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Dealing with Opinion Power in the Platform World: Why We Really Have to Rethink Media Concentration Law

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ABSTRACT

The platformised news environment affects audiences, challenges the news media's role, and transforms the media ecosystem. Digital platform companies influence opinion formation and hence wield "opinion power," a normatively and constitutionally rooted notion that captures the core of media power in democracy and substantiates why that power must be distributed. Media concentration law is the traditional tool to prevent predominant opinion power from emerging but is, in its current form, not applicable to the platform context. We demonstrate how the nature of opinion power is changing and shifting from news media to platforms and distinguish three levels of opinion power: (1) the individual citizen, (2) the institutional newsroom and (3) the media ecosystem. The reconceptualization at the three levels provides a framework to develop future (non-)regulatory responses that address (1) the shifting influence over individual news consumption and exposure, (2) the changing power dynamics within automated, datafied and platform-dependent newsrooms, and (3) the systemic power of platforms and structural dependencies in the media ecosystem. We demonstrate that as the nature of opinion power is changing, so must the tools of control.

KEYWORDS

Media concentration; media pluralism; news media; opinion power; platforms

Digital platform companies (hereafter "platforms")¹ play an ever-growing role in contemporary democracies. The largest platforms today are much more than mere economic parties by controlling different digital technologies, implementing AI tools and algorithms, and managing significant amounts of data and communication flows (Pasquale 2020, 89). Platforms' ability to influence individual and public opinion formation within the media ecosystem leads to wielding what we call "opinion power," with potentially serious implications for democracy.

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We are witnessing an ongoing debate about how to deal with the enormous power that platforms are amassing (Naughton 2018). Recognizing the systemic risks posed by platform dominance has resulted in a push to regulate big tech (Noam 2021) leading to governments in Europe and worldwide taking up efforts to protect democracy and curtail concentrated platform power. Yet, most of these initiatives target platforms' market power or focus on data protection, and are limited in their actual ability to sustain fundamental values of the public communication sphere. Although hinted towards by the EU Commission in its Democracy Action Plan (2020), media concentration law has not received too much attention so far. This comes as a surprise, as it traditionally plays a central role in dealing with opinion power.² Media law-specific instruments are necessary to safeguard media pluralism and equal chances to communicate, as merely economic-based instruments are not entirely capable of doing so.

With the increasing digitalisation and platformisation of the news environment, the very role of news media is challenged. Some have argued that because platforms have become essential sources of news and political information, they should be treated like the media within the framework of media concentration law (e.g. Nemitz & Pfeffer 2022, 348). Although we share the sense of urgency, it is also important to stress that media concentration law, as it currently stands, is rather useless for mitigating risks of concentrated opinion power held by platforms. If media concentration law is to play a meaningful role in regulating platforms' opinion power, it requires rethinking. Indeed, the current focuses on media ownership, broadcasting licenses and measurements of TV audience shares do not fully encompass the effects on opinion formation online and offline as we will argue.

While the call to reform media concentration law and adopt it to the contemporary digitalised media ecosystem is not new (Neuberger 2018; Neuberger & Lobigs 2018; Schulz 2017; Schulz & Held 2006; 'Stigler Committee on Digital Platforms' 2019; KEK 2018; Ofcom 2016, 2021), there have not yet been substantial changes. The reasons for that vary, including the lack of competence at the EU level, the fragmented and non-coherent nature of media laws across Europe and the world, the global impact of platforms and the special protections and privileges of the news media in democracies as the "fourth estate" or "watchdog." Such incoherencies and fragmentations in the digital media environment make simple reforms difficult (e.g. Dreyer, et al 2022, 199–201). Instead, considering the normative function of media concentration law, we propose to move ahead and develop novel ways to deal with opinion power.

To move forward, we must first understand how opinion power is shifting. This article constitutes the first part of a larger research project that aims not only at better understanding shifts of opinion power, but also at developing ways and informing policy debates and regulatory thinking on how to deal with concentrated power in the media. We follow a normative approach to identify and develop the legal and regulatory conditions for a media environment that promotes media plurality, public values and democracy in the age of platforms and AI. Hence, this first part (re)conceptualizes opinion power at the individual citizen, institutional newsroom, and media ecosystem levels to develop an initial understanding of the power dynamics and the failure of media concentration law to fulfil its normative goals. In short, this

contribution aims to set the scene for a long-term rethinking of changing power dynamics in the media.

As mentioned, applying a normative legal research method, we begin by looking at the concept of “opinion power” (derived from the German concept of “Meinungsmacht”), embedded in the protection of freedom of expression and information, equality of chances to communicate and participate in the public sphere, media pluralism as well as privacy and data protection. We base our argumentation of developing a new digital media concentration law on the normative grounds developed by the German case. We believe that the notion of “Meinungsmacht” and its normative bases, particularly equal chances to communicate, media pluralism and power distribution, are useful values to conceptualise opinion power in the digital age and develop suitable (non-)regulatory responses. This does by no means imply that our research is primarily directed at Germany. Instead, it may provide useful guidance for effectively following the positive approach to protecting media freedom and plurality (Kenyon 2021; Tambini 2021), which is prevalent in the whole of Europe. Furthermore, building on Lukes’ theorisation of the three dimensions of “power” – decision-making power, agenda power and dominating power – we will map the shifting nature of opinion power at three levels: (1) At the individual citizen level, we analyse platforms’ ability to affect the exposure to news content and news consumption. (2) At the institutional newsroom level, we look at the implications of increasingly automated, data-driven and platform-dependent newsrooms. (3) At the media ecosystem level, we examine the systemic opinion power of platforms, which relates to the power over the digital communication infrastructure, technological and data power, and structural dependencies on platforms. Finally, we will use that conceptual framework to critically evaluate key concepts of existing media concentration law and point to the existing gaps while proposing new potential points of departure.

What is Opinion Power and Why Does It Matter?

“Meinungsmacht,” also known as opinion power, refers to “the media’s ability to influence processes of individual and public opinion formation” (Neuberger 2018, 53–68). Because a functioning democracy necessitates a plurality of voices and a free media, constitutional law imposes positive obligations on states to implement (preliminary) measures to avoid dominant opinion power and promote power dispersal (Kenyon 2021; Tambini 2021; Baker 2007). Indeed, diversity of opinion describes a state in which there is no dominant opinion power, which is essential for a pluralistic media landscape and democracy. The goal of balanced diversity of opinion stems from freedom of broadcasting and press, which require the state to enable a diverse opinion market through legislation, specifically media concentration law. Germany has a long tradition of thinking about how to create optimal conditions to promote media pluralism and avoid dominant opinion power and media concentration as a result of its historical legacy, and has developed media concentration legislation based on this normative idea of dispersing opinion power.

