The Sound of Silence:  
Anti-Defamation Law and Political Corruption  

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Abstract  

We explore the role played by libel laws in selecting the information delivered by mass media to voters. The focus is on whether such laws can reduce political corruption and increase voters’ welfare. By endogenizing the response of the voters to information from the media, we clarify under which circumstances regulation reduces or increases corruption. The analysis shows that libel laws can reduce political corruption only if the moral hazard problem dominates adverse selection and the punishment for the defamer is large enough to deter the publication of some well-founded scandals.

Keywords: media and democracy; corruption; defamation; chilling effect.

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...tragedy begins not when there is a misunderstanding about words, but when silence is misunderstood.

Thoreau (1980), p. 278.

1 Introduction

Voters judge politicians by the cover of newspapers. But how can they tell the truth from a cacophony of defamatory statements? In this paper we explore the role played by libel laws in selecting the information delivered by mass media to voters. The focus is on whether such laws can reduce political corruption and increase voters’ welfare.

We study a simple theoretical framework in which an incumbent politician chooses a level of corruption. A newspaper observes a corruption scandals and chooses whether to publish it. Voters read the publication of the newspaper and choose whether to re-elect the incumbent politician or to elect a new one. Crucially, the problem for the voters is dual: they want both to monitor corruption (moral hazard) and to select honest candidates (adverse selection).

The newspaper observes scandals of different quality and size. Well-founded scandals are more likely to be defended in a libel trial and are larger when the politician is more corrupt. Unfounded scandals are less likely to be defended in a trial and their size is independent from actual corruption. We show that libel laws can improve voters’ welfare. In particular, we find that a libel law can improve voters’ welfare only if (i) moral hazard is the dominant problem; (ii) the punishment for the defamer is large enough to deter the publication of well-founded scandals; and (iii) the law deters only the publication of small scandals.

To see this, note that at the time of the election voters focus only on selecting honest politicians for the future. Thus, they choose to re-elect only if there is no scandal. Yet, if the moral hazard problem is dominant, voters would ex ante prefer to commit to forgive some smaller scandals. By hiding smaller scandals from the voters, the law effectively solves the voters’ time inconsistency problem. In order to provide the right incentives to the politician, the law must affect the publication of scandals that are correlated with actual corruption. Thus, the law is effective only if it deters the publication of some well-founded scandals.

An alternative prospective is that social norms evolve over time so that voters are effectively committed to an optimal re-election rule. We explore this scenario and find that a libel law can improve voters’ welfare by promising a compensation to the politician when the newspaper is punished for defamation. In contrast with the no-commitment case, here an optimal law deters only the publication of large scandals. In equilibrium, voters correctly interpret the lack of scandals as evidence of large-scale corruption and do not re-elect the
politician. The politician avoids very serious scandals because these would not be revealed. If no scandal is revealed, the politician has no chance of being compensated for defamation. It follows that a libel law can improve the expected payoff of the voters only if four conditions are simultaneously met: (i) moral hazard is the dominant problem; (ii) the punishment for the defamer is large enough to deter the publication of well-founded scandals; (iii) the law deters only the publication of large scandals; (iv) voters can replace the politician when the newspaper publishes no scandals.

In this case, the efficacy of libel laws hinges on whether these conditions are met in reality. It is licit to imagine that, for legal or customary reasons, voters retain the politician when there is no allegation. For example, the president of the United States can be impeached by the Congress. Although the Supreme Court has historically defended the independence of Congress’s decisions to impeach presidents, it is hard to imagine a president being impeached because of ‘lack of evidence.’ Imposing this restriction on voters’ behavior delivers a further result. If voters can let small scandals go (because this is a social norm of behavior), but never regard a lack of scandals as indicative of large-scale corruption, then free press is optimal: libel laws can only increase corruption.

Two conclusions that we can draw from both models challenge some common beliefs regarding media regulation. First, libel laws can be beneficial only if they deter the media from publishing some well-founded scandal. This phenomenon is known as the chilling effect and it is often considered a negative side effect of libel laws (see, for example, Barendt et al., 1997). Yet, our results suggest that some chilling effect is desirable: even though we could design a law which deters the publication of all and only all unfounded scandals, the optimal law is one who also deters the publication of some well-founded ones. Second, the effect of libel laws on corruption depends on the relative importance of the selection and moral hazard problems. If most politicians are prone to be corrupted and have small incentives to remain in office, then the moral hazard problem is dominant and libel laws might reduce corruption. This is the case when revolving doors between public and private sector guarantee a higher outside option for the politicians. On the contrary, when most politicians are honest and have large incentives to remain in office, a free press performs better in mitigating corruption.

Our conclusions underpin why the effect of libel laws on corruption is hard to identify. Recent studies (Besley and Prat, 2006; Brunetti and Weder, 2003; Djankov, McLeish, Nenova and Shleifer, 2001 and Suphachalasai, 2005) suggest a causal effect of media ownership, competition, and freedom on a wide range of political outcomes, including perceived cor-

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2Evidence from Italian local elections in Drago, Nannicini and Sobbrio (2013) suggests that newspapers play a more relevant role in keeping politicians accountable than in selecting good politicians.
Yet, measures of perceived corruption are endogenous to the information voters receive from the media. For example, Stanig (2011) shows that more stringent laws reduce coverage of corruption. This may have differing effects on voters’ perception of corruption and on corruption itself.

The theoretical literature on the effects of libel laws has so far overlooked the issue of how voters interpret the information in the media. Our model is closest to the ones in Garoupa (1999a,b), where a politician chooses whether to be corrupt or honest and a media firm chooses whether to report corruption or honesty. The politician is assumed to suffer a loss if and only if she has been accused. Our results show that this is not always voters’ optimal reaction. By endogenizing the response of the voters to the information in the media, we provide a theoretical framework to disentangle the effects of media regulation on perceived and actual corruption, thus clarifying under which circumstances regulation reduces or increases corruption.

