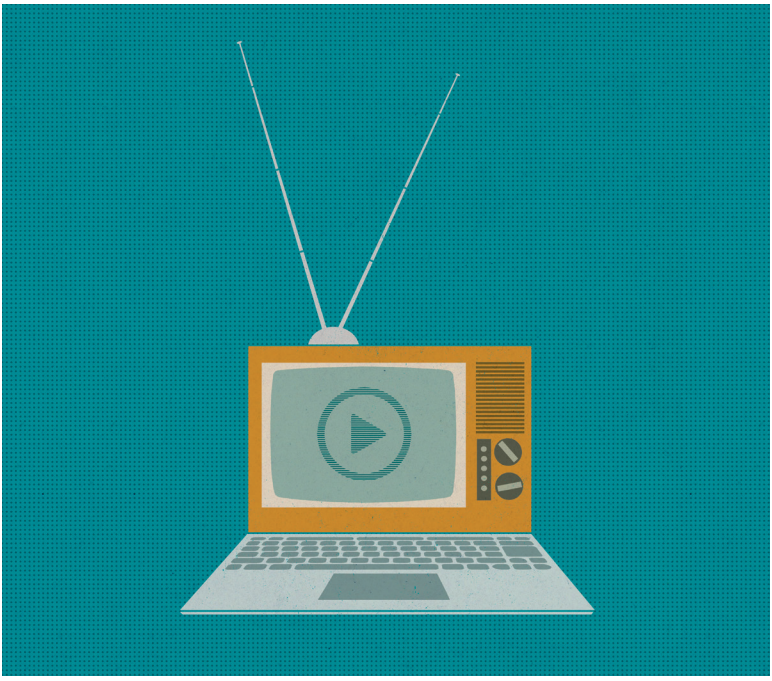
OCCASIONAL PAPERS



The Great Reckoning

Lessons from 1940s Media Policy Battles

By Victor Pickard

KNIGHT
FIRST AMENDMENT
INSTITUTE at
COLUMBIA UNIVERSITY

The Knight Institute's Occasional Papers series aims to bring to a broad audience thoughtful, provocative work from scholars and experts who usually write for more specialized audiences. The open-ended series features papers that address urgent questions at the intersection of speech, privacy, and technology.

The series is conceptualized by Knight Institute staff, including Jameel Jaffer, executive director; Katy Glenn Bass, research director; Alex Abdo, litigation director; and Larry Siems, chief of staff. The series is edited by Glenn Bass with support from Lorraine Kenny, communications director; Adam Glenn, writer/editor; Kushal Dev, research fellow; and Madeline Wood, research coordinator.

The full series is available at knightcolumbia.org/research/

INTRODUCTION

THE EARLY BROADCAST ERA and our current platform era bear some striking resemblances, but one parallel looms large: In the 1940s, we lost a key battle to build a potentially liberating and wondrous medium—and we are on the cusp of doing so again. Then as now, commercial operators defined the terms by which we could use our core communication and information infrastructures. While reaping tremendous profits from the public airwaves, a few corporate firms became the sole providers for much of the nation's media. They spent untold resources to convince Americans that they reflected and served our desires, and therefore we should be grateful for such innovative and free services. Most importantly, these few corporations defined the parameters for how we understood our relationship to our media, concretizing a libertarian ethos that rendered government largely impotent in combating commercial excesses. Democratic oversight, public alternatives, and social responsibilities were kept to a minimum. Today we are verging on committing the same grievous errors. Democratic societies must fight to prevent this from happening again.

HISTORICAL LESSONS FOR OUR FUTURE

In the mid-to-late 1940s, the New Deal made one of its final stands during a series of policy battles at the Federal Communications Commission (FCC).[1] These contestations between regulators and media industries unfolded within a broader political context, one best understood as a societal reckoning that core information systems and infrastructures had fallen prey to a commercial logic run amok. Articulating a social democratic vision for radio, policymakers, and grassroots activists sought to rein in an unaccountable media oligopoly. As the broadcast industry tried to capture policy debates from above, a grassroots reform movement pushed from below.

Media reformers' general aims remained consistent, although their strategies shifted over the years. Their initial goal—beginning in the early 1930s—was to carve out from the nation's airwaves a noncommercial sector that would focus on educational programming and public affairs.[2] After losing that key battle, 1940s New Deal policymakers and activists tried everything from breaking up media conglomerates to imposing strict public interest regulations on broadcasters who monopolized the public airwaves. Regulators were contending with not only toxic commercialism but also a global war against fascism in which mass media were used as propaganda tools. This and other abuses of monopolistic power led to fresh concerns that media outlets were being used as instruments of social control, including newspapers, whose owners were largely anti-New Deal, and in some cases, even sympathetic toward Nazi Germany.

As I recount below, reformers initially advanced progressive plans for restructuring U.S. commercial communication systems to better serve democracy. But by the end of the 1940s, most of these efforts were largely defeated or co-opted, producing only relatively light public interest protections and self-regulatory regimes. Given the many parallels between then and now—powerful media corporations commanding dominant positions over core information and communication infrastructures while causing profound social harms and posing wicked policy problems for dealing with

such negative externalities—this period is instructive for contemporary policymakers and reformers.

Much of the historical analysis in this essay draws from my 2015 book *America's Battle for Media Democracy*, which focused on postwar 1940s media policy debates and how they shaped the structural contours of U.S. information and communication systems, especially print and broadcast media.[3] In more recent work, I analyzed the "social contract" that emerged from this era and what it might look like today.[4] This essay, then, takes a closer look at some of the underlying democratic and economic theories that were taking shape 80 years ago and considers their contemporary implications. From the policy failures and defeats experienced by 1940s reformers—as well as from their few significant victories—they learned valuable lessons. Unfortunately, many of these cautionary tales seemingly have been forgotten today.

THEN AND NOW

KEY INSIGHTS GLEANED during the 1940s regarding commercial media systems' structural constraints warrant consideration today, especially for illuminating the limits of self-regulation and the belief that competitive markets are the best arbiters of the news and information that democracy requires. A lesson from this history—one that is often overlooked—is that early media regulators were not merely concerned about spectrum scarcity and other technocratic factors. Rather, they were deeply worried about concentrated commercial power over news and information, and the predictable problems this posed for democratic society, including the amplification of low-quality information, a lack of media diversity, and even fascistic tendencies within profit-driven, monopolistic media outlets. These concerns are profoundly resonant today.