To advance our thinking about power over opinion formation in the context of new forms of media, it is worthwhile to take a closer look at the German case, the concept of “Meinungsmacht,” and how it has been shaped by the German Constitutional Court (hereafter “BVerfG”). “Meinungsmacht” provides a well-developed perception of the essence of media power in democracy and the grounds for dispersal, which helps in understanding the concept’s normative embeddedness in a broader context. Indeed, the BVerfG emphasises the importance of opinion power in relation to media pluralism, as well as the notion that imbalances in the ability to influence the process of public opinion formation can endanger a pluralistic media landscape and democracy (Helberger 2020, 845).³

More precisely, the underlying reason for the constitutional embedding of opinion power is the political power dimension of news media’s ability to influence individual opinion formation and public discourse. Crucially, Article 10(1) TEU refers to the principle of representative democracy and Article two TEU to democracy, equality, and the rule of law as fundamental democratic values upon which the EU is based. The media play a fundamental role in realising those values by serving as guardians of the flow of information, as the forum enabling the public to engage in debate and exchange opinions and viewpoints on a plurality of topics and issues and as public watchdogs (Trappel & Tales 2021, 16–17). For the news media to fulfil their function, they hold special protections and are subject to enhanced duties and responsibilities (Etteldorf & Cappello 2017, 13–22). In its eighth broadcasting decision, the BVerfG states that “free opinion formation as a prerequisite for both the development of personality and democratic order takes place in a process of communication that could not be sustained without the media, which disseminate information and opinions and express opinions themselves.”⁴ In short, the news media are assigned great responsibility and power in a democracy. Hence, concentrations of such power must be averted.

The urgency to prevent dominant opinion power is equally emphasised by the European Court of Human Rights (ECtHR), according to which “there can be no democracy without pluralism.”⁵ Media pluralism is a multi-faceted notion that requires a closer look. First, *internal diversity* refers to the plurality of content and viewpoints provided by a single media outlet; Second, *structural/external diversity* targets the broader media ecosystem and affects the structure of the media market to measure power and ownership; Third – and most challenged in the digitalised sphere – *exposure diversity* refers to the extent to which audiences are exposed to, find, discover, and consume a plurality of content (Helberger 2018, 157–158; Napoli 1999, 29). The distinct assessment levels – individual citizen, institutional newsroom, and media ecosystem – touch upon all facets of pluralism. Nonetheless, we want to emphasize that pluralism is less about individual choice or multiplicity of sources available than it is about balancing existing structural asymmetries in communicative power and in supporting political equality (Karppinen 2013, 80–81). To sustain a healthy and thriving democracy, citizens need access to a variety of information, sources, and voices, allowing them to form opinions without the undue influence of one dominant actor wielding opinion power. We agree with Karppinen (2013, 80) that it is not enough to conceive

media pluralism in terms of heterogeneity and a more diverse range of choices. Instead, the structural power relations within the media ecosystem, including the “struggles over the framing and agenda of public discussions, and political and corporate decisions about the architecture and ownership of media systems,” should be a focal point (Karppinen 2013, 80).

A similar argument underlies the normative principle of “Kommunikative Chancengleichheit,” which we translate as “equal chances to communicate.” This notion, also developed in German law, primarily aims for fair and equal participation opportunities and inclusiveness in the democratic public sphere (Schulz 1998). As a constitutional concept, it guarantees the individual’s participation in the political process through his or her involvement in the formation of public opinion (Schulz 1998). Baker (2007, 7) emphasises the “democratic distribution principle for communicative power” that reflects a “very wide and fair dispersal of power and ubiquitous opportunities to present preferences, views, and visions.” As the normative benchmark, the communication order should enable each person to benefit from a “structurally possible, real and equal chance to actively or passively participate in the communication and public opinion formation process” (Schulz 1998, 180). With opinion power, we must note that complete equality of actual communicative power is neither possible nor desirable (Baker 2007, 10). Some positions of power and privilege, as for the media, are unavoidable. Accordingly, the BVerfG emphasised that opinion formation is “an intellectual and equal opportunity struggle which leaves economic power positions aside” and allows a “privileged position of the press *only due* to their function.”⁶ In that sense, the value of distributing communicative power does not only relate to ownership but should be implemented in all areas of “structural media policy” to avoid power concentrations (Baker 2007, 194). Therefore, to enable pluralism and equality in public opinion-formation, the structural power relations underlying the media ecosystem are decisive, making it most relevant to investigate power structures (Karppinen 2013, 80; Pickard 2020a).

In a nutshell, the normative and constitutional grounds of preventing dominating opinion power and media concentration may be summarised as ensuring equal communication opportunities, media pluralism, and (communicative) power distribution. These normative ideals underpin this article’s conceptualisation of opinion power in the digital and platform age, as well as the corresponding failures to address identified challenges effectively.

How Do we, Theoretically, Understand “Power”?

As the focus of our research is opinion power and its shifts, we want to dive a little bit deeper to understand how to theorise “power.” To disperse (opinion) power, the prime focus must be to avoid any structurally enabling circumstances for domination to accrue. Lukes (2021, 74), who prominently defines three dimensions of “power,” confirms that “power is a potentiality, not an actuality – indeed a potentiality may never be actualized.” Certainly, to prevent concentration, the “structural ability” to trigger effects on opinion formation alone is decisive, while the actual intention to abuse power or actual effects must not be proven (Neuberger 2018, 57).⁷ Thus, to protect

media pluralism and equality as vital for democratic functioning, the overriding objective should be to pre-emptively avoid dominant opinion power in the media ecosystem from occurring at all. Hence, structural power allocations must be thoroughly observed (Neuberger and Lobigs 2018, 25–27) in an altering digital media environment.