The result that hiding some information from the voters can be beneficial is reminiscent of the results in Goltsman, Hörner, Pavlov and Squintani (2009), who consider optimal mediation rules in a cheap talk game. To the best of our knowledge, our model is the first to consider this problem in a setup with both moral hazard and adverse selection (see Gibbons and Roberts, eds, 2012).

A vast literature in recent years has explored the role played by mass media in the political agency problem. Besley and Prat (2006) study a model of political agency when the government can bribe the media, therefore limiting the latter’s ability to transfer information to the electorate. Both their model and our draw from the vast principal-agent-supervisor literature (for example, Antle, 1984; Tirole, 1986; Kofman and Lawarree, 1993). Most of this research focuses on the nature of contracts capable of deterring collusion between the agent and the supervisor against the interests of the principal. In contrast, we assume that media are independent from the government and focus on the role played by regulations.

The remainder of the paper is as follows. Section 2 introduces and discusses the model; Section 3 presents the results; Section 4 considers optimal re-election rules; and Section 5 evaluates our results in light of the prevalent US jurisprudence on defamation of public figures.

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3Perceived corruption is measured by surveys which ask about expectations and beliefs about corruption. By contrast, experienced corruption refers to surveys which ask about recollections of past experience of corruption. The results of Freille et al. (2007) suggests that laws and regulations have a lesser impact on corruption than other components of press freedom.

4It is worth clarifying that information in our setup is (at least partially) hard.

5Besides the works mentioned in the text, other examples include Besley and Burgess (2002) and Ferraz and Finan (2008). A recent review of this literature can be found in Prat and Strömberg (2011); Besley (2006) contains an excellent review of political agency models.
2 The Model

Our aim is to capture the main insights with the simplest model. There are three players: a politician, a media firm, and a (representative) voter. The politician chooses a level of corruption $c$. The media firm observes a signal $s$ of quality $\theta$ and chooses whether to publish it. The voter observes the publication of the media and chooses whether to re-elect the politician. Figure 1 depicts the timing of the model. We now describe each feature of the model in greater detail. Section 2.1 discusses how to interpret some key aspects of it.

The Politician

The politician chooses a level of corruption $c$ between 0 and 1. The politician is greedy with probability $\mu_0$. Otherwise she is honest. If she is honest, she always chooses $c = 0$. Otherwise, she maximizes

$$u^P (c) \equiv \gamma c + r \Pr (\text{re-elect} \mid c)$$

where $r > 0$ is the utility of being re-elected and $\Pr (\text{re-elect} \mid c)$ depends on the strategies of the newspaper and the voter. The politician’s type is private information.

The Scandals

The Newspaper observes a signal $s$ of quality $\theta \in \{W, U\}$. Signals of quality $W$ are well-founded; signals of quality $U$ are unfounded. The quality of the signal is private information of the newspaper.

With probability $p$, the newspaper observe a well-founded signal. If the politician is greedy and chooses corruption $c$, then this signal is $s = c$; if the politician is honest, then the signal is $s = \phi$. With probability $1 - p$, the newspaper observes an unfounded signal $s$ distributed according to a density function over $[0, 1]$. With some abuse of notation, $\Pr (s \mid U)$ is the probability that an unfounded signal is of size $s$.

A signal $s \in [0, 1]$ is a scandal; $s = \phi$ is silence.

The Newspaper

The newspaper publishes a message $x \in \{\phi\} \cup [0, 1]$. The newspaper can only publish a scandal it observes. To be precise, if $s \in [0, 1]$, the newspaper can publish $x = s$ or $x = \phi$; otherwise, $x = s = \phi$. The payoff of the newspaper is given by

$$u^N (x, \theta) \equiv \pi (x) - \rho \Pr (\text{punish} \mid x, \theta)$$
where \( \pi : \{ \phi \} \cup [0, 1] \to \mathbb{R}_{++} \) is the profits from the publication, \( \rho : \{ \phi \} \cup [0, 1] \to \mathbb{R}_{+} \) is a punishment function, and \( \Pr (\text{punish} \mid x, \theta) \) is the probability the newspaper is punished for libel when publishing \( x \) and the signal is of quality \( \theta \). We assume that publishing a scandal increases the profits of the newspaper: \( \pi (x) > \pi (\phi) \) for all \( x \in [0, 1] \).

**The Law** A libel law is a pair \((\rho, \Pr (\text{punish} \mid \cdot))\) defining the expected punishment for publishing a message \( x \) of quality \( \theta \): \( \rho (x) \Pr (\text{punish} \mid x, \theta) \). We say that such a law *deters the publication* of message \( x \) of quality \( \theta \) if the expected punishment is at least as large as the profits \( \pi (x) \). Unfounded scandals are more likely to be punished than well-founded ones: for all \( x \in [0, 1] \), \( \Pr (\text{punish} \mid x, U) > \Pr (\text{punish} \mid x, W) > 0 \). The newspaper is never punished if it publishes silence: \( \Pr (\text{punish} \mid \phi, \theta) = 0 \) for all qualities \( \theta \).

**The Voter** The voter observes the publication of the newspaper and chooses whether to re-elect the politician. His payoff is given by

\[
u^V (c, \mu) \equiv -(c + \mu)
\]

where \( c \) is the level of corruption chosen by the politician and \( \mu \) is the probability that the next period politician is greedy. We assume that if the politician is not re-elected, then \( \mu = \mu_0 \)[6]

We characterize the set of Perfect Bayesian equilibria which are robust to a vanishingly small tremble of the politician with full support over \([0, 1]\).[7]

### 2.1 Discussion of the Model

A crucial feature of the model is that voters cannot wait for the result of the libel trial to choose whether to re-elect the politician. This assumption catches a fundamental problem faced by political principals: they often need to use the information provided by the media before this can be verifed in a courtroom. Indeed, in the sample collected by Welch and Hibbing (1997), 67% of politicians charged with corruption scandals in the media faced no

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[6] This is the reduced form of a two-period model where (i) the second period politician is not up for re-election and chooses what she prefers and (ii) if the first period politician is not re-elected, a new politician is drawn from an identical pool (see, for example, Besley and Prat [2006]).

