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

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Abstract

Voters use the press to keep politicians accountable. By endogenizing the response of the voters, this paper provides a theoretical foundation to disentangle the effects of media regulation on corruption and 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 well-founded scandals. In this case, libel laws act as a substitute for an optimal re-election rule to which voters commit ex ante.

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

JEL Classification Numbers: D7, K4.

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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

We read newspapers, watch the news, and judge. Voters use the message sent by the press as a primary tool to keep politicians accountable. Hence, the freedom of the press to report on political corruption is at the core of a well-functioning democracy. Yet, if the press is free to publish any allegation, we can expect much of what we read to be a cacophony of defamatory statements.¹ To mitigate this phenomenon, libel laws mandate a punishment for the publication of false accusations. The idea is simple: if the media are deterred from publishing unfounded scandals, voters have a more precise tool to keep politicians accountable. However, the relation between media regulation and precise reporting of corruption can go both ways: if the media fear being punished even when reporting well-founded scandals, they might conceal them—an unintended result known as the *chilling effect*.² This trade-off poses a crucial question: how do (or should) voters react to the message sent by the media both when these are regulated and when they are not?

This question underpins 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 corruption*.³ Yet, measures of

¹Arguably, reputation motives might give the media sufficient incentives to report only true stories (see Gentzkow and Shapiro, 2006 for a reason why this might not be the case). The presence of defamation in the real world and the ubiquity of anti-defamation provisions suggest that these incentives are not sufficient.

²See, among others, Barendt, Lustgarten, Norrie and Stephenson (1997); Garoupa (1999b,a); and Stanig (2011).

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

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. To address this issue, we need to identify the proper channels through which media regulation affects actual corruption.

Arguably, one of the problems faced by this literature is that we miss clear theoretical predictions on which to base empirical studies. In particular, the scant theoretical literature (for example, Garoupa, 1999a,b) does not allow for a direct comparison between corruption levels with and without a libel law. Furthermore, the issue of how voters respond to the information provided by the media lies unexplored. By endogenizing the response of the voters, this paper provides a theoretical foundation to disentangle the effects of media regulation on actual corruption and clarify under which circumstances regulation reduces or increases corruption.

I study a simple theoretical framework to analyze the effects of libel laws on political corruption. A media firm observes evidence of a corruption scandal regarding the politician. Scandals are of different size and quality. 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 does not depend on actual corruption. The media firm chooses whether to publish the scandal and the voters use the message sent by the media to decide whether to re-elect the politician. Their objective is dual: they want both to monitor corruption (moral hazard) and to select honest candidates (adverse selection).

I divide the analysis between the case when the voters can commit to a re-election rule and when they can only decide *ex post* whether to keep the politician. While the no-commitment case is arguably a more realistic setup, studying the optimal re-election rule clarifies the channel through which libel laws can help reducing corruption in the no-commitment case. To see this point, suppose that voters cannot commit. Then they re-elect if and only if

that laws and regulations have a lesser impact on corruption than other components of press freedom.

no scandal has been published. This is because at the time of the election voters focus only on the selection problem. Yet, if the moral hazard problem is dominant, voters would *ex ante* prefer to commit to forgive some smaller scandals. Thus, a libel law can help the voters if it deters the publication of small scandals. By hiding smaller scandals from the voters, the law effectively gives the voters the opportunity of forgiving small levels of corruption. That is, when voters cannot commit, libel laws may act as a substitute for an optimal re-election rule. Indeed, the optimal law induces the same corruption achieved under free press when voters commit to a re-election rule.

From the argument above, it follows that an anti-defamation law can improve the expected payoff of the voters only if (i) adverse selection is a minor 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.

If voters can commit to a re-election rule and moral hazard is the dominant problem, voters re-elect the politician whenever the scandal is small enough. Yet, there is still a channel through which anti-defamation laws could help. 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 the scandals are not revealed, the politician has no chance of being compensated for defamation. It follows that an anti-defamation law can improve the expected payoff of the voters only if four conditions are simultaneously met: (i) adverse selection is a minor 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 punish the politician when the media publish 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 in many situations it is not possible, for legal or customary reasons, to punish the politician without an explicit 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,⁴ 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 (for example, because this is a cultural norm), but cannot 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 effectively limit the freedom of the press to publish well-founded scandals. In this sense, some amount of chilling effect is desirable. This result holds even if we can design a law which deters the publication of all and only all unfounded scandals. That is, even in this case, we might prefer to also deter 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 can 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.⁵ Section 6 discusses the results in light of the prevalent US jurisprudence on defamation of public figures.

My model is closest to the ones of Garoupa (1999a,b). In Garoupa (1999a,b), 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. My results show that this is not always voters' optimal reaction. Furthermore, in my model, the media cannot simply fabricate a scandal. Journalists observe hard and soft information and

⁴See *United States v. Nixon*, 418 U.S. 683 (1974).

⁵Evidence from Italian local elections in Drago, Nannicini and Sobbrivo (2013) suggests that newspapers play a more relevant role in keeping politicians accountable than in selecting good politicians.

decide to run a story when this is advantageous for them. Otherwise the media simply cover other topics.⁶

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 my knowledge, my 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 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 mine 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. My model abstracts from this possibility and analyzes the role of fully independent media.

The remainder of the paper is structured as follows. Section 2 presents some data and anecdotes that help to contextualize the analysis that follows. Section 3 studies the model with commitment and discusses the main assumptions. Section 4 analyzes the case of no commitment, derives a set of testable predictions, and briefly discusses some preliminary evidence. In Section 5 I discuss some key assumptions of the main model and extend the results to a more general settings. Section 6 discusses the results in light of the prevalent US jurisprudence on defamation of public figures. All proofs of Sections 3 and 5 are in the Online Appendix.

⁶This assumption is discussed in more detail in Section 3.

⁷Besides 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 Political Defamation

This section highlights two aspects that play a key role in my analysis. First, voters often take political decisions before the allegation published in the media is verified. Even when the allegations is false, voters must react, and indeed they do. Second, press regulation can indeed be stringent enough to deter the publication of facts the media believe to be well-founded.

A crucial feature of my model is that voters cannot use 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 verified 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 formal investigation by the time of the election. It is interesting to notice that Welch and Hibbing (1997) find that, “if anything, the charges that are not accompanied by formal action are more damaging” for the politician. This is exactly why political defamation is so dangerous.

