The Economics of Political Dishonesty and Defamation

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This paper addresses primarily the implications of the tort of defamation for the existence of political dishonesty in a society where the media have a wide impact and can influence electoral behavior. We present a model in which the tabloids have better information than society. Newspapers can monitor corruption and are, in a sense, auditors of politicians. The use of tabloids as auditors is limited to their self-interest in revealing corruption. The argument of the paper is that as long as newspapers are deterred from defamation, their auditing role is effective in deterring political corruption. © 1999 by Elsevier Science Inc.

I. Introduction

Defamation is a tort concerned with the publication of false defamatory statements about another person that tend to injure a person’s reputation by degrading him in the opinion of his neighbors or to make him ridiculous.1 Defamation can be divided into libel, in which publication is in a permanent form, and slander, which is oral publication. To found an action for publication, the offending matter must be published with a third party.

Libel law deals with a clash of two important values: freedom of speech and freedom from defamation. The proper balance between these goals has been debated over the years.

This paper does not primarily address the optimal regime for the tort of defamation but rather its implications for the existence of political dishonesty in a society in which

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1According to Carter-Ruck et al. (1992), "a statement concerning any person which exposes him to hatred ridicule or contempt or which causes him to be shunned or avoided or which has a tendency to injure him in his office profession or trade."
the media have a wide impact and can influence electoral behavior. In that sense, we are concerned with a potential “chilling” effect by which the media are discouraged from exposing dishonesty and political misdeeds.

A recent case has shown the political implications of defamation. In November 1994, the *Sunday Times* reported that the then Irish Prime Minister, Albert Reynolds, had lied to the Parliament and to his coalition partners on the appointment of his Attorney General as President of the High Court. The nomination was challenged because the Attorney General had apparently been dilatory in seeking the extradition of a pedophile priest. Two weeks later, Albert Reynolds was out of office.

He subsequently sued the *Sunday Times* for libel and was awarded damages of 1£ in November 1996. However, Albert Reynolds may have to pay most of the costs of litigation, estimated at more than 1 million£. The *Sunday Times* had paid 5,000£ into court that Albert Reynolds had refused to accept, leaving himself liable to bear the legal costs incurred by both sides after the date of payment because his award was less than the sum paid in.

Cases like this are not infrequent: In June 1967, William Boaks, a parliamentary candidate in the 1966 general elections, was awarded 1£ after he complained about a pre-election article in the *Times* saying he was out of work and living on benefit.2

In other cases, like the one that Jeffrey Archer won in July 1987 after the *Times* had published that while he was deputy chairman of the Conservative Party, he had engaged in foul conduct and then lied about it: The amount of damages reached 500,000£.3

Another example is the case that opposed Robert Maxwell to *Private Eye* in November 1986, after this satirical magazine alleged that he was financing trips abroad by Neil Kinnock, then the leader of the Labour Party, in hope of ultimate ennoblement. He was awarded 5,000£ compensatory damages and 50,000£ exemplary damages.4

In New Zealand, for example, in June 1959, the Minister of Industries and Commerce won a case against a national magazine (Times) that implied that he may have been concerned in some “under-the-counter” dealings in connection with a government contract. The plaintiff was awarded 11,000£ as compensation.5

An interesting case was the one that took place in Australia in November 1979. The plaintiff, Leon Punch, who was leader of the New South Wales Country Party, complained of reports of a farmers’ meeting at which a number of dairymen were reported to have voted to leave the Party and to have called for the plaintiff to resign. The plaintiff complained of reports in the *Canberra Times*, the *Newcastle Herald*, the *Northern Star*, and the *Sydney Morning Herald*. The case failed against the fourth newspaper and succeeded against the first three, although reports in the first three newspapers were based on a report from the fourth defendant, which in turn was based on a report in one of the first defendants’ newspapers. The plaintiff was awarded 14,000£.6

The motivation can, of course, be generalized and applied to any case in which a person may commit a harmful act (corruption, fraud, or misdeed) and can restrain the media by threat of libel action.

