

## **The Legal Framework of Satire and its Protection**

Raylee Foster

Baylor University

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Dr. Marlene Neill

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The Bill of Rights was established in the United States in 1791, and brought with it the First Amendment, which states, “Congress shall make no law...abridging the freedom of speech, or of the press,” (Ekstrand et al., 2023, p. 45). This set the framework for a country built upon a foundation that welcomes the freedom of thought and its expression. Throughout the nation’s history, however, there have been ample conflicts that raise questions regarding the totality of freedom of speech. The Supreme Court must, therefore, utilize ad hoc balancing to weigh the conflicting rights to free speech and the protection of one’s reputation. Speech regulations may occur when an accusation of defamation arises, as this regulation would be utilized to “repair reputations, deter criticism, and refrain defendants from making further defamatory comments,” (Ekstrand et al., 2023, pp. 150–151) . Truth is the best defense to defamation claims, however some speech is, in essence, false information. Satirical speech falls into this category, and is protected under the First Amendment.

This research paper is aimed at identifying the classification of satire in journalism and mass communication mediums. I will analyze the history of satire and its established protections. I will then highlight the flaws and strengths of satire’s protection as current literature suggests.

### **The Establishment of Satire’s Protection**

*Hustler v. Falwell* was a Supreme Court case that took place in 1988, and set the precedent for First Amendment protection’s application to satire. This case arose after Reverend Jerry Falwell was featured in an advertisement for Campari Liqueur in Larry Flynt’s *Hustler Magazine*. It portrayed Falwell as having lost his virginity in an outhouse with his mother, and there was a disclaimer at the bottom stating, “Ad Parody — Not to Be Taken Seriously,” (Fien, 1989, pp. 906–907). Falwell’s reasoning behind suing *Hustler Magazine* was three-pronged, and

the Supreme Court ruled with the defendant on all three aspects (*Hustler v. Falwell*, 1988). This case set the precedent for satirical content in the courts today

### **Libel Claim**

The difference between satire and defamation is That defamation is an effort to falsify facts, whereas satire is a humorous transformation of truth to convey an underlying message (Warner, 2014). Libel is the written form of defamation, and The Yale Law Journal states, “The New York Times rule allows speakers to be found liable for intentionally making false statements of fact...But while satire presents a face both false and factual, it is not understood in a literal sense; it is not believed as false fact,” (Treiger, 1989, p. 1216).

The New York Times rule changed the courts approach to libel by differentiating claims regarding public and private figures (Ekstrand et al., 2023). The concept of “actual malice” was established in the Supreme Court case of *New York Times Co. v. Sullivan*, and means “knowledge of falsity and reckless disregard for the truth,” (Ekstrand et al., 2023, p. 175). Satire’s protection under the First Amendment, however, is possible because the message it conveys is intended to be understood by a reasonable person as false and as opinion. Because of this recognition of satire, “liability should be imposed not where the author intends to falsify, but where readers believe the statement as fact rather than as opinion,” (Treiger, 1989, p. 1217).

In the context of *Hustler v. Falwell*, the court did not find the libel claim substantial because the advertisement contained a disclaimer of parody. This disclaimer prevented any reader from reasonably believing what was printed was intended as fact, and therefore negated the defamatory aspect of the publication (Fien, 1989). The court found satire protected in *Hustler v. Falwell* because they concluded our political sphere would be considerably poorer without satire as a means of expressing one’s opinion (Johnston, 2003). Because satire is understood as

humor, and not fact, it receives First Amendment protection regardless of the factuality of the contents, because a reasonable person would not understand the contents to be true.

### ***Satire and Emotional Distress***

In addition to libel, Falwell also sued the magazine for the intentional infliction of emotional distress caused by this case, however the courts argued that their interest in the emotional distress of public figures was outweighed by their interest in protecting free speech (Hustler, n.d.). The Supreme Court also established that “Only false statements of fact can justify damages in defamation suits initiated by public personages like Falwell,” (Fien, 1989, p. 909). Additionally, “If intent to satirize is found, even when combined with maliciousness or spite, the author should not be held liable,” (Treiger, 1989, p. 1215). Regardless of the intention of the writer, satirical content is protected by the First Amendment.

The case of *New York Times Co. v. Sullivan* established “breathing space”. This is known as a loose regulation of speech that allows room for things such as factual errors and freedom of expression. This was also established with the intention of preventing high amounts of self-censorship (Gutterman, 2014). The jury Court of Appeals in the case of *Hustler v. Falwell* gave \$100,000 in damages for emotional distress, however the Supreme Court found that if this precedent was set, all satirical work would be subject to the threat of emotional distress claims, and “Hustler v. Falwell speaks to an important right under the First Amendment in the democracy: the right to mock our leaders,” (Gutterman, 2014, p. 507). A foundational aspect of the First Amendment’s speech protection is that it is intended to protect us from the government (Ekstrand et al., 2023), and this requires space to be left for political figure’s criticism. By punishing the criticism of public figures such as Jerry Falwell, there is a possible application to later punish the criticism of government officials, which therefore damages the use of free speech

as a balance for government figures. Regardless of the intent to inflict emotional distress, satirical speech is protected from emotional distress claims, as it is a matter of opinion, and demands the protection allowed through freedom of expression.

### **The Positive and Negative Effects of Protecting Satirical Speech**

Satirical speech does have protection under the First Amendment. It is believed to be a form of opinion. Its protection is, therefore, dependent on one's ability to determine if the contents are clearly fact or opinion, which is done by the courts when they "ask whether the humor contains material that a reasonable reader or fact finder could interpret as suggesting actual facts," (Little, 2012, p. 123) . Satirical speech serves as a positive addition in America because it is a balance for government and swaying public opinion.

