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**Analysing the Effectiveness of Electoral Legislation and
Regulation in the United Kingdom at Addressing the
Challenge of Computational Political Communication**

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Acronyms

ICO – Information Commissioner’s Office

EC – Electoral Commission

GDPR – General Data Protection Act

PPRE - Political Parties, Elections and Referendums Act 2000

APPG – All Party Parliamentary Group on Electoral Campaigning Transparency

UK – The United Kingdom

US – The United States of America

Chapter 1

Introduction

The publication of a series of investigations by international media sources into the role social media platforms may have played in recent high-profile elections has sparked a wider debate into the current state of democracy and how the confluence of technology, rapid cultural and social change, corruption, power and wealth may be shifting the foundations on which democratic elections take place. Decades of technological development from the internet-age to the present has resulted in technology becoming intertwined in practically every strand of society. From software programs to smartphones, greater efficiency and interconnectivity has presaged a gradual creep into the private lives and minds of every user. Social media, having been supercharged by the growth of the smartphone, now appears to pervade ever greater swathes of personal life. To put this into perspective, one could argue that the means by which the public interacts with the world changed as much in two decades in the entire period between the creation of the printing press and the development of television. The confluence of these technologies has given rise to 'big data', the ability to record, catalogue, interpret and predict human action and thought. This, in turn, has allowed Alphabet, Facebook, Twitter and other related companies the opportunity to perfect strategies for consuming significant amounts of their user's attention, granting them immense influence and power in the process. As a result of these events, discussions are taking place concerning these new realities and the impact this is having in the way we conduct elections, referendums and wider political discourse within stable democracies.

Whilst these interrelated forces must be acknowledged, one specific strand of research concerns electoral process itself encompassing campaigns, voting and the public debate that accompanies these events. Having reacted relatively slowly to the development of digital communication the bodies that create and enforce the rules and regulations of elections have been undermined by these outside forces, specifically new forms of political communication. Specific attention has fallen on the difficulties legislators and regulators face in providing the conditions in which transparent, legitimate and democratic elections can take place. Addressing the contravention of legislation and regulation devised to ensure elections take place according to a set of rules, the debate concerns the impact of new forms of political communication on both elections and the wider public discussion.

Research findings and electoral results indicate that existing safeguards to the application of the techniques are perhaps insufficient, and that electoral laws and safeguards have not moved with the times and provide insufficient protection. The challenge presented by modern political communication is how can electoral legislation and regulation remain relevant and what changes need to be made to ensure this remains the case? This will involve a discussion around the modern forms of automated political communication at work and how these take effect. A discussion around the legal and regulatory situation in the UK will follow with questions and potential problems identified in existing framework. The paper will conclude with an analysis of the proposed amendments leading to a set of recommendations concerning new and amended laws. An addendum to the conclusion will contain a discussion about the wider implications of this issue from social, political and economic perspectives.

Research Question:

Analysing the Effectiveness of Electoral Legislation and Regulation in the United Kingdom at Addressing the Challenge of Computational Political Communication

Outlining Scope of Topic; Political, Social and Cultural Relevance

As is often the case with complex and obscure socio-economic matters that are the preserve of experts, attracting public attention to the issue only gains traction following a high-profile event such as a disaster or scandal. Attention to the pressing need for modernisation of the UK's election laws and rules was limited to discussions amongst academics, politicians and public bodies prior to the 2016 Brexit referendum. Organisations such as the UK's collective Law Commissions had published consultation documents as early as 2012, summarising previous work that outlined the scope of the complex, arcane and outdated electoral laws, alongside academic studies urging review of statutes ill-equipped to deal with a rapidly changing political landscape (Law Commission, 2012). The primary focus of this report addressed procedural matters related to UK elections such as vote counting and registering parties, rather than a fundamental analysis of the conditions in which elections/referenda were taking place, such as the changing nature of political debate and modalities of public engagement in that debate. What reports there were on the changing nature of political debate did not address electoral legislation specifically, possibly because the changes underway were rapid and the direction of travel was not apparent, alongside a failure to envisage the potential outcomes.

The nature of political engagement and debate has changed fundamentally in a short space of time. With advent of the internet much of life rapidly shifted into the digital realm. As the media moved to the digital domain so did political debate. With the growth of blogging, vlogging and social media the traditional barriers to participation were removed. More of the public gained a voice and an audience, increasing exponentially the quantity of different views being expressed (whether this resulted in a greater *diversity* of views is debatable however). Simultaneously, this preceded the breakdown of the traditional hold on the means of mass communication by the media and with it the old paradigms no longer applied. Individuals had a greater variety of information sources, and with it the relationship between the media and politics changed; the media were no longer the gatekeepers and the public started to select, access and consume in their own way. Gone are the traditional 'hustings' where a politician would engage with voters in person and control the debate. In its place is a far less regulated environment with few rules. This also intersects with the proximal issues of disinformation e.g. 'fake news' and the erosion of public trust in information found on the internet. Inevitably, political communication and participation started to mutate which impacted on the parties and the approach they took to campaigning.

Indications of how political communication and campaigning had changed was identifiable in the 2008 US presidential campaign where Barack Obama's team successfully mobilised grassroots support, greatly dependent on digital campaigning (Howard et al., 2018). Indeed, his campaign team was staffed with tech company experts that utilised Big Data and social media optimisation to communicate more effectively to the electorate (Naughton, 2012). The UK appeared to be some years behind the US in terms of utilising digital campaigning, but this changed with the 2016 Brexit referendum. Arguably, the Brexit referendum marks the point at which the next phase in the change in political communication took place, and to return to the research question, made it apparent that electoral legislation would need to be revised.

Cambridge Analytica and the Background to Topic

One of the events that triggered media, and later public, interest in the topic was the widely reported involvement of Cambridge Analytica in the Brexit referendum. Following the initial findings, it became apparent Cambridge Analytica had been far more heavily involved in the referendum than was previously thought. Aside from consulting Vote Leave, one of the parties that participated in the referendum, on devising a strategy to win the vote, the findings of an investigation involving numerous news organisations revealed the extent to which it was using micro-targeting to identify and target

voters via social media. The extent to which Cambridge Analytica was using data to target voters was taking place on a much greater scale than previously thought however, which was confirmed after a whistle-blower from inside Cambridge Analytica outlined how it engaged in the illegal harvesting of personal data for millions of Facebook users, utilising highly personalised information to further refine the capacity to 'micro-target' voters (Merrick, 2018). Not only were Cambridge Analytica's actions illegal, based on GDPR regulations in the first instance, but also concerning due to 'Leave' subsequently winning the referendum by the narrowest of margins (BBC, n.d.). There were claims that the techniques used to promulgate campaign messages via social media, targeted at individuals, could have swung a close contest in favour of the Leave vote (Maugham, 2018a).

Whilst the Cambridge Analytica expose triggered public and political outrage, there was a growing uneasiness around the content of political messaging witnessed during the Brexit referendum, underpinned by the dubious facts and claims made by politicians on both sides but most noticeably by the Leave campaign (Keller & Klinger, 2019). Coverage in parts of the media focused on the various Leave campaign groups use of misleading and factually incorrect digital advertising; common themes were claims that migration to the UK from the EU would be accelerated in future and that Turkey was to be admitted to the EU in the near future as a matter of course (Griffin, 2018).