In the United States, libel law came under the influence of federal constitutional law after 1964. In that year, in the case of *New York Times v. Sullivan* [376 U.S. 254 (1964)], the United States Supreme Court ruled that state laws making newspapers strictly liable...

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2 Boaks v. Associated Newspapers Ltd.
3 Archer v. Express Newspapers Ltd.
4 Maxwell v. Pressdram Ltd.
5 Truth (NZ) Ltd v. Holloway.
6 Punch v. John Fairfax & Sons Ltd and Australian Associated Press.
for false defamatory statements were generally inconsistent with First Amendment rights of freedom of press. The reasoning was as follows: If public officials are allowed to recover damages for any false and defamatory statement, regardless of the level of care taken, then newspapers will be discouraged, or chilled, from printing stories on matters of public interest.

To moderate this chilling effect, the Supreme Court imposed a standard of proof in libel cases involving public official plaintiffs which was much higher than that used in most state courts at the time. Renas et al. (1989) have found that this chilling effect depends on the expected revenues of newspapers: It is most pronounced among papers that do not face competition, for which street and machine sales constitute a small percentage of circulation, and that have been sued but have not paid damages in the past.

In the United Kingdom, the Defamation Act of 1952 regulates the tort of defamation. In the case of libel, no damage to the plaintiff has to be proved. In slander, special damage must be proved except where the statement is an imputation of a criminal offense. In any action, the plaintiff must prove that the matter complained of is defamatory, refers to the plaintiff, and has been published by a third person. The burden is on the plaintiff to prove these three essential ingredients, and if he cannot do so, his action is bound to fail.

An action for defamation is essentially an action to compensate a person for the harm done to his reputation. Actions for defamation are usually tried by judge and jury; where there is a jury, it is for them to assess the general damages. General damages are a subjective assessment by the jury of the appropriate compensation for the plaintiff for the injury caused by the defamatory publication. General damages can be contemptuous (usually the smallest coin in the country), nominal (when the plaintiff indicates that his sole objective is to clear his name), compensatory (to vindicate the plaintiff’s reputation), and punitive (aggravated or exemplary damages to punish the defendant for misconduct after the original publication).

Under the United Kingdom rules, at any time after the plaintiff has entered an appearance in the action, the defendant may pay money into court in satisfaction of the plaintiff’s claim. If the plaintiff accepts the money, there is a private settlement and an end to the court proceedings. If he does not, the action will continue and one of two things may happen. If the plaintiff is awarded more than the sum paid into court, he will be entitled to judgment for the sum awarded with costs and the “payment into court” will have no effect. If he is awarded less damages than the sum paid by the defendant, he will only be entitled to the sum awarded and will have to pay the costs incurred by the defendant after the date of payment in. The fact that a payment into court has been made is not disclosed to either the judge or the jury in the course of the trial.

In the United Kingdom, a strict liability rule operates. Damages are usually compensatory, being aggravated if malice or negligence shown. Defendants must prove truth. According to Bradley (1996), settlements are common and plaintiffs prevail in more

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7On the United States case, see Sack (1980).
8In Scotland, no distinction is made between written and oral defamation, and the terms “libel” and “slander” are used synonymously. Actions for defamation tend to be much less frequent in Scotland than in England, and damages tend to be rather lower, to the extent that where damages against a newspaper tend to be measured in thousands in England, they tend to be measured in hundreds in Scotland.
than 50% of the cases that went to trial, but not infrequently the award is less than the amount paid in and plaintiffs become responsible for defendant’s costs.9

In the United States, there are two regimes. If the plaintiff is a public figure, actual malice is the liability standard. If the plaintiff is a private figure, a rule of negligence operates. Damages are compensatory and punitive if actual malice is shown. Plaintiffs must prove falsity. According to Sack (1980) and Bradley (1996), settlements are not very common and defendants prevail in more than 50% of the cases.10 Those actions that go to trial often produce plaintiff’s judgments that are eventually reversed on constitutional grounds.