[7] Formally, let \( \bar{g} \) be a probability distribution with full support over \([0, 1]\). I impose that an equilibrium where the politician plays \( c \in [0, 1] \) must be the limit of a sequence of equilibria of a game where the politician plays \( c \) with probability \( 1 - \epsilon \) and \( \bar{g} \) with probability \( \epsilon \), \( \epsilon \to 0 \). Although sequential equilibria [Kreps and Wilson [1982]] are not defined for infinite games, this requirement captures the spirit of the consistency requirement of sequential equilibria.
formal investigation by the time of the election. Welch and Hibbing (1997) find that, “if anything, the charges that are not accompanied by formal action are more damaging” for the politician.

In our model, the newspaper observes scandals, but it is not sure of whether it will be punished for defamation if it publishes them. We interpret this feature of the model as capturing the newspaper’s uncertainty about the reliability of its sources. Alternatively, one might think of well-founded scandals as true and unfounded scandals as false. In this case, the assumption that well-founded scandals are punished with positive probability captures mistakes in the justice systems.

The newspaper can choose whether to publish the scandal it observes, but it cannot simply create a scandal. We see this as a realistic feature of the model. Reporters construct stories regarding politicians that cannot be proven in court or are plainly false. Nonetheless, these stories are based on some factual evidence that is misinterpreted, misreported, or slanted. Thus, reporters cannot construct any story, but are limited by the hard information they can obtain.

The assumption that publishing a scandal always increases profits captures reputational concerns. To see this, suppose that there are newspapers which have no access to scandals. These newspapers are uninformative and voters prefer informative outlets. A newspaper which publishes no scandal is, all else constant, always more likely to be uninformative. Hence, reputational concerns would imply that publishing a scandal always increases the (future) profits of the newspaper.

3 Time Inconsistency and Libel Laws

We first characterize equilibrium behavior when there is no libel law.

**Proposition 1.** When there is no libel law, greedy politicians choose \( c = 1 \), the newspaper publishes all scandals, and the voter re-elects the politician if and only if he observes no scandal.

**Proof.** All proofs are in Appendix. □

To see why this is the equilibrium, note first that in the absence of any punishment for libel, the newspaper publishes all scandals. Since the voter re-elects only if he sees no scandal, the probability that a greedy politician is re-elected is independent of her level of corruption. Thus, greedy politicians choose to maximize corruption.

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8See, for example, Besley and Prat (2006) for a similar assumption.
At the time of the election, the voter focuses on selecting honest politicians. He reasons that any scandal is more likely to be published if the politician is greedy than if she is innocent and thus re-elects the politician if and only if he observes no scandal.

We turn now to the issue of whether there exist libel laws that can improve the voter’s welfare. Proposition 2 says that this is possible under two conditions.

**Proposition 2.** A libel law reduces current corruption only if it deters the publication of some relatively small well-founded scandals; when moral hazard is the dominant problem, such a law can also increases the voter’s welfare. The optimal law deters the publication of well-founded scandals of size $1 - rp/\gamma$ but not larger.

We first explain why current corruption decreases. Let $(\rho, \Pr(punish \mid \cdot))$ be a libel law that deters the publication of well-founded scandals of size $\bar{s}$ but not larger, with

$$\bar{s} \geq 1 - \frac{rp}{\gamma}.$$  \hspace{1cm} (1)

In equilibrium, the politician chooses $c = \bar{s}$; the newspaper publishes (i) all well-founded scandals greater than $\bar{s}$ but not equal to it, and (ii) unfounded scandals only if in a set $S \subseteq [0, 1]$; the voter re-elects the politician if and only if he observes no scandal.

To see why this is the equilibrium, note that the politician is re-elected with higher probability whenever he chooses $c = \bar{s}$ than when she is more corrupted. In particular, $c = \bar{s}$ gives her an expected payoff equal to

$$\gamma \bar{s} + \left( p + (1 - p)(1 - \Pr(S \mid U)) \right)$$  \hspace{1cm} (2)

$c = 1$ gives her an expected payoff equal to

$$\gamma + \left( (1 - p)(1 - \Pr(S \mid U)) \right)$$  \hspace{1cm} (3)

Comparing (2) and (3), we note that if the politician reduces her corruption to $c = \bar{s}$, she loses $\gamma (1 - \bar{s})$ payoff from corruption, but she gains $rp$ because her probability of being

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9This equilibrium need not be unique since the newspaper might choose to publish when indifferent. This said, call $s$ the largest well-founded scandal the newspaper strictly prefers not to publish ($\pi(s) < \Pr(punish \mid s, W)$). If $s$ is greater or equal to $1 - rp/\gamma$, then there is only another equilibrium: the politician chooses $c = s$; the newspaper publishes (i) all well-founded scandals greater than $s$ but not equal to it, and (ii) unfounded scandals only if in a set $S \subseteq [0, 1]$; the voter re-elects the politician if and only if he observes no scandal. Since the main insights are unchanged by this detail, we prefer to concentrate on this equilibrium.
re-elected increases by the probability $p$ that the newspaper observes a well-founded scandal. Thus, the politician is willing to reduce corruption to $\bar{s}$ when (1) is satisfied.

From the discussion above, it is easy to see that $1 - \frac{rp}{\gamma}$ is also the minimum level of corruption attainable. This depends on the marginal rate of substitution between expected rent and corruption $\frac{rp}{\gamma}$. The greater the loss $rp$ in expected re-election rent when increasing corruption and the smaller the marginal direct payoff $\gamma$ of corruption, the greater will the incentive for the politician to limit corruption be.