Research and reporting identified two fundamental areas of concern regarding this political campaign advertising: the content of itself and the means by which it was funded. These are themes that will be returned to further in the paper, in the form of transparency within electoral campaigns. When discussing 'content' of political advertising this refers to the themes, tropes, claims and facts employed when attempting to convey the message. One prominent example was the claim by the official Leave campaign that the UK would save 350 million pounds per week by leaving the EU that would be spent on the UK's National Health Service, a message painted on the side of a large bus (Adam Payne, 2018). Following the release of this advert several organisations pointed out that the statement was not in fact accurate and was misleading, with several other examples of exaggerated, misrepresented and fabricated political messaging during the campaign (Cadwalladr, 2020).

In terms of campaign funding, the areas of concern relate to the source of funding and how the funds were used. Evidence of overspending by various Leave organisations was apparent during the referendum, following anecdotal reports of large-scale digital advertising undertaken by the Leave movement (Peter Geoghegan & Jenna Corderoy, 2019). Once again, this was picked-up by the media following the publication of studies outlining that overspending may have taken place based on existing rules (Wright, 2018). Furthermore, legal action led by the Electoral Commission on the basis that Leave groups did overspend confirmed there was a case to answer (Maugham, 2018b). Connected to this are issues on the sources of funding and how these can circumnavigate the existing laws. Where the sources of funding are not traceable and transparency isn't applied to campaign financing, questions are raised concerning trust and accountability during and after the election.

Can the election result be fair when one participant has spent far more on advertising than the other(s)? There is evidence of correlation between campaign funding and performance in elections, meaning this poses further questions around equality between participants the relationship between politics and large donors/wealth/power (Moore, 2016). What of the electorate's access to an equality of views and opinions? Does the result of an election truly reflect the underlying opinion of the public when one side has the means to saturate coverage with their messages and communication? Democracies are varied and adaptable to different cultures and local customs/values, but a central tenet of any democracy is that it must reflect the collective will of the people in order to have legitimacy. At a more specific level, to what extent can politicians and a government be trusted where financial backers are not declared? To what extent is the government then indebted to other parties?

Whilst the specific research question under discussion concerns existing electoral legislation in the UK and how these might need to be updated, the topic from a macro perspective addresses fundamental enquiry into the nature of politics, democracy, the values that underpin them, the relationship between the populace and the government, the nature of power in society and democracy and how this manifests; finally it addresses what democracy should look like in future. The law underpins democracy and society, making this is timely discussion.

Definition of Computational Political Communication and What Forms Does it Take

This refers to the varied means by which political communication takes place in the digital realm. Political communication includes official party messaging such as campaign advertising and messaging, but also the surrounding discussion and debate in which the public engage. Third party participants are a factor here, involving unofficial campaign groups and movements. However, there are related methods by which computational political communication takes place:

‘Micro-targeting’ in the political context refers to a practice of using numerous personal data points to categorise the public into groups or subset, then tailoring communication to appeal to them individually (Keller & Klinger, 2019). The communication will be designed in order to appeal to certain values held by the group, with the objective or ensuring their support. This technique requires the gathering of huge amounts of data on many individuals across a wide spectrum of indicators. Social media organisations such as Facebook and Twitter have been highly successful in leveraging this data due to the efficient systems they’ve designed to track, record and categorise the raw data (Bastos Marco & Mercea Dan, 2018)

Another relevant feature of computation political communication concerns the means through which political communication is transmitted, or a carrier through which the political message is conveyed to the public. Much of the political communication one encounters online comes in the form of direct or indirect advertising; videos, images etc. These will tend to be designed specifically for that purpose. Other forms of political communication do occur indirectly however, in a far more subtle way. It is well established that political actors engage in shaping public discourse within the digital realm, swaying public opinion by elevating certain tropes or narratives to their advantage (Howard et al., 2018). Shaping opinion within public discourse requires reach and scale to be convincing, and automated scripts offer such outcomes. ‘Bots’ are one modality of automated scripts, a piece of software that can be programmed to execute certain actions through interfacing with other programs. Bots provide a cheap and efficient means to anonymously communicate with the public. Howard, Woolley and Calo describe bots as *“spam accounts that post autonomously using preprogrammed scripts”* and are designed to parse data more efficiently than a person (Howard et al., 2018).

Chapter 2

Current UK Electoral Legislation

Electoral legislation in the UK covers a broad range of activities associated with all facets of elections, campaigns and referendums, from the technicalities of registering voters to the rules governing how digital voter registration can be accomplished. For the purposes of this paper the analysis of existing UK electoral law will be limited in scope to a summary of the broader legislative picture to provide an overview, followed by a more detailed discussion and analysis of the specific legislation relevant to the research question and problem statement. Undertaking an in-depth analysis of the entirety of UK electoral law would be unnecessary to formulate an answer to the research question. Consequently,

the central legislative topics that shall cover the fundamental UK legislative statutes and texts followed by closer analysis of campaign regulation, political parties and communication and financing.

Electoral legislation in the United Kingdom is constituted of a '*complex, voluminous and fragmented in nature*' framework in urgent need of revision (Law Commission et al., 2014). The complexity of the UK's electoral laws is evidenced in the more than 50 acts and in excess of 150 statutory instruments regulating the process of an election, both of primary and secondary legislative force (Law Commission et al., 2014). A discussion has arisen concerning the necessity of revising, updating and simplifying the complete legislative framework in recent years in view of the perceived unsuitability of the existing framework to meet the challenges outlined in the paper. Given the most recent attempt to review and update the UK's electoral legislation took place in 1983, there is a general acceptance for the need to once again renew and repurpose the legislation to meet the demands of a changed world. Indeed, as the Law Commission reports outline, there is near-unanimous appetite to undertake this process within the UK's political and academic communities (Public Administration and Constitutional Affairs Committee (PACAC), 2019).

Whilst cataloguing the entirety of the UK's electoral law is beyond the scope of this paper the following are primary statutes with relevance to the research question. The *Representation of the People Act 1983 (the 1983 Act)* is the primary statute which contains the core provisions setting out the following:

1. the franchise for UK Parliamentary and local government elections,
2. the infrastructure for registering voters and running elections,
3. the regulation of electoral campaigns, and
4. the mechanism for challenging elections.

As noted by the Law Commission, Schedule 1 of the 1983 Act '*contains the detailed 'election rules' governing the conduct of UK Parliamentary polls and counts. Every other set of election rules, for each particular species of election in the UK, is in secondary legislation*' (Law Commission et al., 2014). The key point is that the key provisions from the 1983 Act have been replicated, sometimes word for word in other supplementary legislation meaning a confusing, repetitive and inelegant set of legislative texts have started to take shape. Further amendments to the 1983 Act took place in 1985 and 2000 with both these amendments leaving the fundamental provisions unaltered but with the addition of provisions relating to specific matters (absent voting for example). What followed has been a piecemeal and ad hoc approach to updating the key legislation, somewhat disparagingly described as 'bolt on', whereby existing provisions are merely updated rather than completely redrafted for new usage. Relevant supplementary legislation includes *The Electoral Administration Act of 2000*, *Representation of the People Act 2000*.