A famous case is the one involving the then Irish Prime Minister, Albert Reynolds. In November 1994, the *Sunday Times* reported that Reynolds had lied to the Parliament and to his coalition partners on the appointment of his Attorney General as President of the High Court. In only two weeks, the Labour Party abandoned the government coalition and Reynolds resigned. Reynolds later sued the *Sunday Times* for libel and the jury decided that the defamatory allegation of which Mr. Reynolds complained was not true, although the defendant was not acting maliciously.⁸

In some cases, the wait for a public verification of the facts can last decades. For example, on June 15, 1978, President Giovanni Leone of Italy resigned as President of the Republic—a unique case in the history of the Italian Republic. Newspapers and political opponents had accused him of being involved in a scandal regarding bribes paid by officials of the U.S. aerospace company Lock-

⁸See Garoupa (1999b) and *Reynolds v. Times Newspapers Ltd and Others*, House of Lords, 28 October 1999, for a complete report on the case.

heed to Italian politicians. Among his most fierce accusers were the Radical Party members of parliament Marco Pannella and Emma Bonino. President Leone was never condemned for the above allegations and—significantly—Mr. Pannella and Ms. Bonino published an open letter of apologies in most national newspapers on the occasion of Leone’s ninetieth birthday in 1998⁹.

Many examples of chilling effect are collected in Barendt et al. (1997). I mention here a late scandal involving Lazio’s (Italy) Governor Piero Marrazzo between the summer and the fall of 2009. Governor Marrazzo was blackmailed by four police officers in possession of a compromising videotape portraying Marrazzo’s involvement with a transgender prostitute. During the late summer and in the early fall of 2009, the police officers had repeatedly tried to sell the video to newspapers and televisions, but could not find a buyer. The scandal is nonetheless capable of capturing media and public attention: on October 23, most national newspapers reported of the existence of a police investigation on four police officers blackmailing Governor Marrazzo. Now Marrazzo’s videotape was subject of an official investigation and this meant the press could have not been sued for defamation. Indeed, details about the videotape appeared on most national newspapers in the following days. In this case, the media did possess relevant evidence of a scandal. As revealed by the widespread first-page publication of minute details of the video, the press would have been eager to publish the scandal. Nonetheless, they refrained for fear of legal consequences.

3 A Model with Commitment

This section introduces a model of political agency where a monopolistic media plays a monitoring role between the voters and a politician. An incumbent politician chooses whether to be corrupt. The media firm observes corruption scandals of different quality and decides whether to publish them. The voters commit *ex ante* to a re-election rule for the politician based on this publication. This rule is represented by a mechanism e , where $e(x)$ is the probability of

⁹Corriere della Sera, November 3 1998, p. 35.

re-electing the politician when the voters observe publication x .

The Politician The politician chooses corruption $c \in [0, 1]$. She can be of two types, $\gamma^P \in \{0, \gamma\}$. Type 0 politicians are irreducibly *honest* and always choose $c = 0$. Type γ politicians are *greedy*: they receive utility from corruption equal to γc , with $\gamma > 0$. The probability that the politician is of type γ is $\mu_0 \in (0, 1]$, with $\mu_0 = 1$ representing the case where only a moral hazard problem exists.

Type γ politicians want to be corrupted and re-elected. Let R be an indicator function taking value 1 if and only if the politician is re-elected. Also, let D be an indicator function taking value 1 if and only if the media firm is punished for defamation (detailed below). The payoff of a type γ politician is $u^P(c, R, D) \equiv \gamma c + Rr + D\delta$, where $r > 0$ is the utility of being re-elected and $\delta \in (0, r]$ is the compensation awarded to the politician if the media is condemned.

The Voters Voters want to limit corruption, but also want to select an honest politician in a second (not modeled) period. For simplicity, we shall assume

$$u^E(c) \equiv -c - \mu$$

where μ is the probability that the next period politician is type γ :

$$\mu = \Pr(\gamma^P = \gamma | R = 1) \Pr(R = 1) + \mu_0 [1 - \Pr(R = 1)].$$

This formulation is a reduced form of a two-period model where there is no punishment for the second period's politician and, 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). There is a moral hazard (corruption in period 1) and a selection component (corruption in period 2). Voters receive no information regarding the politician other than the one published by the media.

The Media The media firm observes a signal $s \in \{\phi, [0, 1]\}$ and the signal's type $\theta_s \in \{\phi, t, f\}$. With probability p , the signal depends on the politician's type and action. If the politician is of type γ , the firm observes a scandal equal to the level of corruption, $s = c$; this scandal is *true* (or *well-founded*), $\theta_s = t$. If the politician is of type 0, the firm observes 'silence': $s = \theta_s = \phi$. With probability $(1 - p)$, the media firm observes a scandal s distributed according to a *cdf* F over $[0, 1]$. This scandal is *false* (or *unfounded*); $\theta_s = f$.

The firm sends to the voters a publication $x \in \{\phi, [0, 1]\}$. For reasons I highlight below, the firm can only publish a scandal it has observed. If there is no scandal, the firm must send the publication 'silence', ϕ . That is, a pure strategy for the media is a function $m(\theta_s, s)$, mapping pairs of signals and signals' types to publications, such that (i) if the firm observes silence, it must publish silence: $x = m(\phi, \phi) = \phi$; and (ii) if the firm observes a scandal of size s , it must publish either a scandal of the same size or silence: if $\theta_s \neq \phi$, $x = m(\theta_s, s) \in \{\phi, s\}$.

The payoff of the media firm publishing x is equal to $u^M(x, D) \equiv \pi(x) - D\rho(x)$, where $\pi(x)$ is the revenue and $\rho(x)$ is the punishment for defamation (detailed below). The firm's revenues are a function π of its publication x , such that $0 = \pi(\phi) < \pi(0)$, $\pi'(x) > 0$ and $\pi''(x) < 0$ for all $x \neq \phi$.

Libel Laws If the firm publishes a false scandal then the firm is punished with probability q_f . If the scandal is true, the firm is punished with a smaller probability q_t , with $0 < q_t < q_f$. The punishment for the firm is a function of the size of the scandal, $\rho : [0, 1] \rightarrow \mathbb{R}_+$. Of course, the firm is never punished if it publishes silence.

Figure 1 depicts the timing of the model. First, voters commit to a mechanism e for the politician; then, the politician chooses c . The media firm observes (θ_s, s) and publishes x . Finally, the stochastic variables R and D are realized. These are, respectively, the realization of e and the libel trial.

It is useful to define the expected payoff of a type γ politician as

$$\nu^P(c, m, e) \equiv E[u^P(c, R, D)] = \gamma c + \Pr(R = 1 | c, m, e) r + \Pr(D = 1 | c, m) \delta.$$

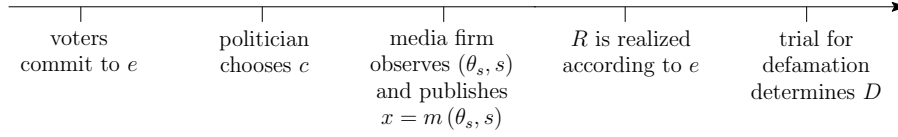


Figure 1: Timeline of the Model

Hence, any mechanism e inducing type γ politicians to choose c should satisfy the incentive compatibility constraint

$$\nu^P(c, m, e) \geq \nu^P(c', m, e), \forall c' > c. \quad (\text{ICC})$$

The remainder of this section studies the set of perfect Bayesian equilibria of this model. I will refer to a law that induces the media firm to conceal some true scandals as a law with potential chilling effect. Notice that this does not mean that in equilibrium the firm receives a true scandal and chooses not to publish it. Indeed, the politician might never choose an act that the media would conceal.

