



The Public Panopticon Manifesto

Pawel Popiel

► To cite this version:

Pawel Popiel. The Public Panopticon Manifesto. Media Theory, 2018, Standard Issue, 2 (2), pp.270 - 288. hal-02047824

HAL Id: hal-02047824

<https://hal.science/hal-02047824>

Submitted on 25 Feb 2019

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.



Distributed under a Creative Commons Attribution - NonCommercial - NoDerivatives 4.0 International License

The Public Panopticon

Manifesto

PAWEL POPIEL

University of Pennsylvania, USA

Media Theory
Vol. 2 | No. 2 | 270-288
© The Author(s) 2018
CC-BY-NC-ND
<http://mediatheoryjournal.org/>

Abstract

Despite occasional frictions with regulators, tech giants like Amazon, Facebook, and Google have enjoyed a relatively unfettered business climate in the U.S. and congenial, even cooperative relations with the state. Although concerns over foreign election meddling, the proliferation of fake news, and growing market power brought unwanted attention from lawmakers, the media, and policy experts, the tech sector's imprint on social and political life remains immense and largely unchecked. This manifesto outlines the contours of this economic and political power. It frames its growth as a failure not just of policy, but also of the policymaking process and the political culture that underpins it. To address this failure, it articulates “the public panopticon” – a new policymaking structure that reimagines the power dynamics within the policymaking process, a reorientation in policy priorities, and a revived public interest at its core.

Keywords

tech sector, market power, lobbying, public interest, media policy

The tech sector shapes how we find and exchange information. It alters how we find and buy goods and services. It owns and exerts control over the technical infrastructure we use to organize ourselves politically. It runs on our data; the traces of ourselves that we leave behind when we engage in activities that increasingly constitute everyday life. Though the act of forgetting is central to human flourishing,¹ these residues do not fade into memory – they are sold to advertisers, commodified wholesale into fundamentally discriminatory, algorithmically-maintained criteria which animate what Oscar Gandy refers to as “the panoptic sort.”² As the tech sector amasses greater market power, the engine that fuels it leaves resignation³ and powerlessness in its wake.

It oversees itself.

These are not technological facts and as such they do not require technological fixes. These are social facts. These are political facts. The actors constituting the tech sector are political actors. Their goals may be economic, but their pursuit and consequences are political. They are also asymmetrical. That asymmetry underlies a fundamental political problem: the distortion of democratic policymaking. Policymaking, the essential vehicle for curbing tech power, requires transparency over surveillance. It requires participation over exclusion. It requires responsiveness over unaccountable self-regulation. It requires a disruptive reimagining of the public's role in it.

Disruptive Innovation

Market Dominance

There is nothing natural about the tech sector's political and economic power. Its accumulation springs from the demanding work of anti-competitive strategizing, deliberate effort, and heavy investment aimed at the manipulation of policymaking processes. It emerges out of the increasingly undemocratic nature of these processes and is legitimized by false narratives that fall upon the receptive ears of the political elites that dictate policy.

When Eric Schmidt said that “Washington is an incumbent protection machine [and] technology is fundamentally disruptive,”⁴ he was only half-wrong – there is nothing fundamentally disruptive about technology.⁵ Everyone agreed with the first part, but too many policymakers embraced the second part, waiting for the tech sector to bring unprecedented waves of competition and shake up the economy.

It ought to be tragically clear now that digital capitalism replicates rather than disrupts analog capitalism,⁶ so much so that speaking of “capitalisms” no longer makes sense. Tech giants are now monopolies, drawing power from network effects, and entrenching their dominance through technical standards and demands for strong patent protections.⁷ They are now actively engaged in the analog work of monopoly-maintenance. The only thing this work disrupts is competition, which

could have offset some of the excesses of their oligopoly and monopoly power.⁸ The government, which relies on these firms' rich user data for its national security surveillance apparatus, often simply overlooks their practices.⁹

Despite occasional frictions with federal regulators, tech giants like Amazon, Facebook, and Google enjoy a relatively unfettered business climate in the U.S. and congenial, even cooperative relations with the state. As the financial industry fell under microscopic regulatory scrutiny following the 2008 global financial crisis and faced significant public criticism, the tech industry assisted the Obama campaign in the election and later advised it on various policy matters, from its tech agenda to its efforts at countering violent extremism online.¹⁰ At the same time, Obama defended these companies against European regulators and voiced support for net neutrality, which the tech sector favored.¹¹ Their evasion of taxes on foreign properties¹² is nothing short of a government subsidy, funded by the public.

Their market dominance has become so normalized that evidence of it is now a cliché. Policymakers accept that Amazon takes in half of all online purchases.¹³ They accept that 77 percent of mobile social traffic belongs to Facebook;¹⁴ that Google owns 81 percent of the search engine market and a staggering 97 percent of mobile search;¹⁵ that 90 percent of smartphones in the world are powered by either Apple or Google operating systems;¹⁶ that Facebook and Google rake in 63 percent of the digital ad market,¹⁷ a duopoly that keeps growing under their watch. These are clichés only when we ignore the power they describe.