In their attempts to curb the excesses of a heavily commercialized, profit-driven media system—from excessive advertising to a lack of public affairs programming—1940s-era reformers grappled with similar structural problems facing us today. They also dealt with similar normative questions: What is the role of government and regulation in guaranteeing and protecting press freedoms? Whose interests matter most, the audience's or media owners'?

Are media monopolies and democratic society compatible? How do we ensure media diversity? What are news media's social responsibilities? The 1940s witnessed the brief rise and fall of an expansive democratic vision of our news media, one founded on positive liberties such as the audience's right to access a wide range of views and voices. Following a period of vicious redbaiting, however, a resolution emerged that helped consolidate corporate control—as well as a largely industry-defined benchmark for social responsibility—over major U.S. media infrastructures. This resolution, what I have referred to as a "postwar settlement for U.S. media," was fundamentally flawed, but it also yielded important insights that hold profound contemporary relevance for today's media-related challenges.

Our current moment, like the postwar 1940s, is a critical juncture for our information and communication systems; policy decisions made now will likely have a profound impact on their trajectories for generations to come. Revisiting these debates—learning from the mistakes, as well as the triumphs, of previous policymakers and reformers— can help us reexamine our assumptions about the evolving relationships between the First Amendment, media content regulation, corporate power, and hopes for a democratic future. Such an exercise can help bring into focus the theories, strategies, and structural reforms necessary for designing a media system in service to democracy. By learning from our past, we can imagine a more democratic future. Therefore, in this essay, I first briefly discuss this history of 1940s media policy battles as a crucial background for several critical questions: What exactly should we learn from this history? What kinds of regulatory frameworks were shown to be most promising? What insights does this history hold regarding the possibilities and limits of self-regulation? Digging into these questions sheds light on some of the most daunting policy questions of our time.

MANY ROADS LEAD BACK TO THE 1940S

THE POSTWAR 1940S witnessed a series of decisive U.S. policy battles, as government officials, social movements, and communication industries grappled over defining media institutions' normative role in a democratic society. Much of this debate focused on defining broadcasters' and publishers' social responsibilities, as well as the government's affirmative duties in assuring that democratic society had access to reliable news and information. Ultimately, these policy debates aimed to determine what regulations were necessary to mediate power relationships between monopolistic media firms and democratic society writ large.

This period also saw the emergence of a media reform coalition composed of grassroots activists and progressive policymakers who challenged the commercial interests consolidating control over much of the U.S. media system, especially broadcasting. Labor unions, civil rights activists, and various progressive groups attempted everything from creating pressure campaigns and community "listening groups" to boycotting shows and trying to influence programming choices, as well as buying radio stations and creating their own alternative media. Most social movements had a media strategy to try to push back against hypercommercialism, anti-labor ideologies, and what many saw as nascent fascism. One Black World War II veteran wrote to the FCC, pleading that the agency regulate racist radio programming that typically characterized African Americans as "lazy, shiftless, superstitious, ignorant, loose and servile." He argued that,

> On the battlefields of France, on Okinawa, on Iwo Jima ... we fought the devils of fascism, discrimination, hate, prejudice, and Jim Crow. We won that fight. We have come home to find that these same enemies are very much alive here. ... This is not the democratic way of life for which so many of our fallen comrades paid so dearly with their lives. This is the Hitler pattern. This is American fascism. [5]

A key policy intervention borne out of such public pressures was the 1946 FCC report, "Public Service Responsibilities of Broadcast Licensees"—commonly referred to as the FCC "Blue Book," given the hue of its cover.[6] This

policy initiative was a high-water mark for FCC progressive activism that mandated meaningful public service obligations for broadcasters in return for their monopolistic use of a public resource (namely, radio spectrum). It attempted to make broadcasters' privilege to hold licenses to the public airwaves contingent on allocating a percentage of their time to nonprofit, public affairs programming, and cutting down on excessive advertising. Running afoul of these rules might trigger public hearings or even a loss of their license altogether, a consequence that is almost unthinkable in today's context, in which broadcasters are essentially assured immunity to such stringent public interest obligations.

Another important 1940s policy forum for defining American media's normative foundations was "The Commission on Freedom of the Press" (popularly known as the "Hutchins Commission"), funded primarily by the media magnate Henry Luce. In response to growing media criticism—expressed to varying degrees by both political elites and the broader public—the Hutchins Commission assembled leading thinkers to redefine press freedoms and media's social responsibilities while negotiating a key question: "One of the main problems before our commission," Zechariah Chafee aptly noted, "is whether the giants should be slain or persuaded to be good[?]"[7] Although initially considering more radical proposals, the commission would ultimately lean towards pressuring media firms instead of slaying them, publishing six book-length reports on the democratic role of various media industries, international communication, and democratic theories of the press. The most influential of these studies was the 1947 general report that codified journalistic ethics, becoming a seminal text for generations of journalists. It also inspired an even more foundational text, *Four Theories of the Press*, which gave rise to a self-regulatory "social responsibility" model that has for many decades remained a key paradigm for ideal press behavior—one that conveniently kept at bay government regulation and direct public oversight. [8]

To the extent that 1940s reformist initiatives challenged libertarian frameworks for media regulation, they were met with an industry-led backlash that deployed aggressive redbaiting to largely thwart the policies proposed by the Blue Book and Hutchins Commission. With the 1940s media reform movement largely stymied, these formative policy debates gave rise to a new power arrangement between media institutions, U.S. regulatory

regimes, and the American polity that was defined by three assumptions: Media institutions should remain only lightly regulated (in terms of public interest protections), should practice industry-defined social responsibility, and should be protected by "negative" freedom of the press.[9] Such conceptions defined press freedoms as privileging media owners' rights over those of listeners, readers, and the broader public. In other words, they elevated a negative libertarian freedom *from* government regulation over the public's positive freedom *to* a diverse and informative media system. And they significantly negated government's affirmative role to guarantee positive freedoms.

This "corporate libertarian" paradigm simultaneously normalized oligopolist control over our media system, while delegitimating particular kinds of regulatory intervention (generally, policies that benefitted communities at the expense of corporate profits) and equating public interest protections with government censorship. Despite some reformist victories and exceptions along the way—for example, 1940s reformers were able to establish what would become known as the Fairness Doctrine, which mandated that broadcasters cover important issues from diverse perspectives—this settlement concretized an industry-friendly policy regime that largely foreclosed on alternative models and prefigured normative expectations. Over time, this form of market-driven governance corroded the American media system's integrity and democratic potential.

