

Impact case study (REF3)

Institution: London School of Economics and Political Science (LSE)		
Unit of Assessment: 34 – Communication, Cultural and Media Studies, Library and Information Management		
Title of case study: Regulating media power in democracies		
Period when the underpinning research was undertaken: 2006–20		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Damian Tambini	Role(s) (e.g. job title): Distinguished Policy Fellow	Period(s) employed by submitting HEI: P/T September 1999–September 2006; F/T September 2006 to present
Period when the claimed impact occurred: 2014–20		
Is this case study continued from a case study submitted in 2014? No		
1. Summary of the impact (indicative maximum 100 words)		
<p>Damian Tambini's research concerns the governance of mixed public–private media systems as a core institution of democratic legitimacy. His research led to the establishment of new legal concepts and frameworks for constraining the rapidly growing power of platforms, protecting media plurality when assessing media mergers, and regulating election campaigning in the UK and Europe. Tambini's research on self-regulation restrained the UK government from pursuing an internet regulation model that blurred the boundary between illegal and harmful content, which would have undermined freedom of expression. The research informed new Council of Europe (CoE) standards that shape the regulation of platforms and inform binding legal decisions by the European Court of Human Rights on media regulation and free expression.</p>		
2. Underpinning research (indicative maximum 500 words)		
<p>Tambini's 2008 book <i>Codifying cyberspace</i> (co-authored with Danilo Leonardi and Chris Marsden) became an early and influential examination of self-regulation of online harms, and of the complex relationship between freedom of expression, media law and self-regulation [1]. By adopting an interdisciplinary approach informed by legal scholarship and regulation of 'analogue' media, it set out a distinctive, holistic approach to understanding the political economy of digital platforms and the possibilities (and limitations) of media governance tools [1] [2].</p> <p>In 2012, Tambini and Craufurd Smith 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. The research set out the limitations of the media plurality tests used in many democracies, revealed the weakness of arguments for deregulation, and showed how indices used in competition law could be adapted to measure public exposure to news and thereby establish fixed limits on media ownership [3]. The research examined why the algorithms used by new internet intermediaries complicate regulatory interventions. It then set out how public interest tests and other checks on media power could take these challenges into account [2] [3] [4]. To identify the implications of these market transformations for public media, Tambini led a 56-country study [5] that revealed an overall decline in the audiences for public service broadcasting and state-controlled media between 2005 and 2010. The study found that digitisation and increased choice did not make publicly funded media untenable, and that digitisation did not appear to have led to increased state control of public service media [5].</p> <p>By contrast with research on the value or limitations of either market or public sector approaches, Tambini examined the overall challenges faced by mixed public–private media systems in democracies. His research showed how communications regulators must be able to draw on a range of fiscal, competition and content policy tools to protect the public interest in a digital environment, innovatively combining self and co-regulation [2] [6]. In response to a government proposal that new legislation should place platforms under a duty of care to their users, Tambini emphasised the need for a <i>differentiated</i> duty of care that creates lower compliance costs for some platforms and some categories of harm by distinguishing legal and illegal content [6]. In the <i>Journal of Media Law</i> [6], Tambini pointed out that the proposed blurring of the line between legal and illegal content could have a significant and problematic impact on freedom of expression, and set out how combining clear legal standards with market incentives could reduce online harms without undermining free speech and democracy.</p>		

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Tambini has paid particular attention to the use of internet intermediaries such as social media for electoral campaigning, which have great potential to undermine democratic legitimacy. His analysis of how these intermediaries have evolved into media gatekeepers 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 [2] [4]. His research investigated Facebook campaigning during the 2016 EU referendum and the 2017 General Election [4]. Through interviewing campaigners, and reconstructing their profiling practices, analysing publicly available campaign spending data, and combining this with data scraped by an innovative crowdsourcing platform, Tambini showed how Facebook was driving a new approach to campaigning by offering a one-stop shop, selecting and filtering information and targeting it based on increasingly elaborate data profiles. He further showed how this has undermined the legal frameworks that limit the role of financial contributions in elections with the aim of maintaining a level playing field, instead enabling campaigners to game campaign regulation [4]. He has monitored how public policy responded to such changes with new approaches to mitigating the effects of platform power [2] [7].

3. References to the research (indicative maximum of six references)

[1] Tambini, D., Marsden, C. & Leonardi, D. (2008). *Codifying cyberspace*. Routledge. doi:10.4324/9780203947067.

[2] Tambini, D. (2018). Parliament, people and platforms. *Intermedia*, 46(3), 10–14. Available at: www.iicom.org/wp-content/uploads/12_IM-Oct-18-parliament-people-and-platforms-min.pdf

[3] Tambini, D. & Craufurd Smith, R. (2012). Measuring media plurality in the United Kingdom: Policy choices and regulatory challenges. *Journal of Media Law*, 4(1), 35–63. doi:10.5235/175776312802483862.

