



The sound of silence: Political accountability and libel law



Gabriele Gratton*

UNSW, Australia

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ABSTRACT

This paper explores the role played by press regulation in selecting the information mass media deliver to voters. The focus is on whether press regulation 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. We show that punitive laws can reduce political corruption only if the moral hazard problem dominates adverse selection and the punishment is large enough to deter the publication of some well-founded scandals.

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1. Introduction

Mass media report to voters about their politicians. But how can the voters tell whether these reports are true? In this paper we explore the role played by press regulation in selecting which cases are reported. The question is whether punitive regulations can increase voters' welfare. For the sake of simplicity, we focus on the publication of political corruption scandal; we call “market profits” the incentives towards publication and “libel laws” the punitive incentives against publication.

Let us begin with a simple story. An editor of a newspaper receives a source in her office. The source reports of a corruption scandal about a politician. He brings some appealing but inconclusive evidence. The editor does not know whether the scandal is true, but she knows how reliable the source is. Before running the story on her newspaper, the editor will compare the increase in sales generated by the scandal with the possible consequences of publishing libel. Thus, libel laws affect which scandals are ultimately published.

Libel law provisions vary greatly even among western democracies or among different jurisdictions in the same country. For example, libel is a criminal offense in Italy and in 17 US states, but not in the remaining 33. Government officials are protected by specific provisions in France; they are less protected than non-public figures in the US.¹ Our model provides a rationale for such variance.

We study a simple theoretical framework in which an incumbent politician chooses a level of corruption. A newspaper observes a corruption scandal and chooses whether to publish it. Voters read the newspaper and choose whether to re-elect the incumbent politician or to replace her with a new one.² Crucially, the problem for the voters is two-fold: they want both to monitor corruption (moral hazard) and to select honest politicians (adverse selection).

* School of Economics, UNSW Business School, UNSW Sydney 2052, NSW, Australia.

E-mail address: g.gratton@unsw.edu.au.

¹ (OSCE, 2005). See Section 5 for more details on the US jurisprudence of public figures.

² Our model features a single (representative) voter. This can be thought of as the median, pivotal voter. Alternatively, the voter can be thought of as an expressive voter (see Brennan and Brooks, 2013; Hamlin and Jennings, 2011; Hillman, 2010) who derives utility from voting for the candidate he believes to be more honest (see also Footnote 1 in Section 2).

The newspaper observes scandals of different qualities and sizes. Reliable scandals are more likely to be defended in a libel trial and are larger when the politician is more corrupt. Unreliable scandals are less likely to be defended in a trial and their size is independent from actual corruption. We ask what libel laws increase voters' welfare. 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 some reliable 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 they see 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 reliable scandals.

An alternative perspective 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. Thus, if they see no scandal, they replace 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 reliable scandals; (iii) the law deters only the publication of large scandals; and (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 keep a politician when there is no allegation against her. 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,³ it is hard to imagine a president being impeached because of a '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 generate some chilling effect (see, for example, [Barendt et al., 1997](#)). Even if we could design a law which deters the publication of all and only all unreliable scandals, the law can reduce corruption only if it also deters the publication of some reliable ones. Thus, a libel law designed to increase voters' welfare inevitably violates the media freedom of speech.⁴

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 large incentives to remain in office, then the moral hazard problem is dominant and libel laws might reduce corruption. On the contrary, when most politicians are honest and have small incentives to remain in the office, a free press performs better in mitigating corruption.⁵ This is perhaps the case when revolving doors between public and private sectors guarantee a higher outside option for the politicians.

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 et al., 2001](#); [Djankov et al., 2001](#); [Petrarca, 2014](#); [Suphachalasai, 2005](#)) suggest a causal effect of media ownership, competition, and freedom on a wide range of political outcomes, including perceived corruption.⁶ Yet, measures of perceived corruption are endogenous to the information voters receive from the media. For example, [Stanig \(forthcoming\)](#) shows that more stringent laws reduce coverage of corruption; [Costas-Pérez et al. \(2012\)](#) show that corruption scandals have a greater effect on voters' behavior when they receive wider press coverage. 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.

A vast literature⁷ 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

³ See *United States v. Nixon*, 418 U.S. 683 (1974).

⁴ See also [Section 5](#).

⁵ Evidence from Italian local elections in [Drago et al. \(2013\)](#) suggests that newspapers play a more relevant role in keeping politicians accountable than in selecting good politicians.

⁶ Perceived 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 the past experience of corruption. The results of [Freille et al. \(2007\)](#) suggest that laws and regulations have a lesser impact on corruption than other components of press freedom.

⁷ Besides 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.

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