

BOOK REVIEW

Breaking Away: How to Regain Control Over Our Data, Privacy, and Autonomy

by Maurice E. Stucke, Oxford, Oxford University Press, 2022, 275 pp.

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Google, Apple, Facebook and Amazon have defied the trend that the majority of US companies disappear within 10.5 years of beginning trading. These companies, whom Stucke refers to as “data-opolies”, dominate the digital market with an ever-expanding range of services, including search engines, web browsers, web mapping, mobile operating systems, social networking, e-commerce platforms and cloud computing. However, the digital market has a unique characteristic; market power is attained through the collection and weaponisation of user data. The result is that free market forces can be manipulated and traditional regulatory strategies are rendered useless. *Breaking Away* explores three important questions: (1) How have data-opolies secured monopolies of unprecedented scale and durability? (2) Why are current regulatory approaches failing to address the problem? (3) What measures can be taken to promote a market in which healthy competition is aligned with consumer privacy interests?

Breaking Away offers a fresh perspective on the long-standing issue of regulating the digital market to protect user privacy and ensure healthy competition. Stucke contributes to the discussion about privacy in big data, approaching the analysis from the perspective of economic theory and competition law. This area of scholarship has received considerable attention in recent years, and *Breaking Away* sits alongside other titles that seek to warn policymakers and users that the problems concerning the power and practices of data-opolies are unprecedented and unlikely to be resolved through conventional regulatory strategies.¹ However, where much of the literature tends towards reiterating the gravity of privacy violations for society, including the explosion of scholarship on the impact on democracy that followed the Cambridge Analytica scandal, *Breaking Away* takes an alternative, interdisciplinary approach.² Stucke explains how the nature of digital platforms and behavioural advertising combined with profit-driven corporations and ineffective regulation have led to a toxic, anti-competitive market in which users' privacy is overlooked.

¹ See: Normann Witzleb, Moira Paterson, Janice Richardson, “Big Data, Political Campaigning and the Law” (Routledge, 2021). Carissa Veliz “Privacy is Power: Why and How You Should Take Back Control of Your Data” (Melville House Publishing, 2021).

² Jim Isaak and Mina J Hanna, “User Data Privacy: Facebook, Cambridge Analytica, and Privacy Protection” (2018) 51 Computer 56. Karl Manheim and Lyric Kaplan, “Artificial Intelligence: Risks to Privacy and Democracy” (2019) 21 Yale Journal of Law and Technology 106. Jie Lian, “Tweets Beware: The Display and Performance Rights” (2019) 21 Yale Journal of Law and Technology 227.

Stucke makes a focused argument that is presented across eleven chapters. The overall claim is that data-opolies are using data as a tool for market manipulation, and current regulatory approaches are ineffective because they view the system in a way that only benefits data-opolies: as a trade-off between competition and privacy. Chapters 1 and 2 set out the extent of data-opolies' power over the digital economy and the anti-competitive practices through which it was obtained. Stucke narrows the scope of the book by focusing on the four biggest companies. This allows for an in-depth analysis of the nature of the anti-competitive practices they used to create durable monopolies in different parts of the digital economy.

The opening chapter sets out the factors contributing to this unusual market dynamic. Data-opolies have taken advantage of the economies of scale that exist around digital services, obtaining a level of market dominance that makes it practically impossible for smaller firms to displace them. Their dominant market positions are then bolstered by network effects. Since, for users, the most attractive social media platform is the one that other people use, new platforms are unattractive almost by definition. The result is that dominant platforms have very little competition. New platforms cannot compete simply by offering superior services; instead, they require a significant social movement such as the recent exodus of Twitter users to Mastodon in response to Elon Musk's acquisition of Twitter. This problem extends to other areas of the digital market including operating systems and smart assistants, as developers are incentivised to create programs that are compatible with the dominant system or application. This winner-takes-all-or-most market dynamic is further exacerbated by the practice of acquiring smaller companies who do manage to break into the market by creating innovative services. For example, Facebook's acquisition of Instagram strengthened its monopoly by transforming a competitor into yet another tunnel through which user data are channeled into Facebook's ecosystem. Finally, and perhaps most concerning, behavioural advertising is used to monetise user data and attention. This creates a feedback loop that undermines privacy as the data gathered from user interaction with advertisements inform future advertising.

