

How do you regulate the media in democracies?

*The digital transformation of the media landscape has created new challenges and raised policy questions in the complex relationship between freedom of expression, media law, and self-regulation. Online election campaigning in particular has been at the forefront of concerns about the power of new platform companies and the challenges of regulating online spaces. **Damian Tambini** identified new legal concepts for constraining the power of platform companies, helping to protect media plurality and freedom of expression.*

Impact Case -- Research Excellence Framework (REF)

What was the problem?

The power and reach of digital platform companies like Facebook (now Meta), Twitter, and Google have created new challenges in the complex relationship between freedom of expression, media law, and self-regulation.

The digital transformation of the media landscape raises policy questions in three broad areas: the regulation of online political campaigning; media plurality law and regulation; and platform governance. Online election campaigning in particular has been at the forefront of concerns about the power of new platform companies and the challenges of regulating online spaces.

What did we do?

My research concerns the governance of mixed public–private media systems as a core institution of democratic legitimacy. My 2008 book [Codifying Cyberspace](#), co-authored with Dr Danilo Leonardi (University of Oxford) and Professor Chris Marsden (University of Sussex), became an early and influential examination of self-regulation of online harms. Informed by legal scholarship and regulation of “analogue” media, it sets out a distinctive, interdisciplinary approach to understanding the political economy of digital platforms and the possibilities (and limitations) of [media governance tools](#).

In 2012 [research](#), Dr Rachael Craufurd Smith (University of Edinburgh) and I showed that the historical emergence of media plurality law since the mid-20th century established a rationale for interventions to protect media plurality that has not been erased by digital abundance. We demonstrated how indices used in competition law could be adapted to measure public exposure to news, taking into account the algorithms used by [internet intermediaries](#), and thereby establish fixed limits on media ownership.

Faced with the challenge of disinformation and online harms, many governments have struggled with how to regulate platforms effectively, while protecting freedom of expression. In my work, I have detailed how communications regulators must be able to draw on a range of fiscal, competition, and content policy tools to protect the public interest. In response to the UK government’s proposal that new legislation should place platforms under a duty of care to their users, I emphasised the need for [a differentiated duty of care](#) that creates lower compliance costs for some platforms and some categories of harm by distinguishing between legal and illegal content, since the proposed blurring of the line between these categories could have a problematic impact on freedom of expression.

I have paid particular attention to the use of internet intermediaries such as social media for [electoral campaigning](#), which has great potential to undermine democratic legitimacy. My analysis showed how the actions of companies such as Facebook depart from previous normative expectations for ethical behaviour and public accountability, and risk new forms of targeted propaganda. My research investigated the use of Facebook in campaigning during the 2016 EU referendum and the 2017 general election. Through interviewing campaigners and analysing publicly available campaign spending data, and combining this with data scraped by an innovative crowdsourcing platform, I showed how Facebook was driving a new approach to campaigning by offering a one-stop shop, filtering information and targeting it based on increasingly elaborate data profiles. This has undermined election spending laws, enabling campaigners to game campaign regulations.

What happened?

My work on how media policy can constrain media power and thus protect democratic legitimacy has impacted regulation of online political campaigning, media plurality law, and platform governance in the UK and Europe.

In 2018, The Observer published revelations about Cambridge Analytica's use of Facebook data to target political messages, which prompted growing public disquiet about the role of social media in elections. Carole Cadwalladr, the journalist who broke the story, [quoted](#) my work extensively in her articles. My research has contributed substantially to the debate, shifting its focus from individual misdemeanours to the wider question of media power, regulation of intermediaries, and options for reform. I wrote for [The Guardian](#) and the [New Statesman](#) on how the democratic process risked being undermined, illuminating some of the technical issues of media regulation. These interventions contributed to a change in direction for UK government policy on political campaigning from a laissez-faire approach to considering more regulation.

In 2015, I was appointed as an independent expert to the Council of Europe on media pluralism and transparency of media ownership and was asked to prepare a feasibility study on the internet and elections. My report, "[Internet and electoral campaigns](#)", concluded that the current regulatory framework no longer suffices for maintaining a level playing field for political contest. I argued that data protection law, campaign finance regulations, and media law interventions needed to be combined in a holistic approach to reform. In July 2020, the Council of Europe announced it would prepare a new recommendation on the internet and elections for its 47 member states to adopt.

The legal concept of media pluralism emerged to protect democracies from the propaganda effects of newspapers and broadcasters in the second half of the 20th century. My work on this subject has influenced UK and European policy. In 2014, I presented evidence to the House of Lords Communications Committee on the subject. The resulting [report](#) cites my work on the importance of a national market focus for media plurality regulation. Ofcom, the UK media regulatory authority, subsequently submitted advice to the Secretary of State for Culture, Media and Sport on a measurement framework for media plurality. Informed by my finding on platform intermediaries' impact on news flows, it advised the minister to consider the specific features of online platforms rather than treat them as news sources or wholesalers. This has been Ofcom's own approach since 2015, deterring further consolidation between new media and mainstream media companies.

My advice to the UK government and Parliament has also focused on counteracting disinformation on digital platforms. I have given evidence to several parliamentary inquiries against an ad hoc approach to regulating individual speech acts, and instead advocated for ways to combine market solutions with competition regulation and co- and self-regulation. The House of Lords Select Committee on Communications adopted this approach in its subsequent report "[Regulating in a digital world](#)", which cited my work extensively, and to which the government responded favourably.

My research on the need for a differentiated duty of care prompted the government to change its governance approach from the one outlined in its 2019 "Online Harms" consultation white paper. This had envisaged a unitary regime applying to all internet intermediaries, and to both harmful and illegal content. In response, I set out a new approach that established stronger duties of care for the larger platforms and for illegal content, and a transparency regime for others. The government's response to the consultation contains just such a proposal, [in line with my submissions](#), stepping back from a model of internet regulation that would have undermined freedom of expression.



Notes:

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