Amongst the other statutes and measures tangentially addressing this branch of law is the *Political Parties, Elections and Referendums Act 2000 (PPERA)* which sets out the law concerning political parties with specific application to finances (donations and fundraising), expenditure, campaign rules and conduct and other related matters of both elections and referendums. The Act also gives force to the Electoral Commission as a regulatory body granting it powers to create regulation, enforces regulation, advise and consult with government and so forth (Participation, n.d.):

The Law Commission undertook a wide-ranging review of the electoral legislation in its entirety over a period from 2012 to 2017 with further reports still ongoing as a result of that analysis. Nonetheless, the findings of that report are suitable starting point for analysis. One relevant point of discussion concerns the balance between primary and secondary legislation, which describes the placement of a legislative vehicle in the hierarchy of laws. Primary legislation normally comes in the form of an Act

which is passed by Parliament and can only be amended by another Act of Parliament, a chain of events that requires significant political consensus and effort. Secondary legislation on the other hand mainly concerns regulations, which are created by either the regulatory body and/or a minister and which do not require parliamentary agreement. As outlined by the Law Commission, within electoral law it is primary legislation which underpins the fundamental principles essential to legitimate elections, transparency, decoupling from state apparatus, independent oversight etc. Regulation, whilst important, carries secondary legislative power and pertains to the function and detail of the elections; how much may be spent and by whom, the requirements to register a voter etc. The separation of primary and secondary legislation alongside different constitutional processes needed to amend them mean that any government can only, theoretically, interfere with the conduct of elections to a limited degree, rather than undermining completely the democratic election process itself – without first obtaining a parliamentary majority for such a change (Law Commission et al., 2014). One can state that for UK electoral law the balance between primary and secondary law is heavily weighted, where primary legislation contains fundamental legislative principle, guiding and governing the process, and ergo is subjected to the greatest parliamentary scrutiny.

Electoral Commission

The legislative base from which the Electoral Commission draws its competencies begins with the *Parties, Elections and Referendums Act 2000 (PPERA)*, setting-out the creation of the commission as an independent body, together with the structure of the Electoral Commissioners with one serving as chairman. Further provisions to enable the Electoral Commission to operate appear in Section 67 of the Electoral Administration Act 2006 which grants the commission power to establish and publish performance standards for electoral and referenda counting officers, which extends to the officers themselves publishing their performance including those related to electoral services (Electoral Administration Act 2006, n.d.)

The introductory text to the Act sets out its broad scope: *'An Act to establish an Electoral Commission; to make provision about the registration and finances of political parties; to make provision about donations and expenditure for political purposes; to make provision about election and referendum campaigns and the conduct of referendums; to make provision about election petitions and other legal proceedings in connection with elections; to reduce the qualifying periods set out in sections 1 and 3 of the Representation of the People Act 1985; to make pre-consolidation amendments relating to European Parliamentary Elections; and for connected purposes.'*

The Electoral Commission's role in UK elections and referenda has grown substantially over time with a high degree of responsibility now placed on the organisation. Whilst commonly referenced as the UK election and referendum 'watchdog' the commissions' responsibilities range from interpreting to suggesting changes to legislation. The Law Commission states that the Electoral Commission has two core functions: the first concerns political parties and includes assisting the parties to comply with the law concerning finances in the forms of expenditures and donations. The second core function concerns the specifics of electoral administration, ranging from the assessment of administrators such as counting officers, monitoring the election to ensure compliance with the law and reporting back to government on problems. Part of this function also concerns a public information role whereby it is expected to provide guidance on elections for public consumption. Another aspect of its role concerns consulting both public and governmental bodies on the current state of electoral legislation and suggesting changes to the legislation as and when necessary.

Any discussion about the role and powers granted to the Electoral Commission should also include the circumstances how it came into being. The commission was created following a number of scandals during the mid-1990's under John Major's Conservative government. The first of these scandals, named 'cash for questions' by the media, concerned sitting MP's taking payment from third parties in order to table favourable questions in Parliament, such as questioning changes to law or policy, or influence legal actions etc. The scandal and accompanying fallout ignited a wider debate on the independence of Parliament and the access being granted to politicians in exchange for rewards (Rebecca Dobson Phillips, 2019). An enquiry followed where the *Committee on Standards in Public Life* recommended the creation of an independent body to regulate political parties, financing, communication and suchlike (Ministry of Justice, 2008). Following an election victory which promised the 'clean-up' of British politics, Tony Blair's Labour government implemented the set of recommendations in the form of the PPERA (Ministry of Justice, 2008). Ironically however, not long after implementing the Act the government was itself embroiled in a similar political scandal where questions were asked about political access for bribery. One conclusion could be that the Electoral Commission remains underequipped in both resources and legislative reach to perform the part of its function outlined in the *Committee on Standards in Public Life* and made law under the PPERA.

Information Commissioner's Office

There are numerous statutes covering the functions and responsibilities of the Information Commissioner's Office, the government regulatory body responsible for protecting information rights for individuals and organisations in the public interest and ensuring enforcement of regulations included in the relevant legislation. Given the broad range of activities falling under its purview there are numerous legal instruments granting it competencies. This somewhat complicated framework has been simplified following the recent introduction of new legislation to rationalise the UK's data framework laws with two primary instruments alongside a third ancillary instrument underpinning the ICO's functions: the General Data Protection Regulation (GDPR) and Data Protection Act 2018, alongside the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR). The GDPR is a wide-reaching European Union regulation covering the use of data within the Union and its member states applying to both organisations and individuals. The Data Protection Act 2018 is the UK's adoption of those laws into national legislation as an Act of Parliament. One important note concerns Brexit, with the Data Protection Act 2018 being drafted to ensure a duplication of the GDPR principles into UK legislation following the UK's withdrawal from the EU, a topic that will be expanded on later. Lastly, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR) and subsequent amendments (the 2018 amendment being the most recent) covers personal rights in relation to electronic communication such as marketing emails and calls, data security protocols, customer privacy etc (Information Commissioner's Office, 2020).

Of the other statutes conveying powers to the ICO, the Freedom of Information Act (2000) concerns public access to information held by public authorities, specifying the extent to which the public can access certain information and in what circumstances alongside outlining the obligations public authorities have to publicise their information. The Environmental Information Regulations (2004) govern the right of the public to access, and the responsibility of public bodies to make accessible, information relating environmental information (Information Commissioner's Office, 2019). The Investigatory Powers Act (2016) governs the use of investigatory powers used by the law enforcement and security and intelligence agencies. The NIS Regulations (2018), eIDAS Regulation, INSPIRE Regulations and Re-use of Public Sector Information Regulations cover the more obscure competencies invested in the ICO are will not be analysed in depth any further (Information Commissioner's Office, 2018).