Definition 1. An anti-defamation law has potential chilling effect if in equilibrium there exists $s : m(t, s) = \phi$.

3.1 Discussion

The information structure in the model deserves some justification. The firm observes scandals, but it is not sure of whether it might be punished for defamation if it publishes them. Some scandals are well-founded. They come from reliable sources and the firm knows it will have high chances of defending them in court—with probability $1 - q_t$. Also, the firm receives unfounded scandals. These scandals come from unreliable sources and the firm does not expect to be able to defend them in court—an event happening with probability $1 - q_f < 1 - q_t$. Another way of looking at this assumption is that well-founded scandals are actually *true* (indeed they always represent the true level of corruption) and unfounded scandals are actually *false*. In this case, $0 < q_t < q_f < 1$ represents the fact that the justice system makes mistakes.

For the sake of simplicity, the model and the results follow this more direct interpretation.

The firm can choose whether to publish the scandal it observes, but it cannot simply invent a story about the politician.¹⁰ This is arguably 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 mostly based on some factual evidence that is misinterpreted, misreported, or simply taken out of context. Likely, readers are not interested in the mere opinion of a reporter, but in a convincing story based on some evidence. For example, casual observation indicates that the mere statement that two persons are having an affair does not create a scandal. On the contrary, when the statement is accompanied by a witness and a picture of the two walking towards a hotel, the effect is completely different, whether the allegation is in fact true or not. Hence, a journalist is not always capable of constructing any possible story, but is limited by the hard information she can obtain. In this sense, we can model media as collectors and filters of information. In this context, the case for libel laws is based on the conjecture that if the media select only well-founded scandals, then they report more precisely the politician's conduct.

The relationship between the expected punishment for the media when publishing true or false scandals is assumed to be fixed and exogenous to the model, while the electorate can only choose a mechanism for the politician. Arguably, the electorate has another instrument in its control: the demand for scandals. Appendix C (in the Online Appendix) extends the results to the case where voters determine an optimal demand for scandals. Also, the distribution of false scandals is independent of the true corruption of the politician. In Section 5, I largely relax this assumption and show that the main thrust of the results is robust to a more general specification of the model.

The firm's revenues are such that any scandal gives larger revenues than publishing no scandals at all. This feature of the model captures the firm's reputational concerns. In my setup, a scandal cannot be fabricated by the

¹⁰See, for example, Besley and Prat (2006) for a similar assumption.

media. Suppose that there are media outlets who never get scandals. These outlets are uninformative and voters prefer informative outlets. Unless the anti-defamation law is so stringent that no scandal is ever published, an outlet which publishes no scandal is, all else constant, always more likely to be an uninformative one. Hence, reputational concerns would imply that publishing any scandal increases the payoff of the outlet.

The assumption that media revenues are increasing and convex is only imposed for ease of exposition. The analysis in this paper is limited to two types of scenarios: (i) when the punishment function is convex *vis-à-vis* revenues and (ii) when the contrary is true. In case (i), anti-defamation laws deter the publication of large scandals relatively more than small scandals. In case (ii), the contrary is true. That is, I exclude the case when only mid-range scandals are deterred. The model can be easily extended to consider these cases without changing the main thrust of the results.

For the analysis in this section (that is, when voters can commit), a crucial assumption is that the politician receives a compensation $\delta > 0$ if the firm is punished for defamation. One might argue that such compensations are usually low *vis-à-vis* other factors that motivate politicians. For example, Irish Prime Minister Albert Reynolds (see Section 2) 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.¹¹ Similarly, the Chairman of the Capital Regional District in British Columbia was awarded \$285,000 in another case.¹²

3.2 Free Press

I begin by considering the limit case where there is no anti-defamation law in place and the media firm is absolutely free to publish any scandal. The equi-

¹¹See *Hodgson v. Canadian Newspapers Co.*, 49 O.R. (3D) 161 Ont. C.A. (2000).

¹²See *Clark v. East Sooke Rural Association et al.*, B.C.S.C. 1120 (2004).

librium level of corruption in this *free press* scenario constitutes a fundamental benchmark against which to compare the level of corruption induced by any punitive law. I shall say that an anti-defamation law is effective if it increases the expected payoff of the voters with respect to the free press scenario.

The equilibrium conditions under complete free press are given in Proposition 1.

Proposition 1. *If the media firm is absolutely free, the equilibrium corruption level of type γ politicians is c^{FP} :*

$$c^{FP} \equiv \begin{cases} 1 - \frac{pr}{\gamma} & \text{if } 1 - \mu_0 < \frac{r}{\gamma}; \\ 1 & \text{otherwise.} \end{cases}$$

The expected payoff for the voters is $\nu^E(FP)$:

$$\nu^E(FP) \equiv \begin{cases} -\mu_0 \left(2 - \frac{pr}{\gamma}\right) & \text{if } 1 - \mu_0 < \frac{r}{\gamma}; \\ -\mu_0 (2 - p(1 - \mu_0)) & \text{otherwise.} \end{cases}$$

Definition 2. An anti-defamation law is said to be effective if it induces an equilibrium expected payoff for the voters greater than $\nu^E(FP)$.

The intuition behind Proposition 1 is straightforward. When the media firm is completely free to publish any scandal without fearing any punishment ($\rho(x) = 0$ for all $x \in [0, 1]$) the expected payoff of publishing any scandal is positive and the media publishes all scandals: $m(\theta_s, s) = s, \forall s, \theta_s$. The information reaching the voters is therefore identical to the scandals observed by the media.

It is convenient to consider two different cases. First, when the adverse selection problem is less important (μ_0 close to one) and the re-election motives of greedy politicians are high (r is large compared to γ). Here voters concentrate on limiting moral hazard. Equilibrium corruption depends on the marginal rate of substitution between expected rent and corruption, pr/γ . The greater the loss in expected rent when increasing corruption (pr) and the lower the marginal direct payoff of corruption (γ), the greater will the

incentive for the politician to limit corruption be. This observation is valid throughout the analysis for any anti-defamation law. Hence, we can anticipate now that such a law reduces corruption if it makes the marginal expected rent of decreasing corruption greater than pr .