The decrease in corruption comes at the expenses of a loss in the ability of the voter to select honest politicians. In equilibrium, a greedy politician has the same chances to be re-elected as an honest one. Thus, the probability that next-period politician is greedy is equal to the prior probability $\mu_0$. By contrast, in the absence of any libel law, greedy politicians are never re-elected and honest politicians are re-elected with probability $p$. Thus, next period politician is greedy with probability $\mu_0 [1 - p (1 - \mu_0)] < \mu_0$. It follows that libel laws can increase the voter’s welfare only if adverse selection is a minor problem compared to moral hazard: $1 - \mu_0 < \frac{r}{\gamma}$.

**Remark 1.** Libel laws can decrease the current level of corruption, but can only increase the probability of selecting greedy politicians in the future.

We wish to offer the following interpretation of our results. When voters effectively select honest politicians, they believe it is less likely that they will have to pay bribes. Thus, our results suggest that indexes of perceived corruption should be higher when the media are more regulated. Experienced corruption is a combination of the presence of greedy politicians and their level of corruption. Our results suggest that indexes of experienced corruption might be higher or lower when the media are more regulated, depending on whether selection or
moral hazard is dominant. Yet, on average, we would expect to see perceived corruption to increase more than experienced corruption when media become more regulated. Albeit at best suggestive of a causal relation, Figure 2 shows the relationship between media regulation and both perceived and experienced corruption in a sample of 32 democracies. Both measures of corruption increase when the media are more stringently regulated, suggesting that the selection problem is—on average—dominant. Figure 3 shows that, in a sample of 32 democracies, corruption over-perception is larger where the press is more regulated, confirming our intuition that tighter regulations induce higher perceived corruption but can indeed increase voters’ welfare.

Our results also imply that political turnout is slower when the media are more regulated,

10Perceived corruption is measured by the Transparency International Corruption Perception Index (inverted scale). For experienced corruption, data are from the World Bank’s ICVS and EU ICS. Press regulation is measured as the "Laws and Regulations" component (including libel laws) of the Freedom of the Press (FOTP) Index. The figure depicts data from available countries. Data for Argentina, Peru, South Africa, and Turkey refer to capital cities only; Great Britain refers to England and Wales. Sources: perceived corruption: CPI 2011, Transparency International 2012; experienced corruption: van Dijk et al. 2008; laws and regulations: FOTP 2012, Freedom House 2012. Both linear regressions p-values are 0.000 and robust to the presence of outliers.

11Corruption over-perception is derived as the residuals of a regression of perceived corruption (Transparency International Corruption Perception Index, inverted scale) over experienced corruption (data from the World Bank’s ICVS and EU ICS). The linear regression p-value is 0.010.
since tougher laws reduce the probability that a scandal is published (both well-founded and unfounded).

Remark 2. More stringent laws increase the probability of re-election of all politicians.

In a cross-country sample, Besley and Prat (2006) show some suggestive evidence of this effect.\footnote{See additional material available at http://econ.lse.ac.uk/staff/prat/papers/mediafigures.pdf (last accessed March 20, 2013).}

The following section studies the set of equilibria when the voter can commit to an optimal re-election rule. If there is no libel law, when adverse selection is a minor problem, the optimal re-election rule re-elects the politician whenever the voters see a scandal equal to \(1 - rp/\gamma\). In equilibrium, the politician chooses \(c = 1 - rp/\gamma\) and the next period politician is greedy with probability \(\mu_0 [1 - p (1 - \mu_0)] < \mu_0\). Intuitively, if the voter can commit to a re-election rule, he prefers to promise the politician that he will forgive some smaller scandals. This gives greedy politicians a sufficient incentive to limit corruption. By contrast, when the voter cannot commit, the politician knows that at the time of the election the voter will focus only on selecting honest politicians. Thus, in the absence of any libel law, there is no incentive for greedy politicians to limit their corruption. A libel law that deters the publication of small well-founded scandals solves this time inconsistency problem for the voter.

4 Optimal Re-election Rule

This section explores the optimal re-election rule the voter would choose to commit ex-ante. The timing of the model is modified as in Figure 4. We introduce a compensation \(\delta \in [0, r]\) the politician receives if the newspaper is punished. Thus, a greedy politician maximizes

\[
u^P(c) \equiv \gamma c + r \Pr(\text{re-elect} | c) + \delta \Pr(\text{punish} | c).
\]

For simplicity, we assume that the probability that any well-founded scandal is punished is a constant \(\Pi\).

Assumption 1. For all \(s \in [0, 1]\), \(\Pr(\text{punish} | s, W) \equiv \Pi \in (0, 1)\).

Our solution concept is perfect Bayesian equilibrium.

We begin by establishing the optimal re-election rule when there is no libel law.

Proposition 3. Assume there is no libel law. If moral hazard is dominant, the optimal rule re-elects the politician with probability 1 when a scandal of size \(1 - rp/\gamma\), but no larger, is
published. A greedy politician chooses \( c = 1 - rp/\gamma \). If adverse selection is dominant, the optimal rule never re-elects the politician when a scandal is published. A greedy politician chooses \( c = 1 \).

To see why this is the optimal re-election rule, recall that in the absence of a libel law, the newspaper publishes all scandals. When moral hazard is the dominant problem, the voter focuses on inducing greedy politicians to choose a low level of corruption. If scandals of size \( 1 - rp/\gamma \) are forgiven by the voter, then a greedy politician is willing to choose that level of corruption since the expected increase in the probability of being re-elected compensates the loss in corruption. Note that this implies that an optimal customary rule for voters is to accept that some corruption is structural to the political process and systematically forgive it. This is consistent with the evidence that different scandals have differing effects on voters’ support of politicians (Welch and Hibbing, 1997).

When adverse selection is dominant, the voter focuses on selecting honest politicians. Since greedy politicians are more likely to produce scandals, the voter commits to re-elect the politician only if there is no scandal.

We turn now to the issue of whether there exist libel laws that can improve the voter’s welfare. Proposition 4 says that this is possible under two conditions.