[4] Tambini, D. (2018). Social media and election legitimacy. In M. Moore and D. Tambini (eds) *Digital dominance: The power of Google, Amazon and Facebook* (pp. 265–293). Oxford University Press. ISBN-13: 978-0190845120

[5] Tambini, D. (2015). Five theses on public media and digitization: From a 56-country study. *International Journal of Communication*, 9, 1400–1424. Available at: eprints.lse.ac.uk/62187

[6] Tambini, D. (2019). The differentiated duty of care: A response to the *Online harms* White Paper. *Journal of Media Law*, 11(1), 28–40. doi:10.1080/17577632.2019.1666488.

[7] Tambini, D. & Labo, S. (2016). Digital intermediaries in the UK: Implications for news plurality. *Info: Digital Policy, Regulation and Governance*, 18(4), 33–58. doi:10.1108/info-12-2015-0056.

The research outputs listed above have all been through rigorous peer-review processes in established journals in the field, thus meeting standard quality indicators.

4. Details of the impact (indicative maximum 750 words)

Tambini's work on how media policy can constrain media power and thus protect democratic legitimacy during the current digital transformation impacted on three areas: regulation of online political campaigning; media plurality law and regulation; and platform governance. His research has directly impacted decisions by the UK government, regulations of the communications regulator Ofcom, and recommendations from numerous parliamentary committees and government policy. His research has had an impact on decisions of communications regulators and electoral commissions across Europe and, in particular, on decisions of the CoE, the body that makes Recommendations (non-legal binding acts) on how the 47 member states should protect democracy, human rights and the rule of law. Recommendations are to be implemented in the national law governing the 820 million citizens of CoE states.

Online political campaigning

In 2015, Tambini was appointed as an Independent Expert of the CoE's Committee of Experts on media pluralism and transparency of media ownership. In this capacity, he was asked to prepare the CoE's new feasibility study on the internet and elections. This study, which drew on the underpinning research on media plurality and on the limits and scope of internet self-regulation [1] [2] [7], set out a new approach based on Tambini's advice that new forms of online campaigning should engage the CoE's duties to protect democracy and human rights such as freedom of expression. The final report, *Internet and electoral campaigns* [A], directly cites [7] in identifying

weak points in electoral and media legislation. It concluded that the current regulatory framework no longer suffices for maintaining a level playing field for political contest, restraining media power, and limiting the role of money in elections. Consistent with Tambini's research recommendations, the report argued that data protection law, campaign finance regulations and media law interventions needed to be combined in a holistic approach to reform.

The report was cited by the Venice Commission, which provides legal advice to EU member states, in its 2018 report on disinformation [B]. It led to the CoE announcing in July 2020 that it would prepare a new Recommendation on the internet and elections [A].

Tambini's research on online political campaigning was described as 'timely and prophetic' [C] by Urška Umek, Secretary of the CoE's Steering Committee on Media and Information Society. Tambini has served this Steering Committee as a member of its Committee of Experts on Media Pluralism and Transparency of Media Ownership (MSI MED) from 2015–17 and its Committee of Experts on Media Environment and Reform (MSI-REF) since 2019. MSI-REF will prepare a standard-setting proposal on election communication and media coverage of electoral campaigns, and establish guiding principles for media and communication governance to address the shift from established channels to social networks and related risks (manipulation of public opinion, lack of public trust, information disorder). Describing how Tambini's research can contribute towards the fulfilment of these objectives, Umek said: '... this will provide a really good basis for any standard setting or guidelines which may be undertaken by the CoE' [C].

Tambini's research on online political campaigning has also influenced and informed public debate about the integrity of elections. *The Observer's* 2018 revelations about Cambridge Analytica's use of Facebook data to target its users with political messages in 2016 prompted growing public disquiet about the role of social media in elections, the power of digital platforms and the inadequacy of current regulation. Tambini's research contributed in the expert debate to a shift from a focus on individual misdemeanours to the wider question of the evolution of media power and regulation of intermediaries. This drove debate on the legal and policy frameworks and options for reform, and contributed to an enhanced public understanding in the UK on how the democratic process risked being undermined. It shifted the discussion from largely technical issues towards the normative and policy principles at stake [4]. Carole Cadwalladr, the journalist who broke the story, quoted Tambini extensively in her newspaper articles between 2016 and 2019 [D], and has attested to the policy relevance of his research and its role in catalysing debate on this issue: 'Damian Tambini's research is extremely useful in setting out the legal and policy frameworks and options for political advertising. He has been instrumental in pushing the debate forward on new forms of propaganda and their corrosion of trust in democracy' [E].