To analyse opinion power's changing nature in the media, we consult the framing of power as developed by Lukes in three editions (1974, 2005 and 2021). He theorised the notion of power in the light of changing power relations and structures. In essence, Lukes stipulates that power is not only exercised "through overt decision-making and covert non-decision making," but also through the "influencing, shaping or determining" of people's beliefs, values, and opinions. Those "who prevail in decision-making are those with more power in social life" (Lukes 2021, 22–23). Accordingly, Lukes' first dimension of power concentrates on "behaviour in the making of decisions (...)" (Lukes 2021, 24). Following Bachrach's and Baratz's critique on the narrowness of Lukes' one-dimensional view of power, Lukes introduces non-decision-making power, relating to agenda power. They criticised that power is not only expressed through decisions but also through non-decisions about which potential issues do or do not enter the political arena (Lukes 2021, 44, 24–29). In this respect, influencing how agendas come to be shaped sparks power. Similarly, Bagdikian (2000, 16) understands media power as "carefully avoiding some subjects while enthusiastically pursuing others," thus being able to not only tell the readers *what* to think about but also shape *how* people think about issues (Schlosberg 2018, 204). In creating or reinforcing barriers to "the public airing of policy conflicts" and thus influencing which topics enter public discourse, agenda power is also political power (Lukes 2021, 25; Fawzi 2018, 1145). As phrased in one of the classic agenda-setting studies, "the media are the major primary sources of national political information; for most, mass media provide the best- and only-easily available approximation of ever-changing political realities," which indeed confers upon (mass) media a crucial political and democratic function (McCombs & Shaw 1972, 185). Hence, the power of the media over opinion formation and setting the agenda *is* political power.

In his later work, Lukes focuses on "domination" and how power can "operate unobserved and behind our backs and may be at its most effective when least observable to agents and observers alike" (Lukes 2021, 2). According to Lukes (2021, 3), domination is possible through the creation of (structural) dependencies and is defined as "the power to secure compliance with the interests of the powerful." In the debate on "domination as power," Pettit also recognises that domination can be *structural*, giving it a more profound meaning because it constitutes the background of what makes dominating relationships possible (Lukes 2021, 159–160). Therefore, domination is most successful when it is "routine and unconsidered, the everyday enactment of norms and practices, rules and roles that engender and sustain subordination, dependence, and powerlessness" (Lukes 2021, 159–160). While we agree with the systemic power potential stemming from creating dependencies, we refrain from using the term "dominance" to discuss opinion power to avoid confusion with the competition law analysis in which dominance has a very particular meaning. For this reason, we instead build on Helberger's (2020) terminology and refer to "systemic opinion power" and/or "structural dependency," both substantial enablers of domination (Lukes 2021, 159–160).

How is (the Nature of) Opinion Power Changing?

Individual Citizen Level – Power over News Consumption and Exposure

The digitalisation and platformisation of the news media trigger changes of control in newsrooms, which, subsequently, affects individual opinion formation. Connecting to Lukes' first dimension of power, this means that an individual is presented with a variety of opinions and viewpoints, and each individual can consciously and autonomously decide, based on the available choices, what his or her preferences are. However, to make decisions freely, individuals should be sufficiently informed and knowledgeable about the opinions of others to make their own judgments. It is a key function of the news media to disseminate information, interpret events, and curate political news. Consequently, they exert editorial decision-making power, which influences individual opinion-formation by pre-selecting and presenting which viewpoints an individual gets to choose from, influencing behaviour by emphasising specific issues, and by interpreting news for the public. Ideally, those decisions are based on public values and interests because they considerably impact how individuals consume news, what news contents they are exposed to, and how their political behaviour and decisions are formed, i.e. in the context of elections. At the same time, free and open opinion formation is not just an "individual right."⁸ It is about protecting a democratic state, where individual expressions influence the environment of ideas, guaranteeing free and open public opinion formation.⁹ The importance of protecting the individual communicative autonomy in the public sphere hence extends to safeguarding public will formation (Schulz 1998, 168–172). This is particularly important from the perspective of enabling a news environment allowing equal chances for a diversity of voices to participate.

Platforms and algorithms disrupt news media's power over individual news consumption and exposure. *News recommendation algorithms* is a prime example of prompting a shift of opinion power, as they filter the growing abundance of information and content online and actively guide and match individual readers with the news apt for them (Helberger 2019, 994). Despite an unprecedented availability and plurality of information of sources available, news consumption online is not simultaneously pluralistic (Helberger 2018; Napoli 1999) as algorithmic control and the steering of access to information allow a pre-selection of contents and enable control over communication and information flows. As recommendations are based on user data held by platforms, they command powerful instruments to control the scarce attention of the user and keep them engaged on platforms for as long as possible (Helberger 2019, 1003; Moore 2016; Naughton 2018). That is, platforms' knowledge gained through data collection, as well as their ability to use that data and algorithmic tools to command and organise online attention and persuade, have the potential to create opinion power (Helberger 2020, 5).

Despite enhanced individual autonomy and control over online news consumption, platforms still play a crucial role by guiding user attention to content based on personal interests and preferences. The vast amount of information available and the individual's inability to navigate through all content autonomously manifest the role of platforms in the news consumption process. Furthermore, free opinion formation is

affected by the level of (perceived) privacy and data protection as abuse triggers distrust and possibly has a detrimental chilling effect on free expression and opinion formation (Cohen 2013, 1911; Lynskey 2017; Richards 2015). Hence, individual informational autonomy is increasingly crucial to empower users in a media environment characterised by growing power concentration.

Institutional Newsroom Level – Power over Editorial Decision-Making and Agendas

As indicated earlier, Lukes (Lukes 2021, 44, 24–29) considers “non-decisions” about which potential issues do or do not enter the political arena as agenda power. Power potential stems not only from influencing what issues people think about, but also how they think about them. Traditionally, the news media make choices about the public agenda based on their role to inform the public of ongoing debates and current issues. Notably, in reference to opinion power, the BVerfG famously grounded the function of the news media in politics and democracy in the *Spiegel* decision, arguing that “if citizens are to make political decisions, they must be fully informed, but also know opinions and viewpoints of others to weigh those up. (...) The press keeps this constant debate going, provides information, takes a stand and has an orienting effect on public debate.”¹⁰ To that end, journalists’ and editors’ gatekeeping role and editorial decision-making power to make a news selection largely shapes public opinion as some topics might be pushed more while avoiding others. Due to the far-reaching implications of opinion power, the normative values of equality, pluralism and power distribution may be affected with new actors interfering with the role of traditional media.