**Proposition 4.** A libel law increases the voter’s welfare only if (i) it deters the publication of some relatively large well-founded scandals, (ii) the re-election rule does not re-elect the politician when the newspaper publishes no scandal, and (iii) moral hazard is the dominant problem.

To fix ideas, we describe the equilibrium under one optimal libel law. This law deter the publication of (i) all well-founded scandals of size greater than

\[
\bar{s} = 1 - \frac{p(r + \delta \Pi)}{\gamma}
\]

but not equal to it, and (ii) all the unfounded scandals not in some \( S \subseteq [0, 1] \). Under such law, if moral hazard is dominant, one optimal re-election rule prescribes re-election with probability 1 if the newspaper publishes a scandal not greater than \( \bar{s} \); otherwise, re-election with probability 0 (including when the newspaper publishes no scandal).
In equilibrium, the politician chooses a level of corruption $c^* = \bar{s}$; the newspaper publishes all well-founded greater than $\bar{s}$ but not equal to it and unfounded scandals not in $S$. To see why this is the equilibrium, note that the politician is re-elected with higher probability whenever he chooses $c^*$ than when she is more corrupted. In particular, $c^*$ gives her an expected payoff equal to

$$\gamma c^* + r \left[ p + (1 - p) \left( 1 - \Pr(S \mid U) \right) \right] + \delta \left[ p\Pi + (1 - p) \Xi(S) \right]$$

where $\Xi(S)$ is the total expected compensation from unfounded scandals:

$$\Xi(S) \equiv \int_S \Pr(\text{punish} \mid s, U) \Pr(s \mid U) ds.$$ 

Choosing $c > c^*$, gives the politician an expected payoff equal to

$$\gamma c + r \left[ (1 - p) \left( 1 - F(\bar{s}) \right) \right] + \delta \left( 1 - p \right) \Xi(S).$$

We note that there is a loss in expected re-election equal to $rp$ and a loss in expected compensation equal to $\delta p\Pi$. The reason is that higher corruption leads the newspaper to conceal well-founded scandals. Since the voter does not re-elect if there is no scandal, the politician’s chances of re-election decrease by the probability $p$ of a well-founded scandal. Similarly, since the newspaper cannot be punished for libel if it does not publish a scandal, the politician’s chances of compensation decrease by the $p\Pi$. Thus, the politician prefers $c^*$ to $c > c^*$ if the increase in expected rent from re-election and compensation is larger than the loss in corruption: $c^* \geq \bar{s}$.

One might argue that compensations to victims of libel are usually low vis-à-vis other factors that motivate politicians. For example, Irish Prime Minister Albert Reynolds was awarded only 1 penny despite having lost his post. Yet, British MP Jeffrey Archer infamously received £500,000 when he sued the Daily Star in 1987. Furthermore, local officers are often awarded large damages if compared to their yearly salary. For example, a senior municipal official in a suburb of Toronto, Ontario was awarded $780,000 plus interest in a case of corruption libel. Similarly, the Chairman of the Capital Regional District in British Columbia was awarded $285,000 in another case.

Proposition 4 relies on the ability of the voter to commit not to re-elect the politician when no scandal has been published. The efficacy of libel laws hinges therefore on whether this

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13 See Garoupa (1999b) and Reynolds v. Times Newspapers Ltd and Others, House of Lords, 28 October 1999, for a complete report on the case.
condition is met in reality. Proposition 5 (below) says that if the voter re-elects the politician when the newspaper publishes no scandal, any libel law can only reduce the voters’ expected payoff and increase the level of corruption chosen by a type \( \gamma \) politician.

**Proposition 5.** If the re-election rule must re-elect the politician when the newspaper publishes no scandal, then any libel law is either ineffective or it induces more corruption and lower welfare for the voters than a completely free press.

5 Conclusions

We have suggested a framework to analyze the effect of libel laws on the political agency problem. By endogenizing the response of the voters to the information in the media, we identified the conditions under which such laws can reduce political corruption. We argue that these conditions are quite stringent. Indeed, they require that monitoring politicians’ behavior is a more important issue than selecting honest politicians. Furthermore, if voters are (i) capable of forgiving some smaller scandals and (ii) not capable of punishing the politician when there is no scandal at all, then any libel law can only increase political corruption.

Taken literally, this statement justifies a *laissez-faire* media policy, under which media are free to publish evidence of stories even when they have reasons to doubt their veracity. In this sense, the results presented here constitute a rationale for the distinction between *negligence* and *actual malice* drawn in U.S. Supreme Court ruling *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). The Supreme Court decision on this case held that all statements about the conduct of public officials, even those that can be proven to be false, are protected under the First Amendment guarantee of the freedom of the press. The case for libel exists only if the plaintiff can prove that the defendant’s statements are made with *actual malice*, that is, "with knowledge that they are false or in reckless disregard of their truth or falsity" (p. 280). The Court also made explicit that actual malice is different from bad motive or ill will (*common-law malice*)\(^{16}\) For the Supreme Court, indeed, "erroneous statement is inevitable in free debate, and [...] it must be protected" (p. 271).

Citing the opinion by Justice Burch (78 Kan., at 724, 98 P. at 286):

> It is of the utmost consequence that the people should discuss the character and qualifications of candidates for their suffrages. The importance to the state and to society of such discussions is so vast, and the advantages derived are so great, that they more than counterbalance the inconvenience of private persons

whose conduct may be involved, and occasional injury to the reputations of
individuals must yield to the public welfare, although at times such injury may
be great. The public benefit from publicity is so great, and the chance of injury
to private character so small, that such discussion must be privileged.

The Alabama law provision, judged as unconstitutional by the Supreme Court, held that it
sufficed to prove the falsity of the accusation for the defendant to be liable. This constituted
indeed a threat for the media, which are in most cases unable to know for certain whether
the allegation can be proven in court to be true. The Supreme Court held that "a finding of
negligence [...] is constitutionally insufficient to show the recklessness that is required for a
finding of actual malice" (p. 288).