Tambini contributed articles to *The Guardian* (November 2016, April 2018 and June 2018) and the *New Statesman* (April 2019), and gave a public lecture at the National Theatre in February 2018 [F]. These interventions helped to illuminate previously obscure technical issues of media regulation, and enabled civil society to engage with these issues at a time when their impact on democratic legitimacy was widely seen as in crisis. The 2016 *Guardian* article was widely shared, receiving 240+ comments. Tambini's relevant policy briefs have also achieved high download figures: a policy working paper on online campaigning was downloaded 7,682 times; another on fake news, 14,839 times; and a chapter on social media and elections [4], 2,874 times [G]. These interventions contributed to a change in the direction of UK government policy on political campaigning from a laissez-faire approach to a more pro-regulation approach. Tambini (with Martin Moore) also contributed to the Electoral Reform Society's *Reining in the political 'Wild West': Campaign rules for the 21st century*, warning that digital campaigning was outpacing the slow work of European and national regulatory reform [H].

Media plurality law and regulation

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. Tambini's work on this subject has influenced UK policy debate, led regulators such as Ofcom to apply the law and concept of media plurality to internet intermediaries in new ways, and informed CoE standards on media plurality and transparency of media ownership.

In 2014, Tambini was invited to present evidence to the House of Lords Communications Committee Report on media plurality and ownership. The Committee's report [I] cites the

underpinning research findings on media plurality and the importance of a national market focus for regulation. The following year, Ofcom submitted advice to the Secretary of State for Culture, Media and Sport on a measurement framework for media plurality. Informed by Tambini's finding that intermediaries' impact on news flows must be taken into account by regulators (cited in Ofcom's November 2015 report [J]), Ofcom advised the Secretary of State to consider the specific features of online platforms rather than treat them as news sources or wholesalers. Since 2015, when Ofcom calculates the impact of a proposed media merger, the regulator has taken into account the role of online platforms in news flows. The existence of this framework has deterred further consolidation between new media and mainstream media companies, offering democratic processes some protection from new concentrations of media power.

Between 2015 and 2018, Tambini also served as a member of the CoE's Expert Group on Media Regulation and Plurality. Selected as a rapporteur for this group, Tambini has drafted a series of reports and co-drafted Recommendations. Tambini's research informed a new Recommendation on media plurality and transparency of media ownership [K], adopted by the CoE in 2018. The new standard provided for in the Recommendation recommends that the 47 national signatories to the CoE Convention legislate so that citizens know who owns news companies, including (for the first time) those that distribute on digital platforms. This will be implemented in each national signatory's domestic law.

Platform governance

Tambini's advice to the UK government and Parliament has also focused on counteracting disinformation on digital platforms. He appeared before several parliamentary inquiries charged with tackling this issue, including private briefings to the Department for Culture, Media and Sport Select Committee Inquiry on 'fake news' and the House of Lords Digital Democracy Committee. His submitted evidence on internet self-regulation (based on [1] [2] and [4]) was cited extensively in the House of Lords Select Committee on Communications' *Regulating in a digital world* report [L]. Tambini's interventions helped to shape government policy by identifying ways that market solutions can be combined with competition regulation and co- and self-regulation [2] [6]. Tambini gave evidence against an ad hoc approach that seeks to regulate individual speech acts, advocating an approach that addresses systemic and competitive problems. This was the approach adopted by the House of Lords [L] report and confirmed by the government response to that report [M], further confirmed in the 2020 appointment of Ofcom to the role of the Digital Authority, also recommended by the House of Lords report.

Tambini's research on the need for a differentiated duty of care [6] prompted the government to change its governance approach from that outlined in its 2019 *Online harms* White Paper. The original White Paper envisaged a unitary regime applying to all internet intermediaries, and both harmful and illegal content. Tambini's contribution to the subsequent consultation [6] set out a new approach that established stronger duties of care for the larger platforms and illegal content, and a transparency regime for others. The government's response to consultation [N] contains a proposal for such a differentiated duty of care. This change was described by Graham Smith on the media blog Inforum [O] as 'perhaps the most significant policy development compared with the White Paper', while Smith also attributes this change to Tambini's submissions to the consultation. A 2019 House of Commons Library briefing paper on social media regulation [P] set out Tambini's critique of a uniform duty of care in detail. According to Nicola Aitken, head of Online Counter-Disinformation for the UK government, his research had 'been really valuable in helping us shape our thinking and policy proposals on disinformation' [Q].