PRESS FREEDOMS AND DEMOCRATIC THEORIES

WITHIN THESE 1940S media policy battles, an alternative vision of press freedom was beginning to crystallize, one best referred to as a "social democratic" model for media regulation. This framework assumed a more affirmative, positive understanding of press freedoms than what was contained in the dominant libertarian paradigm described above. Placing a premium on public access to a diverse and informative news media system, this reformist project assumed that an oligopolistic, profit-driven media system was at best a fundamentally flawed system for satisfying democratic requirements. To oppose this vision, the business community sponsored elaborate public relations campaigns to convince

policymakers and the broader public that such an approach to media was inherently socialistic and un-American. As I discuss below, such redbaiting enabled them to defeat most social democratic policy formations, but the jurisprudential record offers tantalizing glimmers of a different approach to media regulation, one that enshrined more positive liberties.

Key among the highwater marks for articulating a greater commitment to positive freedoms is the Supreme Court's 1945 *Associated Press* (AP) decision. The case considered whether the AP's First Amendment rights allowed it to claim certain exemptions from antitrust enforcement. The Supreme Court dismissed this argument, stating that the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. ..."[10] The court maintained government's affirmative duty to protect press freedom: "It would be strange indeed ... if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom."[11] Similarly, Justice Felix Frankfurter argued that the First Amendment treated journalism as something having much more than mere commercial value "like peanuts or potatoes," but instead enjoyed special government protections for being "indispensable to the workings of our democratic society."[12] This positive-rights discourse was later rearticulated in the Supreme Court's 1969 *Red Lion* decision upholding the Fairness Doctrine (first established in 1949), which held that, "It is the right of the viewing and listening public, and not the right of the broadcasters, which is paramount."[13] Such progressive interpretations of the First Amendment sanctify positive freedoms and suggest that government must protect them—providing a critical counternarrative to a commercially captured First Amendment often deployed by corporations to shield themselves from regulatory oversight.

Despite these earlier victories for positive liberties, today we see abundant evidence of a more negative understanding of media's social responsibilities. For example, these libertarian assumptions were on full display during Mark Zuckerberg's Georgetown University speech in the fall of 2019, when he maintained that Facebook's primary concern was protecting freedom of expression.[14] Implied in Zuckerberg's speech was that such freedom is best realized by the absence of state interference, allowing an unimpeded

market to drive political discourse. Zuckerberg's highly publicized speech was widely—and justifiably—panned for being self-serving, but much of what he said accurately reflects common mythologies within liberal democratic discourse.

Liberal/libertarian First Amendment fundamentalism tends to ignore preexisting structural inequities, creating openings for someone like Zuckerberg to make outlandish claims about expressive freedoms. Conveniently presuming a level playing field that flattens out questions of power and exploitation, such assumptions fail to acknowledge how some voices silence others. This discourse typically conflates the "marketplace of ideas" with the capitalist market, thereby legitimating commercial excesses that corrupt our communication and media systems in various, often subtle, ways. The implications of this unfettered commercial logic are that news, information, and communication systems operate effectively so long as wealthy individuals and corporations can pay to express themselves.

In this scenario, any attempt to confront concentrated power—to create more opportunities for others to speak, to gain access, or to regulate against extreme commercialism, hate speech, and other social harms—is condemned as an illegitimate foray into the marketplace, an attack on core freedoms, and a form of grotesque censorship. But the market, itself an artificial creation, routinely censors speech and expression, especially when driven by the imperative of maximizing advertising revenue. The legal theorist C. Edwin Baker rightly observed that advertising often acts as the "most consistent and the most pernicious 'censors' of media content."[15] Given that market-driven media predictably and systematically filter out some viewpoints and voices while elevating others, this "market censorship" deserves far more attention in media policy debates.

To assume that the market reflects a pure expression of democratic desire is a core plank of corporate libertarianism, which also professes that government has no legitimate role in media markets. Of course, the state has *always* played a key role in designing information and communication systems—from the post office to the internet—and remains involved in their governance; pretensions to the contrary are libertarian fantasies. Nonetheless, conversations regarding government interventions have been particularly challenging in the U.S., where policy discourse has long been constrained

by a corporate libertarian paradigm and decades of neoliberalism. These inherent contradictions provide cover for Zuckerberg and like-minded market apologists to conflate profit motives with democratic imperatives.

As legal scholars such as Andrew Kenyon have pointed out, the mere absence of the state does not guarantee a democratic ideal for speech and expression within our media systems.[16] Moreover, a long-standing tradition establishes government's affirmative duty to guarantee a free and functional press system.[17] While the First Amendment clearly forbids abridgment of citizens' press freedoms, it does not prevent government from intervening to ensure such freedoms exist; otherwise, the entire concept of freedom of the press is rendered meaningless. A progressive tradition of legal discourse legitimates such affirmative government action that ensures the necessary conditions for a healthy media system. Justice Potter Stewart, arguing that the First Amendment does much more than simply protect individual freedoms of speech and expression—but rather protects and enshrines the press as an autonomous *institution*—asserted that the "Free Press guarantee is, in essence, a *structural* provision of the Constitution" (his emphasis).[18] These arguments maintain that the First Amendment's primary purpose is to create greater potentials for human freedom—and not just to protect us against government tyranny.

Unfortunately, popular American discourses about the media's normative role in a democratic society rely on an impoverished view of the First Amendment, seeing it as primarily dedicated to upholding negative liberties (freedom from government intrusion) over positive liberties (freedom to access rich and diverse sources of information, and opportunities to create our own media). While free expression in a democracy requires both positive and negative liberties, the latter are more libertarian and therefore more easily captured by media corporations. These firms often invoke negative liberties to shield themselves from public interest regulations and public investments in alternative media infrastructures—which also naturalizes the unregulated market as the final arbiter of democratic discourse. Several key political-economic conditions buttress this market libertarianism—and also present opportunities for structural reforms.