As the news media are increasingly automated and data-driven, the way how newsrooms work and their normative role and editorial independence are affected (Diakopolous 2019, 203; Simon 2022; Van Drunen and Fechner, 2022). Van Drunen and Fechner (2022, 7) argue that “one way in which automation potentially challenges editorial independence is by changing the way in which editorial control is exercised, enabling non-media actors to directly influence the way in which a specific media organisation automates its editorial decision-making.” Journalistic editorial decision-making power, which affects the (political) agenda, is increasingly influenced by other factors than mere journalistic values. We observe that platforms may become “powerful agenda setters” because “journalistic standards of relevance are now competing with a probabilistic calculation of popularity” in determining the visibility of political actors and news (Ananny 2020).¹¹

Overall, platforms’ algorithmic control, data processing and infrastructural control have implications for the entire “news circle” from observation to production and distribution of news, altering how newsrooms are setting the agenda (Loosen & Solbach 2020, 180). In a so-called “hybrid news system” “information and the source of news circulate between news media and social media, with the latter gaining a prominent position to determine whether certain information becomes news and if it ends up on the media and public agenda” (Araujo & van der Meer 2020, 647). Thus, newsrooms increasingly analyse user behaviour and platform data to determine public preferences

and trends. Newsrooms then adjust content production and curation based on information aggregation and distribution. Click-based *audience metrics* are a common way data-driven newsrooms measure real-time audience behaviour and engagement to better understand and reach audiences. As Diakopolous (2019, 184) observes, “large flat-screen monitors reflecting real-time measurements of “most read” or “trending” stories hang from the walls of major newsrooms (...)” and thereby influence editorial decisions.

“Editors can examine the performance of their editorial choices as they scrutinise metrics in real time,” according to Ferrer-Conill & Tandoc (2018, 448). Thus, despite newsrooms being value-driven, editorial decisions and newsmaking are increasingly influenced by datafied user interests shaped by platforms’ “techno-commercial strategies” (Van Dijck et al. 2018, 57), who act as “providers of AI services, tools and infrastructures, or as partners in research and development” (Simon 2022, 1). In all that, we need to be reminded that the roles and activities of platforms are fulfilled not in a “neutral” way as sometimes claimed, but based on the interests of private companies (Nielsen & Ganter 2022; Gillespie 2010). It follows that while in democracies “broadcasters are usually constrained in what they broadcast and in the political views they can express,” platforms “can command attention to promote their own views and services (...) can give them a political power comparable to that of a broadcaster” without constraints (Moore 2016, 29).

Besides that, platforms’ direct funding strategies may provide a source of power and control of private companies over newsrooms and editorial decision-making. Influencing news coverage of big tech and topics around platform governance may solidify agenda power. We are not questioning journalists’ professionalism or claiming to detect a lack of independence, we intend to remind that “power is a potentiality, not an actuality (...)” which, even if never actualised, may result in control (Lukes 2021, 74). Accordingly, we refer to Pickard (2020a, 108), who pointed to some critics claiming that because “newspapers have an incentive to protect its publisher’s economic interests,” the Washington Post – owned by Amazon’s Jeff Bezos – may have so “aggressively criticised the then-presidential candidate Bernie Sanders’ policy proposals” (to regulate big tech more stringently). Thus, contentious investments of big tech companies into newsrooms should be scrutinised because they always follow their own political and economic agenda.

In brief, as few (private) platform companies gain control over many news media organisations worldwide, a concentration of power over data and technology is triggered, which could have serious consequences for editorial decision-making and agendas. Accordingly, safeguarding editorial independence and a resilient media are central aspects in creating counterpower.

Media Ecosystem Level – Systemic Power of, and Structural Dependencies on, Platforms

Systemic (opinion) power, which Helberger (2020, 846) refers to as “the power to create dependences and influence other players in a democracy,” affects the media ecosystem level more generally by changing its very structure and power allocations. As

mentioned elsewhere, the entire news cycle from observation, production, dissemination and consumption of news is (re)organised around platforms, their rules and logic and thus influenced and mediated by them. As a result, individuals and newsrooms are in a state of structural dependency on platforms, with implications for the broader functioning and power allocation within the media ecosystem. Thereby the normative values, particularly of structural media plurality and of a dispersal of (communicative) power, are undermined.

News media's concerns about the long-term effects of becoming too dependent on platforms have provocatively been phrased as the risk of becoming "slaves to the algorithm" (Nielsen & Ganter 2022, 7).¹² To illustrate, a simple change of Facebook's algorithm in 2018 to prioritise the content of friends and family over news content triggered a significant impact on news organisations' distribution strategies and required them to react (Meese & Hurcombe 2020, 7–11). Despite this acknowledgement, breaking the dependency on platforms is arduous, largely due to platforms' disproportionate data power and the unprecedented amounts of "knowledge" over users' interests, audience preferences and public trends, which, based on the notion that

knowledge is power," further consolidates opinion power.¹³ As previously alluded to, dependency plays a fundamental role in manifesting (platform) power. In their most recent work, Nielsen & Ganter (2022, 2) describe platform power as "power exercised through socio-technical systems built by companies that draw many different third parties in by empowering them to do things that each of them value and want, while in the process leading them to become ever-more dependent on the platform in question, increasingly intertwined in highly asymmetric relations." Hence, while the news media (mostly) benefits from these partnerships with platforms, ever-increasing dependencies also trigger ever-increasing power concentrations in the media.

More specifically, concentration trends are exacerbated by newsrooms becoming more platform-dependent and data-driven, resulting in a two-way dependency. First, platforms provide distribution *infrastructures* and *technologies*, making platforms mediators between newsrooms and their audiences and giving them the technological power to compel journalists to optimise news content to reach their readership. Accordingly, publishers make content "algorithm ready" and appropriate to the logic of platforms' underlying infrastructure (Gillespie 2010, 349–352; Gillespie 2014, 168; Helmond 2015, 7). As previously elucidated, platforms become digital communication infrastructures and "active agents," influencing the news production process. This vastly shifts power from the newsrooms to platforms and, at least to some extent, to the audience.¹⁴ Second, platforms provide *data*, for instance in the form of audience metrics, on which newsrooms rely in editorial decisions. Indeed, the need for newsrooms to be competitive and to serve the audiences' interests by producing popular content manifests dependency on platforms and their data. In essence, news media depend on platforms in many ways: as mediators between newsrooms and their audiences, as infrastructures compelling journalists to optimise news content to reach a readership, and as providers of data and technology. Structural dependencies, power asymmetries and concentrations of data and technological power are the result, with tremendous consequences for the media ecosystem as a whole (see for instance, Simon 2022).

Furthermore, journalism funds, such as the “Google News Initiative,” and heavy investments into newsroom innovation are strategic ways of maintaining systemic power in the media ecosystem and stipulating dependency. A report examining Google’s strategies in the German media ecosystem strikingly demonstrates that most newsrooms today are (at least) partially funded by Google with implications for the entire media ecosystem (Fanta & Dachwitz 2020). In addition, platforms are not only competitors or investors of news media but also business partners. As we have seen in recent years, they cannot be considered *equal* business partners though. Disproportionate negotiation powers between news media and platforms and between governments and platforms further spur structural dependencies as the following example shows. In early 2021, the Australian government proposed the so-called News Media Bargaining Code (NMBC), designed to make platforms pay publishers for hosting news content and address the bargaining power imbalance between platforms and the news media.¹⁵ Facebook disagreed with entering into negotiations with news publishers or paying for hosting content. As a result, it banned all news content and critical health information about the COVID-19 pandemic from its platform, eventually pushing for (re)negotiations with the Australian government.¹⁶ This episode demonstrates the immense power that platforms wield, not just over the news media but also in the broader communication sphere and with other actors.