For the purposes of this paper only a small part of the ICO's work shall be of interest, which concerns the overlap between the ICO and its competencies relative to elections and referendums, given the ICO has a broad mandate concerning data protection and access. This contrasts with the Electoral Commission that has a more specific responsibility of regulating elections and referendums in general and consequently, its activities are of greater relevance to the research topic. However, central to the research question is the rapidly developing field of data science within politics and elections, first pioneered in the United States and used notably during the Presidential Campaign of then Senator Barack Obama (cite) and more recently during the Brexit campaign and the subsequent investigations into Cambridge Analytica and related organisations (cite). The ICO has a responsibility to intervene in these events as a result of political campaigning being classified as a form of direct marketing under law, whereby an individual is contacted by a political party/organisation of someone on behalf of one to promote a political view in order to gain support at the ballot box. The specific legislation that covers these powers are the Data Protection Act and the Privacy and Electronic Communication (EC Directive) Regulations 2003 (PECR) (Information Commissioner's Office, n.d.)

Chapter 3

Case Studies

Concerns about the extent of the UK's electoral laws being outdated and unfit for purpose have been the topic of analysis and debate for some time, primarily within specialised academic and political communities. As evidenced by the Law Commission analyses on the deficiencies within the existing legislative framework, progress has been made on addressing the shortcomings in UK electoral law. For the wider public however there is little awareness about these matters and understandably so, given the media's disinclination to report on proposed amendments to complex and arcane constitutional law. Public engagement and interest increased exponentially however following events related to the 2016 Brexit Referendum and the 2017 and 2019 General Elections, driven by investigative journalism into the new forms of political communication being used during both campaigns.

2016 Brexit Referendum

Summary of Brexit

The 2016 United Kingdom European Union membership referendum (Brexit referendum) took place on the 23rd June 2016 to decide whether the UK should remain, or leave, the European Union. Prior to the referendum itself were decades of debate and dispute as to whether the UK should remain in the EU which both fed and derived from internecine fighting amongst political parties, particularly factions within the Conservative Party, as to how this 'question' should be resolved. Ultimately, Britain's Prime Minister at the time David Cameron, under pressure from within by his party's 'Eurosceptic' faction and externally from the single-policy UK Independence Party, led by the colourful and charismatic Nigel Farage, elected to offer a referendum to the public in a bid to "...settle this European question" (Waterfield, 2013). In what became a passionate and fiercely contested campaign opinion cleaved into two ideologically opposed camps; 'Remain' and 'Leave' with the common ground seeming to diminish the longer the campaign wore on. From the start the UK government and state adopted a pro-Remain stance, mobilising its resources in a bid to convince the public that the country would be best served by remaining as part of the EU. Ranged against the pro-EU bloc was an alliance of populist, right-wing politicians, and parties alongside more established anti-EU personalities, reinforced by numerous left-wing movements that objected to the supranational nature of the EU.

The feverish campaign resulted in a closely fought election with 'Leave' carrying an unlikely victory by a winning margin of 3.8% - 17,410,742 for leave to 16,141,241 for remain (BBC, n.d.).

Analysis of Events Relative to Research Question

Despite the result providing a clear mandate for the UK to exit the EU, the result appeared to have insufficient legitimacy amongst 'Remain' supporters from the moment it was announced. This was largely attributed to frustration with the outcome of the referendum by the pro-Brexit movement and media. But it was also clearly driven by the dawning realisation that the campaign, and many of the groups participating in and around it, were deeply flawed. Evidence had started to emerge during the campaign of dishonest and falsified communications by the Leave movement, but these were often lost in the shrill that surrounded public debate during the campaign. Within more niche academic journals and blogs there was discussion concerning the evidence of dubious messaging being propagated through social media platforms but also through fringe news sites and blogs (Moore, 2016).

2017 and 2019 United Kingdom General Election

Both the 2017 and 2019 General Elections took place against a social and political background that was fundamentally altered by the Brexit referendum. The divisions that had arisen and progressively hardened during the bitter referendum campaign only reinforced in the months and years that followed. Evidently, there were unsettled questions and grievances that had not been addressed by the confirmatory vote for Brexit which manifested in blockages to the process; on one side the Remain supporting members of the electorate were unwilling to accept what they saw as a deeply flawed campaign and tainted vote, meaning the result lacked legitimacy. In addition, partly fuelled by this anti-Brexit swell, politicians opposed to Brexit as both a concept and the procedure used to vote on it insisted on adhering to the correct parliamentary procedures rather than finding shortcuts to enacting Article 50 to enable expediency and a satiation of the Brexit-supporting public's desire to 'settle the issue'. A perception arose within the broadly pro-Brexit faction that politicians were deliberately frustrating efforts to advance the progress of legislation through Parliament required to invoke Article 50 of the Treaty on European Union (TEU), necessary to formalise the Brexit process beyond a confirmatory (and non-binding) vote.

Whilst there were very likely ideological motivations behind the parliamentary blockages to enacting Article 50 and ergo Brexit, these were founded upon legitimate uncertainties and unanswered questions regarding the technicalities of post-Article 50 preparations and the evidently insufficient planning as to what would follow. The failure of pro-Brexit political parties, bodies and MP's to resolve these doubts only created further entrenchment against the pushing through of an inchoate Brexit. Further fuel to this combustible situation was provided by judicial involvement in triggering Article 50, with legal challenges mounted against parties and bodies connected to Brexit, culminating in a Supreme Court ruling concerning the illegality of proroguing Parliament. In the eyes of much of the public however, the combination of establishment (parliamentary and media predominantly) obfuscation together with public marches and campaigns to challenge elements of the Brexit campaign and referendum hinted at a concerted and conspiratorial movement to frustrate and prevent Brexit from occurring. On the other hand, much of the British public appeared to support a thorough examination of the governments Brexit planning prior to triggering Article 50 whilst on the other hand any delay signified sabotage.

Analysis of Events Relative to Research Question

The tactics and methods refined and exploited during the 2016 Brexit Referendum were successfully reemployed during both the 2017 and 2019 United Kingdom General Elections and campaigns. One

intervening factor would be the unresolved nature of Brexit at the time of both elections; the underlying resentment harboured by many in the Brexit grouping had hardened at the perceived failure of Parliament to deliver a concrete outcome, nor a clear roadmap or timeframe for achieving one. This was evident during the 2017 election where the energy created by the Brexit referendum had manifested in ardently opposed camps, emotionally invested in the outcome of the vote. That momentum carried into the 2017 General Election which played-out as a Brexit confirmation vote enabling the participants to identify and target those voters likely to be influenced by an appeal to those sentiments.

Chapter 4

Discussion

Summary of Computation Political Communication and Existing Electoral Legislation

The preceding chapters discussed the intersecting factors related to the research topic and question; how the internet-age created the conditions for dramatic social and cultural upheaval, leading to fundamental shifts in how society shares information, consumes information and relates to information. Consequently, these exogenous forces have reshaped the dynamics of political communication and interaction, both within the political community itself and in how the public engages with political groups and bodies. In response, political bodies have adapted and devised new methods to interpret and communicate with society, with these developments subsequently asking new questions of electoral legislation and regulatory bodies.