Yes, monopolies afford certain efficiencies. Yes, they sustain economies of scope and scale, reduce production and expansion costs, and allow firms to withstand uncertainties inherent in digital and media markets.¹⁸ Yet monopoly power also enables Amazon to execute predatory pricing strategies to kill off smaller competitors and thwart emerging markets, strangling crucial sources of innovation and creating unemployment.¹⁹ It allows Facebook and Google to buy up start-ups that pose a threat to their business models or that own data they can use as an informational advantage over their rivals.²⁰ Their monopolies in online retail, social

media, and search facilitate aggressive expansion into other markets, including delivery, telecom, health, energy and utilities, travel, and financial applications.²¹ This destructive conquest is met only with “policy silence.”²²

Political Power

The problem of concentration is not an economic problem – it is a political problem. As firms consolidate, they accumulate market power and the incentives to abuse that power to guard their new market position.²³ Their stake in legislative and regulatory debates expands, along with incentives to exert their accumulated political power to influence these debates to their advantage, at the expense of other public interest goals.²⁴ Consolidation increases concentration; the absence of competing actors who may dilute that political power. The interests are more homogenous between a smaller number of firms than among many – there are fewer conflicts, fewer organizational costs, fewer coordination costs, fewer messaging and lobbying costs.²⁵

The tech firms’ dominance over digital communications coupled with their unprecedented social reach makes them naturally attractive to politicians. Tech giants feed and exploit this attraction. They donate to both parties to secure political access. They assist both parties in primary and electoral campaigns, in exchange for free advertising and political relationships.²⁶ They move through the corridors of political power with growing ease: the revolving door between Silicon Valley and the government is well-documented.²⁷

Business-savvy supersedes political allegiances: these activities are about cultivating proximity and political access, which facilitate effective lobbying. The tech sector invests millions in immense lobbying power to fight regulation, outspending even the commercial bank industry.²⁸ The investment yields dividends. Tech giants deployed it successfully to kill bills that would have curbed user data collection and introduced stronger consumer privacy rights.²⁹ Google deployed it to beat an FTC antitrust investigation into its search business.³⁰ They continue to deploy it to maintain their self-regulatory regimes and expand their economic reach.³¹

Lobbying investments secure often private encounters with policymakers which, obscured from public view and reprimand, animate subtler dimensions of the tech sector's influence on the policymaking process. The frequent commingling, the uncensored discussions, the growing familiarity all leave an elite imprint on regulators' systems of belief, policy preferences, and ideological biases. Proximity becomes a channel for "cultural" and "discursive capture."³² This capture is more visible in policy discourses than immediate policy outcomes because it is ideological – it injects, reinforces, and naturalizes elite values within the state.³³

The state, of course, must be receptive to these values. Its neoliberal inclinations, which show no sign of decline, foster that receptiveness. The state remains committed to the market as a key source of economic growth and to actively securing that growth above all other considerations.³⁴ Thus, when Google lobbyists announce that "technology is such a fast-moving industry that regulatory burdens would hinder its evolution,"³⁵ policymakers listen. Such capture – if one can call it that since both sides are complicit – discursively narrows the range of policy options regulators consider. Structural alternatives like breaking up monopolies and taming the sector's power using systemic regulatory approaches are written off, like a radical overreaction to a technical problem. The ideological parameters that contour policymaker debates, then, "marginalize broader theories of the public interest, citizenship and, in particular, democracy."³⁶ Their impact extends beyond individual policy votes to the entire regulatory system.

Of course, policy and regulation can address monopoly power, but the neoliberal permissiveness toward market forces has infected these spheres for too long now.³⁷ The Chicago School's influence looms over antitrust law, and its obsession with consumer price effects of mergers becomes meaningless when tech giants offer their services for free or engage in predatory pricing to undermine competitors.³⁸ The tech sector exploits these blind spots to evade regulation. Its market power is subtler, more pervasive, and invisible below the level of market structure. It is market structure that reveals devastating concentration, and it is market structure that reveals why material resources are converted into political capital.³⁹

Meanwhile economics, the other *lingua franca* of policymaking, has abandoned historical context, political considerations, and therefore its normative potential, in favor of abstracted empirical models.⁴⁰ This abdication depoliticizes debates in a fundamentally political process. As regulatory agencies give economic reports, often from corporate lobbyists, particular weight, it introduces abstraction and exclusive, specialized discourse in the service of illusory objectivity.⁴¹

Marginalizing the Public

At this point, it is worth pausing to ask the fundamental question: where is the public in these processes? How are the voices that constitute it represented in these debates? When meetings between tech and political elites do not occur behind closed doors, the public may learn about them in the news. It may look at publicly available lobbying disclosures that enumerate immense sums and vague descriptions. It may learn that a law has been passed, a bill has failed, a new regulatory framework has been adopted. It may receive a notification that “terms of service” have been updated, and it may even try to understand the revisions in which it had no say.

The public is too often absent, marginalized from these proceedings. And yet its members actively participate in these markets, they actively produce on these platforms, they actively consume and interact with these products. For many, these activities are inextricably embedded in their daily life. They have a stake in these debates because tech companies possess reservoirs of intimate information that they provide about themselves, often unwittingly, often as part of social interaction. They have a stake in these debates because they do not control how that information will be used, and because that information is often used to commercialize their social and political activities on these platforms.

