In a creative approach to governance, both Facebook and Sidewalk Labs adapted legal trusts to create systems for adjudicating questions of content governance and privacy, respectively. Facebook took the direct approach of creating the Oversight Board Trust to ensure the independence of the Oversight Board. The trust model designed by Facebook relied on the guiding principles of an irrevocable trust alongside the governance model of a court with adjudicatory and appeal processes. The trust and Oversight Board model rely on established financial mechanisms for providing operational funding while guaranteeing the independence of the trustees, in this case, the Oversight Board. The Facebook model retained the traditional structure of a trust and modeled the Oversight Board closely after the general structure and process of the U.S. Supreme Court, even going as far as letting the board decide what cases to take. Sidewalk Labs’ proposal was intricately complex in comparison and attempted to design a data trust built on the model of a legal trust but with significant differences. The proposed data trust presented a slightly more complex arrangement than traditional legal trusts. In one reading of the data trust, Sidewalk Labs would hold legal rights to the data, while the data trust would be responsible for the management and stewardship of the data according to a set of principles called Responsible Data Use Guidelines, with the aim of protecting public interest. Addressing concerns that Sidewalk Labs would retain legal interest in the data, Sidewalk Labs offered a different reading: “No one has a right to own information collected from Quayside’s physical environment—including Sidewalk Labs” (Dawson, 2018,

para. 4). Under this updated model, the data would be subject to collective governance (Austin & Lie, 2021). While Sidewalk Labs' powers varied between the different versions of the data trust, in both variants the "public" is the beneficiary, and an independent data review board serves as trustee.

The limitations of the Urban Data Trust are tied to the nature of the assets being held in trust. In a traditional legal trust, the asset is usually an estate comprising funds or tangible assets. The proposed data trust, however, positions urban data as an asset, raising two critical issues. First, the data were not Sidewalk Labs' to begin with. As a result, attempts to retain or transfer legal rights to trustees can be interpreted as a claim to prior interest in the data, which critics regarded as an overreach. Second, the beneficiary was described as the public, thereby assuming a homogeneity of interests among the various constituencies that make up the public. As Austin and Lie (2021) explain, the Urban Data Trust "increased legal complexity" and "lacked clarity" (p. 259). Despite its many efforts, the company was unable to make a compelling case for its trust model, which notwithstanding its description as a "civic data trust," originated with the organization, not public authorities, and could not address what was thought to be its goal—"to instill trust in the public that Sidewalk Labs was not going to have preferred access to the data" (Austin & Lie, 2021, p. 258).

Ultimately, both Facebook and Sidewalk Labs' approaches stand out for attempting to outsource trust to an external system, with varying results.

Trust Intermediaries

Intermediaries were central to both companies' interventions. The trust and court mechanisms rely on staffing by individuals appointed because their expertise and reputations lend credibility to the companies' proposals. Zuckerberg's comparison of the Oversight Board to the "Supreme Court" likens the members to judges who ideally embody expertise and impartiality. Facebook tried to ensure the fitness of the board members by developing a candidate review guide, highlighting the considerations for appointing board members. The qualifications included traits such as being "open-minded and inclusive" (Harris, 2019, para. 11), which was defined as the willingness to respectfully engage with alternate viewpoints and experience collaboration with diverse teams, specifically at the international level. This openness qualification is unsurprising given the global scope of Facebook's operations and its role in facilitating culturally relevant interaction among users. The company also required that the candidates considered for appointment to the Oversight Board should be experts "experienced on matters relating to digital content and governance, including free expression, civic discourse, equality, ethics, safety, privacy and technology" (Harris, 2019, para. 11). Such expertise is particularly important for academic and other elite audiences to accord any credibility to the board. In fact, more than half of the board members in 2021 were academics.

Subsequent developments in the Quayside Project and with the Facebook Oversight Board illustrate setbacks that can occur when companies attempt to build trust through the appointment of intermediaries. Just as appointed experts can lend their reputations to companies seeking to build trust with the public, they can easily dissociate from companies, raising doubts about the corporate initiatives they were supposed to promote. Ann Cavoukian, the former privacy commissioner in Ontario, withdrew from advising Sidewalk Labs in October 2018, as did a few other experts who questioned the company's willingness to comply with their recommendations (O'Kane, 2018). Similarly, Facebook had appointed experts to its Oversight Board, but critics formed a volunteer shadow board in response. These critics were not focused on the technical details or workings

of the system created by Facebook; rather, their concerns stemmed from a lack of trust in the company's motives, attributing Facebook's trust-building efforts to corporate self-preservation (Halpern, 2020).