The equilibrium corruption $c^{FP} > 0$ is accepted by the voters, in the sense that the politician is forgiven despite the fact that voters know that the scandal $x = c^{FP}$ is true. We can talk of a *physiological* level of corruption. Voters accept that some corruption is structural to the political process and systematically forgive it. This is consistent with empirical evidence that different scandals produce a significantly different effect on voters' support for a politician (Welch and Hibbing, 1997).

Since greedy politicians are systematically forgiven by the voters, the optimal mechanism does not select honest politicians and the ex ante probability that the second period politician is of type γ equals μ_0 .

Second, if the adverse selection problem is dominant (μ_0 is small) and the re-election incentives are low, then voters concentrate on selecting honest politicians and punish all scandals. In this case, a greedy politician chooses $c = 1$ and the probability that the second period politician is of type γ is $\mu_0(1 - p(1 - \mu_0))$.

3.3 Punishing Large Scandals

This section characterizes the set of equilibria for different anti-defamation laws which punish large scandals relatively more harshly than smaller ones. That is, the punishment function ρ has $\rho(0) = 0$, $\rho'(x) > 0$, and $\rho''(x) \geq 0$ for all $x \in [0, 1]$.¹³

The following proposition summarizes the main findings regarding the effect of introducing an anti-defamation law.

Proposition 2. *An anti-defamation law deterring the publication only of large scandals is effective only if (i) the adverse selection problem is not so important*

¹³The results in this section are valid for all laws such that ρ crosses π at most once and from below.

($1 - \mu_0 < r/\gamma$), (ii) the law has potential chilling effect, and (iii) the voters punish the politician whenever the media are silent ($e(\phi) = 0$).

The key intuition derives from the optimal response of the media firm to the possibility of being punished for defamation. This depends on two threshold scandals: \underline{s} and \bar{s} . The first threshold

$$\underline{s} \equiv \{s \in \mathbb{R}_+ : \pi(s) = q_f \rho(s)\}$$

is the largest scandal that the firm would publish if it were to be false. We can refer to \underline{s} as the measure of the intended stringency of the anti-defamation law. A low \underline{s} means that few false scandals would be published by the media, a high \underline{s} means that many such scandals would be published. Indeed, if $\underline{s} > 1$, the anti-defamation law is not stringent at all, in the sense that it is never binding for the media's problem. The second threshold is

$$\bar{s} \equiv \{s \in \mathbb{R}_+ : \pi(s) = q_t \rho(s)\}.$$

This is the largest scandal that the firm would publish if it were to be true. Hence, we can think of \bar{s} as the measure of the unintended stringency of the anti-defamation law or the measure of the potential chilling effect. In fact, a low \bar{s} means that few scandals would be published by the media even when true. A high \bar{s} means that many such scandals would be published and the chilling effect potential is reserved to only the most serious scandals. Indeed, if $\bar{s} > 1$, the anti-defamation law is not creating any chilling effect at all, in the sense that it is always economically convenient for the firm to publish a true scandal. Notice that the properties of ρ and π guarantee the uniqueness of \underline{s} and \bar{s} . Furthermore, since $q_t < q_f$, it is easy to show that $\underline{s} < \bar{s}$.

Suppose that $\bar{s} \geq 1$. In this case, all true scandals are published by the media firm. Hence, the law has no potential chilling effect. Again, when adverse selection is less important and re-election motives are high (r is large compared to γ), voters concentrate on limiting the moral hazard. This mechanism must be based on true scandals and equilibrium corruption depends

on the marginal rate of substitution between expected rent and corruption pr/γ . On the contrary, if the adverse selection problem is dominant, then voters concentrate on selecting honest politicians and punish all scandals. In this case, a corruption-prone politician chooses $c = 1$. This implies that a law without potential chilling effect is ineffective in reducing political corruption. Also, the probability of selecting honest politicians is unchanged from the case of a completely free press. Nevertheless, the probability that any politician is re-elected is higher than in a situation of free press, since more false scandals are concealed by the press and that silence induces the voters to re-elect the politician. We can therefore state the following:

Proposition 3. *A law that only deters the publication of false scandals is ineffective: both corruption and the voters' expected payoff equal their free press levels. The set of optimal mechanisms is the same as in the case of free press. For any optimal re-election rule, the probability that a politician is re-elected is higher than in free press and, if $c^{FP} < \underline{s}$, decreasing in \underline{s} .*

It remains to analyze the case when $\bar{s} < 1$. In this case, the media firm is deterred from publishing some true scandals, provided they are serious enough. Then, if a type γ politician chooses a very high level of corruption, the media would not report any scandal with probability p . If the moral hazard problem is dominant ($1 - \mu_0 < r/\gamma$), the voters will concentrate on inducing the lowest possible corruption in type γ politicians. Hence, when the media remain silent, voters punish the politician. Indeed, the disappearance of large scandals does not reduce the amount of useful information available to the voters because these are substituted by the message silence. This implies that the expected punishment for the politician in the case of high corruption is not different from the case of free press: high corruption leads to silence which leads to punishment. What has changed is the expected compensation for defamation. When the media publish all true scandals, whether the politician chooses to be less or more corrupt, she has a probability q_t of reaping judgments from the media firm publishing a true scandal. When there is some potential chilling effect, this is possible only if the politician has chosen a low level of corruption.

Hence, the anti-defamation law adds an extra incentive for the politician: the possibility of being compensated for defamation. If \bar{s} is sufficiently high, then a type γ politician chooses a level of corruption equal to $\bar{s} - pr/\gamma$. If \bar{s} is too low, then the level of corruption necessary for the politician to enjoy the possibility of compensation is so low that it is not worth giving up the possibility of choosing the maximum level of corruption. That is, a law that induces the media to conceal even small true scandals induces the politician to choose $c = 1$ for any re-election rule. Furthermore, to maximize the probability of selecting an honest politician, the voters set $e(\phi) = 0$, inducing $\mu = \mu_0(1 - p)$. That is, voters let type γ politicians choose maximum corruption and try to select them out by punishing them whenever a true scandal is received by the media. The expected payoff for the voters is $-\mu_0(2 - p)$.

Notice that $c^* = 1$ and punishing the politician whenever a true scandal exists is always a feasible solution in the case of free press (set $e(x) = 0$ for all $x \in [0, 1]$, for example). Yet, while in that case voters can also maximize the probability of re-electing an honest politician by setting $e(\phi) = 1$, in this case this is not possible. Hence, the expected payoff for the voters is strictly less than $\nu^E(FP)$.

The minimum possible level of corruption is achieved for any \bar{s} such that

$$\bar{s} \in \left[1 - \frac{p(r + q_t\delta)}{\gamma}, 1 - \frac{pq_t\delta}{\gamma} \right]$$

and equals $c^{\min} \equiv 1 - \frac{p(r + q_t\delta)}{\gamma}$.