Additionally, Van Dijck et al. (2018) highlighted platforms’ governance power through contracts and policies, such as terms of services and licence agreements. The role of platforms in setting the terms and guidelines enables them to moderate interactions, also between news media and audiences. Within the frame of content moderation, Helberger (2020, 849) argues in a like manner, stating that “making platforms the central locus of governance of online communication” and assigning them the task to moderate communication content on their platforms “strengthens their grip on the very process of democratic opinion formation.” Governments now have limited possibilities to control content removals online while platforms become powerful and dependable actors for organising online information and communication (Helberger 2021, 67). Accordingly, any calls for more regulation coming from big tech companies should be viewed critically. The largest platforms could not only benefit from higher regulatory standards, when those may be hard to comply with for smaller competitors, but they also have an active part in shaping regulations, see only the NMBC. As Marietje Schaake put it “the false dichotomy of regulation versus no regulation ignores the benefits tech companies have enjoyed as a result of certain regulatory interventions.”¹⁷ Not only do we need to call to mind that those platforms exert a vast influence on policymakers in Brussels, but some regulatory efforts, such as the Digital Services Act (DSA), may even manifest their role as rulers over the Internet and as (allegedly) merely being mediators without pursuing any own interests.¹⁸

The Normative Goals and Concepts of Media Concentration Law as New Points of Departure

Despite a relative lack of attention until then, media concentration law was hinted at in the Democracy Action Plan by the European Commission. As the Commission

announced it “will also analyse existing national media diversity and concentration rules to see whether and how they ensure a plurality of voices in digital media markets, especially in the light of the growing role of online platforms.”¹⁹ Although the EU has no specific competence to regulate media pluralism and there are no concrete media concentration or media ownership rules on EU level, some harmonising measures to protect media pluralism, like the Audiovisual Media Services Directive (AVMSD) and the proposed Media Freedom Act (MFA), are indeed possible and pursued (Irion & Valcke 2014, 5).²⁰

As powerful global players in the digital sphere, platforms contribute significantly to a concentrated digital environment, which is especially worrying when it comes to the media (Noam 2021, 78–80). Nemitz & Pfeffer (2022, 344) note, “technological and economic dominance today is more than just a market phenomenon. It pertains to power over democracy.” Not least we argue that there are three elements that contribute to the changing nature of opinion power. First, deploying *algorithms* that enable control over the access and selection of information, content and communication flows. Second, the ability to access user *data* and communication content that allows for creating user profiles based on personal interests and beliefs. Third, *technological power*, namely creating and providing software, algorithms, and filter technologies, triggers influence over communication infrastructure and architecture. In that, platforms can be seen as wielders of opinion power and as “active political actors in their own right” (Helberger 2020, 843). Correspondingly, holistic and structural responses are needed. As media concentration law traditionally deals with exactly that, it is worth exploring.

Looking beyond Previous Reform Suggestions

German legal scholar Hoffmann-Riem (1992) once wrote: “Technological, economic and political changes in the media system also lead to changes in the media law.” We agree with this observation but must add “*should* lead,” as, despite unprecedented changes in the media, real, substantial, and structural changes to media law are yet to be implemented.

In the context of media concentration law, Neuberger (2018, 28–30, 46–49) correctly asserted, “if the protective aim of media concentration law is the free, open and independent opinion formation, the relationship between opinion power, diversity and opinion formation must be more closely observed as it currently does not grasp the full complexity at hand.” As a matter of fact, while the goals and concepts of media concentration law become increasingly topical, widespread consensus exists about its inability to respond to the problem of platform power and dominant trends of convergence, digitalisation, and internationalisation adequately, as Paal (2017) noted.

It seems pertinent to look for possible approaches to updating media concentration law. Some suggestions to broaden the scope have been made in the past. Previously, Schulz and Held (2006, 63; 2017) discussed moving to a system encompassing various media and focusing concentration control on the dangers and effects of influence on opinion, referred to as “Gesamtmedienmodell.” In 2018, KEK (German Commission for Controlling Concentration) proposed a new concept for securing plurality which

should be based on an overall market model, moving away from the TV-centred approach and capturing all media markets relevant to opinion formation. In that context, Neuberger and Lobigs (2018, 33) suggested looking at opinion power from an effect or relevance perspective, intending to understand the real effects on opinion formation better by concentrating on the characteristics of the offer (the editorial and political relevance), on user characteristics (how content is received at large through algorithmic persuasion and attention keeping of audiences), and on effect characteristics (how individual and public opinion formation is influenced).²¹ In fact, taking a bottom-up approach to opinion formation might be relevant to better grasp real exposure and consumption. In addition, Ofcom in the United Kingdom (UK) (2021, 2) and the Stigler report in the United States (US) (2019) both investigated the trends of media concentration and the normative and democratic implications and came to similar conclusions. In 2021, Ofcom suggested to “broaden the scope of the “Media Public Interest Test” framework beyond print newspapers and broadcasters to capture a broader range of “news creators” to be more reflective of the way people access and consume news today” and the Stigler report confirmed the need to develop targeted policies aimed at reducing concentrations of economic, media, data and political power of platforms, which are potentially dangerous for democracy (“Stigler Committee on Digital Platforms’ 2019, 15).

Most recently, Nemitz & Pfeffer (2022, 347–348) took up the question of whether media concentration law should apply to platforms like it does to traditional media. They argue in the affirmative, asserting that “platforms are not only passive, but rather create content actively in some cases, and in all situations arrange and display it.” Therefore, they suggest that due to platforms’ power to aggregate (political) news and disseminate content tailored to personal profiles, they have become active actors in the public sphere. Despite true elements in the reasoning, the extent to which platforms can and should be subject to the same legal framework as mass media is debatable. We should not apply an overly broad definition of “media” as to safeguard legacy media protections and privileges, which would otherwise apply to other actors in the media ecosystem as well.²² Nonetheless, the unaccounted role of platforms and other non-media actors to influence opinion formation and affect power allocations in the media ecosystem is becoming graver, while merely updating existing media concentration rules may be insufficient.