All of us are invested in the outcomes of these debates because tech giants occupy the same economic and political sphere as the public and the perils of monopoly power touch everyone. Market concentration means the concentration of political power, which skews democratic politics in favor of the elites. It means greater concentration of wealth among the few, and greater social and economic inequality.⁴²

The public has a stake in these debates because tech elite interests are not its interests. Tech elites' political and economic views override their social views, which so endeared them to the center-left. Yes, they support immigration reform, gun control, taxes for the wealthy, and universal healthcare.⁴³ Yet they oppose labor unions, state-run social programs for the poor, and government regulation of their industry.⁴⁴ They prefer private philanthropy over government social protections.⁴⁵ They prioritize fast economic growth over income equality.⁴⁶ In the aggregate, their policy preferences and political philosophies support structures that institutionalize and perpetuate social inequality.

But then, policymaking is not a representative or responsive process.⁴⁷ The state is far more responsive to the policy preferences of the wealthy.⁴⁸ Neoliberalism prioritizes elite governance, and therefore its interests, over those of a majority. So, it is hardly surprising that as state and corporate interests align, “[w]hat remains of representative democracy is overwhelmed, if not totally though legally corrupted by money power.”⁴⁹ Under this system, the public benefits largely by chance. And even when the tech sector lobbies for issues of public interest like immigration reform, freedom of expression online, and broadband access, they become “economized,”⁵⁰ gaining legitimacy only in the context of the tech sector's priorities: technological and economic expansion. These issues are no longer worthwhile in and of themselves – tech giants subsume them under their elite interest umbrella, relegating the public interest to the status of a mere positive externality.

Policymaking is not a participatory or a transparent process. Legal and economic analysis can play a vital role in policy debates when paired with other political and social considerations, but as the dominant policy tools they only erect a barrier of specialized discourse between the public and the experts. The digitization and public accessibility of regulatory proceedings renders a semblance of transparency as illusory as the power of technology to disrupt deeply embedded political processes. Access to archives means little if the rules by which the contest of opinions is settled in favor of a policy outcome remain obscured.⁵¹ Regulators owe the public no explanation for how they decided to approve a merger, failed to stop one that harmed the public

interest, or ended an antitrust investigation into a company's anti-competitive practices.⁵² The public is not invited to the private meetings where such decisions are made and their voices rarely affect the calculus of policymaking.⁵³ When the public's views are solicited, they are often cherry-picked to provide support for a policy agenda and ignored when they oppose it.⁵⁴

If policymaking prioritizes the interests of tech elites, then how can it address the problems inherent in their self-regulatory regimes? The shroud of obfuscation hangs over the entire tech sector. Private user data animates the industry, and even regulators do not understand the mechanisms behind its collection, aggregation, interpretation, and use. These patented secrets, these algorithmic "black boxes"⁵⁵ are as obscure and removed from the public as the policy process itself. We are told to trust them because they are efficient and objective. But algorithmic inputs are made by people – inputs embedded in wider social, political, and economic contexts that no amount of automation can erase. They reflect the social biases of their makers.⁵⁶ They reflect their owners' business logics. The discriminatory search results, politically-charged false news, foreign bots, and hate speech are not algorithmic malfunctions. They are not technological problems, but political and economic problems. Unless regulators uphold the public interest, these problems will continue to proliferate. Unless the public occupies the central focus of policymaking, tech giants will continue to evade regulatory scrutiny with impunity, mock demands for accountability, and skip congressional hearings.⁵⁷

Yet policymakers are all too eager to accept the lie regulation will kill technological innovation. They agree too quickly with tech elites that they lack the expertise to regulate technology and they meekly allow the self-regulatory regime to continue unimpeded.⁵⁸ Policymaking too often aligns with elite priorities, instead of reflecting the plurality of voices, representing a multitude of stakeholders, maintaining true transparency, and ensuring the accountability of those it oversees. The public is relegated too often to the sidelines; a passive observer of the impenetrable, politically-sanctioned expansion of tech power. These political inequities, and the machinery behind them, forestall decisive solutions to critical problems.

In this system, disruptive innovation becomes little more than an empty slogan that allows Silicon Valley to legitimate its concentration of market and political power. But it can be wrested from the tech giants and revived in the service of democratic policymaking. It can be applied with full force to the policymaking processes themselves, and the political culture that underlies them, to return the public interest to their core.

The Public Panopticon

The Foucauldian panopticon denotes surveillance. Like the “interlocking directorate”⁵⁹ between tech and political elites, it denotes control by forces obstructed from public view. It turns the object of its gaze into “the object of information, never a subject in communication.”⁶⁰ The public remains outside policy proceedings, rather than deeply engaged in them. Gestures of transparency are meaningless without the public’s ability to provide consequential input. In a self-regulatory system, what is transparency other than the pronouncement of a decree?

By contrast, the public panopticon reimagines this power relationship; the power relationship between state and corporate actors and the public, between surveillance and transparency, between self-regulation and public accountability.

The first spark of the public panopticon occurs the moment when all the eyes in it, unblinking, fall upon the watchtower. It is at this moment that the taking of the watchtower becomes a possibility. But the work of the public panopticon begins when the structure is taken. Its work begins when the public and its interests occupy the watchtower, inverting the power dynamics within panopticon. For the public panopticon, the policy process, the market behavior it oversees, and the actors who participate in both remain visible. The public panopticon demands transparency, but it also demands accountability and the legitimacy of various tools to achieve it.

To ignite that first spark requires a transformation in political culture. The public panopticon challenges the assumptions that guide our current regulatory approaches to addressing market concentration. If elite discourse and ideology constrain the field

of options considered by policymakers, the public panopticon aims to shed light on alternatives to expand that field.