As noted above, the result can be expressed in terms of the marginal rate of substitution between expected rent when the media observe a true scandal and corruption. In the case of free press, this is equal to pr/γ . That is, increasing corruption decreases the expected rent by $pre'(c)$ and increases it by γ . The presence of an anti-defamation law with potential chilling adds an extra loss for the politician when deviating from c^{\min} to sufficiently high levels of corruption $c > \bar{s}$. The extra loss is the expected compensation $q_t\delta$. In this sense, the rate of substitution becomes $p(r + q_t\delta)/\gamma > pr/\gamma$.

One comparative statics result is of particular interest. The minimal level

of corruption is achieved when $1 - pq_t\delta/\gamma > \bar{s} \geq 1 - p(r + q_t\delta)/\gamma$. In this case, the equilibrium level of corruption is determined by how likely the politician is to be compensated for defamation when the media firm has published a true scandal. If a politician has a high chance of winning the trial when the firm has published the truth, then the politician has a greater incentive to see the truth being published. Indeed

$$\frac{\partial c^{\min}}{\partial q_t} = -\frac{p\delta}{\gamma} < 0.$$

Corollary 1. *Ceteris paribus, the more likely a trial is to commit a mistake and punish an innocent media firm, the lower is the minimum equilibrium level of corruption c^{\min} .*

Proposition 2 says that for an anti-defamation law to be effective the voters must be capable of punishing the politician when no allegation has been made. The efficacy of libel laws hinges therefore on whether this condition is met in reality. As noted in Section 1, it is licit to imagine that in many situations it is not possible, for legal or customary reasons, to punish the politician without an explicit allegation. The following result establishes that when voters do not (or cannot) punish the politician when the media remain silent, any anti-defamation law can only reduce the voters' expected payoff and increase the level of corruption chosen by a type γ politician.

Proposition 4. *If the voters cannot punish the politician when the media firm is silent, then any anti-defamation law is either ineffective or it induces more corruption and lower expected payoff for the voters than in the case of free press.*

3.4 Punishing Small Scandals

The results in Section 3.3 depend crucially on the assumption that anti-defamation laws deter the publication of serious scandals (high s) more than trivial ones (low s). This assumption is consistent with a law aimed at protecting individuals from false accusations which may heavily damage their

reputation.¹⁴ Yet one might think the converse is true. That is, that punishment does not increase enough with the gravity of the publication. Hence, the return from the publication of trivial scandals does not justify the risk of being punished for defamation and the publication of extremely serious scandals is so remunerative that it is worth the risk. This is the case of a punishment function (ρ) that is relatively concave with respect to the revenue function (π). In this section I argue that such a law would be at best ineffective in deterring political corruption. Hence, the laws analyzed in the previous section are the only ones which can have any hope of reducing corruption.

To see this point, consider a variation of the model in Section 3 such that $\rho(0) \geq \pi(0)$ and $\rho', \rho'' \leq 0$. This implies $q_t \rho(x) > \pi(x)$ if and only if $x < \bar{s}'$ and $q_t \rho(x) > \pi(x)$ if and only if $x < \underline{s}'$ for some $0 \leq \underline{s}' \leq \bar{s}'$.¹⁵ If $\bar{s}' \leq 0$, the law does not deter the publication of any true scandal (there is no chilling effect).

The main results in this section do not depend on the prior probability of having a greedy politician, μ_0 . Indeed, there is no law that improves the ability of voters to select honest politicians. To see this point, consider first a scenario where true scandals are published. The incentives and the ability to select honest politicians are unchanged with respect to the free press case. Second, consider a scenario where true scandals are concealed. In this case, honest and greedy politicians are pooled in the sense that they produce the same information for the voters, thus reducing voters' ability to select honest politicians. This implies that any advantage brought up by an anti-defamation law must be achieved through a reduction of the moral hazard problem. For ease of exposition, I show the results for the limit case where there exists only a moral hazard problem, that is, $\mu_0 = 1$. In this case we can state the following proposition.

Proposition 5. *If the anti-defamation law deters only the publication of relatively small scandals, then the law is either ineffective or it increases the level*

¹⁴See Section 6 for a discussion of this rationale for anti-defamation laws.

¹⁵The results in this section are valid for all laws such that ρ crosses π at most once from above.

of corruption.

To see this point, consider first a law without potential chilling effect. This law reduces the probability that small false scandals are published, but does not change the probability that a true scandal is published. The optimal re-election rule is not changed and greedy politicians choose c^{FP} . Second, consider the case when the law induces the media to conceal only the smallest true scandals so that a scandal of size c^{FP} is still published if true. If the politician chooses a level of corruption that is not published by the media, the politician expects to be re-elected (since no scandals indicates low corruption, voters re-elect the politician). But the expected payoff for the politician is strictly less than if she chooses c^{FP} and voters forgive her. Since the expected payoff in this last case is equal to the expected payoff of choosing $c = 1$ (the incentive compatibility constraint is binding with free press), there is no re-election rule that can induce a level of corruption below c^{FP} . Indeed, if the law induces the media to conceal even larger scandals, the politician is simply induced to choose the largest corruption that would be concealed by the media. In this case, whenever a true scandal is received by the media, she is re-elected since the media publish no scandal. In contrast with the case when large scandals are more likely to be concealed by the media, the politician has no incentive to reduce corruption because of the possibility of receiving a compensation for defamation. In fact, in order to increase the probability of a scandal being punished, the politician should increase corruption.

4 A Model without Commitment

This section modifies the model in Section 3 introducing the requirement that the re-election rule must be ex-post rational for the voters. That is, the timing of the model is modified as follows. First, the politician chooses c . The media firm observes (θ_s, s) and publishes $x = m(\theta_s, s)$. Voters observe x and decide whether to keep the current politician. Finally, the stochastic variable D is realized. I also set $\delta = 0$ since the compensation for defamation plays a much smaller role in this case and $\delta > 0$ would make the analysis more cumbersome

without adding much to the intuition. The rest of the model is unchanged. Furthermore, I exclude the trivial case of $\mu_0 = 1$ since, when all politicians are equally greedy, any re-election strategy is sequentially rational.

The remainder of this section studies the set of perfect Bayesian equilibria of this model which are robust to a vanishingly small tremble on the side of the politician with full support over $[0, 1]$.¹⁶

In such a set-up, voters re-elect the politician only if $\Pr(0 | x) \geq 1 - \mu_0$, where $\Pr(\gamma^P | x)$ is the probability that the politician is type γ^P , conditional on observing a publication x . Let g be a probability distribution over $[0, 1]$. If type γ politicians play each $c \in [0, 1]$ with probability $g(c)$ and there exists scandals that would be published by the media (that is, there exists $(\theta_s, s) : m(\theta_s, s) = s$), then the probability that the politician is honest is greater than $1 - \mu_0$ if and only if no scandal has been published:

$$\Pr(0 | x) \geq (1 - \mu_0) \iff x = \phi.$$

It follows that, with free press, the level of corruption chosen by the politician equals $c^{FP} = 1$. In equilibrium, voters re-elect if and only if $x = \phi$.

