

Institution: London School of Economics and Political Science
Unit of Assessment: 20 Law
Title of case study: The development of libel law
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Scott et al's research has made a contribution to critical public debate around libel reform. Specifically, it has been used to inform debate by parliamentarians and HM Government in the process of scrutiny of Lord Lester's aborted Defamation Bill 2010 and the Bill enacted as the Defamation Act 2013. This is evidenced by citation in a number of parliamentary publications, including a House of Commons Library Briefing Paper and House of Lords Library Note, in addition to being used directly by Scott in evidence given to the Ministry of Justice Libel Working Group and Joint Select Committee on Defamation.</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Scott is a Senior Lecturer in the Law Department. All the underpinning research has been undertaken since he joined the LSE in 2006. Parts of the research were undertaken jointly with Andrew Murray (LSE), Charlie Beckett (LSE) and Alastair Mullis (UEA). The research of Trevor Hartley (Emeritus Professor, LSE) on libel tourism also formed part of the overall Law Department project on libel reform.</p> <p>There is, at the heart of nearly all proposals to reform libel law, a tension among three competing interests: the rights of publishers, the reputation rights of private citizens, and the principle of free speech. The prevailing view among law reformers and political campaigners is that decisions about how to prioritize these interests must always be put into effect through the alteration of existing legal rules. A core claim of Scott et al's research is that the prevailing view is right only up to a point: libel reform should focus less on amendment of the substantive law and more on problems of cost and process (Mullis and Scott 2009a). This claim informs Scott et al's analysis of recent legislative initiatives (Mullis and Scott 2011a) and has resulted in their putting forward a broadly-based a reform agenda which draws on insights from social psychology, political philosophy and human rights law and which is markedly different from the agenda typically propounded by political campaigners (Mullis and Scott 2012b).</p> <p>The research has had demonstrable impact on multiple publication rules and – in relation to libel tourism – on discursive remedies and choice-of-jurisdiction rules. As regards multiple publication rules (according to which a new cause of action arises each time the same piece of defamatory material is published), Scott et al's research suggests that a move to a single rule would be unsatisfactory, perhaps unlawful, because it would fail to protect reputation. They recommend instead a new defence of "non-culpable republication" (the recommendation has its origins in 2009b and is developed in 2011b).</p> <p>On the questions of appropriate remedies and choice-of-jurisdiction rules, the research provides reasons for and recommends stronger reliance on a range of "discursive remedies" as opposed to damages. The research also recommends a shift away from a court-based process towards a simplified, cost-saving decision-making system (Mullis and Scott 2012b). Central to Mullis and Scott 2012b is a theoretically-informed proposal for a bifurcated approach to the determination of libel claims, with determinations being made by "an appropriately designed self- or statutory media-regulator".</p> <p>(On the basis of the research, Scott was elected in December 2011 as Academic Fellow of the Inner Temple, a conferral which recognizes <i>inter alia</i> the outstanding contribution of the legal research of early- to mid-career academics to the Bar of England and Wales.)</p>
<p>3. References to the research (indicative maximum of six references)</p>

Impact case study (REF3b)

(2009a) A. Mullis and A. Scott, 'Something rotten in the state of English libel law? A rejoinder to the clamour for reform of defamation', 14 *Communications Law* 173-183 (evidence of at least 2* quality: national and international scholarly reliance on the research at e.g. [2013] *Pub. Law* 108; (2012) 35 *Fordham Int'l L.J.* 1501; (2012) 60 *Am. J. Compar. L.* 533; (2011) 74 *MLR* 845. <http://eprints.lse.ac.uk/27135/>

(2009b) A. Scott, A. Murray and C. Beckett, *Response to the Ministry of Justice Consultation on Defamation on the Internet: the Multiple Publication Rule* (Consultation Paper CP20/09 - November). <http://eprints.lse.ac.uk/51309/>

(2010) T. Hartley, "'Libel Tourism" and Conflict of Laws', 59 *International and Comparative Law Quarterly*, 25-38 (citations at e.g. (2012) 107 *Northwestern Univ. L. Rev.* 116; (2012) 60 *Am. J. Compar. L.* 508; (2011) 12 *German L.J.* 1681). DOI: 10.1017/S0020589309990029.