Obligation to Protect Media Pluralism

We turn to media concentration law due to its long tradition of dealing with opinion power. The traditional objective of media concentration law is to deal with economic market power *and* media influence over public opinion formation (Paal 2017, 610). Hence, the normative goal to protect public values and media pluralism, as are threatened by power concentrations, sounds intuitively appealing.²³ Thus, for the age of digitalisation, we should re-visit the basic tenets of media concentration law.

Above all, under international human rights standards, states are required to take measures to promote an environment in which a diversity or range of information and ideas are available to the public, thus, to prevent media concentration (Tambini 2021;

Kenyon 2021). Accordingly, measures to promote media pluralism are duly embedded in all EU member state legislations. The degree of their effectiveness to deal with new forms of opinion power and platform power is, however, questionable, not at least because of their strong focus on broadcasters. It is commonly agreed that in this context, any measures to protect media pluralism and avert media concentration must be taken *proactively and preliminarily* as counterbalancing dominant opinion power *retrospectively* is difficult and likely to have already affected public values negatively.²⁴

Ownership Does Still Matter!

Traditional media concentration law seems to assume that many media outlets and owners equal a pluralistic media landscape. To maintain a plurality of actors and voices and reduce market concentration, some EU member states have opted for implementing thresholds on the allocation of licences for broadcasters or the number of newspapers owned. However, today's main problem with media concentration law is its narrow applicatory focus on traditional media, primarily TV and broadcasting. Accordingly, online services, search engines and internet content offerings without broadcasting participation would not be included (Schulz & Held 2006, 63). In the platformised news environment, restricting power measurements to linear broadcasting content does not reflect the reality of how public opinion formation is impacted anymore. Furthermore, the assumption that many owners and outlets equal plurality is not true for the digitalised age (Brogi et al. 2021, 18). The perception that the greater the number of media actors, the greater the possibility of bringing diverse viewpoints and opinions in the public debate may not be completely true anymore. Instead, media pluralism today is increasingly concerned with how audiences are exposed to, find, discover and consume content (Karppinen 2013, 91–93 and 110–111; Napoli 1999; Helberger 2018). And although many owners do not automatically secure pluralism, *ownership* still matters.

Media ownership and cross-media ownership still implies high control over public opinion and can trigger opinion power (e.g. Harcourt & Picard 2009). Baker (2007) and Pickard (2020a and 2020b) both agree that in the digital environment, despite the belief that anyone could be a journalist or media producer, ownership matters and continues to be highly concentrated. Respectively, by enabling public access to production, publication and distribution tools, platforms have undermined Liebling's (1960) claim that "freedom of the press is guaranteed only by those who own one" (Moore & Tambini 2021, 278). Although a greater power distribution can be assumed based on technologically enhanced participation possibilities (Castells 2007, 239), we are faced with a reallocation of power and new concentrations (Garton Ash 2016, 77–88; Neuberger & Lobigs 2018, 60).

Consequently, in the future, measurement approaches must focus on the structural ability to influence opinion formation, instead of ignorantly limiting the scope to broadcasters, newspapers, magazines and other traditional media. In other words, ownership still matters, but we need to better understand "*whose*" ownership of "*what*" matters. As Pickard (2020b, 105) put it, what matters is "monopoly ownership" as a broad and structural threat affecting the media ecosystem and the values it is

based on. In short, limiting ownership ignores the fact that “the real issue is often “control,” for which ownership is a loose but imperfect proxy” (Baker 2002, 57). Rather, we must focus on control over the sources of power.

Economic Effects and Public Values Must Go Hand in Hand!

There is a strong interaction between the goals underlying competition law and media concentration law. It is deemed that functioning competition between many actors in the media market encourages media pluralism, while market-concentration can cause irreversible structural changes in the media sector and jeopardise media pluralism due to a diminishing number of competing companies (Paal 2017, 611). As a result, the influence of competition law in the media cannot be underestimated.

Concentrated market power poses political threats. Hence, free and functioning competition is an important aspect in ensuring media pluralism and controlling power over opinion-formation (e.g. Baker 2007). Nonetheless, dealing with concentrated market power through competition law or merger controls alone cannot sustain media pluralism nor democracy as “competition law aims at creating fair conditions from an economic point of view and not to ensure diversity in the media sector” (Cappello 2020, 23). Abuse of market power is identified *ex post*, while media concentration law follows an *ex-ante* approach to proactively prevent any structural abilities to trigger effects on opinion formation from the outset (Neuberger 2018). That is where media concentration law comes in. It acts at the intersection of competition law, media law and constitutional law – all relevant for dealing with opinion power. Its rationale to aim at both the economic effects of media market concentration and creating the conditions for the realisation of public values are highly relevant for the digitalised news environment.

Discussion: Proposed Directions for a New Approach

As previously defined, the *algorithmic* control and steering of information, the access to user *data* and communication contents, and the *power to control communication infrastructures and technologies* manifest the changing nature of opinion power in the platform context. As the nature of opinion power differs from its traditional understanding, we simply cannot rely on the traditional tools of media concentration law to prevent dominant opinion power anymore. We use the conceptual lens developed in Section “How Do we, Theoretically, Understand “Power”?” – distinguishing between the individual citizen, institutional newsroom, and media ecosystem levels of (opinion) power – to propose new points of departure.

We argue that a new approach should primarily focus on tackling the power imbalances and structural dependencies we identified, as well as become more wary of the far-reaching role and powers of new and non-media actors. Baker (2002, 57) argued that to understand power in the media, we need to understand “who will have control,” instead of focusing too strictly on ownership. He continues that whoever has control over policy-makers and processes in fact has control. As previously argued, platforms increasingly exert political power by influencing individual and institutional

choices and agendas, by controlling infrastructures and exerting influence over law-making processes. The overarching goal must be to develop the conditions for a plural media landscape, by facilitating individual autonomy, empowering a resilient news media, protecting editorial independence and avoiding dependencies and lock-ins. That being said, we are faced with structural challenges requiring structural solutions.

Individual Citizen Level – Power over News Consumption and Exposure

As a starting point, we look at the shift of opinion power at the individual citizen level. Notably, how individuals come to shape their opinions shifts as powers over news consumption and media reach change. Unprecedented amounts of content online require individuals to navigate through heaps of information. Algorithmic selections help individuals, yet, individuals must maintain a certain level of (intellectual) autonomy to be able to freely and openly, without external interferences, make choices.