There was a failure to recognise the emergent challenges posed by new forms of political communication, leading to an absence of urgency at updating legislation, an undertaking that required broad political consensus and leadership. Partly, this inertia can be attributed to the absence of demonstrable outcomes; at the time of the Brexit referendum and subsequent general elections the causal relationship between new forms of political communication and inadequate legislation remained inconclusive. One could also argue that indifference to these problems arose out of misguided self-interest on the part of the political community.

And yet, the preceding investigation into both the Brexit referendum and the 2017 and 2019 General Elections outlined the many instances where the above intervening factors manifested in demonstrable problems, leading to divisive campaigns that may have delivered winners, but with a high cost of legitimacy for many voters. The ongoing disputes and legal proceedings related to these campaigns, years after the events, indicate that the underlining tensions remain unresolved. Furthermore, the necessary public scrutinisation of the campaigns, participants and activities have not taken place.

In view of this situation, the following chapter will discuss the outlines of a framework for legislation and regulation. This will not be an exhaustive set of recommendations and nor will the legislative text be proposed in detail. Instead, the relationship between new forms of political communication, examples where these have occurred, and legislation/regulation will be expounded upon. The analysis is sub-divided across the following three categories:

- Transparency
- Monitoring
- Deterrence

Transparency

There are grounds to suggest that currently, electoral legislation contains insufficient protection to ensure transparency in elections and referenda. Transparency in the context of this paper is a broad concept; it refers to the extent that the whole, and constituent parts of, the election/referendum campaign is visible and open to scrutiny. Transparency can be a derivative of and causal factor within every facet of the campaign; actors in the campaign such as official parties and third-party groups, media organisations and reporters, social media organisations, data brokers etc. But it should also apply to the activities those actors participate in, such as campaign communication and advertising, campaign expenditure, reporting, and so forth. Transparency in this context can be conceived of as a set of guidelines with quantifiable outcomes that are imbued in the entire electoral system, including legislation. On the second point; transparency can also be framed in terms of a shared set of values that all participants understand and adhere to, with the implicit commitment that the spirit of the law will be followed even when the fact of the law may be ambiguous. Transparency as outlined by the Electoral Reform Society report on the UK's electoral laws means *“voters should be able to find out what claims campaigners are making and who is making them. They should also be able to see if campaigners are putting out contradictory messages to different groups of voters or seeking to portray different images of themselves to different voters”* (Michela Palese & Josiah Mortimer, 2019).

Numerous organisations have published reports in the last year that analyse the changing nature of political communication, campaigns and funding and how these issues might be addressed in legislation. Whilst broad in scope, collectively these studies identify several overlapping areas of concern in which a measure of transparency can impact, and these can be grouped under the following categories:

- Marketing/Advertising Transparency
- Financing/Funding Transparency

Marketing/Advertising Transparency

Several organisations have expounded on the overlap between transparency and political campaign communication, primarily advertising. One area concerns transparency around the organisation(s) or individual behind a digital political advertisement; who financed it, published it, disseminated it etc. Digital political advertising has grown exponentially in the last decade, especially given the growth of social media platform engagement. The Electoral Commission estimates that 42 percent of campaign spending reported during the 2017 general election was on digital advertising, an increase from 23 percent in 2015 (Michela Palese & Josiah Mortimer, 2019). Likewise, political parties spent 1.3 million GBP on Facebook adverts during the 2015 general election, a figure which doubled to 3.2 million GBP during the 2017 election (Michela Palese & Josiah Mortimer, 2019). As the Information Commissioner's Office points out in the 'Democracy Disrupted' report, elections are becoming increasingly 'datafied' and as such, digital campaigning constitutes an ever-greater share of advertising (Denham, 2018). There are several logical reasons behind this trend; digital campaigning provides greater reach at a lower cost, the barrier to entry for smaller parties is low, it provides the ability to micro-target voters with messages attuned to appeal to their core values and beliefs etc.

By its nature, digital campaign advertising is opaque; to use one example; tracing the origin of a political advert or meme is extremely difficult, especially for the public (All Party Parliamentary Group, 2020). An image can be produced by an individual, posted in a chat group or social media platform and then disseminated widely; meanwhile, the potential audience is limitless. The imperishable nature of the digital realm means theoretically an advertisement never disappears; it has the potential to remain visible and in circulation for an interminable period (Michela Palese & Josiah Mortimer, 2019).

Whilst the original advertisement may be altered or deleted any copies, once created and disseminated, no longer fall under the aegis of the creator (Denham, 2018). But the opposite also applies; a digital advertisement is deleted with the press of a button and altered just as easily. Statements and facts in one advertisement can be altered for the next instantly. Keeping track of the advertisements and auditing the communication chain becomes impossible. That makes holding campaign participants to account even harder once the election has finished.

From a regulatory and legal standpoint these factors are challenging and make the enforcement of legislation difficult. This contrasts starkly to the pre-internet conditions where physical leafletting, hustings and townhall meetings were the norm. Indeed, even accounting for the advent of the telephone; television and early mobile telephony; followed by mass email canvassing, the scale and complexity from a monitoring perspective was simpler (Denham, 2018). As discussed by several sources, the essence of campaigning has mutated with the advent of computational political communication; transparency has deteriorated as the provenance of advertisements can no longer be assured and the political discourse fragments across multiple platforms and channels; amongst increasingly atomised groups and sub-sets of participants.

Related to this are issues of consistency in political messaging. The opaque and transient nature of digital advertising, its relative low cost and the low barrier to entry mean advertisements can be produced on a large scale and distributed rapidly online. This enables political parties and third-party groups to make use of data to target voters with specific messages. Different advertisements can promise different things at different times. As outlined in the Fair Vote report, this contrasts with the idea of a billboard visible to all that remains the same throughout the campaign due to the initial cost (All Party Parliamentary Group, 2020). The same report makes reference to the Brexit campaign and the way in which *“at least 3 different Brexits”* were presented as realistic outcomes during the referendum, with pro-Brexit parties adapting the message in subtle ways to appeal to the different groups (All Party Parliamentary Group, 2020).

Transparency concerns also arise from the perspective of undermining trust in the wider public discourse that surrounds elections. Political groups and parties can exploit a lack of transparency to lend legitimacy to fringe groups and fringe views, giving the impression of broad support to the idea and inversely, the undermining of an opponent. To use one example; a political meme distributed by an individual, or a collection of individuals acting in concert, can create the illusion of organic popularity. The Fair Vote report explains the difficulty in discerning between a concerned citizen trying to get their point across and a ‘subversive astroturf’ in which the person *“obfuscates the sponsorship of an advertisement to imply it was created organically by unaffiliated individuals”* (All Party Parliamentary Group, 2020). The use of ‘bots’ and ‘troll farms’ within election campaigns has grown exponentially, often working in concert with political movements working together with parties. To expand on this point further; Fair Vote’s report suggests four methods through which promotion of ideas in the digital realm can occur: 1) paid advertising, 2) automated bots, 3) troll farms, 4) organised volunteers (All Party Parliamentary Group, 2020). Under the current regulatory regime, all 4 of these categories of agenda promotion are open to exploitation by political groups due to the lack of transparency inherent to the way in which they operate.