In our model, the US jurisprudence regarding the defamation of a politician can be
summarized as follows. First, if it is possible to prove that the newspaper knew that the
scandal is unfounded, then it should be punished to preserve the politician’s right of not being
defamed. This is in line with our findings. Indeed, such a provision would only decrease the
number of unfounded scandals that are published. This does not decrease voters’ expected
payoff and instead increases the expected payoff of a honest politician, since she is re-elected
more often. Second, no punishment should be granted on the sole ground that the statement
is false, because this would damage public welfare. In particular, it damages voters’ ability
to select honest politicians.

This paper constitutes a very partial step into the analysis of the link between legal
frameworks for the press and the functioning of democratic institutions. Our results high-
light the importance of the endogenous response of the voters to allegations made by the
press. Nevertheless, we excluded the possibility that a media outlet has a political or per-
sonal motivation to ruin the reputation of the politician (see Warren, 2012 for a model
where media are biased in favor of the incumbent). Furthermore, media slant might also
be demand driven when there is uncertainty about the quality of different outlets. In this
case, a bias towards readers’ prior beliefs improves the outlet’s reputation and future rev-
enues (Gentzkow and Shapiro, 2006, 2010). In both cases, the more appropriate question is
whether defamatory statement made with common-law malice, that is, with the intention
of ruining the politician’s reputation, should be punished more harshly. Given the impact
that such legal provisions have on the functioning of democratic institutions, both questions
demand further research.

References


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A Appendix

A.1 Proof of Proposition

We first show in 3 steps that this is an equilibrium.

Step 1 A greedy politician expects all scandals to be published and that the voter will not re-elect her. Thus, she maximizes $\gamma c$ and chooses $c = 1$.

Step 2 The newspaper faces no punishment for libel and by assumption $\pi(x) > \pi(\phi)$ for all $x \neq \phi$. Thus, it publishes $x = s$.

Step 3 The voter knows all scandals are published. For all $\epsilon > 0$ and all $x \neq \phi$, he holds beliefs

$$Pr(\text{greedy} | x) = \frac{[p((1 - \epsilon) \mathbb{1}(x = c) + \epsilon g(x)) + (1 - p) \Pr(x | U)] \mu_0}{[p((1 - \epsilon) \mathbb{1}(x = c) + \epsilon g(x)) + (1 - p) \Pr(x | U)] \mu_0 + (1 - p) \Pr(x | U)(1 - \mu_0)} > \mu_0;$$

for $x = \phi$, he holds beliefs $Pr(\text{greedy} | x) = 0$. Thus, he re-elects if and only if he observes $x = \phi$.

To see why the equilibrium is unique, note that Steps 2 and 3 do not depend on Step 1. Thus, in all equilibria, the voter re-elects if and only if $x = \phi$ and the newspaper publishes all scandals. Last, notice that Step 1 says that, given Steps 2 and 3, the best response of the politician is a singleton.

A.2 Proof of Proposition

Let $(\rho, \Pr(\text{punish} \mid \cdot))$ be a law which deters the publication of (i) well-founded scandals of size $s$ but not larger and (ii) unfounded scandals not in $S \subseteq [0, 1]$. Note that this includes all laws which deter any well-founded scandals.
We show in three steps that (i) if \( \bar{s} \geq 1 - rp/\gamma \), the politician chooses \( c = \bar{s} \), the newspaper publishes well-founded scandals larger than \( \bar{s} \), and the voter re-elects if and only if he observes no scandal. If (ii) \( \bar{s} < 1 - rp/\gamma \), the politician chooses \( c = 1 \) and the other players’ strategies are as in (i).

**Step 1** A greedy politician expects the voter to re-elect if and only if he observes no scandal. If the politician chooses \( c \) such that the law deters publication of well-founded scandals of size \( c \), then her expected payoff is

\[
\gamma c + r [p + (1 - p)(1 - \Pr (S \mid U))] ;
\]

if she chooses \( c' \) such that the law does not deter publication of well-founded scandals of size \( c' \), her expected payoff is

\[
\gamma c' + r [(1 - p)(1 - \Pr (S \mid U))] .
\]

Thus, the politician prefers the first option to the second if and only if the largest scandal deterred by the law \( \bar{s} \) is greater or equal to \( 1 - rp/\gamma \). When this condition is met, she chooses \( c = \bar{s} \); otherwise she chooses \( c = 1 \).

**Step 2** The newspaper strictly prefers to publish well-founded scandals if they are greater than \( \bar{s} \). It might be indifferent for scandals of size \( \bar{s} \), otherwise it strictly prefers to publish \( x = \phi \) whenever it observes a scandal of size \( \bar{s} \).

**Step 3** If \( \bar{s} \geq 1 - rp/\gamma \), for all \( \epsilon > 0 \), when \( x \neq \phi \) the voter holds beliefs

\[
\Pr (\text{greedy} \mid x) = \frac{[p \epsilon g (x) + (1 - p) \Pr (x \mid U)] \mu_0}{[p \epsilon g (x) + (1 - p) \Pr (x \mid U)] \mu_0 + (1 - p) \Pr (x \mid U) (1 - \mu_0)} > \mu_0;
\]

when \( x = \phi \), he holds beliefs \( \Pr (\text{greedy} \mid x) \leq \mu_0 \). Thus, it is a best response for the voter to re-elect if and only if he observes \( x = \phi \).

If \( \bar{s} < 1 - rp/\gamma \), then the voter’s beliefs and strategy are identical to Step 3 in Proof of Proposition [1].

We might want to see whether the equilibrium is unique. We show that this is not the case, but all equilibria share the same fundamental properties. To see this, note that Steps 3 and
2 are independent of Step 1 and the best response of the politician is a singleton. Thus, we only need to see what happens if the newspaper publishes a well-founded scandal when it is indifferent.