Most EU member states have at least some rules in place that, amongst other measures, limit the (audience) reach a single media outlet shall have by measuring audience shares. Restrictions based on audience shares are used as thresholds to prevent ownership concentration and to increase pluralism, by limiting the potential power over individual news consumption and exposure.²⁵ A pluralistic media offer is, for instance, defined as being a “media offer through a plurality of independent and autonomous media and services reflecting the widest possible diversity of socio-cultural currents of expressions and ideas.”²⁶ The goal is to limit the power that a single outlet has over the supply and availability of news content. In most member states however, audience share thresholds only apply to TV and radio, ignoring other non-media actors (Jakubowicz, 2015)²⁷.

As previously discussed, concentration of opinion power cannot effectively be measured if other factors, such as control over distribution and aggregation of news content, accessibility and discoverability of news content, and the use of technological tools to influence the dissemination and prominence of content are left out. That is, because we are no longer concerned with a concentration of audience shares, but with concentrated power over audience attention. It is evident that the approach of media concentration law to measure audience shares of traditional media cannot capture opinion power for various reasons. It ignores the fact that actors who do not directly own an outlet but control distribution infrastructures, algorithms and data that enables ranking, prioritising and recommending news content, can manage attention, consumption, exposure and subsequently wield opinion power in new and sophisticated ways.

The extent to which users are (truly) free to choose between various sources and contents and enjoy what the Council of Europe has called “cognitive autonomy” needs to play a more prominent role in counterbalancing power (Helberger 2018, 171).²⁸ Hence, we might need to borrow from areas that so far have not yet played a role in media concentration law and include privacy and data and consumer protections as elements of a new media concentration law. Other elements may involve measures to avoid contractual and technical lock-ins by ensuring the overall design of digital choice architecture is built to enable autonomy. The DSA, for instance, takes such an

approach in regulating recommenders and giving the opportunity to switch off personalisation. While this is no perfect solution, it does point to the need to give users choice and autonomy. Because, measures to protect (vulnerable) consumers and safeguard individual (intellectual) autonomy typically fall under data protection law or consumer law, but neither intervention are designed to take into account public interest objectives, such as the ability to benefit from a diverse media offer and not to be exposed to excessive opinion power, media concentration law new style may have to include such elements.

Institutional Newsroom Level – Power over Editorial Decision-Making and Agendas

As alluded to, editorial decision-making is increasingly focused on making content platform- and algorithm-ready to comply with the logic and designs of platforms, which is crucial to keep the largest possible audience engaged and interested by feeding “popular” content. As discussed earlier, because of those developments, news media’s normative role and editorial independence are affected (Van Drunen and Fechner 2022). Ownership limitations, typically restrictions relating to capital control, foreign ownership and transparency, are central nodes in media concentration law to ensure independence within media outlets and newsrooms. As concluded in a recent study,²⁹ media ownership rules are largely focused on traditional media and “rarely take into consideration the take-up of new services and platforms, which results in the scarcity of set limits for digital news media.” The limitations in place ignore the way how data analytics and algorithmic tools have reshaped the relationship with the audience, allowing for far more fine-grained control over the flow of audience attention by new actors and platforms. Therefore, in the context of platforms, we need to discuss *what* kind of ownership really matters and how we should define ownership. We argue that ownership is no longer only concerned with owning shares or control over cable networks or programme content but is more about ownership or control over data, algorithms, and infrastructures. In fact, as mentioned elsewhere, the very concept of ownership is increasingly misleading, as one cannot “own” audience attention, popularity, user engagement or even personal data. Objects of control and ownership change, as audience data increasingly becomes a source of power inside newsrooms (Ferrer-Conill & Tandoc 2018, 448). Additionally, the (technological) means to connect with the audience is increasingly outside the control of newsrooms and shifts towards platforms (Nielsen & Ganter 2022). Accordingly, a new paradigm is necessary to capture how these new critical resources can be instrumentalised to assert a position of opinion power.

Essentially, in many respects, the way we have conceptualised opinion power at the institutional newsroom level in the form of using data and algorithmic control to influence newsrooms’ internal strategies can probably be better described as a new form of “undue influence” over the democratic opinion formation process. Van Drunen and Fechner (2022, 22) highlight that current regulations fail to target “internal organisational matters” to safeguard “editorial independence in the sphere of private actors, specifically aimed at limiting external (commercial) influences or media

concentrations.” The *potential* power of external, non-media actors, who provide technologies and data and set the terms and conditions, with own political and commercial interests to affect opinion formation suffices to make it a matter of concern. In particular “autonomy” in editorial decision-making is a normative ideal that is seen as constitutive to journalism and it is crucial to inform the public sufficiently to enable a public arena for free and independent opinion formation (Simon 2022, 12). Here, traditional regulatory approaches alone may not be the best solution. As Van Drunen and Fechner (2022, 5) points out, some aspects of editorial independence, such as professional values, own stances and opinions, may fall outside the scope of law.

Counterbalances should also focus on making news media more resilient and independent from commercial financial sources. As previously mentioned, investments and funding by big tech companies influence newsrooms without direct ownership, which may create financial and technological dependencies (Fanta & Dachwitz 2020). An opacity of funding sources could further lead to concentrated power over several news media organisations without being captured by the current tools. In that respect, creating the conditions for public investment and stimulating independent innovation could provide a pathway to break the economic and technological dependency on platforms. Diversifying funding within the media ecosystem can help overcome news media’s dependency on platforms for financial survival and enhance competition in the media ecosystem between all actors involved. Pickard (2020b) calls for diversifying news media’s revenue streams and de-commercialising the media to make it less dependent on advertising, which is dominated by platforms and facilitated by access to users and their data. In fact, let us not forget, Google or Meta do not *own* the BBC, the NPO, or the Volkskrant, but still exert influence through funding. Crucially, we must rethink and enhance transparency of third-party funding streams, such as the financial flows from platforms to newsrooms, to get a better picture of the economic dependencies and power distributions.

Media Ecosystem Level – Systemic Power of, and Structural Dependencies on, Platforms

As previously identified, platforms wield systemic power, making them “regulatory structures of the social” and “facilitators of free speech.”³⁰ Their function to provide communication and information infrastructures, their ability to influence news circulation and accessibility, and their broader influence on media actors and the media market by setting rules, terms, and conditions are striking. Current media concentration rules, neither ownership rules nor other limitations or transparency and oversight measures, can fully apprehend this far-reaching power potential. Especially with regard to mergers, Perusko (2010) highlighted that “beyond economic perspectives, and due to media goods’ economic and cultural role, media mergers cannot only drastically impact upon competition but also on the diversity and pluralism of opinions and views.”³¹ Accordingly, the anti-competitive behaviour of big tech companies and platforms in the media does indeed have an effect on pluralism.