In equilibrium, a honest politician is re-elected with probability p and a type γ politician is never re-elected. Hence, the probability that the period 2 politician is of type γ is given by

$$\mu = \mu_0 [1 - p(1 - \mu_0)].$$

The following proposition summarizes these findings.

¹⁶In general, there exists a continuum of perfect Bayesian equilibria where voters re-elect with any probability between 0 and 1 for any publication $x \in [0, 1]$ such that a greedy politician never plays $c = x$. Similarly, if the politician chooses $c \in (0, 1)$ such that $m(t, c) = \phi$, there exists a continuum of perfect Bayesian equilibria where voters re-elect with any probability between 0 and 1 if $x = \phi$. In the unique equilibrium studied here, voters punish all scandals unless the media conceal all of them. 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 $1 - \eta$ and \bar{g} with probability η , $\eta \rightarrow 0$. 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.

Proposition 6. *If the media firm is absolutely free, the equilibrium corruption of type γ politicians is $c^{FP} = 1$ and the expected payoff for the voters is $-\mu_0 - \mu_0 [1 - p(1 - \mu_0)]$.*

4.1 Punishing Large Scandals

This section characterizes the set of equilibria for different anti-defamation laws which punish large scandals relatively more harshly than smaller ones. That is, the punishment function ρ has $\rho(0) = 0$, $\rho'(x) > 0$, and $\rho''(x) \geq 0$ for all $x \in [0, 1]$.¹⁷

Consider the introduction of an anti-defamation law ρ without chilling effect. Call \mathcal{S}^ρ the set of scandals s which are not published by the media and let $\Pr(\mathcal{S}^\rho) \equiv \int_{\mathcal{S}^\rho} z dF(z)$ be the probability that a false scandal is not published. The optimal choice for the politician is therefore given by

$$\max_{c \in [0,1]} \gamma c + r(1 - q) \Pr(\mathcal{S}^\rho)$$

giving $c^* = c^{FP}$.

In equilibrium, a honest politician is re-elected with probability

$$p + (1 - p) \Pr(\mathcal{S}^\rho).$$

A corrupt politician is re-elected with probability $(1 - p) \Pr(\mathcal{S}^\rho)$. The probability that the period 2 politician is of type γ is given by

$$\begin{aligned} \mu &= (1 - p) \Pr(\mathcal{S}^\rho) \mu_0 + \mu_0 [(1 - p) \Pr(\mathcal{S}^\rho) + q(1 - q)] \\ &= \mu_0 [1 - p(1 - \mu_0)] \end{aligned}$$

Since $\Pr(\mathcal{S}^\rho)$ is non-decreasing in ρ , we can state the following result.

Proposition 7. *An anti-defamation law without chilling effect has no impact on current corruption and the selection of honest politicians. The probability*

¹⁷The results in this section are valid for all laws such that ρ crosses π at most once and from below.

that a politician is re-elected is higher than in free press.

Consider now a law with potential chilling effect. Notice that this implies $m(t, s) = \phi$ for all s greater than

$$\bar{s} \equiv \{s \in \mathbb{R}_+ : \pi(s) = q_t \rho(s)\}.$$

Notice that $\bar{s} \geq 0$. This implies that voters re-elect the politician if and only if $x = \phi$. Hence, a politician who chooses $c = 1$ is re-elected with probability $p + (1 - p) \Pr(\mathcal{S}^\rho)$. The optimal choice for the politician is $c^* = c^{FP}$. In equilibrium, all politicians, honest and greedy, are re-elected with probability $p + (1 - p) \Pr(\mathcal{S}^\rho)$. The probability that the period 2 politician is of type γ is given by

$$\begin{aligned} \mu &= [p + (1 - p) \Pr(\mathcal{S}^\rho)] \mu_0 + \mu_0 [1 - p - (1 - p) \Pr(\mathcal{S}^\rho)] \\ &= \mu_0 > \mu_0 [1 - p(1 - \mu_0)]. \end{aligned}$$

The following proposition summarizes these arguments.

Proposition 8. *An anti-defamation that deters the publication of only large scandal and has potential chilling effect has no impact on current corruption and it increases the probability of selecting corrupt politicians.*

4.2 Punishing Small Scandals

The results in Section 4.1 depend crucially on the assumption that anti-defamation laws deter the publication of serious scandals (high s) more than trivial ones (low s). As noted before, one might think the converse is true. That is, that punishment does not increase enough with the gravity of the publication. Hence, the return from the publication of trivial scandals does not justify the risk of being punished for defamation and the publication of extremely serious scandals is so remunerative that it is worth the risk. This is the case of a punishment function (ρ) that is relatively concave with respect to the revenue function (π).

Consider a variation of the model in Section 4 such that $\rho(0) \geq \pi(0)$ and $\rho', \rho'' \leq 0$. This implies $q_t \rho(x) > \pi(x)$ if and only if $x < \bar{s}'$ and $q_t \rho(x) > \pi(x)$ if and only if $x < \underline{s}'$ for some $0 \leq \underline{s}' \leq \bar{s}'$.¹⁸

If $\bar{s}' < 0$, the law does not deter the publication of any true scandal (there is no chilling effect). It is sufficient to notice that in the previous section we did not specify whether \mathcal{S}^ρ contained high or low scandals to realize that the results of the previous section are still valid.

Consider then the case when $\bar{s}' \geq 0$. Now there exist some low enough scandals that would not be published if they were to be true. Since voters re-elect the politician when there is no scandal, we should ask whether there exists $\bar{s}' > 0$ such that the politician would prefer to reduce corruption to $c = \bar{s}'$ in exchange for an increase in her chances of being re-elected. This is true whenever

$$\begin{aligned} \gamma \bar{s}' + r[p + (1-p)\Pr(\mathcal{S}^\rho)] &\geq \gamma + r(1-p)\Pr(\mathcal{S}^\rho) \\ \iff \\ \bar{s}' &\geq 1 - \frac{rp}{\gamma}. \end{aligned}$$

That is, if the anti-defamation law is stringent enough to deter the publication of all true scandals up to $s = 1 - rp/\gamma$, then the level of corruption in period 1 is less than in the case of free press. More precisely, the level of corruption is $c^* = \min\{\bar{s}', 1\}$.¹⁹ In particular, the anti-defamation law which induces the least amount of corruption is one with $\bar{s}' = 1 - rp/\gamma$, which induces a level of corruption $c^* = \bar{s}'$. Notice that this is the level of corruption achieved with free press when the voters can commit to a re-election rule.

