

Defamation Law or Political Action?: Defamation and Civil Society in Australia and England

Wednesday 26 June 2024, 1 -6.30pm

Ante Room, Somerset House East Wing, Dickson Poon School of Law
The Strand, London

Defamation Law

The wandering pressman who had been a few months out of Sydney came into the Press Club.

"What's become of Blank, who used to edit the Sun?"

"He's in gaol. George Black wrote him a letter about himself, and he published it. So the editor had to prosecute himself for using offensive language about himself, and because he wouldn't bind himself not to print the Minister's statements for twelve months, he had to send himself to gaol."

"Where's Dash, of the Herald?"

"He was seen to smile furtively as Mr. Holman walked past. This was construed as an insulting sneer, and he was hanged."

"Was he laughing at Holman?"

"Oh, dear, no! He was just chuckling over some of the gay jokes in the Herald's leading article that morning."

"What about Asterisk, of the Telegraph?"

"The Treasurer took fearful offence at the abusive tone of its financial review of the week, and the whole staff of the paper is doing time."

"It looks like the purifying of politics, anyway."

"The purifying of fiddiesticks! The same old politicians are there."

While England and Australia share a common law heritage, particularly in private law, a striking difference between the legal histories of two countries lies in the use of defamation law in the political context. While 'political' defamation actions can be found in the books throughout the nineteenth and twentieth century in England, defamation actions became an established fact of political life in Australia (a flavour of which is provided in the press comment from the *Sydney Sun*). While it is commonly thought in Australia that the use of political defamation is of relatively recent origin, it has a long history, and in this respect 21st century practice represents modern manifestations of a continuum rather than a substantive change from the past.

This workshop is the beginning of the process of unpacking this difference between legal systems of common origin and culture. Questions include what we mean when we talk about political defamation, to what extent is Australian legal history littered with actions about political defamation, and to what extent is this a substantively different phenomenon to that taking place contemporaneously in England? If the perception is grounded in reality, to what extent can it be explained? More broadly, to what extent has the greater prevalence of political defamation in legal culture, in public imagination even if not reality, had on the law of defamation? Has the direction of influence been one way, or have political defamation actions shaped both the legal and political landscapes of law and politics? Can we understand completely political culture without the law of defamation, or is political defamation, at least in part, constitutive of our understanding of the boundaries of free speech and reputation?

The workshop will be in two parts. The first part, which will take place between 1.00pm-4.00pm, is primarily for academic lawyers. It will take the form of a roundtable, at which the convenors of the workshop, Professor David Rolph (Sydney Law School) and Professor Mark Lunney (King's College London) will present background papers. There will also be a number of other papers on the history and current practice relating to political defamation actions. This part of the workshop is an opportunity for participants to engage with the tentative thesis put forward by the convenors from a wide variety of perspectives including historical, comparative, theoretical and doctrinal.

The second part of the workshop, between 4.30pm-6.30pm, will focus more on political defamation in practice. In this session, there will be a number of presentations exploring what political defamation in modern Australian and English law looks like, and how the reality fits with the underlying justifications for the tort of defamation. How should modern defamation law define political defamation? How, if at all, should it be regulated differently from defamation in other contexts? And is the answer a path-dependent one, inextricably linked to the history of political defamation in each jurisdiction?

There will be no requirement for any (formal or informal) papers and no requirement for anything to be submitted in advance of the workshop. Rather, we would like participants to engage with the themes and questions we have identified above, in an attempt to provide a richer, more contextual background for understanding political defamation in jurisdictions that share a common legal heritage but a quite different history of civil society. In exploring these issues we hope to shed light on the place of political defamation in the modern law of defamation.