In December 2020 Tambini accepted an invitation to be a member of the UK government's Counter-Disinformation Policy Forum. This group of 20 external experts includes all major social media platforms and eight academics working directly with the Minister of State to design co-regulatory solutions for COVID-19 disinformation. Tambini was repeatedly invited to present his research to the international body representing European Communications Regulators.

Tambini's work on platform governance impacted European regulators. In 2019 Tambini was invited by the CoE to submit a report on policy approaches to information disorder. The report [R] provides a template for CoE policy in this area.

5. Sources to corroborate the impact (indicative maximum of 10 references)

[A] CoE (Council of Europe) (2018) *Internet and electoral campaigns*. DGI(2017)11, April. See also: CoE announcement of its intention to prepare a new Recommendation on the internet and elections.

[B] Rozgonyi, K. (2018) *The impact of the information disorder (disinformation) on elections*. European Commission for Democracy Through Law (Venice Commission), 26 November. [Tambini's work is cited in para. 23.]

[C] Emails from the Secretary of the Council of Europe Steering Committee on Media and Information Society, 7 December 2018 and 1 March 2017.

[D] Carole Cadwalladr articles in *The Guardian* that quote Tambini: 'Google, democracy and the truth about internet search', 4/12/2016; "'Dark money' is threat to integrity of UK elections, say leading academics', 1/4/2017; 'Arron Banks: "Brexit was a war. We won. There's no turning back now', 2/4/2017; 'Who's supposed to regulate elections in the 21st century? Apparently no one', 11/6/2017; "'We're waiting for answers": Facebook, Brexit and 40 questions', 12/5/2018; 'Brexit party's funding must be investigated, says Gordon Brown', 20/5/2019.

[E] Statement provided by Carole Cadwalladr, 3 September 2019.

[F] Tambini's articles in *The Guardian*, 'In the new robopolitics, social media has left newspapers for dead', 18/11/2016; 'What should be done with Facebook – break it up, or regulate it?', 27/4/2018; 'The UK needs tougher powers to stop foreign interference in our elections', 27/6/2018; and in the *New Statesman*, 'To beat populists in the EU elections, progressives must learn from their tactics', 23/4/2019.

[G] Data taken from LSE Research Online, <https://eprints.lse.ac.uk/>

[H] Electoral Reform Society (2019) *Reining in the political 'Wild West': Campaign rules for the 21st century*, 4 February.

[I] House of Lords (2014). Media plurality. Select Committee on Communications, 1st Report of Session 2013–14, 4 February. Cites Tambini's work on pp. 15, 24, 51 and 62 on the importance of a national market regulatory focus and the retention of the 20/20 media cross-ownership rule; led to government rejecting calls to remove that rule, and, in part, to new Ofcom guidance **[J]**.

[J] Ofcom (2015). Measurement framework for media plurality: Ofcom's advice to the Secretary of State for Culture, Media and Sport, 5 November. Ofcom advises the Secretary of State on whether to permit media mergers. This guidance sets out how Ofcom must conduct a regulatory review in cases of mergers that raise media plurality concerns. It refers to Tambini's work at para. 2.27/3.35 and, in line with his advice, includes new measures for internet intermediaries.

[K] CoE (Council of Europe) (2018). Recommendation CM/Rec(2018)1[1] on media pluralism and transparency of media ownership. Adopted by the Committee of Ministers on 7 March 2018.

[L] House of Lords (2019). Regulating in a digital world. Select Committee on Communications, 2nd Report of Session 2017–19, 9 March. Quotes Tambini several times (notably paras. 123, 152, 175 and 233), and provided parliamentary support for the subsequent *Online Harms White Paper* that combines co- and self-regulation in ways supported by Tambini's evidence.

[M] Department for Digital, Culture, Media and Sport (DCMS) (2020) *Government response to the House of Lords Select Committee on Communications Report into Digital Switchover of Television and Radio in the United Kingdom Session 2009–10*, 15 April (see p. 16).

[N] DCMS (2019). *Online Harms White Paper: Full government response to the consultation*. Tambini's research **[6]** influenced reference to a 'differentiated' approach distinguishing illegal and harmful content to preserve free expression (Chapter 2, para. 4).

[O] Inform (2020) '*Online harms deconstructed: The initial consultation response – Graham Smith*', 20 February. Media law expert Graham Smith explains the impact of Tambini's article on a 'differentiated duty of care'.

[P] Woodhouse, J. (2019) 'Social media: How much regulation is needed?' House of Commons Briefing Paper Number 8743, 19 December. Tambini's work is discussed in detail on pp. 20–1.

[Q] Statement by the Head of Counter Online Manipulation, DCMS.

[R] Tambini, D. (2020) *Media freedom, regulation and trust: A systemic approach to information disorder*. Council of Europe, February.