Suppose $\pi(s) = \rho \Pr(\text{punish} | s, W)$. Then the newspaper would publish a well-founded scandal of size $\bar{s}$. But then the politician would not choose $c = \bar{s}$, because this scandal will be revealed and the politician will not be re-elected. There are two possibilities: (i) $\bar{s} \equiv \sup \{s \in [0, 1] : \pi(s) < \rho \Pr(\text{punish} | s, W)\} \geq 1 - rp/\gamma$. Then there is an equilibrium where the politician chooses $c = \bar{s}$, the newspaper publishes well-founded scandals larger than $\bar{s}$, and the voter re-elects if and only if he observes no scandal. (ii) $\bar{s} < 1 - rp/\gamma$. Then the politician chooses $c = 1$ and the other players’ strategies are as in (i). It is easy to see that this is the same statement as above but with $\bar{s}$ instead of $\bar{s}$. That is, with “strictly deters publication” instead of “deters publication.”

It is easy to see that the optimal law is one with $\bar{s} = 1 - rp/\gamma$.

Recall that we have considered all laws but those deterring the publication only of unfounded scandals. Now let $(\rho, \Pr(\text{punish} | \cdot))$ be such a law. Since $\Pr(\cdot | U)$ is independent of corruption $c$, it is easy to see that in the unique equilibrium the politician chooses $c = 1$.

It remains to show whether any law increases the voter’s expected welfare. The voter’s expected welfare is given by

$$ u(c, \mu) = - (\mu_0 c + \mu) $$

$$ \mu = \mu_0 \left[ 1 - (1 - \mu_0) (\Pr(\text{re-elect} | h) - \Pr(\text{re-elect} | g)) \right]. $$

With no libel law, the equilibrium expected payoff for the voter is $u^V(1, \mu) = - \mu_0 [2 - (1 - \mu_0) p]$. For any law with $\bar{s} < 1 - rp/\gamma$, the expected payoff is

$$ u^V(1, \mu) = - \mu_0 \left[ 2 - (1 - \mu_0) (p + (1 - p) (1 - \Pr(S))) - (1 - p) (1 - \Pr(S))) \right] $$

$$ = - \mu_0 \left[ 2 - (1 - \mu_0) p \right]. $$

Last, with any law with $\bar{s} \geq 1 - rp/\gamma$, the expected payoff is

$$ u^V(\bar{s}, \mu) = - \mu_0 \bar{s} - \mu_0 \left[ (1 - \mu_0) (p + (1 - p) (1 - \Pr(S))) - p - (1 - p) (1 - \Pr(S))) \right] $$

$$ = - \mu_0 \left[ 1 + \bar{s} \right]. $$

It is easy to see that the law that maximizes this last expression is the one with $\bar{s} = 1 - rp/\gamma$.
and this law is beneficial for the voters if and only if

\[ \mu_0 \left[ 2 - \frac{rp}{\gamma} \right] < \mu_0 [2 - (1 - \mu_0)p] \]

\[ \iff \]

\[ \frac{r}{\gamma} > 1 - \mu_0 \]

that is, when moral hazard is the dominant problem.

\[ \square \]

\section*{A.3 Proof of Proposition 3}

Let \( \Pr(\text{re-elect} | \cdot) \) be a re-election rule. We know that the newspaper publishes all scandals. By the revelation principle, it is sufficient to solve

\[
\min_{\Pr(\text{re-elect} | c)} \mu_0 [1 + c^* - (1 - \mu_0) (\Pr(\text{re-elect} | h) - \Pr(\text{re-elect} | g))] \\
\text{s.t. } c^* = \arg \max_c u^P(c) \\
\text{s.t. } u^P(c) \geq u^P(c') \text{ for all } c' > c.
\]

Compute the expected payoff for the politician if she chooses \( c \):

\[ u^P(c) = \gamma c + r \underbrace{p \Pr(\text{re-elect} | c)}_{\text{well-founded scandal}} + r(1 - p) \int_0^1 \Pr(\text{re-elect} | s) \Pr(s | U) ds. \]

\[ \underbrace{\text{unfounded scandal}} \]

Note that the expected re-election rent from unfounded scandals is independent of \( c \). Thus, the incentive compatibility constraint is

\[ \gamma c + rp \Pr(\text{re-elect} | c) \geq \gamma c' + rp \Pr(\text{re-elect} | c') \text{ for all } c' > c. \]

Let moral hazard be the dominant problem: \( r/\gamma > 1 - \mu_0 \). Then, any optimal re-election rule has \( \Pr(\text{re-election} | c^*) = 1 \) and \( \Pr(\text{re-election} | c') < 1 \) for all \( c' > c^* \). Note that the incentive compatibility constraint is binding only at \( c^* = 1 - rp/\gamma \). For any larger \( c^* \), we can decrease the probability of re-election for some \( c' > c \) and relax the constraint.

Let adverse selection be the dominant problem: \( r/\gamma < 1 - \mu_0 \). Then notice that reducing corruption to \( 1 - rp/\gamma \) is not worth the loss in selection. Thus, \( \Pr(\text{re-elect} | c) = 0 \) for all \( c \in [0, 1] \) is optimal and we have \( c = 1 \). 

\[ \square \]
A.4 Proof of Proposition 4

We divide the proof in 2 parts. Part 1 shows that any law which does not deter the publication of a well-founded scandal of size 1 induces at least as much corruption as no law and at most as much expected payoff for the voter. Part 2 shows that a law which deters the publication of large well-founded scandals reduces corruption and increases the voter’s payoff if moral hazard is the dominant problem.

Part 1 Let \((\rho, \Pr (\text{punish} \mid \cdot))\) be a law which does not deter the publication of (i) well-founded scandals of size 1 and (ii) unfounded scandals in \(S \subseteq [0, 1]\).