The actual malice rule leaves most of the victims of defamation with no legal remedy for damage to their reputation. The cost to the victims of reputational harm can be very high. It can even deter participation in public life. Some of this deterrence is salutary. To the extent that those deterred fear disclosure of their misdeeds in office, the rule is beneficial. But it may deter others who do not fear disclosure of misdeeds but do fear false accusations about ordinary sins.11

The small economic literature of tort of defamation has developed around three main areas: (1) liability standards and compensatory damages; (2) costs of litigation; and (3) defenses for defamation.

Most papers analyze the tort of defamation in terms of liability standard (strict liability versus negligence) and damages (compensatory versus punitive). This literature includes Renas et al. (1983), Sheer and Zardkoohi (1985, 1989), Bezanson et al. (1989), Hollander (1989), Anderson (1991), and Bradley (1996). It is assumed in these papers that the full public value of a true published story may not be entirely captured by the original publisher. In general, a relaxed liability rule is proposed: If the level of care taken is less than appropriate, then the plaintiff should be fully compensated for damages; if the level of care equals or exceeds the care standard, then liability should be relaxed (some compensation is still appropriate). However, a negligence rule seems to go too far. Bradley (1996) compares the tort of defamation in the United States and the United Kingdom. He concludes that editorial decision-making on stories potentially harmful to a person’s reputation may not be too different in the two countries.

The discussion about costs of litigation and payments into court can be seen within the now vast literature on the economic analysis of legal disputes and their resolution. References include Shavell (1982, 1995), Cooter and Rubinfeld (1989), Gravelle (1989, 1993), and Polinsky and Rubinfeld (1998). It is argued that a move from the American rule (each party bears their own costs of litigation) to the English rule (the loser also pays the winner’s litigation costs) will lead to an increase in the number of trials. Moreover, as long as defendant and plaintiff have similar probability distributions about the outcome of the court proceedings, a settlement is likely to occur.

In most legal systems, defenses for defamation include absolute privilege, justification

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9Between 1980 and 1990, Carter-Ruck et al. (1992) list only 72 court cases in which damages have been awarded. They also show that since 1985 awards of damages have escalated.

10A public person is: (1) someone in the government who has, or who seems to have, substantial responsibility over governmental affairs; (2) someone who has achieved such pervasive fame and notoriety that he has become a public figure for all intents and purposes; or (3) a person who voluntarily injects himself into a public controversy.

11We are grateful to one referee for pointing out that the actual malice rule of deterring potential entrants who fear false accusations of ordinary sins can be compared to the English rule’s chilling effect on nonfrivolous suits by plaintiff’s who fear paying both sides’ fees in the event that the court inaccurately rules against them.
(truth), qualified privilege, and fair comment.\textsuperscript{12} Posner (1998) discusses the economic rationality for the possible defenses. He argues that the law externalizes some of the costs of giving information to encourage an external benefit.

Cass (1989) argues that the economics of the tort of defamation focus on the effect of the liability standard on the probability of recovery: Raising the threshold of recovery naturally reduces the incidence of recovery. He suggests that economic analysis has not produced strong conclusions about changes in libel law and has left subsidiary questions unanswered, namely, the trade-off between freedom of speech and freedom from defamation.

In this paper, I address this trade-off by taking a different approach: I discuss the impact of the tort of defamation on political dishonesty; that is, how the tort of defamation may stimulate political dishonesty. We consider a politician who can be honest or dishonest and a tabloid that may or may not expose him. We discuss how a social planner should choose an optimal set of compensations and sanctions before the game starts.

We start with a model in which the court cannot perfectly observe the politician’s behavior but the tabloid can. In this sense, we address the deliberate publication of defamatory falsehoods for editorial reasons.

Two main conclusions are presented: First, the sanction for dishonesty should be as high as possible; and second, the compensation for defamation should not be too high. Comparing the defamation laws of the United Kingdom and United States, the model predicts that a first-best solution (i.e., honest politician and honest tabloid) can be achieved in the first case (where plaintiffs tend to prevail) with a smaller compensation. However, when the sanction for dishonesty is constrained by the politician’s wealth, dishonesty may be easier to avoid in the second case.

Second, a rule of compensatory damage can be counterproductive: It may not deter defamation and, at the same time, it may encourage hidden dishonesty.