POLITICAL ECONOMIC IMPLICATIONS

SIMILAR TO TENSIONS and structural contradictions afflicting earlier commercial media firms, many of the harms propagated by Facebook across the globe are symptomatic of processes connected to its core business model—one based on surveillance and algorithmic manipulation to capture personal data and sell advertising.[19] This abuse is enabled by Facebook's monopolistic market position and, like many corporate firms, Facebook will do whatever it takes to maintain that position and make as much money as possible. In pursuit of maximizing profit to the detriment of democratic considerations, Facebook continually dodges calls for greater transparency and accountability, while at the same time purportedly favoring some degree of regulation. Even more damning, recent revelations show that Facebook has long been aware that it causes significant social harms but was unwilling to sacrifice profits to protect public health.[20]

This malfeasance has spawned a rare bipartisan consensus that government must rein in platform monopolies—a concept that, until recently, seemed unfathomable. Now, however, even Republican policymakers—albeit often for ill-conceived reasons, such as an unshakeable conviction that Facebook is driven by a political bias against conservatives—believe government intervention is necessary. Even Zuckerberg, long given to shirking responsibility for platform-related social problems, has conceded that Facebook should be held to certain regulations after all.[21] Indeed, Facebook has continued to profess a pro-regulatory stance for several years, even running ads, op-eds, and public statements in major media outlets—as well as an explanation on Facebook's own website—that call for updated internet regulations.[22]

These public performances beg the obvious question: *What kind* of regulation? Any measure that lessens Facebook's responsibilities for content moderation while staving off more structural kinds of regulatory intervention, tamping down public criticism, and most importantly, preserving profits, serves Facebook's economic interests very well. This is a remarkably similar pattern that helped shape American broadcasting.

POSTWAR CONCERNS ABOUT "MARKET CENSORSHIP"

A **KEY LESSON** often overlooked from the postwar period is that media reformers and policymakers were not just concerned about managing technological constraints, such as those associated with scarcity of broadcasting spectrum. Nor were they merely concerned about promoting good media ethics and social responsibility. Rather, reformers and progressive regulators were primarily concerned about *structural* problems in the news and information systems. In particular, they were concerned about the shortcomings of a heavily commercialized media system and its predictable harms to democratic society. It was self-evident to them that a system whose primary criterion for success was tremendous profits for a handful of corporations would never be truly committed to serving the public's information needs. Unfortunately, what was commonsensical then quickly became exiled beyond the bounds of acceptable policy discourse, thereby naturalizing over the decades a deeply libertarian fealty to the majesty of markets and the inherent corruption of public interest regulations.

When these old battles over media's democratic role are narrated today, larger normative concerns are often stripped away in favor of technocratic constructions. For example, when we hear about the earlier battles over the Fairness Doctrine—if we hear about them at all—we too often overlook how these concerns struck at the heart of commercial media's political-economic power. In fact, the Fairness Doctrine was not just about maintaining some degree of balance on the public airwaves; it mandated an enforceable social compact that ensured commercial broadcasters had an affirmative duty to cover particular kinds of information and uphold democratic imperatives that did not reduce to the mere pursuit of profit. With this context as a backdrop, it becomes clear how debates over the Fairness Doctrine have long served as proxy battles for much larger structural issues.

These long-standing structural concerns should be central to our analysis when we scrutinize today's social media platforms. While much attention is focused on determining if platforms are establishing adequate norms for content moderation and whether they are following their own rules, core normative questions are often ignored, such as whose interests do these firms

serve. What are the means of ownership and control? Should a handful of corporate firms determine the contours of our democratic discourse? How could we design news and information systems that privilege democratic concerns over commercial ones?

Reform-minded policymakers confronted these questions head-on in the 1940s. Their main concern was the predictable hazards connected to a heavily commercialized media system. They clearly understood that harnessing our media system so firmly to the capitalist imperative of profit maximization was a devil's bargain. Reformers, though losing battles for more structural changes, continued to press for regulatory protections from these endemic problems. And critics continued to publicly decry the various social harms caused by these firms, hoping that, at the very least, they could shame commercial operators into better behavior—to "persuade them to be good." But too often they were forced to fall back on halfway measures and corporate self-regulation.

Despite reformers' valiant attempts to enact meaningful policy changes, a postwar settlement consolidated commercial ownership and control of key journalistic institutions while concretizing power relationships that largely continue to define U.S. media institutions' social obligations today. These power arrangements undercut a constructive regulatory role for government while leaving de facto governance to marketplace relationships that consistently elevate profits over democratic imperatives. The American radio oligopoly went from fearing imminent and aggressive government intervention in 1945 to feeling emboldened and largely beyond the reach of most structural reform efforts by 1949. Had the progressive reformers in the postwar 1940s prevailed and initiatives such as those reflected in the FCC's Blue Book become foundations for U.S. communications policy, Americans may have inherited a very different kind of media system. Instead, the commercial system emerged from the 1940s even stronger, with a fleeting social democratic moment in U.S. media policy now all but forgotten.

But it would be incorrect to see this progressive policy failure as a democratic outcome. Rather, the rise and fall of a social democratic vision for U.S. media can be largely attributed to a growing anti-communist hysteria in the postwar 1940s that rendered even moderate regulatory efforts off-limits. Reform-minded bureaucrats were redbaited, discredited, and chased out of

the federal halls of power in Washington, D.C., while radical and progressive activists were purged from social movements across the country. This sudden rightward lurch left a lasting imprint on many core U.S. infrastructures and systems, from health care to media. Another contributing factor was that many liberals naively assumed broadcasters were arguing in good faith and that market forces would self-correct against commercial excesses. Absent strong structural reform—especially public alternatives that were not market-dependent and profit-driven—media corporations were able to deploy redbaiting discourses to delegitimate regulatory reforms and grab yet more power. Industry representatives accused the FCC of attempting to "BBC-ize" U.S. radio while commercial broadcasters declared that they alone were courageously defending the American ideals of "free radio" against nefarious socialistic policy elites.[23] This discursive context enabled corporate media oligopolies to capture First Amendment discourses to advance their commercial interests and use them as a shield to stave off progressive policy interventions.

By the end of the 1940s, the reform movement against unchecked media commercialism had been largely contained. Under the new settlement, media would become "socially responsible," and the public—and, specifically, regulators—were meant to be placated. The postwar settlement for U.S. media marked a failure for reformers' vision of a more democratic media system—a vision privileging public access over corporate profits, and diversity over commercial values—profoundly impacting much of what Americans would encounter in their media for decades to come. This outcome was not inevitable—nor must it be permanent. But it nonetheless provides a cautionary tale for how we must aim for different outcomes in current policy debates over platform monopolies' social responsibilities.