Chapters 3, 4 and 5 outline how the law has failed to address these practices and the strategies invoked by various jurisdictions, including the European Union's General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA). Stucke delves into the fiercely contested subject of data ownership and argues that assertions from digital platforms that users "own" their data are meaningless in absence of control over how such data are used. Whilst Stucke is critical of the behaviour of data-opolies, they are presented as rational actors in a market that aligns profit with anti-competitive practices and the exploitation of user data. Stucke makes a compelling argument that the problem fundamentally lies with the nature of the current digital market, in which market interests and consumer privacy are not aligned. Therefore, purely market-based solutions, such as requiring individual users' permission to use their data, are not workable in light of the complex reality of how data are collected and used in the digital economy and the fact that social media networks exploit the interdependency of people, making it impossible to retain full control of your data when others around you are sharing theirs.

Chapters 6, 7 and 8 dismantle the argument that a solution exists in measures either designed to increase competition or offering stricter legal protections for the right to privacy. To increase competition, we must make data "non-rivalrous" by compelling those who collect such data to share them with other platforms. However, doing so further damages users' control over their data. At the same time, policies that minimise the data that can be collected may also harm consumer interests by making services less accurate or useful (eg Google Maps relies on user location trackers to maintain its accuracy). Stucke aptly terms this dilemma "the competition-privacy lever". Therefore, Stucke's contribution to the literature is reframing the debate to encourage a shift away from the mindset that regulation requires trade-offs between competition and privacy. The problem is that the

current market is data-orientated, not consumer-orientated. Users are not getting the most out of online platforms and services because, rather than being consumers whose interests guide the development of the service, we are effectively the oilwell from which the real commodity – data – is extracted.

Chapters 9, 10 and 11 outline several measures for tackling data-opolies' anti-competitive behaviour and realigning competition with consumer privacy interests. The measures are presented on a spectrum, although it is highlighted that effective regulatory regimes would use them in a cumulative fashion. At the softer end of the spectrum, Stucke advocates stronger guidelines that incorporate continuous monitoring of data-opolies by anti-trust authorities to end anti-competitive practices before they wipe out competitors and reinforce existing monopolies. The next step up is strengthening disclosure requirements to make data non-rivalrous. The middle of the spectrum includes numerous variations of opt-out/opt-in policies. The final, most coercive measure is banning surveillance in order to eliminate behavioural advertising from the market.

The book deliberately leaves open two aspects of the question of how law should address the problems surrounding data-opolies: the type of law and the stringency of the measures required. Whilst Stucke makes a convincing argument as to why this problem cannot be effectively tackled by any one jurisdiction in isolation, the measures he advocates for are heavily reliant on effective legal enforcement, which international law is characteristically averse to. In addition, although the suggested policies clearly point to a tighter system of regulation, they encompass a wide range of options: from mere oversight, through clear-cut legal requirements surrounding consent to data collection, to even a prohibition on certain practices.

Overall, the arguments in the book are clear, well-evidenced and indicative of the author's distinguished career as a scholar, lawyer and legal advisor. Stucke methodically exposes the anti-competitive practices of data-opolies, the failures of current legal regimes in various jurisdictions and the fallacy of both competition-based and privacy-based solutions, which often overlook the realities of how digital platforms function, the interdependency of users' data and the extent to which these platforms are already integrated into our lives. Stucke uses concise language and useful examples to make specialised concepts (mainly from competition law and economic theory) easily comprehensible to readers who are unfamiliar with either or both fields. This makes *Breaking Away* a valuable read not only for scholars, lawyers, consumer groups and policymakers, but also anyone interested in how their data are being used and what can be done about it.