Notably, dependencies and power imbalances in the media ecosystem may severely exacerbate concentration trends, particularly in business negotiations between news

media organisations and platforms. Undoubtedly, it is inevitable to discover ways of dealing with disproportionate negotiation powers between old and new media, which must be a central focal point to break away from structural dependencies and protect independence. Any novel approach should aim at levelling powers and creating counterbalances by empowering users and news media (Helberger 2020, 850; Meese 2021, 270). For instance, by looking at balancing negotiation powers between platforms and news media through enhanced contractual obligations or guidelines guaranteeing a fair and equal value exchange. Still, we should be wary of examples such as the NMBC in Australia that aimed at levelling negotiation power imbalances but arguably strengthened platform power and may even have further contributed to concentration.³² Still, a well-developed concept of enabling collective bargaining powers and agreements could be a remedy, especially to enhance and stimulate local news media and their competitiveness towards other large media companies in the ecosystem, such as Springer or DPG.

Furthermore, transparency and oversight must go beyond the current limited means to deal with concentrated power. Suggestions involve, for instance, strengthening and expanding media authorities' power (European Commission 2022). Accordingly, Craufurd-Smith suggested an expansion of media authorities' "information-gathering powers" to help measure actual online news consumption as well as to allow for a better understanding of how these infrastructures work and better detect concentration trends (Ofcom 2021, 13). Complementarily, more holistic cooperation between national and European competition authorities, data protection authorities and media authorities could help detect possible threats of media concentration in the platform context where access to and control over data have much broader implications for competition and the media ecosystem.

In fact, media concentration interventions should increasingly focus on developing more measures, such as expanding data access rights for media authorities or imposing new transparency obligations on platforms, to better understand who controls data, how technical persuasiveness affects opinion formation and who controls attention. Future research should investigate the effectiveness of, for instance, the EU AI Act and the Data Act and how the provisions address the use and access of data and the level of "risk" connected to using algorithms and AI in journalism and what does that mean for countering dominant opinion power. Aspects such as fair data access rights may be crucial to balance power asymmetries in the media ecosystem and break dependencies.

Consequently, rethinking media concentration law as a complementary approach to platform regulation can help broaden the scope and refocus regulatory efforts on protecting public values and democracy. The idea of introducing thresholds resonates to a great extent with recent legislative proposals for the digital world. For example, the DSA is the first piece of legislation of its kind that regulates recommenders to give users more choice and recognises risks to media pluralism as "systemic risks." The DMA and Data Act focus on creating counterbalances in the digital market and the recently proposed Media Freedom Act focuses on empowering a resilient media and protecting editorial independence.³³ Those are first approaches that need to be scrutinised further and in detail, but may provide elements for a media concentration law new style.

Value-based regulation that takes a longer-term perspective and focuses not only on disciplining (economic) platform power and reacting to specific phenomena can help create lasting conditions for countering power more systematically, which is vital to prevent future technological innovations and market developments from ending in a legal vacuum. Finally, we need to highlight that the nature of platforms makes this a cross-border and international matter (Paal 2017, 616), which requires expanding international cooperation and coordination to tackle big tech power and protect democracy effectively.

Outlook

We established that new power dynamics call for re-examining and reinventing the regulatory approaches to addressing new power concentrations. The (re)conceptualization of the shifting nature of opinion power and the demonstration of the gaps in the current media concentration toolbox to deal with it provides a basis for ongoing and continuing research. A simple reform of national media concentration, such as to include platforms in the scope of “media,” misses the point. We need to think of a completely new style of dealing with media concentration that is fit for the digital age.

The analysis at three levels can be applied to directly develop tools focussed on the threats faced by the respective level. Such as, for the individual citizen level, tools must focus on ensuring free and open opinion formation by creating counterpowers in the form of empowering individuals to be more autonomous. Doing so goes beyond traditional approaches. For instance, protecting users’ intellectual privacy and data should become part of a digital media concentration law. At the institutional level, measures should address the challenges for newsrooms in the age of automation, datafication and digitalisation, as well as growing data, technological and financial dependencies on platforms. A better understanding of the power dynamics within newsrooms and the effects on normative professional values, editorial independence and agenda-setting is needed. For instance, the traditional concept of media ownership does not fully capture who is in control and exerts influence. A better understanding of that in combination with building a more resilient and independent media is crucial for a new media concentration law. Lastly, the media ecosystem level allows us to examine the broader implications of growing structural dependencies and systematic opinion power on the media ecosystem. It emphasizes that any “attempts to ‘platform-proof’ democracies must always be accompanied by other structural measures,” as none of the current regulatory attempts will reverse “the processes of media change or changes in media use behaviour” (Dreyer et al., 2022, 201). Hence, oversight, transparency and control mechanisms are just few approaches that need to be further engaged with for structural solutions.

In a nutshell, we need adequate tools to create counterpowers while relying on the normative principles to safeguard media pluralism and equality for free and open opinion formation as well as promote a dispersal of communicative power. To do so, we need to look beyond the traditional scope of media concentration law. The locus of analysis must shift, as we showed, to new tools that so far are not part of the traditional media concentration toolbox. Now is the time for broadening our perspectives.

We are in a phase of huge momentum for regulating platform power, and as Pickard underscored “now have most likely a fleeting window of opportunity for bold plans and structural reform” (Moore & Tambini 2021, 425). The present incentives to deal with platform power must be extended to capture the changes in the broader media landscape and strive for significant structural reform. We need a coherent framework that affirms the primacy of democracy and helps create countervailing powers to enable a structural distribution of opinion power.

Notes

1. In line with the definitions of “platform” (Gowa, 2019) and “platform companies” (Simon, 2022), we refer to “digital platform companies” (hereafter “platforms”) as (1) the services, platforms, and infrastructures of large platform companies, and (2) the “firm’s” or “company’s” corporate and business strategies. Henceforth, we particularly consider platforms like Alphabet’s subsidiary Google and its services (such as search), Meta, as the parent company of social media services such as Facebook and Instagram, and other social media platforms like Twitter and TikTok.
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4. BVerfGE 90, 60 (1994) 8th broadcasting decision
5. European Court of Human Rights (ECtHR), 25803/04, 25817/04, Judgement of 30 June 2009, 76
6. BVerfGE 20, 162, 176 (1966) Spiegel decision
7. (non-official translation)
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9. BVerfGE 7, 198, 31 (1958) Lueth-Urteil
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12. Quote by Nick Denton, founder Gwaker Media
13. The closest expression in Bacon’s works is, perhaps, the expression “ipsa scientia potestas est,” found in his *Meditationes Sacrae* (1597), which is translated as “knowledge itself is power.”
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