To draw the correct conclusions from these struggles, we must acknowledge the subsequent erasure of power in the retelling of those earlier debates. Often left out of standard historical narratives—which typically focus on how chaos reigned on the airwaves or how a "scarcity rationale" justified government interventions—is how the initial impulse to regulate broadcasting stemmed from recognizing that these broadcast monopolies had tremendous political and economic power that needed to be countervailed.[24] Another lesson to be gleaned from this time that holds important relevance for current

debates—perhaps counterintuitively—is that simply breaking up monopolies was proven to be insufficient. Although lying beyond our regulatory imagination today, the FCC forced one of the two major broadcasters (NBC) to divest itself of one of its two major networks (what would become ABC). However, going from two big radio networks (the other one being CBS, and not including the much smaller Mutual Broadcasting System) to three did not democratize or transform the media landscape.[25]

Another cautionary tale emerging from these debates was that regulation—most notably, the Fairness Doctrine, which mandated some degree of affirmative local accountability duties to be upheld by broadcasters—also ultimately proved to be an insufficient means of reining in the broadcast monopolies (though arguably it did maintain some degree of viewpoint diversity). The Fairness Doctrine was seen as a kind of consolation prize by reformers who wanted stricter regulations, but eventually market libertarians would succeed in repealing even this compromised public interest protection in 1987, paving the way for what would become a right-wing-dominated broadcast media system.[26] With increasingly less local accountability, few protections still exist for the public's positive rights to a diverse and informative media system.

If breaking up and/or regulating media firms prove to be suboptimal, the creation of *public alternatives* would appear to be the best option.[27] And indeed, implications from previous policy battles suggest that content regulations and anti-monopoly measures are often necessary and should be pursued—or at least kept on the table at all times—but are ultimately insufficient in solving some of our most intractable media-related problems. In other words, increased competition in media markets certainly can have positive effects but faces limitations when the entire system is still driven by unfettered commercial logics.[28]

A key lesson to draw from 1940s policy battles is that we need bold structural reforms—reforms that change the underlying logics and business models that drive so much of our heavily commercialized news and information systems. These could range from creating new institutions to removing market pressures from our already-existing communication infrastructures. Anything less risks merely shoring up the platforms' power into perpetuity.

RADICAL POSSIBILITIES

WHILE RESPONDING TO immediate problems and reining in platform monopolies is important, it is also critical for us all to expand the political horizon and envision a more democratic future. As leading analysts quibble over new rules for these platforms, we also need to ask big-picture questions: Are these models legitimate? Are they reparable? Can we instead imagine an entirely different—perhaps a publicly owned and democratically governed—model altogether? Put differently, we should not be confined to being mere spectators yelling from the sidelines at social media platforms to do a better job at enforcing their own rules. Democratic societies have the power to make new rules.

The platforms' self-reform efforts thus far have been woefully insufficient given the scale of the problems facing societies across the world today. Although concerns about mis/disinformation eventually pushed Facebook to reluctantly take some nominal actions, its platform continued to be a key driver for false claims about election fraud and provided a forum for organizing insurrectionist activities—in large part planned on the platform[29]—that contributed to the January 6, 2021, assault on the U.S. Capitol. Under tremendous public pressure, Facebook did belatedly take more aggressive actions when it banned President Trump from the platform (later determined to be only a temporary ban). However, that it took such a traumatic event to finally force Facebook's hand speaks volumes and suggests that much more stringent regulations are necessary. Even the Facebook Oversight Board—well-meaning as it may be—is ultimately a self-regulatory approach that diverts attention from the many reasons why such a core global communication and information infrastructure should never be in the hands of a single profit-driven entity. Our policy debates about the Facebook problem need to move beyond questions of content moderation to consider major structural reforms placing platform monopolies under more democratic control.

To democratize overly commercialized information systems, democratic societies have three general tools at their disposal. First, they can deploy pro-competition policies such as antitrust measures to *break up* media monopolies (or prevent mergers and acquisitions from happening in the first place), and trust that a diverse and competitive market will disincentivize

socially harmful behavior.[30] Second, they can *aggressively regulate* firms to preempt or offset social harms and negative externalities. Finally, democratic societies can establish *public alternatives* that are unencumbered by market pressures and therefore, if designed and governed democratically, can operate according to more socially beneficial logics. As discussed earlier, the first two of these approaches were readily tried in the 1940s and continue to be the most prominent strategies gaining attention now. However, the third option—building public alternatives—deserves more attention, especially considering lessons from earlier periods of reform.

If the long history of failed media reform attempts tells us anything, it should teach us that, by and large, self-regulation cannot stand in for long-term, systemic change. Indeed, only deeper structural reform can assure democratic outcomes and more permanent solutions to the many problems we currently face. While many such reforms—nationalizing the platforms, for example—are often cast out of bounds before the conversation even begins, promising signs suggest that we can at least dare to fathom more radical interventions.

As we try to imagine bolder, more democratic futures for our core information infrastructures, several trajectories of potential reform typically present themselves. One is the attempt to reform big technology firms from the inside, especially among tech workers themselves, who have been one of the strongest forces for political action against the platforms in recent years. In 2018, to give one example, 20,000 Google employees staged a global walkout to protest sexual harassment. Given their positions inside platform companies, tech workers could play a key role in labor organizing at multiple levels of these firms and democratize them from within.[31]

Another reformist project that is grounded in both American history and mainstream economic theory assumes that these platforms should be treated as public utilities.[32] If society were to move in that direction, we can easily imagine mandating a bevy of meaningful public interest obligations on these firms. These measures might include, for example, "signal boosting" reliable information within Facebook newsfeeds and Google searches.[33] In general—while calls for bringing back broadcast-era regulations such as the Fairness Doctrine are implausible and unfeasible—proposals for reasonable policy protections against the platforms' worst excesses are certainly worth considering.[34]

Beyond regulatory measures—and recalling the earlier goals of New Deal-era reformers—a more radical approach worth keeping in the conversation is outright public ownership, including cooperative models that are gradually receiving more attention.[35] Such new ownership structures could, over time, completely reorient labor relations, democratizing not only the platform monopolies but entire sectors of our news and information systems. However, any such reform project first requires a public education campaign that reminds us all how media corporations' incentives, design principles, and relationships to individuals and communities are subject to democratic—and not simply profit—imperatives, and must therefore be held accountable to public policies and social needs. All democratic societies have the power to change platform monopolies if they collectively decide to do so. Our actions should not be overly determined by commercial logics and values, since ultimately this is not about the platforms' objectives and expectations; rather, it is about our social needs—and any hope we might have for a democratic future.

CONCLUSION

By the 1940s, a media system that had been hailed as a great democratizer was now dominated by a few corporate gatekeepers whose sole aim was to maximize profits by capturing and selling their audience's attention to advertisers. Then as now, policymakers and activists scrambled to impose some semblance of democratic control over a media system run amok, fighting against a toxic commercialism that limited the range of voices, and that amplified sensationalized content and propaganda to millions of Americans. Attempting to rescue media institutions' democratic potential from being overwhelmed by commercial imperatives, they agonized over new normative definitions and social responsibilities for these powerful corporations. After much struggle, what eventually emerged was a lightly regulated commercial media system with relatively few meaningful public interest obligations or public alternatives.