In this paper, we present a model in which the tabloids have better information than society. Newspapers can monitor corruption and are, in a sense, auditors of politicians. The use of tabloids as auditors is limited to their self-interest in revealing corruption. The argument of the paper is that as long as newspapers are deterred from defamation, their auditing role is effective in deterring political corruption.

The basic model with perfect information is introduced in Section II. In Section III, we discuss some extensions to the model, and in Section IV, we point out the main conclusions. Propositions are proved in the Appendix.

**II. Model with Perfect Information**

In this model there is a politician, \( P \), and a tabloid, \( T \). The politician can be honest, \( h \), or dishonest, \( d \). The tabloid can say that politician is honest, \( H \), or dishonest, \( D \). Notation is presented in Table 1.

There are four possible states. Let us start with full honesty. This is the case where the

\textsuperscript{12}Absolute privilege: (1) a statement made in judicial proceedings by any judge, advocate, juryman, party or witness; (2) a fair, accurate and contemporaneous report of judicial proceedings; (3) a statement made in Parliament by a member of any House; or (4) reports and papers published by the order of either House. Qualified privilege: (1) a statement made by a person in the course of performing a duty; (2) a statement made by a person protecting his own interest; (3) a statement made in a newspaper report of proceedings of certain associations; or (4) a statement made in communications between a solicitor and his client.
politician is honest and the tabloid publishes that he is honest. The politician has his initial wealth, \(w\), and the tabloid has the monetary value of its assets \(m\). Social welfare is \(W_1\).

Consider the case where the politician is honest and the tabloid accuses him of dishonesty; i.e., the tabloid defames the politician. The politician bears a loss, \(x\) (cost of being exposed as dishonest), the tabloid sells more newspapers and gets \(r\). The defamed politician goes to court and has a probability \(p\) of winning the case. If the politician wins the case, he gets compensation, \(f\). If he loses the case, he may be prosecuted for dishonesty and faces an expected sanction, \(s\). Social welfare is \(W_3\).

Consider now the case where the politician is dishonest and the tabloid publishes that he is honest; i.e., there is hidden dishonesty. The politician has an extra gain from being dishonest, \(c\), whereas the tabloid makes no further gain. Social welfare is \(W_4\).

Finally, we have the case of exposed dishonesty: The politician is dishonest and the tabloid exposes him. The politician has a gain from dishonesty, \(c\), and bears a cost of being exposed, \(x\). The exposed politician goes to court to clear his name and has a probability, \(q\), of winning the case (where \(q < p\)). If the politician wins the case, he gets compensation \(f\). If he loses the case, he is prosecuted for dishonesty and faces an expected sanction, \(s\). Social welfare is \(W_2\).

We distinguish different libel laws by attending on the liability standard. The liability standard is reflected in the probabilities \(p\) and \(q\). In the United Kingdom, a strictly liability rule operates that corresponds to higher probabilities \(p\) and \(q\).

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**13**This is usually the case in the context of political corruption. However, in cases in which the government does not go after losing plaintiffs, the expected sanction \(s\) is zero.

**14**The net loss from being exposed as a dishonest politician is larger when the politician is honest (\(x\)) than when he is dishonest (\(x-c\)).
States, there are two rules: actual malice and negligence. Both correspond to smaller probabilities $p$ and $q$.

The welfare ranking is $W_1 > W_2 > W_4$, and $W_1 > W_3$. However, any of the following is possible: $W_1 > W_2 > W_6 > W_4$, $W_1 > W_3 > W_5 > W_4$, and $W_1 > W_2 > W_4 > W_3$.

We start by considering a sequential game with perfect information and no litigation costs. Politician moves first. The tabloid perfectly observes that move and decides what to publish. The extensive form of the game is in Figure 1, where the payoffs shown are those of the politician, the tabloid, and social welfare.

A Court of Justice cannot accurately observe a politician’s behavior, and we assume that $1 > p > q > 0$. The social planner decides the compensation, $f$, and the expected sanction, $s$, before the game starts. The probabilities $p, q$ are not policy instruments.