(2011a) A. Mullis and A. Scott, 'Lord Lester's Defamation Bill 2010: A Distorted View of the Public Interest?', 16 *Communications Law* 6-19 (citations at e.g. (2012) 23 *Entertainment L. Rev.* 28; (2011) 16 *Communications Law* 142). <http://eprints.lse.ac.uk/33308/>

(2011b) A. Mullis and A. Scott, 'Worth the Candle? The Government's Draft Defamation Bill', 3 *Journal of Media Law* 1-17. DOI: 10.5235/175776311796471242.

(2012a) A. Mullis and A. Scott, 'Reframing Libel: Taking (all) Rights Seriously and Where it Leads', 63 *Northern Ireland Legal Quarterly* 3-23. <http://eprints.lse.ac.uk/43195/>

(2012b) A. Mullis and A. Scott, 'The Swing of the Pendulum: Reputation, Expression and the Re-centering of English Libel Law', 63 *Northern Ireland Legal Quarterly* 25-56. <http://eprints.lse.ac.uk/43196/>

Evidence of quality: publications in peer-reviewed journals and citations as noted above.

4. Details of the impact (indicative maximum 750 words)

Scott et al's research has had impact in the sense of having "made a contribution to critical public debate around policy" (REF Panel C criteria, section C3, para. 80). It was considered by the government during the scrutiny of Lord Lester's aborted Defamation Bill 2010 and was relied on in the parliamentary debates culminating in the passing of the Defamation Act 2013. The research is referred to in numerous parliamentary publications, including a House of Commons Library Briefing Paper and House of Lords Library Note. Scott relied on it when he gave evidence to the Ministry of Justice Libel Working Group and to the Joint Select Committee on Defamation.

The Ministry of Justice Libel Working Group considered the research in detail and cited it in its report (section 5, source 1). The research was circulated among all MPs and Peers by a lobby group ('Lawyers for Media Standards'), and was extensively quoted in a House of Commons Library Briefing Paper (section 5, source 2 at p. 4), and in a House of Lords Library Note (section 5, source 3, at pp. 3-4, 11 and 12) in advance of the Second Reading debate on the Defamation Bill 2010. Elements of the argument presented by Lord Triesman during the House of Lords' Second Reading debate (section 5, source 4) expressly rely on Mullis and Scott 2011a.

Scott was invited in April 2011 to meet with Ministry of Justice officials to discuss the Draft Defamation Bill (now Defamation Act 2013) and the proposals set out in Mullis and Scott 2012a and 2012b. He also gave written and oral evidence to the Joint Select Committee on Defamation in May 2011. In its report, the Select Committee cited Scott's evidence explicitly and reiterated the central theme of the research when observing that:

the key to reducing costs lies not only in reform of the law but, more significantly, in changes to the way it operates in practice... New mechanisms and streamlined procedures are required to enable parties to settle disputes more quickly and therefore

cheaply (section 5, source 5 at para.10).

(Other core themes of the research, such as "the importance of the law being accessible to the ordinary person" (section 5, source 5 at para.13) are also evident in the Select Committee's report, though they are not explicitly linked to the research itself.)

On the issue of jurisdiction in libel law – the 'libel tourism' debate – a high level workshop was organised by LSE in January 2009. Participants included the Chairman of the House of Commons Select Committee on Culture, Media and Sport who indicated that the discussions would bear significantly on the subsequent inquiry into *Press Standards, Libel and Privacy*. Following this event, Scott briefed the Select Committee in advance of its inquiry, while Hartley advised Ministry of Justice officials on the construction of clause 7 of the Draft Defamation Bill, which focuses on jurisdiction.