With the increasing use of data in elections, the continued growth of social media participation and the shift of political discourse into the digital sphere, the public are being tasked with discerning the veracity of digital information and interactions: *“is this genuine debate...or a bot based in a third country being paid for by someone with financial motives or political motives?”* (All Party Parliamentary Group, 2020).

Proposed Updates Related to Marketing/Advertising Transparency Concerns

Legislate that all online campaign material should be required to display a digital imprint which clearly identifies the organisation that funded and published the material in a form that is easily recognisable to the public. Numerous organisations, including the Electoral Commission, the Information Commissioner's Office, the House of Commons Public Administration and Constitutional Affairs Committee and the Electoral Reform Society have argued that transparency and would be improved in elections through the use of digital imprinting (Denham, 2018).

Require social media companies to label advertising and campaign material on their platforms with clear identification on the source of the advert. As the Electoral Commission suggests in its consultation paper, greater cooperation between the social media platforms and regulators, together with an increase in accountability for the adverts on their platform by the likes of Facebook would address many of the concerns surrounding political advertising (The Electoral Commission, 2018). The Electoral Reform Society paper points out the extent to which political advertising is now driven by the social media platforms, meaning changes to the existing laws are critically important (Michela Palese & Josiah Mortimer, 2019).

Legislate for the creation of a single online campaign material database, open and searchable by members of the public, containing all the campaign material used by all parties in an election or referendum. This would include third-party affiliate bodies. Numerous organisations argue for the creation of such a database (Michela Palese & Josiah Mortimer, 2019). This would subject parties to greater scrutiny, enable them to be held more accountable to their claims after the election and grant regulators and ensure misleading advertisements are identified and labelled. The database would need to be monitored by a regulatory body such as the EC or ICO, or a combination of them.

Financing/Funding Transparency

The existing regulatory and legislative arrangements governing UK elections and referenda have demonstrable gaps in terms of transparency deficits relating to electoral financing, spending and reporting. Instances arose during both the Brexit referendum and subsequent UK general elections where insufficient. Deficiencies in the regulation and reporting of rules governing donations, which resulted in legal action undertaken by the Electoral Commission against several 'Leave' political groups (Elgot, 2018). The allegations involved in the cases of both 'Vote Leave' and 'Leave.EU' relate to fundamental questions concerning campaign finance and how it is reported. Evidently, in both example the Electoral Commission found they broke the law. This raises concerns about how this can be prevented from happening again the future.

The current reporting requirements for political donations is a serious concern. The existing laws were devised in the pre-internet age where cash, cheque or bank transfer donations were the norm. Audit trails are created when a donation occurs via one of these channels, certainly for bank or cheque donations. As such, there was a degree of transparency around who was donating, how much they gave and how often they did so. The digital age has ushered in the ability to transfer money from anywhere in the world instantaneously, multiple times a day, from multiple accounts. Under these conditions the true origin of campaign funding, the motivation of the donor, the relationships between the donor and the recipient party or political affiliate group, become murky and hard to assess. These are not characteristics of a funding system that promotes transparency and accountability. One

interesting example of permissible donation limits fostering suspicion is that 59 percent of the 624 million USD donated to the Trump campaign during the 2016 presidential campaign came via donations under 200 USD – that being the threshold at which donors must be identified under US law (Michela Palese & Josiah Mortimer, 2019). Whilst this may be a coincidence the very fact that it can occur raises concerns, give the risks to the system being exploited. At present, UK law states that for any non-cash donation under 500 GBP it is not a requirement to provide evidence that the donor is on the electoral role or registered in the UK (All Party Parliamentary Group, 2020).

There are other concerns here regarding transparency around to whom political actors are affiliated. Issues of national sovereignty were a well-publicised concern in the 2016 presidential election with the ‘Mueller Report’ investigating allegations of Russian involvement in the election (Dana Farrington, 2019). In the UK this, area of enquiry following recent elections has not been subjected to such a thorough examination, but this should not indicate that the risk isn’t a tangible one (Peter Geoghegan & Jenna Corderoy, 2019). The Electoral Reform Society and Information Commissioner’s Office reports both discuss the allegations of foreign funding during the Brexit campaign, where Leave groups were linked to donations from bodies and actors with links to Russia. Whilst the allegations are yet to result in prosecutions the details of the cases expose why transparency in this area would be increased through greater accountability (Cadwalladr, 2018).

Proposed Updates Related to Financing/Funding Transparency Concerns

Legislation created to require all political donations are recorded, by reducing the threshold for reporting from 500 GBP to 1p for non-cash donations and 500 GBP to 20 GBP for cash donations.

Numerous reports suggest that recording donations will provide greater transparency as to the source of income, to whom parties may be affiliated and reinforce the public’s perception of an open and trustworthy political system (The Electoral Commission, 2018).

Legislate to ensure corporate donations are derived from UK reported profits only. The Electoral Commission points out that addressing the risks associated with non-UK derived donations is essential; the detail of any proposals would need further consideration whilst balancing free speech imperatives (The Electoral Commission, 2018)

Legislate to ensure standardised financial reporting by all parties and campaign groups, with a clearer breakdown of the type of spending per category and greater detail i.e. digital advertising. As proposed by the Electoral Commission and supported by other reports, legislation for increased detail in reporting and clearer definitions of spending per category and type would increase transparency and diminish the opportunity for misrepresentation of spending (The Electoral Commission, 2018). Such changes are essential to create greater public trust in how parties are being funded.

Monitoring

Numerous studies have identified deficiencies in the monitoring of electoral campaigns as an area that requires attention. Currently, the monitoring of the different parts of electoral and referendum campaigning falls under jurisdiction of numerous, overlapping pieces of legislation. Furthermore, the bodies appointed to monitor and enforce legislation share responsibilities that overlap in certain areas. Nevertheless, primary responsibility for the monitoring of electoral campaigns is shared between the Electoral Commission and the Information Commissioner’s Office, with other bodies responsibility pertaining to secondary activities. In the context of the activities previously discussed in this chapter, relating to transparency in campaign finance and advertising, then both the Electoral Commission and Information Commissioner’s Office exert substantial influence.

Broadly, the Electoral Commission has a responsibility to monitor issues relating to official party and third-party financing, whilst the Information Commissioner's Office has a remit to monitor the advertising and marketing share of those bodies. In the case of the Electoral Commission, the organisation is primarily responsible for ensuring that referendum and electoral campaigns are being conducted in accordance with the legislation, alongside other responsibilities in this area as outlined in Chapter 1 of the paper. The duties of the Information Commissioner's Office extend further than electoral matters being charged with ensuring data is being used responsibly in the UK.