This longer arc of media policy history reminds us that we as a society set parameters for how our communication systems and our political

discourses are structured. It also brings into focus the limitations of trying to shame media corporations into good behavior without the backing of strong structural regulations, sustained public oversight, and well-resourced public alternatives to commercial operators. The U.S. did eventually, after many years of persistent advocacy, establish a public broadcasting system, one that has remained largely underfunded compared to its counterparts across the globe. Allocating just $465 million dollars each year toward its public media, U.S. federal funding amounts to a pittance of $1.40 per capita (only 0.002 percent of its gross domestic product). By comparison, countries such as the U.K., Norway, and Sweden devote close to $100 or more per capita toward their public media.[36]

We have largely forgotten these historical lessons as we embark on a bold new experiment. For many decades, the U.S. has tested whether the media that democracy requires can be solely delivered by a lightly regulated commercial media system. Today, the data are in, and we can see clearly where this experiment has led us. It has ended with pervasive right-wing propaganda, with little actual journalism, and with a system that is characterized by dis/misinformation and low-quality information in general. And it has resulted in an impoverished imagination about what our media could and should look like, yielding increasingly low expectations regarding government's responsibilities in optimizing the democratic potential of our news and information systems.

Democratic societies have long understood that structural diversity in media ownership is required to achieve media pluralism and a healthy democratic media system.[37] In addition to breaking up information monopolies, public interest regulations as well as significant investments in public service media are also necessary. Unfortunately, these approaches are typically met with deep skepticism in the U.S. and often entirely erased from media policy debates, especially in recent decades as neoliberal economics and market fundamentalism have come to dominate such discourses.

Drawing from earlier historical lessons, one potential path ahead is twofold: First, we must reclaim an affirmative understanding regarding government's duty to ensure that our media infrastructures serve democracy. Second, we must endeavor to remove public goods like news and information from the market entirely and create public alternatives. Pairing these

two arguments—one legal-democratic and one political-economic—can help provide the intellectual foundations for a progressive policy approach toward recovering our news and information systems from monopoly power and commercial capture. If we do not learn from the miscalculations of an earlier generation of reformers, we are condemned to repeat them.

NOTES

1 For histories of the activism of this period, see Elizabeth Fones-Wolf, Waves of Opposition: Labor, Business, and the Struggle for Democratic Radio (2006); Kathy Newman, Radio Active: Advertising and Consumer Activism, 1935–1947 (2004). Alan Brinkley, End of Reform: New Deal Liberalism In Recession And War (1995). On New Deal activism at the FCC, see Dallas Smythe and Thomas Guback, Counterclockwise: Perspectives on Communication, 26-27 (1994).

2 Robert Mcchesney, Telecommunications, Mass Media, and Democracy: The Battle for the Control of U.S. Broadcasting, 1928–1935 (1993).

3 Victor Pickard, America's Battle for Media Democracy: The Triumph of Corporate Libertarianism and the Future of Media Reform (2015).

4 Victor Pickard, *A New Social Contract for Platforms: Historical Lessons for the Digital Age*, *in* Dealing with Digital Dominance: Joining up the Policy Solutions (Damian Tambini & Martin Moore eds., 2021).

5 Pickard, *supra* note 3, at 62. Original source: William Tymous Letter to Clifford Durr, March 12. Smythe papers, Box 16-18, Folder 2-14. Simon Fraser University, British Columbia. (1946).

6 F.C.C., *Public Service Responsibility of Broadcast Licensees* [The Blue Book], F.C.C. (Mar. 7, 1946).

7 Pickard, *supra* note 3, at 164.

8 Victor Pickard, *"Whether the Giants Should Be Slain or Persuaded to Be Good": Revisiting the Hutchins Commission and the Role of Media in a Democratic Society*, 27 Critical Stud. Media Commc'n 391-411 (2010).

9 Isaiah Berlin, *Two Concepts of Liberty*, *in* Four Essays on Liberty (Henry Hardy ed., 1969).

10 Associated Press v. United States, 326 U.S. 1, 20 (1945).

11 *Id*.

12 *Id*. at 28.

13 Red Lion Broad. Co., Inc. v. FCC, 395 U.S. 367, 368 (1969).

14 Cecilia Kang & Mike Isaac, *Defiant Zuckerberg Says Facebook Won't Police Political Speech*, N.Y. Times (Oct. 17, 2019), https://www.nytimes.com/2019/10/17/business/zuckerberg-facebook-free-speech.html [https://perma.cc/8K9J-BQSE].

15 C. Edwin Baker, Advertising and a Democratic Press 3 (1994).

16 Andrew Kenyon, Democracy of Expression: Positive Free Speech and Law (2021). *See also* Damian Tambini, Media Freedom (2021).

17 Martha Minow, Saving the News (2021).

18 Justice Potter Stewart, Address Before Yale Law School (Nov. 2, 1974), *in* 26 Hastings L.J. 631 (1975).

19 Shoshana Zuboff, The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power (2019). For case studies of specific harms, see Chloé Nurik, Censored, Commodified, and Surveilled: How Facebook's Self- Regulatory Governance Harms Marginalized Communities (2021) (Ph.D. dissertation, University of Pennsylvania) (on file with author).

20 For an overview, see N. Y. Times, *The Facebook Papers and their fallout*, N.Y. Times (Oct. 25, 2021), https://www.nytimes.com/2021/10/25/business/facebook-papers-takeaways.html [https://perma.cc/G8UY-HPQ5].

21 Mike Isaac, *Mark Zuckerberg's call to regulate Facebook, Explained*. N.Y. Times (Mar. 30, 2019), https://www.nytimes.com/2019/03/30/technology/mark-zuckerberg-facebook-regulation-explained.html [https://perma.cc/SRV2-RKNV].

22 Jacob Silverman, *Facebook Now Says It's the Solution to the Crises It Created*, New Republic (May 24, 2021), https://newrepublic.com/article/162509/facebook-big-tech-nick-clegg-regulation-policy [https://perma.cc/3QQ3-PTFV]. For links to Facebook's official position on regulations, see We support updated regulations on the internet's most pressing challenges, https://about.fb.com/regulations/ [https://perma.cc/RVB3-A9F4] (last visited Feb. 2, 2022).