**DEFINITION 1:** A first-best solution has everyone being honest; i.e.,

(i) the tabloid follows $H | h$ and $D | d$.

(ii) the politician chooses $h$.

**PROPOSITION 1:** Suppose there are no wealth constraints. A first-best is implemented by setting the policy instruments $f, s$ such that:

(i) $r/p < f < r/q$,

(ii) $s > (c - x + qf) / (1 - q)$.

The first-best solution is achieved by choosing a high expected sanction for dishonesty and a limited “fair” compensation for defamation. Note that this limited fair compensation is possibly independent of the politician’s gain, $c$, from dishonesty and his reputation loss, $x$. Being tough on defamation leads to hidden dishonesty, which is possibly the worst state of the world. However, this outcome can always be avoided.

Higher $p$ and $q$ (there is a higher probability that the politician wins the case ceteris paribus) implies that, in a first-best solution, the compensation could be smaller. If the dishonesty sanction is constrained by the politician’s wealth, exposed dishonesty rather than defamation is a more plausible outcome for the game. Different tabloids have
different revenues. Accordingly, each tabloid should face a different fine for the same wrongdoing. The critical values of the compensation for defamation are determined by the tabloid gains from publishing and not from the damage induced by such publication.

Policy design can be discussed in the context of Figure 2. Proposition 1 basically says that the compensation should not be so high that it would not pay to expose a cheating politician. And coompenstation should not be so low that the newspaper would have an incentive to print lies about honest politicians. The implementation of this result is based on the assumption that the libel award is made by a social planner maximizing social welfare. The model also allows for a social planner with a different social welfare index: Assume that the court (the jury) makes the libel award and $f$ is much inflated and greatly exceeds any loss $x$ suffered. This is argued to be the British case. From Figure 2, the optimal choice of $s$ is immediate. In general, very generous jury awards lead to hidden dishonesty whatever $s$ is.

Proposition 1 also proposes that politicians should face high expected sanctions if they are dishonest. Assume that the government never goes after losing plaintiffs, and so $s$ is very small. From Figure 2, the best a social planner can do is implement exposed dishonesty by setting a limited compensation. Note that social sanctioning $x$ is a substitute for expected punishment for corruption.

Comparing defamation laws in the United Kingdom and the United States (in the sense that probabilities $p$ and $q$ seem to be higher in the first case), the model predicts that the first-best solution is obtainable under the United Kingdom rules with a smaller compensation and a larger expected sanction for corruption.

The ability to achieve the first-best solution depends on the wealth of the politician or the tabloid. Suppose that the politician has a small amount of wealth so that the first-best solution cannot be achieved. Then we should set the dishonesty sanction, $s$, to equal his entire wealth. Depending on the ranking of $W_2$ and $W_3$, there are two
potential solutions: (1) set the defamation fine at a value \( r/p^2e \), for an arbitrarily small \( e \), and achieve \( W_3 \) (note that it may not be feasible); or (2) set a defamation fine sufficiently different from \( r/p \) (and less than \( r/q \)) and achieve \( W_2 \) (which is always feasible).

Suppose now that the tabloid does not have valuable assets so that the first-best solution cannot be achieved. Again depending on \( W_2 \) and \( W_3 \), two solutions are possible: (1) set a smaller fine for dishonesty and achieve \( W_2 \); or (2) set a high fine for dishonesty and achieve \( W_3 \).

**Model With Costs of Litigation**

In this model, the expected costs of litigation can be interpreted as to encompass both the American and the English cost-shifting rules. Suppose, if a politician is honest, that the politician’s litigation costs are \( l \) and the tabloid’s costs are \( n \). The American rule implies that \( l^h = l \) and \( n^h = n \). The English rule implies that \( l^h = (1 - \eta)(l + \eta n) + p(1 - \eta)l \) and \( n^h = (1 - \eta)n + p(\eta l + n) \). Define \( p = n/(l + n) \). If \( p > p^h \), the tabloid expects to pay more under the English rule than under the American rule. The opposite happens if \( p < p^h \). Both rules are equivalent in terms of expected costs if \( p = p^h \). Note that \( p^h \) is independent of \( \eta \).