The expected payoff for a greedy politician who chooses \(c\) such that a well-founded scandal of size \(c\) is published is given by

\[
u^P (c) = \gamma c + r p \Pr (\text{re-elect} \mid c) + \\
+ r (1 - p) \left[ \int_S \Pr (\text{re-elect} \mid s) \Pr (s \mid U) ds + \Pr (\text{re-elect} \mid \phi) \Pr (S \mid U) \right] + \\
\text{unfounded scandal} \\
+ \delta p \Pi + \delta (1 - p) \int_S \Pr (\text{re-elect} \mid s) \Pr (s \mid U) ds. \quad (6)
\]

Compare the expected payoffs of \(c = 1\) and some \(c' < 1\) such that a well-founded scandal of size \(c'\) is published. The re-election rule minimizes the expected payoff of \(c = 1\) and maximizes the expected payoff of \(c'\) if \(\Pr (\text{re-elect} \mid 1) = 0\) and \(\Pr (\text{re-elect} \mid c) = 1\). Thus, \(u^P (c') \geq u^P (c)\) for some re-election rule if and only if

\[c' \geq 1 - \frac{rp}{\gamma}.
\]

The expected payoff for a greedy politician who chooses \(c''\) such that a well-founded scandal
of size $c''$ is not published is given by

$$u^P (c'') = \gamma c'' + r Pr (\text{re-elect} | \phi) \quad +$$
$$\text{well-founded scandal}$$
$$+ r(1 - p) \left[ \int_s \Pr (\text{re-elect} | s) \Pr (s | U) ds + \Pr (\text{re-elect} | \phi) \Pr (S | U) \right] +$$
$$\text{unfounded scandal}$$
$$+ \delta (1 - p) \int_s \Pr (\text{re-elect} | s, U) \Pr (s | U) ds. \quad (7)$$
$$\text{expected compensation}$$

Note that the “unfounded scandal” term in (6) and (7) is the same in both expression. The “expected compensation term differs by the expected compensation from well-founded scandals $\delta p \Pi$. Compare the expected payoffs of $c = 1$ and some $c'' < 1$ such that a well-founded scandal of size $c''$ is not published. The re-election rule minimizes the expected payoff of $c = 1$ and maximizes the expected payoff of $c''$ if $Pr (\text{re-elect} | 1) = 0$ and $Pr (\text{re-elect} | \phi) = 1$. Thus, $u^P (c'') \geq u^P (c)$ for some re-election rule if and only if

$$c'' \geq 1 - \frac{(r - \delta \Pi) p}{\gamma} > 1 - \frac{rp}{\gamma}.$$  

We then conclude that any law which does not deter the publication of well-founded scandals of size 1 cannot decrease corruption. Also notice that the probability of re-electing honest and greedy politicians is the same as in the case of free press both when adverse selection is dominant and when moral hazard is.

**Part 2** Let $(\rho, Pr (\text{punish} | \cdot))$ be a law which (i) deters the publication of well-founded scandals of size $s$ but not larger and (ii) does not deter the publication of unfounded scandals in $S \subseteq [0, 1]$. 

The expected payoff for a greedy politician who chooses \( \bar{s} \) is given by

\[
 u^P(c) = \gamma c + r \left[ \Pr(\text{re-elect} | \bar{s}) \right] + \left[ \int_{S} \Pr(\text{re-elect} | s) \Pr(s | U) ds + \Pr(\text{re-elect} | \phi) \Pr(S | U) \right] + \left[ \int_{S} \Pr(\text{re-elect} | s,U) \Pr(s | U) ds \right]
\]

well-founded scandal

unfounded scandal

expected compensation

(8)

If the politician chooses \( c' > \bar{s} \), the expected payoff is given by

\[
 u^P(c') = \gamma c' + r \left[ \Pr(\text{re-elect} | \phi) \right] + \left[ \int_{S} \Pr(\text{re-elect} | s) \Pr(s | U) ds + \Pr(\text{re-elect} | \phi) \Pr(S | U) \right] + \left[ \int_{S} \Pr(\text{re-elect} | s,U) \Pr(s | U) ds \right]
\]

well-founded scandal

unfounded scandal

expected compensation

(9)

which is increasing in \( c' \). Thus, \( u(\bar{s}) \geq u(c') \) for all \( c' > \bar{s} \) is tightest at \( c' = 1 \).

Note that the “unfounded scandal” term in (8) and (9) is the same in both expression. The “expected compensation” term differs by the expected compensation from well-founded scandals \( \delta p \Pi \).

The re-election rule maximizes the expected payoff of \( \bar{s} \) and minimizes the expected payoff of \( c' \) if \( \Pr(\text{re-elect} | \bar{s}) = 1 \) and \( \Pr(\text{re-elect} | \phi) = 0 \). Thus, \( u^P(\bar{s}) \geq u^P(1) \) for some re-election rule if and only if

\[
 \bar{s} \geq 1 - \frac{(r + \delta \Pi) p}{\gamma}.
\]

Thus, a law with \( 1 - (r + \delta \Pi) p/\gamma \leq \bar{s} < 1 - rp/\gamma \) effectively reduces corruption if the re-election rule has \( \Pr(\text{re-elect} | \phi) = 1 \) and \( \Pr(\text{re-elect} | s) \) sufficiently low for large \( s \).

Notice that such a re-election rule does not select honest politicians because in equilibrium greedy politicians are re-elected with the same probability as honest ones. Thus, the re-election rule is optimal and the voter’s expected payoff is increased only if moral hazard is the dominant problem: \( r/\gamma > 1 - \mu_0 \).
A.5 Proof of Proposition (5)

From Proposition (4), the only case in which corruption is less than in free press is when the law deters the publication of all scandals above $\bar{s}$. Consider such a law. From Part 2, Proof of Proposition (4), the optimal re-election rule in that case prescribes $\Pr(\text{re-elect} \mid \phi) = 0$. Let $\Pr(\text{re-elect} \mid \phi) = 1$. Then, from (8) and (9), $u^P(1)$ is strictly greater than $u^P(c)$ for any $c \leq 1 - rp/\gamma$. 