The intuition behind this result is straightforward. Small scandals are not published and voters re-elect when there is no scandal. This means that choosing a level of corruption small enough that a true scandal would not be

¹⁸The results in this section are valid for all laws such that ρ crosses π at most once and from above.

¹⁹As a last check, consider a law that deters the publication of all scandals. Any re-election strategy is sequentially rational. Yet, since the probability of being re-elected is independent of the action taken by the politician, we must have $c^* = c^{FP} = 1$ and $\mu = \mu_0$.

published increases the probability of being re-elected. If the required level of corruption is too low, then the politician will still prefer to be very corrupt and be re-elected less often. Yet, if she can afford a reasonably high level of corruption and increase her chances of being re-elected, then she will. What reasonable stands for depends on the marginal increase in rent rp and marginal decrease in corruption γ .

While a law with $\bar{s}' = 1 - rp/\gamma$ reduces corruption today, it also decreases the ability of the voters to select honest politician. Indeed, in equilibrium we have $\mu = \mu_0$, since both honest and corrupt politicians produce scandals with the same probability $(1 - p) \Pr(\mathcal{S}^\rho)$. The law increases the voters' expected payoff if and only if $1 - \mu_0 < r/\gamma$.

In this case, anti-defamation laws act as a substitute of an optimal re-election rule. Indeed, at the time of the election, voters focus only on the selection problem and punish all scandals. If adverse selection is a smaller problem than moral hazard, voters would *ex ante* prefer to commit to forgive some smaller scandals. By hiding smaller scandals from the voters, the law effectively gives the voters the opportunity of forgiving small levels of corruption.

The following proposition summarizes these findings.

Proposition 9. *An anti-defamation law which deters the publication of true scandals only if they are small enough can reduce the level of corruption today up to the level of corruption induced under free press when the voters can commit to a re-election rule. Such a law can increase the expected payoff of the voters only if adverse selection is less important than moral hazard ($1 - \mu_0 < r/\gamma$).*

In the Introduction I argued that perceived and experienced corruption can be affected in a differing ways by media regulation. One way to look at this in our model is the following. Voters' beliefs regarding the probability that they will meet a corrupt politician (perceived corruption) is influenced mostly by how well they expect to be able to select honest politicians. In my model, this corresponds to the probability μ of having a greedy politician in period 2.

Instead, voters' personal experience with corruption is influenced also by how much they have been able to deter corruption today. That is, in my model experienced corruption should be better predicted by the (inverse of the) total expected payoff of the voters. This is the sum of μ and corruption today (c^*).

Summarizing the results in this section, while anti-defamation laws can reduce the level of corruption today, they never reduce the probability that future politicians are greedy. Indeed, any law with sufficient chilling effect increases this probability from $\mu_0 [1 - p(1 - \mu_0)]$ (with free press) to μ_0 .

Remark 1. An anti-defamation law can decrease the level of corruption in period 1 but can only increase the probability of selecting greedy politicians in period 2.

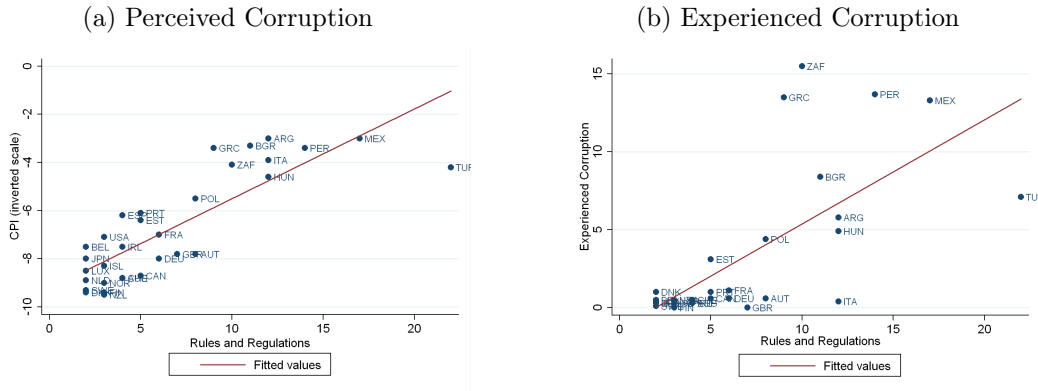
The total payoff of the voters increases only if moral hazard is dominant. Hence, the model predicts that, with more stringent regulations for the press, (i) perceived corruption should always increase and (ii) experienced corruption can either increase or decrease depending on whether selection or moral hazard is dominant.

Albeit at best suggestive of a causal relationship, Figure 2 shows the relationship between media regulation and both perceived and experienced corruption in a sample of 32 democracies.²⁰ Both measures of corruption increase when the media are more stringently regulated, suggesting that the selection problem is—on average—dominant.

Whether selection or moral hazard is the dominant problem may depend on the specific society, its cultural norms, and other legislation (for example, against revolving doors). This means that Figure 2 might be the result of pooling societies where the selection problem is dominant together with others

²⁰Perceived 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.

Figure 2: Corruption and Media Regulation



where the monitoring problem is. This would influence only the effect of libel laws on experienced corruption. Hence, more stringent rules for the media should increase perceived corruption more than experienced one. Albeit only suggestive, Figure 3 shows that, in a sample of 32 democracies, corruption *over-perception*²¹ is larger where the press is more regulated.

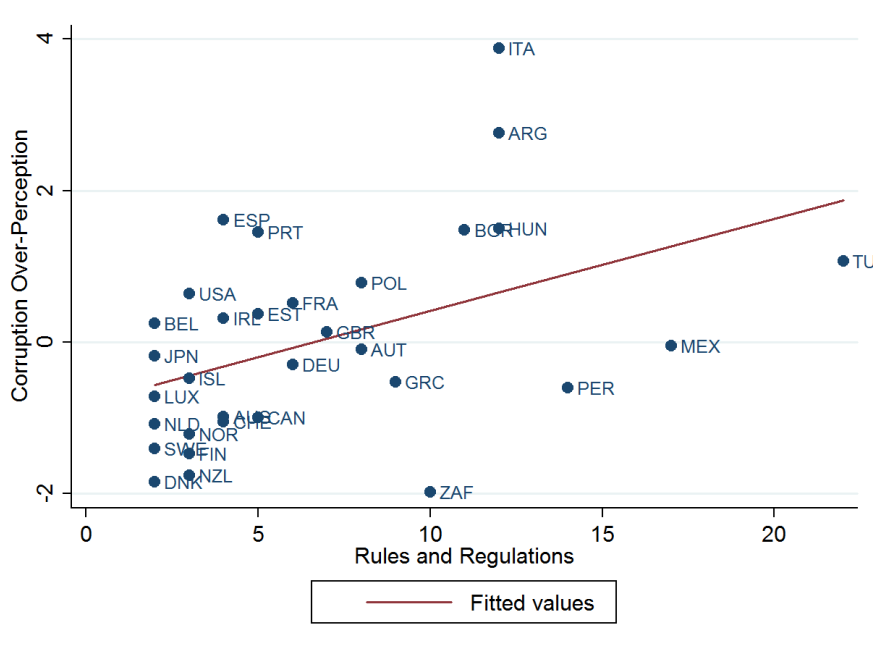
In this section, the probability that a politician retains her position is equal to the probability that the media publish no scandals. Under free press, this happens with probability p if the politician is honest and with probability 0 if she is greedy. Hence, the total probability that the politician is re-elected is $(1 - \mu_0)p$. A law without chilling effect (or one that deters only the smallest scandals) increases the probability of re-election of both types of politicians: if the politician is honest, then this is $p + (1 - p) \Pr(\mathcal{S}^p)$; if she is greedy, the probability is $(1 - p) \Pr(\mathcal{S}^p)$. The total probability is therefore given by