One of the issues raised in the reports concerns the lack of cooperation and collaboration between both organisations. Whilst both organisations have internal resources and expertise these are limited in scope to core areas of responsibility; in the case of the Electoral Commission knowledge of electoral rules and procedures and for the ICO knowledge of the overlapping data laws in the UK such as General Data Protection Regulation and Data Protection Act (2018). The challenges to monitoring that have evolved during the internet-age require a multifaceted and coordinated approach, however. Legal breaches relating to political advertising, for example, will require adjudication using expertise in electoral law, personal data rights and data usage. The Fair Vote report points out that "the complex legal framework applicable to micro-targeting, for example, is overlapping" meaning addressing breaches of the law requires input from both the Electoral Commission and the ICO (All Party Parliamentary Group, 2020). Evidence that a multidisciplinary approach is required to effectively monitor modern electoral campaigns arose during the Brexit referendum with the prosecutions of Vote Leave and Leave.EU concerning electoral overspend (Maugham, 2018b). As discussed earlier in this chapter concerning transparency in political advertising, these cases concern both breaches of electoral spending procedure and identifying the true origin of digital campaign spending.

Relatedly, numerous reports cite insufficient resources, both material and juridical, as an area in need of reform (Public Administration and Constitutional Affairs Committee (PACAC), 2019). From a regulatory standpoint, it can be argued that Electoral Commission currently has insufficient powers to fulfil its role of safeguarding elections and referendums. As highlighted by the Electoral Reform Society, the EC struggled to keep track of all spending by campaign participants during the Brexit referendum, leading some commentators to suggest that the full extent of overspending on advertising hasn't been detected and punished (Michela Palese & Josiah Mortimer, 2019). Similarly, the EC lacks the power to obligate the technology platforms such as Facebook to divulge data on campaign advertising activities and on the way in which they collect and use personal data, creating a regulatory void (The Electoral Commission, 2018). And in terms of campaign funding, the EC appears unable to trace the ultimate source of donations from corporate bodies and from overseas (The Electoral Commission, 2018). Tackling these issues will require increased regulatory reach enabled by legislation and increased resources in the form of personnel and technology. As pointed out in the Electoral Reform Society report, the EC and ICO are only part of a "complex jigsaw of regulatory reform" and a meaningful response to the challenge will require the action from Ofcom, government, parliament and other public bodies (Michela Palese & Josiah Mortimer, 2019).

[Proposed Updates Related to Monitoring Concerns](#)

Legislate to increase the power of the EC; enable it to fully regulate party financial reporting and data collection and usage relate to political campaigns. Related to the transparency concerns, the EC should benefit from increased authority to regulate the financial reporting of parties and campaign groups and how they collect and use data. As the Electoral Reform Society point out, there is currently a gap in regulatory oversight between the EC and ICO, with the EC in a better position to focus on the use of data in the electoral sphere (Michela Palese & Josiah Mortimer, 2019).

Legislate to increase the resources available to the Electoral Commission and ICO, particularly in view of the multifaceted competencies and knowledge required to regulate the current digital and political landscape. The Electoral Commission, supported by political bodies and non-governmental organisations, argues for an increase in its material and legislative resources (The Electoral Commission, 2018). The detail of these increased powers and resources needs to be discussed, but recognition of the problem by the government should be a first step (The Electoral Commission, 2018)

Encourage cooperation between the EC, CIO and other related government bodies and agencies to share knowledge and competencies. Potentially this proposal would not require legislation to bring about action; however, a formal laying-out of the terms of cooperation and sharing of responsibility may bring greater benefits.

Deterrence

The final discussion point concerns the sub-category of deterrence, with an analysis of the activities that relate to deterrence; how these relate to the research topic; actualise in elections and can potentially mitigated through proposed changes to legislation. Deterrence in this context refers to the measures that deter election participants from transgressing electoral legislation. More specifically, this refers to infractions of electoral statues discussed in Chapter 2 and the penalties that might entail. Both the EC and ICO exercise the power to impose deterrence measures through their regulatory capacity, either directly in the form of a fine or indirectly, for more serious infractions, via a referral to a state prosecution body such as the Crown Prosecution Service (Michela Palese & Josiah Mortimer, 2019). Notwithstanding these facts, several reports have argued that existing deterrence measures are ineffective at deterring illegal activity during elections and that these need to be reviewed.

The numerous infractions that occurred during the Brexit referendum related to advertising overspend illustrate that existing regulations are not deter the breaking of the rules. As Craig Westwood, the Electoral Commission Director pointed out, certain political parties view any penalty imposed by the EC merely as a 'cost of doing business' with the maximum fine of 20,000 GBP per offence acceptable when weighed against potential gains (All Party Parliamentary Group, 2020). The ICO has the capacity to levy much larger fines, under the GDPR statute up to a maximum of 20 million GBP or 4% of an organisation's annual turnover, far higher than anything the EC can impose (All Party Parliamentary Group, 2020).

Attributing legal accountability for illegal actions during an election campaign is an issue that can be framed under deterrence. Existing legislation assigns responsibility to campaign 'agents' as per section 90C of the Representation of the People Act (Public Administration and Constitutional Affairs Committee (PACAC), 2019). These individuals are required to interpret sometimes vague statues and discern complex categories of spending; for example, the laws relating to categorising 'notional spending' (Public Administration and Constitutional Affairs Committee (PACAC), 2019). A failure to interpret the category of spending correctly could lead to further action, placing a large burden of responsibility the campaign manager. One potential outcome of such an arrangement is that it could enable a political party to use an 'agent' acting on behalf of the campaign manager whereby the agent acts as 'fall person' in the event of laws being broken. hereby they are held responsible and penalised for deliberately illegal actions whilst shielding the true decision-makers from the consequences (All Party Parliamentary Group, 2020). In such a scenario the party can assign illegal activity to a 'rogue' or 'incompetent' campaign manager at little cost to the campaign party, all the while shielding the

leadership. The APPG argues this needs to be addressed with true accountability assigned to decision-makers.

Proposed Updates Related to Deterrence Concerns

Review the fines that the Electoral Commission can impose with the intention of increasing these substantially. As the Electoral Commission itself points out, supported by other reports, an increase in the maximum fine it can levy could reduce the incident rate of transgressions by parties that see the relatively low fine as an acceptable cost (The Electoral Commission, 2018). The ICO provides an example of the potential scale of penalty that should be considered in any review (Michela Palese & Josiah Mortimer, 2019)

Legal accountability for the managers with ultimate responsibility for the campaign. Clarify the criteria through which individuals can be described as the person responsible for the campaign, especially relating to advertising spend. These individuals need to be held accountable with clear penalties applicable (Michela Palese & Josiah Mortimer, 2019).

Evaluation

Transparency

The proposal for digital imprinting of online materials is a relatively straightforward move that will greatly enhance transparency. With existing regulations in place covering offline material imprinting, extending these to cover online advertising would appear logical. Extending these requirements to social media and related technology platforms will be difficult, based on the apparent reluctance to date of these companies to contemplate change; whether for the altruistic ‘free speech’ considerations they espouse publicly, or concern as to the potential impact such requirements might have on enormous revenue streams. There are certainly proximal privacy and free speech issues when contemplating increased legislation in the digital space, especially given the apprehension that would arise from any move toward the highly regulate environment that internet users in places such as China face. However, recent moves by Facebook to implement changes to its existing position indicates the technology companies grasp the issue at hand (Isaac, 2020). An online political advert database would be a sensible and democratic solution that empowers voters to conduct their own research into the communication techniques used during elections. Opposition to the database would surely be based on resistance to the idea of being held accountable to campaign commitments, rather than an objection to the database itself.