Its political philosophy aligns with those who expose structural inequality, corporate power, and their consequences. It believes that economics should not begin with Hayek or Friedman, but with Piketty. It believes that antitrust law should not begin with Bork, but with Teachout and Khan. It believes that tech sector scholarship should not begin with Shirky and Howard, but with Morozov, Tufekci, and Vaidhyanathan. It aligns itself not with New America, but with Citizens Against Monopoly.⁶¹

It rejects the contradictory Silicon Valley ethos, whose distaste for progressive state intervention renders its social liberalism meaningless.⁶² It opposes the specialized and anti-democratic discourse of tech solutionism and internet centrism,⁶³ the apolitical economics that dominates policy analysis, and the neoliberal and fundamentally narrow Chicago School approach to antitrust law.⁶⁴ It embraces discourses that chart structural inequalities with brutal precision. It embraces a legal approach to antitrust that moves beyond price effects, and foregrounds barriers to entry, first mover advantages, network effects, and market structure.⁶⁵

It recognizes that the government has always been involved in markets,⁶⁶ but that the government has not always been accountable to the public. The public panopticon pays close attention to policy issues because it is the key stakeholder in them. It exposes and shames the political opportunists and ideological partisans who hijack policymaking processes for private profit and political ambition at the expense of the public. It demands lobbying reform, including more comprehensive disclosures, spending limits, and accountability. It sees a vital role for information in policymaking, but a public one. It shuns politicians without a clear antitrust agenda.

It is not afraid to embrace creative destruction of black boxes that fuel tech companies' informational advantages. It supports independent, public advisory boards to oversee privacy and content regulation on these platforms.⁶⁷

The public panopticon is also not afraid to embrace creative and surgical destruction of tech monopolies. As their power extends into other spheres of economic and social life, including health, retail, energy and utilities, travel and leisure, and financial applications, it sees its dominance in its original markets as a threat to competition in others. Informational asymmetries, market power, and first mover advantages reverberate beyond search and social. While stricter antitrust can prevent further accumulation of power, breaking up tech giants along functional lines will fundamentally curb threats to competition.⁶⁸ It is not afraid to imagine separating Amazon's online market from its brick-and-mortar retail and delivery services. It is not afraid to imagine separating Facebook's social media platform from its messaging acquisitions. And it is not afraid to imagine separating Google's search from its other ventures.

It is not afraid to envision a policy sphere where a plurality of voices is respected, solutions are imagined, and power is accounted. After its initial spark, the public panopticon aims to impose democratic order upon market chaos with its collective gaze.

References

- Alden, W. (2013) "Google's Antitrust Victory." *The New York Times*. January 4.
<http://dealbook.nytimes.com/2013/01/04/googles-antitrust-victory/>.
- Baker, C. E. (2007) *Media concentration and democracy: why ownership matters* [in English]. Communication, society, and politics. New York, NY: Cambridge University Press.
- . *Media, Markets, and Democracy*. New York, NY: Cambridge University Press, 2001.
- Brodkin, J. (2017) "FCC explains why public support for net neutrality won't stop repeal." *Ars Technica*. November 22. <https://arstechnica.com/tech-policy/2017/11/why-the-fcc-ignored-public-opinion-in-its-push-to-kill-net-neutrality/>.

- Broockman, D. E., Greg F. Ferenstein, and Neil A. Malhotra (2017) "Wealthy Elites' Policy Preferences and Economic Inequality: The Case of Technology Entrepreneurs. Stanford University Graduate School of Business Research Paper No. 17-61.". (September 5).
- Brown, W. (2015) *Undoing the Demos*. Cambridge, MA: MIT Press.
- Center for Responsive Politics (2017) "Top Industries - 2017." *Opensecrets.org, Center for Responsive Politics*.
<https://www.opensecrets.org/lobby/top.php?showYear=2017&indexType=i>.
- Cohen, J. E. (2012) *Configuring the networked self: Law, code, and the play of everyday practice*. Yale University Press.
- Coy, P. (2017) "How to Tame Google, Facebook, Amazon, and Apple." *Bloomberg*. November 29. <https://www.bloomberg.com/news/features/2017-11-29/how-to-tame-google-facebook-amazon-and-apple>.
- Dayen, D. (2016) "Google's Remarkably Close Relationship with the Obama White House, in Two Charts." *The Intercept*. April 22.
<https://theintercept.com/2016/04/22/googles-remarkably-close-relationship-with-the-obama-white-house-in-two-charts/>.
- DSouza, D. (2017) "Tech Giants Lobby Hard Under Intense Scrutiny." *Investopedia*. September 21. <https://www.investopedia.com/tech/what-are-tech-giants-lobbying-trump-era/>.
- eMarketer (2017) "Google and Facebook Tighten Grip on US Digital Ad Market." *eMarketer*. September 21. <https://www.emarketer.com/Article/Google-Facebook-Tighten-Grip-on-US-Digital-Ad-Market/1016494>.
- FABERNOVEL (2014) "GAFAnomics: New Economy, New Rules." *SlideShare*. November 25. <https://www.slideshare.net/faberNovel/gafanomics>.
- Foucault, M. (1977) *Discipline and Punish: The Birth of the Prison*. Translated by Alan Sheridan. New York, NY: Vintage.
- Freedman, D. (2008) *The politics of media policy*. Cambridge, UK: Polity.
- (2010) "Media policy silences: The hidden face of communications decision making." *The International Journal of Press/Politics* 15, no. 3: 344-61.
- (2014) *The Contradictions of Media Power*. London: Bloomsbury.