Now once tabloid announces dishonesty, \( D \), the politician can go to court, \( g \), or not, \( ng \). If he does not go to court, he is charged with dishonesty and faces an expected sanction, \( s \). Notation is presented in Table 2.

The welfare ranking is \( W_1 > W_{2B} > W_{2A} > W_{2B} > W_4 \) and \( W_1 > W_{3A} > W_{3B} \). As before, exposed dishonesty and defamation can have different rankings. This is again a sequential game with perfect information in which the politician moves first. The extensive form of the game is in Figure 3.

**Definition 2:** The first-best solution has

(i) the politician chooses \( g|h \) and \( ng|d \),
(ii) the tabloid follows \( H|h \) and \( D|d \), and
(iii) the politician chooses \( h \).

**Proposition 2:** Suppose there are no wealth constraints. The first-best solution is implemented by setting the fines \( f,s \) such that:

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As one referee pointed out, the distinction between court costs (which are paid by the loser under the English rule) and attorney fees (which are not) should be made. In terms of the model, this is expressed by imposing \( \eta < 1 \).
In general, larger expected costs of litigation on the side of the defendant imply that a first-best solution is easier to implement as long as wealth constraints are not binding.

Expected costs of litigation on the plaintiff side introduce a less-than-maximal sanction for dishonesty.

Higher $p$ and $q$ implies that $\frac{lh}{p}$ and $\frac{ld}{q}$ are smaller: the politician’s real costs of litigation are smaller (cost of litigation divided by probability of winning). A first-best solution can be more difficult to implement when the tabloid is more likely to lose the case.

Once costs of litigation are included, the model predicts that a first-best solution can be more difficult to implement under the United Kingdom rules than under the United States rules because a politician has more incentives to go to court even if dishonest.

III. Extensions to the Model

Imperfect Information

Based on Garoupa (1999), we can consider the case where the tabloid is not able to observe perfectly the politician’s move. The tabloid is not sure whether a politician is dishonest or not. The extensive form of the game is in Figure 4.

It is quite intuitive that a first-best solution is no longer possible because the politician is able to anticipate the tabloid’s beliefs. Moreover, he knows that if the tabloid thinks he is honest, he should be dishonest. The tabloid also anticipates this and, therefore, cannot possibly expect the politician to be honest!

We can interpret the model we have discussed as a situation where the tabloids have better information than society. Tabloids monitor corruption and are, in a sense, auditors of politicians. The use of tabloids as auditors is limited to their self-interest in revealing corruption. The argument of the paper is that as long as a first-best solution is implemented, their self-interest is deterred and, consequently, their auditing role is
effective. However, when the tabloid has the same information set as the rest of society, there is less sense for an auditing role.

**Settlements**

In this simple model, we have ignored the possibility of a settlement between the politician and the tabloid. Following the approach proposed by Shavell (1982), and under the assumption that $p$ and $q$ are common knowledge, the defendant must pay $pf - (1 - p)s - l^p$ to an honest plaintiff and $qf - (1 - q)s - l^d$ to a dishonest plaintiff to secure a settlement. This means that the defendant’s payoff after the settlement is $w + r - pf + (1 - p)s + l^p - n^p$ and $w + r - qf + (1 - q)s + l^d - n^d$, respectively. So the politician and the tabloid always prefer to settle.

In terms of a first-best policy, we have to redefine the boundaries of the compensation and of the expected sanction for corruption. Proposition 2 hold when Condition (i) is now:

$$ f > \left[ r - n^h \right]/p + \left[ (1 - p)s + l^h \right]/p $$

The lower limit to the compensation to deter defamation is higher when settlements are possible because the tabloid knows that the expected cost from publishing a lie is smaller. Also note that there is one more argument for a “limited” expected sanction for corruption: By punishing too much corruption, the incentive for the politician to accept a low settlement increases, and so defamation is less deterred.