Conclusion

Research on trust in new media and communication studies has tended to focus on technologies and their users. In this article, we instead focused on the corporate owners and developers of these technologies, analyzing the interventions they proposed in response to concerns about their accountability for content governance and privacy. In particular, this article compared the way both companies pursued their proposals to adapt legal mechanisms for the creation of systems of accountability, consistent with Luhmann's (2017) idea of system trust. We argued that while Facebook's simple adaptation of legal trusts and the U.S. Supreme Court model was consistent and accessible to a lay public, it limited its process substantially to elite groups. Sidewalk Labs, on the other hand, embarked on a more expansive engagement process but proposed such intricately complex adaptations of legal trusts that meaningful engagement was effectively restricted to elites.

Corporate strategy lies at the heart of these attempts by Big Tech to build public confidence in their commitment to privacy and speech governance. Torontonians were asked to trade financial and functional benefits for possible erosion in privacy protection and other potential problems. The proposed Urban Data Trust was meant to position the company as trustworthy to carry out the project. However, the proposed oversight mechanisms did little to resolve the reputational issues raised by the company's relationship with Google. Moreover, the multiplicity of concerns with the project—including privacy risks, gentrification, Sidewalk Labs' outsider status, and an unclear path to business profits—added layers of complexity to the company's proposed solutions. Arguably, Facebook's approach required a less-advanced understanding of legal mechanisms, covered a small number of take-down cases, and did not challenge the "common-sense" of platform function (Cammaerts & Mansell, 2020).

The case studies we analyzed in this study demonstrate how technology companies are adapting democratic governance processes and legal mechanisms to develop systems of accountability to garner trust. Facebook has a global reach, and its consultation process was conducted across countries. Nonetheless, the broad framework of its interventions for content governance—the combination of a legal trust and adjudicatory body—bears strong similarities to Sidewalk Labs' intervention in data privacy despite the latter's more complex rendering alongside focus on a local project in Toronto and the Canadian governance context.

The eventual outcomes of the cases—Facebook going on to establish a now-functioning Oversight Board and Sidewalk Labs withdrawing from developing the Quayside Project—suggest that Facebook's simpler and more focused approach was more effective. Apart from the difference in the degree of sophistication of their adaptations of legal mechanisms, the companies may have been subject to quite different standards.

The first distinction is the stage of the business of the companies. Facebook was already an operating platform with millions of global users. Its proposed content-governance system was not designed

to secure approval to begin operating its platform. Rather, it was to signal that it took concerns about content governance seriously (Klonick, 2020). What was at stake for Facebook was not a denial of operation but a declining reputation and possible intervention by governments to regulate the platform. Sidewalk Labs, on the other hand, was fighting an uphill battle to gain the trust of a public that was increasingly aware of the risks associated with technology companies thanks to years of pervasive social media use. It was a public that was now more skeptical than when utopic ideas of the Internet held sway.

Second, Facebook operated an online platform, while Sidewalk Labs was proposing to operate a part of a city. The stakes were different. While the consequences of poor platform governance are significant, given the realization that the platform was a major influence on democratic processes around the world and emotional contagion, the risks do not compare with the scope of the Quayside Project, which would span both physical and virtual worlds. While people may have ceded control of the Internet to technology companies, physical spaces appear to be currently free from the influence of these companies, a state that people may seek to preserve.

Finally, the governance of physical spaces has been within the purview of governments, not private companies. As a result, Sidewalk Labs was in a rather difficult situation because its business model required a private company to take control of a physical space ordinarily under the control of a public government. It did not help either that it was a U.S. company and seen as a foreign exploiter of data or that it was affiliated with Google (Haggart & Tusikov, 2020).

We invite future research to explore these contextual differences and how they may have influenced attitudes to the companies' proposed interventions.

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