- (2015) "Media Moguls and Elite Power." *Political Economy Research Centre*
<http://www.gold.ac.uk/media/migrated/media/goldsmiths/departments/academicdepartments/politics/pdf/PERC-2-Freedman-Elites.pdf>.
- (2016) "Web 2.0 and the death of the blockbuster economy." In
Misunderstanding the internet, edited by James Curran, Natalie Fenton and Des
Freedman, 69-94. London: Routledge.
- Gandy Jr, O. H. (1993) *The Panoptic Sort: A Political Economy of Personal Information*.
Critical Studies in Communication and in the Cultural Industries. Boulder, CO:
Westview.
- Gilens, M. (2012) *Affluence and Influence: Economic inequality and political power in America*.
Princeton, NJ: Princeton University Press.
- GovTrack. (2016a) "S. 799 (112th): Commercial Privacy Bill of Rights Act of 2011."
<https://www.govtrack.us/congress/bills/112/s799/summary>.
- (2016b) "S. 913 (112th): Do-Not-Track Online Act of 2011."
<https://www.govtrack.us/congress/bills/112/s913/summary>.
- Grande, A. (2013) "Facebook, Google Continue Privacy Lobbying Splurge." *Law360*.
January 23. <http://www.law360.com/articles/409500/facebook-google-continue-privacy-lobbying-splurge>.
- Grewal, D. S., and Jedediah Purdy (2014) "Introduction: Law and neoliberalism."
Law & Contemp. Probs. 77: 1-23.
- Harcourt, A., and Robert G. Picard (2009) "Policy, Economic, and Business
Challenges of Media Ownership Regulation." *Journal of media business studies* 6, no.
3: 1-17.
- Harvey, D. (2005) *A Brief History of Neoliberalism*. New York, NY: Oxford University
Press.
- Hendrickson, C., and William A. Galston (2017) "Big technology firms challenge
traditional assumptions about antitrust enforcement." *Brookings*. December 6.
<https://www.brookings.edu/blog/techtank/2017/12/06/big-technology-firms-challenge-traditional-assumptions-about-antitrust-enforcement/>.
- Kang, C., and Juliet Eilperin (2015) "Why Silicon Valley is the new revolving door
for Obama staffers." *The Washington Post*. February 28.
<https://www.washingtonpost.com/business/economy/as-obama-nears-close-of->

- [his-tenure-commitment-to-silicon-valley-is-clear/2015/02/27/3bee8088-bc8e-11e4-bdfa-b8e8f594e6ee_story.html?utm_term=.d4b993c23170](https://www.nytimes.com/2015/02/27/3bee8088-bc8e-11e4-bdfa-b8e8f594e6ee_story.html?utm_term=.d4b993c23170).
- Khan, L. (2017) "Amazon's Antitrust Paradox." *Yale Law Journal* 126: 710-805.
- Khan, L., and Sandeep Vaheesan (2017) "Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents." *Harv. L. & Pol'y Rev.* 11 (2017): 235.
- Kreiss, D., and Shannon C. McGregor (2017) "Technology Firms Shape Political Communication: The Work of Microsoft, Facebook, Twitter, and Google With Campaigns During the 2016 U.S. Presidential Cycle." *Political Communication* : 1-23.
- Kwak, J. (2013) "Cultural Capture and the Financial Crisis." Chap. 4 In *Preventing regulatory capture: Special interest influence and how to limit it*, edited by Daniel Carpenter and David A Moss, 71-98. New York, NY: Cambridge University Press.
- LaVecchia, O., and Stacy Mitchell. (2016) *Amazon's Stranglehold: How the Company's Tightening Grip Is Stifling Competition, Eroding Jobs, and Threatening Communities*. ILSR: Institute for Local Self-Reliance. https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf.
- Levina, M., and Amy Adele Hasinoff (2017) "The Silicon Valley Ethos: Tech Industry Products, Discourses, and Practices." *Television & New Media* 18, no. 6: 489-95.
- Lynn, B., and Matt Stoller (2017) "How to stop Google and Facebook from becoming even more powerful." *The Guardian*. December 6. <https://www.theguardian.com/commentisfree/2017/nov/02/facebook-google-monopoly-companies>.
- McChesney, R. W. (2003) "Theses on Media Deregulation." *Media, Culture & Society* 25, no. 1: 125-33.
- (2013) *Digital disconnect: How capitalism is turning the Internet against democracy*. New York, NY: The New Press.
- Melvin, J. (2012) "Web Giants Face Battle Over 'Do Not Track', Other Consumer Privacy Legislation." *Huffington Post*. March 10. http://www.huffingtonpost.com/2012/03/10/do-not-track_n_1336380.html.
- Morozov, E. (2014) *To Save Everything, Click Here: The Folly of Technological Solutionism*. New York, NY: PublicAffairs.