$$(1 - \mu_0)p + (1 - p) \Pr(\mathcal{S}^p) > (1 - \mu_0)p.$$

When the law has sufficiently large chilling effect (that is, when it either deters the publication of true scandals equal to 1 or of small scandals up to $1 - p r/\gamma$),

²¹Corruption 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.

Figure 3: Corruption Over-Perception and Media Regulation



then the probability of being re-elected is $p + (1 - p) \Pr(\mathcal{S}^\rho)$ for both types of politicians. Hence, the total probability is

$$p + (1 - p) \Pr(\mathcal{S}^\rho) > (1 - \mu_0) p + (1 - p) \Pr(\mathcal{S}^\rho) > (1 - \mu_0) p.$$

We can therefore state a further prediction of the model. Namely, that tougher regulation increases the average political longevity of politicians.

Proposition 10. *More stringent anti-defamation laws increase the re-election probability of all politicians. A law without chilling effect increases the re-election probability of all politicians by the same amount. When the law has sufficient chilling effect, then it increases the re-election probability of a greedy politician more than the one of an honest politician.*

In a cross-country sample, Besley and Prat (2006) show some suggestive evidence of the first part of the proposition.²²

²²See additional material available at <http://econ.lse.ac.uk/staff/prat/papers/mediafigures.pdf> (last accessed March 20, 2013).

5 Correlated Scandals

This section generalizes the model of Section 3 by relaxing the assumption that the distribution of false scandals $F(\cdot)$ is independent of the level of corruption c . In particular, we shall assume that the conditional distribution of false scandals $F(\cdot | c)$ is a continuously differentiable function such that the probability of observing small scandals is decreasing in c , in the sense of first order stochastic dominance:

$$F(s | c) < F(s | c'), \forall s \in [0, 1], c > c'.$$

In this sense, we allow for false scandals to be a meaningful signal of corruption. Indeed, a more corrupt politician is arguably more likely to produce evidence of corrupt behavior, even when the allegation itself is false.

I also relax the structure of the profit function and the punishment, assuming only a single crossing property such that there exist two thresholds, \underline{s} and \bar{s} , with $\underline{s} \leq \bar{s}$, such that a false scandal is published if and only if it is less than \underline{s} and a true scandal is published if and only if it is less than \bar{s} . An anti-defamation law is therefore completely characterized by the pair $(\underline{s}, \bar{s}) \in \mathbb{R}_+^2$.

For the purpose of this section, I focus on the case of moral hazard only, that is, $\mu_0 = 1$. I shall refer to a law that induces the media not to publish at least some false scandal as *binding*.

Definition 3. An anti-defamation law is *binding* if and only if $\underline{s} < 1$.

When the model is generalized this way, closed form solutions as in Section 3 cannot be produced. Nevertheless, it is possible to show that the main message of Section 3 is still valid.

Proposition 11. *In the generalized model*

1. *There exists at least one law without potential chilling which reduces corruption.*

2. *There exists at least one law with potential chilling inducing less corruption than any law without potential chilling.*
3. *Any optimal mechanism for any binding law includes $e(\phi) = 0$.*

The main difference between Proposition 11 and the results of Section 2 is that, in the generalized model, there exist laws without potential chilling effect that are capable of reducing corruption. Intuitively, if the firm does not publish high scandals and high false scandals are correlated with high corruption, then a very corrupt politician will expect less compensation from the media than a more honest one. Furthermore, voters' re-election rule does not lose its bite when some very high false scandals are concealed. As in the case of a law with potential chilling, voters can punish the politician when the media are silent. Since the media do not report false scandals only if very large, the politician is more likely to be punished for lack of evidence when she is more corrupt. Nevertheless, I conjecture that this effect is likely to be small. Indeed, the magnitude of this effect depends on how precise false scandals are. If false scandals are a very good indicator of corruption, then anti-defamation laws without potential chilling induce very low corruption. Nevertheless, it is important to notice that in this case defamation would not be much of a problem in the first place, since false scandals are actually a good approximation of the truth. When instead false scandals are poorly related to the true level of corruption, anti-defamation laws without potential chilling do not induce levels of corruption much lower than a state of free press.

6 Conclusions

The analysis of the previous sections suggests that libel laws punishing the publication of false stories about politicians and bureaucrats can induce more corruption than a free press. For such laws to induce lower corruption, the punishment for defamation must be sufficiently large to effectively limit the freedom of the press to publish information they believe to be true. 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*).²³ 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

²³*Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 666 (1989)

finding of actual malice" (p.288).

In the model in this paper, the US jurisprudence regarding the defamation of a politician can be summarized as follows. First, if it is possible to prove that the media firm knew that the scandal was unfounded, then it should be punished to preserve the politician's right of not being defamed. This is in line with the findings of this paper. Indeed, this would only decrease the number of unfounded scandals that are published. Lowering this threshold does not decrease voters' expected payoff and instead increases the expected payoff of a honest politician, since she is re-elected more often (see Proposition 3). Second, no punishment should be granted on the ground that the statement was simply false, because this would damage *public welfare*. Indeed, the results in this paper highlight how damaging anti-defamation laws can be for the voters' ability to deter political corruption.

This paper constitutes a first step into the analysis of the link between legal frameworks for the press and the functioning of democratic institutions. In particular, the results highlight the importance of the endogenous response of the voters to allegations made by the press. Nevertheless, the model presented here abstracts from the possibility that a media outlet has a political or personal 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 revenues (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 heavily. Given the impact that such legal provisions can have on the functioning of democratic institutions, these are relevant questions which demand further research.

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