23 Pickard, *supra* note 3, at 73-77.

24 David A. Moss & Michael R. Fein, *Radio Regulation Revisited: Coase, the FCC, and the Public Interest*, 15 J. Pol'y His. 389–416 (2003).

25 Some provisions in the FCC's 1941 "chain broadcasting rules" arguably helped protect against hazards associated with vertical integration. They attempted to promote competition among local outlets and national networks while also providing more autonomy to individual stations. However, the rules' ultimate efficacy remains debatable.

One analysis published a decade after they went into effect found that "[a]ll in all, the Rules have not made network practices since 1941 substantially different from their practices before that date." (79). *The Impact of the FCC's Chain Broadcasting Rules*, 60 YALE L.J. 78-111 (Jan. 1951). For the original rules, see Federal Communications Commission, "Report on Chain Broadcasting," Commission Order No. 37, Docket No. 5060, May (1941).

26 Victor Pickard, *The Strange Life and Death of the Fairness Doctrine: Tracing the Decline of Positive Freedoms in American Policy Discourse*, 12 INT'L J. COMM., 3434-53 (2018).

27 For recent work on the need for expanded public media infrastructure, see Ellen Goodman & Sanjay Jolly, *A 'Full Stack' Approach to Public Media in the United States*, GER. MARSHALL FUND (July 26, 2021), https://www.gmfus.org/news/full-stack-approach-public-media-united-states [https://perma.cc/KR6P-5AUY]; Ethan Zuckerman, *The Case for Digital Public Infrastructure*, KNIGHT FIRST AMENDMENT INST. (Jan. 17, 2020), https://knightcolumbia.org/content/the-case-for-digital-public-infrastructure [https://perma.cc/6CWE-HEZB].

28 Pawel Popiel, Emergent Governance: The Politics of Competition in Digital Markets (2020) (Ph.D. dissertation, University of Pennsylvania) (on file with author).

29 David Mack et al., *"If They Won't Hear Us, They Will Fear Us": How The Capitol Assault Was Planned On Facebook*, BUZZFEED NEWS (Jan. 19, 2021), https://www.buzzfeednews.com/article/davidmack/how-us-capitol-insurrection-organized-facebook [https://perma.cc/FDT7-99VZ].

30 For an overview of what is often referred to as the "Neo-Brandeisian" approach to antitrust law, see TIM WU, THE CURSE OF BIGNESS: ANTITRUST IN THE NEW GILDED AGE (2018).

31 Aaron Petcoff & Ben Tarnoff, *Tech Workers at Every Level Can Organize to Build Power*, JACOBIN (Feb. 6, 2021), https://jacobinmag.com/2021/02/tech-workers-organizing-class-position [https://perma.cc/Z8X3-ARYA].

32 Nick Srnicek, *The only way to rein in big tech is to treat them as a public service*, GUARDIAN (Apr. 23, 2019), https://www.theguardian.com/commentisfree/2019/apr/23/big-tech-google-facebook-unions-public-ownership [https://perma.cc/Y3Z9-3D76]; Dan Schiller, *Reconstructing Public Utility Networks: A Program for Action*, 14 INT'L J. COMM. 4989–5000 (2020); James Muldoon, *Don't Break Up Facebook—Make It a Public Utility*, JACOBIN (Dec. 16, 2020), https://jacobinmag.com/2020/12/facebook-big-tech-anti-trust-social-network-data/ [https://perma.cc/VU5Z-JSGG].

33 Karen Kornbluh & Ellen Goodman, *Safeguarding Digital Democracy: Digital Innovation and Democracy Initiative Roadmap*, GER. MARSHALL FUND (Mar. 24, 2020), https://www.gmfus.org/publications/safeguarding-democracy-against-disinformation [https://perma.cc/548P-SJHX].

34 VICTOR PICKARD, DEMOCRACY WITHOUT JOURNALISM? CONFRONTING THE MISINFORMATION SOCIETY (2020). PHILIP NAPOLI, SOCIAL MEDIA AND THE PUBLIC INTEREST: MEDIA REGULATION IN THE DISINFORMATION AGE (2019).

35 Thomas Hanna & Michael Brennan, *There's No Solution to Big Tech Without Public Ownership of Tech Companies*, JACOBIN (Dec. 21, 2020), https://jacobinmag.com/2020/12/big-tech-public-ownership-surveillance-capitalism-platform-corporations [https://perma.cc/YDD4-ZQEV]. Ben Tarnoff, *A Socialist Plan to Fix the Internet*. JACOBIN (Nov. 30, 2019), https://jacobinmag.com/2019/11/tech-companies-antitrust-monopolies-socialist [https://perma.cc/N9ST-5A9Z].

36 Timothy Neff & Victor Pickard, *Funding Democracy: Measuring Correlations Between Public Media and Democratic Health in 33 Countries*, INT'L J. PRESS/POLS. (Dec. 13, 2021), https://doi.org/10.1177/19401612211060255.

37 Robert Picard & Victor Pickard, *Essential Principles for Contemporary Media and Communications Policymaking*, REUTERS INST. FOR STUDY JOURNALISM, U. OXFORD (Apr. 2017), https://reutersinstitute.politics.ox.ac.uk/sites/default/files/research/files/Essential%2520Principles%2520for%2520Contemporary%2520Media%2520and%2520Communications%2520Policymaking.pdf [https://perma.cc/72X8-99UU].

BIBLIOGRAPHY

C. Edwin Baker, Advertising and a Democratic Press 3 (1994).

Isaiah Berlin, *Two Concepts of Liberty*, *in* Four Essays on Liberty (Henry Hardy ed., 1969).

Alan Brinkley, End of Reform: New Deal Liberalism in Recession and War (1995).

Elizabeth Fones-Wolf, Waves of Opposition: Labor, Business, and the Struggle for Democratic Radio (2006).

Thomas Hanna & Michael Brennan, *There's No Solution to Big Tech Without Public Ownership of Tech Companies*, Jacobin (Dec. 21, 2020), https://jacobinmag.com/2020/12/big-tech-public-ownership-surveillance-capitalism-platform-corporations [https://perma.cc/YDD4-ZQEV].

Mike Isaac, *Mark Zuckerberg's call to regulate Facebook, Explained*. N.Y. Times (Mar. 30, 2019), https://www.nytimes.com/2019/03/30/technology/mark-zuckerberg-facebook-regulation-explained.html [https://perma.cc/SRV2-RKNV].

Cecilia Kang & Mike Isaac, *Defiant Zuckerberg Says Facebook Won't Police Political Speech*, N.Y. Times (Oct. 17, 2019), https://www.nytimes.com/2019/10/17/business/zuckerberg-facebook-free-speech.html [https://perma.cc/8K9J-BQSE].