- Net Marketshare (2017) "Search Engine Market Share." *Net Marketshare*. November.
<https://netmarketshare.com/>.
- Pasquale, F. (2015) *The Black Box Society: The secret algorithms that control money and information*. Cambridge, MA: Harvard University Press.
- Pickard, V. (2014) *America's Battle for Media Democracy: The Triumph of Corporate Libertarianism and the Future of Media Reform*. New York, NY: Cambridge University Press.
- Piketty, T. (2014) *Capital in the Twenty-First Century*. Translated by Arthur Goldhammer. Cambridge, MA: Harvard University Press.
- Romm, T. (2013) "How Google beat the feds." *Politico*. January 3.
<http://www.politico.com/story/2013/01/how-google-beat-the-feds-085743>.
- Teachout, Z., and Lina Khan. (2014) "Market Structure and Political Law: A Taxonomy of Power." *Duke Journal of Constitutional Law & Public Policy* 9, no. 1: 37-74.
- Thompson, D. (2010) "Google's CEO: 'The Laws Are Written by Lobbyists'." *The Atlantic*. October 1.
<http://www.theatlantic.com/technology/archive/2010/10/googles-ceo-the-laws-are-written-by-lobbyists/63908/>.
- Turow, J., Michael Hennessy, and Nora A. Draper (2015) *The Tradeoff Fallacy: How Marketers Are Misrepresenting American Consumers and Opening Them up to Exploitation*. The Annenberg School for Communication, University of Pennsylvania.
https://www.asc.upenn.edu/sites/default/files/TradeoffFallacy_1.pdf.
- Vogel, K. P. (2017) "Google Critic Ousted From Think Tank Funded by the Tech Giant." *The New York Times*. August 30.
<https://www.nytimes.com/2017/08/30/us/politics/eric-schmidt-google-new-america.html?mtrref=www.google.com&gwh=DCBC5A392FA37F82B18859B6078F4B7E&gwt=pay>.
- Weismann, A. (2016) "Silicon Valley Companies Lobby to Remain Unregulated." *The New York Times*. October 24.
<http://www.nytimes.com/roomfordebate/2016/10/24/silicon-valley-goes-to-washington/silicon-valley-companies-lobby-to-remain-unregulated>.

Wong, J. C. (2017) "Trick-or-treats and burger tweets: what tech CEOs did instead of testifying in DC." *The Guardian*. November 1.

<https://www.theguardian.com/us-news/2017/nov/01/tech-congress-testimony-fake-news-where-were-ceos>.

Notes

- ¹ Julie E. Cohen, *Configuring the networked self: Law, code, and the play of everyday practice* (Yale University Press, 2012).
- ² Oscar H. Gandy Jr, *The Panoptic Sort: A Political Economy of Personal Information. Critical Studies in Communication and in the Cultural Industries* (Boulder, CO: Westview, 1993); see also Frank Pasquale, *The Black Box Society: The secret algorithms that control money and information* (Cambridge, MA: Harvard University Press, 2015).
- ³ Joseph Turow, Michael Hennessy, and Nora A. Draper, *The Tradeoff Fallacy: How Marketers Are Misrepresenting American Consumers and Opening Them up to Exploitation*. The Annenberg School for Communication, University of Pennsylvania, 2015.
https://www.asc.upenn.edu/sites/default/files/TradeoffFallacy_1.pdf.
- ⁴ Derek Thompson, "Google's CEO: 'The Laws Are Written by Lobbyists'," October 1, 2010, <http://www.theatlantic.com/technology/archive/2010/10/googles-ceo-the-laws-are-written-by-lobbyists/63908/>.
- ⁵ Des Freedman, "Web 2.0 and the death of the blockbuster economy," in *Misunderstanding the internet*, ed. James Curran, Natalie Fenton, and Des Freedman (London: Routledge, 2016).
- ⁶ *The Contradictions of Media Power* (London: Bloomsbury, 2014), 44. "Web 2.0 and the death of the blockbuster economy."
- ⁷ Robert W. McChesney, *Digital disconnect: How capitalism is turning the Internet against democracy* (New York, NY: The New Press, 2013).
- ⁸ Ibid.
- ⁹ Ibid.
- ¹⁰ David Dayen, "Google's Remarkably Close Relationship With the Obama White House, in Two Charts," *The Intercept*, April 22, 2016, <https://theintercept.com/2016/04/22/googles-remarkably-close-relationship-with-the-obama-white-house-in-two-charts/>; Cecilia Kang and Juliet Eilperin, "Why Silicon Valley is the new revolving door for Obama staffers," *The Washington Post*, February 28, 2015, https://www.washingtonpost.com/business/economy/as-obama-nears-close-of-his-tenure-commitment-to-silicon-valley-is-clear/2015/02/27/3bee8088-bc8e-11e4-bdfa-b8e8f594e6ee_story.html?utm_term=.d4b993c23170.
- ¹¹ Dayen, "Google's Remarkably Close Relationship With the Obama White House, in Two Charts"; Kang and Eilperin, "Why Silicon Valley is the new revolving door for Obama staffers".
- ¹² McChesney, *Digital disconnect: How capitalism is turning the Internet against democracy*.
- ¹³ Clara Hendrickson and William A. Galston, "Big technology firms challenge traditional assumptions about antitrust enforcement," *Brookings*, December 6, 2017, <https://www.brookings.edu/blog/techtank/2017/12/06/big-technology-firms-challenge-traditional-assumptions-about-antitrust-enforcement/>.
- ¹⁴ Ibid.
- ¹⁵ Ibid.; Net Marketshare (2017) "Search Engine Market Share." *Net Marketshare*. November. <https://netmarketshare.com/>.
- ¹⁶ "Big technology firms challenge traditional assumptions about antitrust enforcement".
- ¹⁷ eMarketer (2017) "Google and Facebook Tighten Grip on US Digital Ad Market." *eMarketer*. September 21. <https://www.emarketer.com/Article/Google-Facebook-Tighten-Grip-on-US-Digital-Ad-Market/1016494>.
- ¹⁸ Alison Harcourt and Robert G. Picard, "Policy, Economic, and Business Challenges of Media Ownership Regulation," *Journal of media business studies* 6, no. 3 (2009); McChesney, *Digital disconnect: How capitalism is turning the Internet against democracy*, 132-35.