Any reform to political financing and reporting will encounter ferocious resistance from within the political sphere and the adjacent corporate lobby, given the symbiotic relationship that exists between politics and wealth for most of history of democracy. Enhanced financial reporting requirements along with the reporting of all donations will be a significant burden on parties and affiliated campaign groups, given that some of these are small organisations with limited budgets. This could necessitate assistance from the EC or another body to ensure the correct systems are put in place. Requiring all corporate donations to derive from UK profits is another sensible proposal, in view of the scandals seen in the UK and US concerning foreign power involvement. All the case studies and reports highlight the growing unease around the concept of foreign power involvement in democratic elections – taking these steps would be the first phase in tackling a vital concern.

Monitoring

Expanding the roles of the EC and ICO, with proportionate increases to their powers and resources, would appear to be long overdue step in view of the exponentially greater scale of regulation they’re

now tasked with. Financial reporting appears to be an area of vulnerability where critical auditing on the source of income and result of spending is not taking place. Increased transparency in this area intersects with most of the adjacent concerns, meaning a scale-up in targeted monitoring should prove valuable. Regulation is a delicate task and over-regulation of the political domain runs the risk of constraining the freedoms associated with healthy democratic discourse. Moreover, the perception of over-regulation can be as damaging as the reality of it. On the other hand, the expanded responsibilities and powers being proposed for the EC are limited in scope to specific countermeasures; sparsely regulated online campaign advertising, oversight of financial reporting etc.

Formalising the framework for enhanced cooperation between existing regulatory bodies is another sensible and low-cost/high-impact proposal that could enable a wider distribution of specialist knowledge presently siloed within in each organisation. Such a move would furthermore avoid the need to create additional regulatory bodies, such as the 'Online Harms Regulator' as proposed by the APPG amongst others (All Party Parliamentary Group, 2020). Additional regulatory bodies may only further complicate the overlapping jurisdictions and responsibilities in place currently and draw resources from the EC and ICO. Personal data gathering and usage has not been specifically addressed in the recommendations, despite the ICO and other bodies advocating reform on how political parties and technology companies utilise it for political advertising. However, the monitoring of data use online is in the purview of the ICO to some degree. The relentless 'datafication' of politics (along with practically all online activity) is closely tied to many of the problems outlined in this paper. None of these issues exist in isolation, meaning any proposed reforms need to be broad in scope. There are philosophical and moral elements to the discussion around personal data use, which transcend the narrow field of politics. Nevertheless, the proposals for a statutory Code of Conduct that all participants adhere to when handling personal data could go some way to addressing the issues discussed, even if these require greater detail (Michela Palese & Josiah Mortimer, 2019).

Deterrence

Increasing the potential fines for instances of legal contravention would appear to be sensible, given the relatively low fines that are payable relative to those issued by the ICO. Likewise, a number of reports mention how the Electoral Commission's relatively low fines are an acceptable 'cost of doing business' to some participants. When the cost is weighed against the potential gain, then clearly the fines are insufficient. A party that wins an election through repeated breaches of regulation stands to benefit from being in government, with those that lent it support during the campaign also in a position to profit. The rewards are great, meaning the penalty needs to be harsher. Legal accountability for those in de facto control of a campaign would require decision-makers to face the consequences of illegal actions, potentially leading them to consider the cost. In theory this may lead to fewer breaches of the law within parties as they face personal responsibility for their actions. Whether this materialises would depend on how assiduously the law is enforced by the EC and ICO.

Chapter 5

Conclusion

The case for reform of the UK's electoral laws is compelling, as evidenced by the arguments supporting this position in the preceding chapters. Rapid technological change created the conditions for social and cultural shifts in communication and information dissemination. Political communication evolved with it; the volume of communication has increased, and the techniques used by political parties are more sophisticated than before. The public spends more time in the digital sphere and with it has come greater competition for their attention. Campaign techniques have developed to capture voters' attention; simple and personalised messaging. Data gathering and application has become an indispensable commodity; the party that understands what the electorate wants to hear stands a better chance of winning. But these capabilities are hugely expensive; more than ever, the party or candidate with the greatest resources holds the advantage. Data scientists, marketing experts, cultural guru's – any serious campaign must have competencies in these fields. Money has flooded into politics, much of it through unofficial and illegal channels (Peter Geoghegan & Jenna Corderoy, 2019). There is an awareness that democracies worldwide stand at the precipice of even greater threats, and that recent elections have demonstrated the vulnerabilities inherent to open democracies. Whilst the political landscape has altered, the rules and regulations demarcating these interactions are still rooted in the 20th Century.

Implementing all the suggested reforms will be challenging, both practically and politically. Wholesale reform of any body of law will likely encounter resistance from vested interests; and yet, history has taught us that scepticism should be applied when contemplating wholesale change to constitutionally sensitive legislation. Whilst the arguments laid out in this paper provide compelling grounds to pursue consolidation and clarification of current electoral law these must be balanced against the risks that accompany a systematic reform and augmentation of electoral legislation. Substantive alterations that change the fundamental character of the legislation can give rise to unintended consequences *that "often transform or exacerbate, rather than resolve, the problem targeted."* (Public Administration and Constitutional Affairs Committee (PACAC), 2019). This is evident from the preceding chapters in which the transformation of political communication provoked unpredictable effects. Sceptics will point out that the UK remains a democracy relative to some other countries.

Leaving aside the focus of the research question, there are broader questions to contend with; both the Electoral Reform Society and APPG discuss the potential implications of inaction; a deeper and lasting erosion of trust in politicians and political institutions, disengagement, and disinterest. Warnings about the undermining of democracy may well be framed as alarmist. It could be argued that these proposals are required to repair structural damage to the UK's political environment and the public's faith in it. The aftershocks of the destructive Brexit referendum continue to ripple through UK society, following more than 4 years of discord. With neither side satisfied by the outcome to date none of the wounds have healed. Some of the proposed amendments to legislation will indirectly address problems caused by the Brexit referendum.

The Electoral Reform Society report discusses the concept of resilience within democracy, referring to the damage caused by widespread misinformation in the public sphere, reifying as disengagement, interference and negative effects on beliefs and attitudes (Michela Palese & Josiah Mortimer, 2019). They argue for increased transparency, tackling of misinformation and proportional legislative measures (Michela Palese & Josiah Mortimer, 2019). In such a system however, key stakeholders such as regulators, media, academia and the public need to cooperate to hold politicians and parties to account, flagging and must engage in the process and act as the ultimate regulator. Civic engagement

is another thread in the same theme, requiring increased public participation in politics and organised, concerted action rather than fractured and disorganised actions. The greatest protection to democracy must begin with an informed, educated and organised public, willing to act against any sign of corruption or deceit. Perhaps the future of politics lies not in legislation, but in a renewal of public faith in a political system that is currently malfunctioning, which in turn erodes public faith in society. To these macros questions we currently have more questions than answers; starting the process of renewal with the public could hold the key.

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