### **Satire as a Balance for Government**

The media has long served as a balance for government authorities (Daly, 2018), and satire is one of the methods employed by mass communication mediums to critique political authorities and officials. During the Black Lives Matter movement and presidential campaign of 2020, the television show TLS, "redirected the main target of its satire to political figures and decisions and strove to influence the behavior of policymakers, rather than the public, to set good examples and come up with wise behavioral controls to lead the nation through the crisis," (Zekavat, 2021, p. 50). The use of humor to highlight flaws in a political system is one that has proven successful in the history of the United States. In the world of politics, this can be modeled in books such as those written by George Orwell, the pamphlets of Mark Twain, or the early newspapers of Ben Franklin (Daly, 2018).

A key element of satirical speech is critique, and therefore "satire typically exposes flaws and injustices in politics and media" (Burgers & Brugman, 2022, p. 969). The critique of

politicians does not require the use of satire, as a criticism is a matter of opinion, however satire brings with it the ability to highlight politicians shortcomings in a humorous way that leaves breathing space for expression while also stirring the minds of the viewer.

### ***Satire as a Means of Persuasion***

Satire is understood as an opinion, and therefore is not meant to convey a fact in and of itself. However, “as a society - we also know that “many a truth is said in jest” (Little, 2012, p. 117). Because of this, people often recognize satire as an attempt to convey a certain message. In modern society, satire can be a light-hearted attempt to change public opinion. Because, “Humor and satire have the potential to cause informational behavioral change through providing information, creating positive emotions, entertaining and engaging their audience,” (Zekavat, 2021, p. 50), there is a high probability satire can portray a message through humorous means and reframe the opinions of the public.

One of the reasons satire is necessary for changing public opinion is the audience it attracts. Satirical news stations, for example, gain 80% of their audience because they are a means of entertainment. This results in those consuming the information to do so without necessarily seeking out news (Burgers & Brugman, 2022). Scholars also note that it is possible that satire not only reaches a different audience, but keeps individuals who oppose ‘hard news’ engaged and aware of the news because of its soft, humorous delivery (Burgers & Brugman, 2022). By presenting information in a more appealing way, people are better able to receive and process the material in front of them.

### **The Dangers of Protecting Satirical Speech**

While satire has many positive effects in modern American society, this form of speech may cross boundaries at times. Although it does not fall under the scrutiny of actual malice,

satirical speech can be a means of targeting individuals one opposes, and has the potential to misguide audience members and inflict emotional pain. Because of this potential danger, there are limitations to the protection of satirical speech under the First Amendment.

In the Supreme Court case of *New Times Co v. Isaacks*, it was established that “Satire or parody that conveys a substantially false and defamatory impression is not protected under the First Amendment as mere opinion or rhetorical hyperbole, but instead is subject to scrutiny as the whether it makes a statement of fact under defamation case law,” (*New Times Inc v. Isaacks*, 2004). When content labeled as satire spreads a message that is undeniably false, and would be understood as such by a reasonable person, it is then subject to claims of defamation. It loses its protection when its message can be understood as a falsified fact, and not a mere opinion.

Despite this limitation, many aspects of satirical speech are protected, and are equally harmful to the groups they target. Part of the protection of satirical speech is that it must obtain content neutral laws, meaning the regulations cannot be based on the groups targeted, or the message outside the bounds of a fact/opinion claim. For example, “satire has been in the past largely a weapon in the hands of the powerless against dominant groups and people, and that many feel it is insensitive to return fire and use it against the powerless... however, we negate our ‘freedom to offend’ if we exercise it only when it is safe or ‘politically correct’ to do so,” (Larkin, 2016, p. 194). Satire is a display of American’s freedom of expression, and with that is American’s freedom to offend. Satirical content, so long as it is not understood as true by a reasonable person, may be any degree of offensive, to any people groups or persons, as its protection is not dependent on the group targeted.

### **Baylor’s NoZe Brothers and their use of Satire**

Satirical speech can be found on college campuses as well. Baylor University is widely recognized for their student mediums such as the Baylor Lariat, LNTV News and Focus Magazine, however the university has another, more humorous mass communication outlet. The Rope is a satirical newspaper founded by a campus organization called the “NoZe Brothers”, which began in 1924 (Burke, n.d.). A member of the NoZe Brothers noted her goal in writing for The Rope was “to poke fun at various Baylor idiosyncrasies while also addressing serious issues — all while keeping in line with the brotherhood’s satirical tone,” (Kyle, 2022). Although some contents of the NoZe Brother’s newspaper may be considered extreme, it is satirical in nature and has a reputation for being filled with false information and opinion. It would not, by a reasonable person, be understood as truth. Similar to the Supreme Court case of *Frank v National Broadcasting Co*, the contents are seen as so “nonsensical and silly” that they would never be assumed to be true and therefore do not fall under the bounds of defamatory material.

### **Summary**

Satirical speech is protected under the First Amendment as a means of expression and a matter of opinion. Its protections are rooted in content neutral laws, meaning the regulations do not differ depending on the groups targeted in the satirical speech forms. There are limitations to the protections for satirical speech, such as the potential to be understood as true by a reasonable person. The contents of satirical speech, however, are often nonsensical and may even contain a stating the material is not to be understood as truth. The precedent for the Supreme Court’s interpretation of satirical speech protections is rooted in the Supreme Court cases of *Hustler v. Falwell* and *New York Times Co. v. Sullivan* — which continue to shape the courts understanding of satire as a protected form of speech in the courts today.



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