The Ministry of Justice Libel Working Group (section 5, source 1 esp. at pp. 19-21) recommended a single publication rule in preference to the defence of non-culpable republication. This matter was reviewed in the oral and written evidence submitted by Scott to the Joint Committee. In its report, the MoJ Working Group noted explicitly the option of introducing a 'non-culpable republication' defence (with reference to Scott's evidence), although it ultimately preferred the introduction of the alternative rule (section 5, source 5 at para. 58).

The research has impacted on broader policy debate. For instance, the Joint Committee asserted that "a rapid public correction, explanation or apology is often the remedy most valued by the claimant" (section 5, source 5, paras 10 and 30). This is a key proposition to be found in Mullis and Scott 2012a (esp. at pp.16-21) and was emphasized by Scott to the Committee in written evidence, and was raised specifically in relation to internet regulation during the oral evidence session.

The Joint Committee requested additional evidence from key witnesses on the feasibility of the bifurcated approach to the determination of libel claims as recommended by Scott (section 5, source 5 vol. II at 21). It concluded that:

the Government [should] explore further the development of a voluntary, media-orientated forum for dispute resolution in the context of the current review of the regulatory regime governing the media (section 5, source 5 para. 84).

This has become the more broadly preferred option in the wake of the widespread public focus on the future of media regulation.

Finally, in line with a key proposition of Scott's research on the costs regime, the Committee recommended that the Government should review its current plans afresh "with a view to protecting further the interests of those without substantial financial means" (section 5, source 5 at p.12 and para. 89).

Why the impact matters. Scott et al's research has significantly informed discussions and law reform proposals concerning the feasibility of a single-publication rule, and appropriate choice-of-jurisdiction rules, in libel law. Their defence of a revised multiple-publication principle – the proposed new defence of "non-culpable republication" – is an important contribution to current legal policy debate.

5. Sources to corroborate the impact (indicative maximum of 10 references)

All Sources listed below can also be seen at: <https://apps.lse.ac.uk/impact/case-study/view/46>

1. Ministry of Justice, (2010) *Report of the Libel Working Group*. London: Ministry of Justice, p.13 n 21.

<http://webarchive.nationalarchives.gov.uk/20110322191207/http://www.justice.gov.uk/publications/d>

[ocs/libel-working-group-report.pdf](#)

<https://apps.lse.ac.uk/impact/download/file/1516>

2. Horne (2010) *Reform of Defamation Laws*. House of Commons Library Briefing Paper, SN05409, p. 4 nn 7 & 9 at <http://www.parliament.uk/briefing-papers/SN05409>
<https://apps.lse.ac.uk/impact/download/file/1517>

‘Academics Alastair Mullis and Andrew Scott have recently argued that “the public commentary on libel law has been remarkably one-sided and in some respects dangerously over simplified” and have stated that the newspapers have “subtly aggrandised their own vested interests as a reflection of the public good” not acknowledging the fact that most complaints “concerning damaging media inaccuracy and falsehood involve relatively impecunious claimants who face an uneven legal battle against multinational media corporation defendants’.

3. Vollmer (2010) *Defamation*. House of Lords Library Note, LLN 2010/016, pp. 11-12 (this Note incorrectly states that the research had been ‘commissioned’ by ‘Lawyers for Media Standards’ and that hence it was one of ‘two major reports by interest groups’ (p. 3)) (at <http://www.parliament.uk/documents/LLN%202010-016%20DefamationFP.pdf>).
<https://apps.lse.ac.uk/impact/download/file/1518>

4. 720 HL Deb cols 459-463, 9 July 2010.

5. Joint Committee on Defamation [2010-2012] *Draft Defamation Bill*. HL Paper 203/HC 930 (atf <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtdefam/203/203.pdf>).
<https://apps.lse.ac.uk/impact/download/file/1519>