Andrew Kenyon, Democracy of Expression: Positive Free Speech and Law (2021).

Karen Kornbluh & Ellen Goodman, *Safeguarding Digital Democracy: Digital Innovation and Democracy Initiative Roadmap*, Ger. Marshall Fund (Mar. 24, 2020), https://www.gmfus.org/publications/safeguarding-democracy-against-disinformation [https://perma.cc/548P-SJHX].

David Mack et al., *"If They Won't Hear Us, They Will Fear Us": How The Capitol Assault Was Planned On Facebook*, Buzzfeed News (Jan. 19, 2021), https://www.buzzfeednews.com/article/davidmack/how-us-capitol-insurrection-organized-facebook [https://perma.cc/FDT7-99VZ].

Robert Mcchesney, Telecommunications, Mass Media, and Democracy: The Battle for the Control of U.S. Broadcasting, 1928–1935 (1993).

Martha Minow, Saving the News (2021).

David Moss & Michael Fein, *Radio Regulation Revisited: Coase, the FCC, and the Public Interest*, 15 J. Pol'y His. 389–416 (2003).

James Muldoon, *Don't Break Up Facebook—Make It a Public Utility*, Jacobin (Dec. 16, 2020), https://jacobinmag.com/2020/12/facebook-big-tech-antitrust-social-network-data/ [https://perma.cc/VU5Z-JSGG].

Philip Napoli, Social Media and the Public Interest: Media Regulation in the Disinformation Age (2019).

Timothy Neff & Victor Pickard, *Funding Democracy: Measuring Correlations Between Public Media and Democratic Health in 33 Countries*, Int'l J. Press/Pols. (Dec. 13, 2021), https://doi.org/10.1177/19401612211060255.

Kathy Newman, Radio Active: Advertising and Consumer Activism, 1935–1947 (2004).

Chloé Nurik, Censored, Commodified, and Surveilled: How Facebook's Self- Regulatory Governance Harms Marginalized Communities (2021) (Ph.D. dissertation, University of Pennsylvania) (on file with author).

N. Y. Times, *The Facebook Papers and their fallout*, N.Y. Times (Oct. 25, 2021), https://www.nytimes.com/2021/10/25/business/facebook-papers-takeaways.html [https://perma.cc/G8UY-HPQ5].

Aaron Petcoff & Ben Tarnoff, *Tech Workers at Every Level Can Organize to Build Power*, Jacobin (Feb. 6, 2021), https://jacobinmag.com/2021/02/tech-workers-organizing-class-position [https://perma.cc/Z8X3-ARYA].

Robert Picard & Victor Pickard, *Essential Principles for Contemporary Media and Communications Policymaking*, Reuters Inst. for Study Journalism, U. Oxford (Apr. 2017), https://reutersinstitute.politics.ox.ac.uk/sites/default/files/research/files/Essential%2520Principles%2520for%2520Contemporary%2520Media%2520and%2520Communications%2520Policymaking.pdf [https://perma.cc/72X8-99UU].

Victor Pickard, *"Whether the Giants Should Be Slain or Persuaded to Be Good": Revisiting the Hutchins Commission and the Role of Media in a Democratic Society*, 27 Critical Stud. Media Commc'n 391-411 (2010).

Victor Pickard, America's Battle for Media Democracy: The Triumph of Corporate Libertarianism and the Future of Media Reform (2015).

Victor Pickard, *The Strange Life and Death of the Fairness Doctrine: Tracing the Decline of Positive Freedoms in American Policy Discourse*, 12 Int'l J. Comm., 3434-53 (2018).

Victor Pickard, Democracy without Journalism? Confronting the Misinformation Society (2020).

Victor Pickard, *A New Social Contract for Platforms: Historical Lessons for the Digital Age*, *in* Dealing with Digital Dominance: Joining up the Policy Solutions (Damian Tambini & Martin Moore eds., 2021).

Pawel Popiel, Emergent Governance: The Politics of Competition in Digital Markets (2020) (Ph.D. dissertation, University of Pennsylvania) (on file with author).

Dan Schiller, *Reconstructing Public Utility Networks: A Program for Action*, 14 Int'l J. Comm. 4989–5000 (2020).

Dallas Smythe & Thomas Guback, Counterclockwise: Perspectives on Communication, 26-27 (1994).

Nick Srnicek, *The only way to rein in big tech is to treat them as a public service*, Guardian (Apr. 23, 2019), https://www.theguardian.com/commentisfree/2019/apr/23/big-tech-google-facebook-unions-public-ownership [https://perma.cc/Y3Z9-3D76].

Damian Tambini, Media Freedom (2021).

Ben Tarnoff, *A Socialist Plan to Fix the Internet*. Jacobin (Nov. 30, 2019), https://jacobinmag.com/2019/11/tech-companies-antitrust-monopolies-socialist [https://perma.cc/N9ST-5A9Z].

Tim Wu, The Curse of Bigness: Antitrust in the New Gilded Age (2018).

Shoshana Zuboff, The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power (2019).

About the Author

Victor Pickard is a professor of media policy and political economy at the Annenberg School for Communication. Previously he taught at NYU and the University of Virginia. He also worked on media policy in Washington, D.C., as a senior research fellow at the media reform organization Free Press and the think tank New America, and as a policy fellow for Congresswoman Diane Watson. He has authored or edited six books, including the award-winning *Democracy Without Journalism? Confronting the Misinformation Society* (Oxford University Press, 2020) and *America's Battle for Media Democracy: The Triumph of Corporate Libertarianism and the Future of Media Reform* (Cambridge University Press, 2015). He is a board member for Free Press and he frequently collaborates with activists, policymakers, journalists, and community groups focused on media reform. Since 2012, he has co-directed the annual Consortium on Media Policy Studies (COMPASS) program in Washington D.C. With Sarah J. Jackson and Todd Wolfson, he co-directs the Media, Inequality & Change (MIC) Center.

© 2022, Victor Pickard.

About the Knight First Amendment Institute

The Knight First Amendment Institute at Columbia University defends the freedoms of speech and the press in the digital age through strategic litigation, research, and public education. It promotes a system of free expression that is open and inclusive, that broadens and elevates public discourse, and that fosters creativity, accountability, and effective self-government.

knightcolumbia.org

Design: Point Five
Illustration: © Dan Page Collection


KNIGHT
FIRST AMENDMENT
INSTITUTE at
COLUMBIA UNIVERSITY