- ¹⁹ Olivia LaVecchia and Stacy Mitchell, *Amazon's Stranglehold: How the Company's Tightening Grip Is Stifling Competition, Eroding Jobs, and Threatening Communities*: ILSR: Institute for Local Self-Reliance, 2016, 15-31, 35-36. https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf.
- ²⁰ Barry Lynn and Matt Stoller, "How to stop Google and Facebook from becoming even more powerful," *The Guardian*, December 6, 2017, <https://www.theguardian.com/commentisfree/2017/nov/02/facebook-google-monopoly-companies>.
- ²¹ FABERNOVEL (2014) "GAFAnomics: New Economy, New Rules." *SlideShare*. November 25. <https://www.slideshare.net/faberNovel/gafanomics>.
- ²² Des Freedman, "Media policy silences: The hidden face of communications decision making," *The International Journal of Press/Politics* 15, no. 3 (2010).
- ²³ Robert W. McChesney, "Theses on Media Deregulation," *Media, Culture & Society* 25, no. 1 (2003).
- ²⁴ C. Edwin Baker, *Media concentration and democracy: why ownership matters*, Communication, society, and politics (New York, NY: Cambridge University Press, 2007), 48-49.
- ²⁵ Lina Khan and Sandeep Vaheesan, "Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents," *Harn. L. & Pol'y Rev.* 11(2017): 266.
- ²⁶ Daniel Kreiss and Shannon C. McGregor, "Technology Firms Shape Political Communication: The Work of Microsoft, Facebook, Twitter, and Google With Campaigns During the 2016 U.S. Presidential Cycle," *Political Communication* (2017): 7.
- ²⁷ Dayen, "Google's Remarkably Close Relationship With the Obama White House, in Two Charts"; Kang and Eilperin, "Why Silicon Valley is the new revolving door for Obama staffers"; Anne Weismann, "Silicon Valley Companies Lobby to Remain Unregulated," *The New York Times*, October 24, 2016, <http://www.nytimes.com/roomfordebate/2016/10/24/silicon-valley-goes-to-washington/silicon-valley-companies-lobby-to-remain-unregulated>.
- ²⁸ Center for Responsive Politics, "Top Industries - 2017," *Opensecrets.org, Center for Responsive Politics*, 2017, <https://www.opensecrets.org/lobby/top.php?showYear=2017&indexType=i>.
- ²⁹ Allison Grande, "Facebook, Google Continue Privacy Lobbying Splurge," January 23, 2013, <http://www.law360.com/articles/409500/facebook-google-continue-privacy-lobbying-splurge>; Jasmin Melvin, "Web Giants Face Battle Over 'Do Not Track', Other Consumer Privacy Legislation," March 10, 2012, http://www.huffingtonpost.com/2012/03/10/do-not-track_n_1336380.html; GovTrack, "S. 799 (112th): Commercial Privacy Bill of Rights Act of 2011," 2016a, <https://www.govtrack.us/congress/bills/112/s799/summary>; "S. 913 (112th): Do-Not-Track Online Act of 2011," 2016b, <https://www.govtrack.us/congress/bills/112/s913/summary>.
- ³⁰ Tony Romm, "How Google beat the feds," *Politico*, January 3, 2013, <http://www.politico.com/story/2013/01/how-google-beat-the-feds-085743>.
- ³¹ Deborah DSouza, "Tech Giants Lobby Hard Under Intense Scrutiny," *Investopedia*, September 21, 2017, <https://www.investopedia.com/tech/what-are-tech-giants-lobbying-trump-era/>.
- ³² James Kwak, "Cultural Capture and the Financial Crisis," in *Preventing regulatory capture: Special interest influence and how to limit it*, ed. Daniel Carpenter and David A Moss (New York, NY: Cambridge University Press, 2013); Zephyr Teachout and Lina Khan, "Market Structure and Political Law: A Taxonomy of Power," *Duke Journal of Constitutional Law & Public Policy* 9, no. 1 (2014): 45-46; Victor Pickard, *America's Battle for Media Democracy: The Triumph of Corporate Libertarianism and the Future of Media Reform* (New York, NY: Cambridge University Press, 2014), 218.
- ³³ Freedman, *The Contradictions of Media Power*, 74; Pickard, *America's Battle for Media Democracy: The Triumph of Corporate Libertarianism and the Future of Media Reform*, 218.
- ³⁴ Wendy Brown, *Undoing the Demos* (Cambridge, MA: MIT Press, 2015), 24-28; David Harvey, *A Brief History of Neoliberalism* (New York, NY: Oxford University Press, 2005), 77-78.
- ³⁵ William Alden, "Google's Antitrust Victory," January 4, 2013, <http://dealbook.nytimes.com/2013/01/04/googles-antitrust-victory/>.
- ³⁶ Freedman, *The Contradictions of Media Power*, 83.
- ³⁷ *The politics of media policy* (Cambridge, UK: Polity, 2008), 36-52.
- ³⁸ Lina Khan, "Amazon's Antitrust Paradox," *Yale Law Journal* 126(2017).
- ³⁹ Khan and Vaheesan, "Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents."; Teachout and Khan, "Market Structure and Political Law: A Taxonomy of Power."
- ⁴⁰ Thomas Piketty, *Capital in the Twenty-First Century*, trans. Arthur Goldhammer (Cambridge, MA: Harvard University Press, 2014), 573-75.