The importance of payments into court for the United Kingdom law on defamation has been emphasized in the Introduction. In the context of this model, it is argued that the possibility of a settlement presents the defendant with a powerful weapon to secure a low-cost deal, particularly with plaintiff risk aversion. This, in turn, has a knock on the effect on the chilling effect on newspapers. So the possibility of payments in makes a first-best solution harder to implement.
The model is set up as a game with three players: a politician, a tabloid, and the rest of society. Although we have explicitly recognized that there are many different tabloids with different revenues, that different tabloids should be punished differently according to their revenues, the interaction between different tabloids has not been modeled.

There is a widespread perception of circulation wars being fought between a few leading tabloids in the United Kingdom and in the United States, with stories of political corruption as one of the principal weapons. The decision of one tabloid whether or not to be honest (in the sense modeled in the paper) depends on the decision taken by other tabloids. Consider a case in which the politician is honest (in the model without litigation costs) and there are two tabloids deciding independently whether to publish that he is corrupt. Let us also assume that if both publish, each gets half of the total revenues, \( r \). Then by setting \( f > r/p \), both are deterred from publishing. On the other hand, when the politician is corrupt, by setting \( f < r/(2q) \), both are determined to publish (they both seek to be the only one publishing but both end up doing it). Therefore, the existence of a first-best solution is not affected by the existence of competition in the market.

An alternative way of allowing for the competition effect in this model is to say that if a lot of tabloids publish that a politician is corrupt, the probability of the politician winning the case decreases. In comparative static analysis, such an exercise resembles the one comparing the United Kingdom rules (higher probabilities) to the United States rules (lower probabilities). So, a first-best solution when the market is more competitive implies a higher compensation for defamation.

IV. Conclusion

The purpose of this paper has been to analyze and assess the current defamation laws as a device to avoid political dishonesty. Three main results were presented.

First, the fine for defamation should not be too small to deter defamation and should not be too high to avoid the chilling effect. It should increase with the revenues from publishing defamatory news and politician’s litigation costs but it should decrease with the tabloid’s litigation costs. This limited fair compensation is possibly independent of the gains from dishonest behavior and the damage of lost reputation.

The punishment for corruption should not be too small to deter corruption and should not be too high to chill politicians suing for defamation.

Second, if the possibility of a settlement between defendant and plaintiff exists, the compensation for defamation should be higher to deter defamation, and the punishment for corruption should be less severe to avoid the politician accepting a low settlement.

Third, strategic interaction between tabloids has ambiguous results on the fine for defamation. On one hand, the fine should increase to deter defamation (if newspapers fight circulation wars in which publishing political corruption stories gives them an advantage). On the other hand, the fine should decrease to expose corruption (if newspapers are chilled because their marginal increase in revenues is small given that everyone publishes these stories).
Appendix: Proof of Propositions

Proof of Proposition 1

We solve the game backwards for subgame perfection. The solution is in Figure 2:

1. If $f = r/q$, the tabloid always prefers to say that a politician is honest, $H$. Therefore, the politician prefers to be dishonest, $d$.

2. If $r/p < f < r/q$, the tabloid exposes the politician as he is: chooses $H/h$ and $D/d$.
   The politician chooses $h$ if and only if
   $$s \geq \left[ c - x + qf \right]/\left[ 1 - q \right]$$

3. If $f < r/p$, the tabloid always prefers to say that a politician is dishonest, $D$. The politician chooses $h$ if and only if
   $$s \geq c/[p - q] - f$$

Proof of Proposition 2

We solve the game backwards for subgame perfection. Depending on litigation costs, three cases can be considered.

If $f + s \geq t^p/q$, the politician’s expected costs of litigation are small, and he always goes to court. The game is similar to the case in which expected costs of litigation do not exist. Full honesty can be achieved by following the rule of fixing a high dishonesty sanction and $(r - n^d)/p < f < (r - n^h)/q$.

If $f + s \leq t^p/p$, the politician’s expected costs of litigation are high, and he only goes to court if honest. The first-best solution is possible if the social planner can choose $s > c - x$ and $f > (r - n^h)/p$.

If $f + s < t^p/p$, politician’s litigation expected costs are very large, the politician never goes to court, and the unique possible outcome of the game is exposed dishonesty without litigation.

References