- ⁴¹ Freedman, *The politics of media policy*, 103.
- ⁴² Khan and Vaheesan, "Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents."
- ⁴³ David E. Broockman, Greg F. Ferenstein, and Neil A. Malhotra, "Wealthy Elites' Policy Preferences and Economic Inequality: The Case of Technology Entrepreneurs. Stanford University Graduate School of Business Research Paper No. 17-61.," (2017).
- ⁴⁴ Ibid.
- ⁴⁵ Ibid.
- ⁴⁶ Ibid.
- ⁴⁷ Freedman, *The politics of media policy*, 80-104.
- ⁴⁸ Martin Gilens, *Affluence and Influence: Economic inequality and political power in America* (Princeton, NJ: Princeton University Press, 2012).
- ⁴⁹ Harvey, *A Brief History of Neoliberalism*, 77-78.
- ⁵⁰ Brown, *Undoing the Demos*, 22.
- ⁵¹ Freedman, *The politics of media policy*, 89-93.
- ⁵² Khan and Vaheesan, "Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents."
- ⁵³ Freedman, *The politics of media policy*, 89-93.
- ⁵⁴ Ibid., 92, 102-04; Jon Brodtkin, "FCC explains why public support for net neutrality won't stop repeal," *Ars Technica*, November 22, 2017, <https://arstechnica.com/tech-policy/2017/11/why-the-fcc-ignored-public-opinion-in-its-push-to-kill-net-neutrality/>.
- ⁵⁵ Pasquale, *The Black Box Society: The secret algorithms that control money and information*.
- ⁵⁶ Ibid., 38-40.
- ⁵⁷ Julia Carrie Wong, "Trick-or-treats and burger tweets: what tech CEOs did instead of testifying in DC," *The Guardian*, November 1, 2017, <https://www.theguardian.com/us-news/2017/nov/01/tech-congress-testimony-fake-news-where-were-ceos>.
- ⁵⁸ Pasquale, *The Black Box Society: The secret algorithms that control money and information*.
- ⁵⁹ Des Freedman, "Media Moguls and Elite Power," *Political Economy Research Centre* (2015), doi: <http://www.gold.ac.uk/media/migrated/media/goldsmiths/departments/academicdepartments/politics/pdf/PERC-2-Freedman-Elites.pdf>.
- ⁶⁰ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York, NY: Vintage, 1977), 200.
- ⁶¹ Kenneth P. Vogel, "Google Critic Ousted From Think Tank Funded by the Tech Giant," *The New York Times*, August 30, 2017, <https://www.nytimes.com/2017/08/30/us/politics/eric-schmidt-google-new-america.html?mtrref=www.google.com&gwh=DCBC5A392FA37F82B18859B6078F4B7E&gwt=pay>.
- ⁶² Broockman, Ferenstein, and Malhotra, "Wealthy Elites' Policy Preferences and Economic Inequality: The Case of Technology Entrepreneurs. Stanford University Graduate School of Business Research Paper No. 17-61.,"; Marina Levina and Amy Adele Hasinoff, "The Silicon Valley Ethos: Tech Industry Products, Discourses, and Practices," *Television & New Media* 18, no. 6 (2017).
- ⁶³ Evgeny Morozov, *To Save Everything, Click Here: The Folly of Technological Solutionism* (New York, NY: PublicAffairs, 2014).
- ⁶⁴ Khan, "Amazon's Antitrust Paradox.,"; see also David Singh Grewal and Jedediah Purdy, "Introduction: Law and neoliberalism," *Law & Contemp. Probs.* 77(2014).
- ⁶⁵ Khan, "Amazon's Antitrust Paradox."
- ⁶⁶ Pickard, *America's Battle for Media Democracy: The Triumph of Corporate Libertarianism and the Future of Media Reform*; C. Edwin Baker, *Media, Markets, and Democracy* (New York, NY: Cambridge University Press, 2001).
- ⁶⁷ Pasquale, *The Black Box Society: The secret algorithms that control money and information*.
- ⁶⁸ Peter Coy, "How to Tame Google, Facebook, Amazon, and Apple," *Bloomberg*, November 29, 2017, <https://www.bloomberg.com/news/features/2017-11-29/how-to-tame-google-facebook-amazon-and-apple>; Khan, "Amazon's Antitrust Paradox."

Pawel Popiel is a doctoral student at the Annenberg School for Communication, University of Pennsylvania. He studies the politics of media and telecom policymaking.

Email: ppopiel@asc.upenn.edu