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"MORE THAN ENTERTAINMENT": THE ROLE OF SATIRICAL NEWS IN DISSENT, DELIBERATION, AND DEMOCRACY

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ABSTRACT

This research project argues that in an age of infotainment and a failing news media, satirical news has emerged as an important force in revealing truth and engaging an apathetic public in politics and debate. Therefore, this research project seeks to distinguish and examine the roles of satirical news in encouraging a deliberative democracy. Satirical news has historical roots in the First Amendment as a loud critic and purveyor of political dissent. More recently, satirical news shows on television—the precursors to *The Daily Show*—have faced many barriers, including political party maneuverings, ratings, and falling advertising revenue, ultimately finding that if staying power required potent satire, such roadblocks must be ignored. Finally, political comedians intend to affect change or prove an ideological point through their satire, but often after criticism, hide behind the satirist shield and claim, "I'm just a comedian." Such a stance has benefits in that it encourages comedians to more fearlessly challenge pseudo-structures created by the political-media elites, filling the role traditionally held by journalists. At the same time, the satirist shield allows politicians and media elites to throw satirical news critiques aside, regardless of their truth and importance. In the end, satirical news is certainly important to democracy. If those in power fail to recognize satire's significance, they must be either forgetting or ignoring the First Amendment's purpose of encouraging robust and free debate. Such debate and discourse, fueled by the rearrangement power structures and the invocation of indignation, are necessary outcomes of satirical speech. These distinct roles of satirical news serve a theoretical basis for legitimizing the impact of such shows on the creation of an informed citizenry.

A Note on Style

This thesis is a combination of historical, legal, and limited ethnographic analysis. References in the footnotes and bibliography are presented in *Chicago* style, with the exception for court case citations, which are in *Bluebook* style, the accepted style of citation for legal research.

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"If we amplify everything, we hear nothing."
– Jon Stewart, critiquing sensationalism in the news.

"What exactly was this? I can't control what people thought this was. I can only tell intentions. This was not to ridicule people of faith. Or people of activism or to look down our noses at the heartland, or passionate argument or to suggest that times are not difficult and that we have nothing to fear. They are and we do. But we live now in hard times, not end times. We can have animus and not enemies."
- Jon Stewart, commenting on the intended role of the *Rally to Restore Sanity and/or Fear*, held October 30, 2010 in Washington, D.C.

CHAPTER 1

Introduction: Satirist or Journalist?

On November 11, 2009, a story broke that Fox News' Sean Hannity had doctored footage from a GOP healthcare rally to make the turnout seem thousands higher than it actually was. The clip,[1] featuring Republican congresswoman Michele Bachmann declaring that "between twenty and forty-five thousand people had assembled," cut back and forth between actual footage of the ten-thousand person rally[2] and the September 12th highly attended tea party rally led by another Fox News commentator, Glenn Beck. Hannity, and by extension Fox News, was chastised not only for the bias but also a lack of journalistic ethics, forcing Hannity to make a public apology.[3] So who was the investigatory journalist who brought this story to light? It was Jon Stewart, the host of the satirical news program *The Daily Show*, which airs four times a week on Comedy Central. This was not the first time Stewart has been likened to a journalist. In 2008, the Pew Research Center asked Americans to name the journalists they most admired. For the first time ever,

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[1] Comedy Central, "The Daily Show with Jon Stewart," November 10, 2009.

[2] Philip Rucker, "Activists bring 'tea party' to Capitol Hill; House Democrats' health bill denounced as 'Pelosi-Care,'" *Washington Post,* November 6, 2009, A04.

[3] Mark Silvia, "Hannity says sorry for using wrong rally video," *Los Angeles Times,* November 13, 2009, accessed February 10, 2010, http://articles.latimes.com/ 2009/nov/13/nation/na-hannity-crowd13.

a comedian—Stewart—was chosen as the fourth most admired journalist.[4]

These self-proclaimed fake news programs, such as *The Daily Show, The Colbert Report,* and the weekend update segment of *Saturday Night Live*, have taken on the responsibility of filling a role traditionally held by the mainstream media, such as fact-checking and encouraging deliberative political discourse and dissent.[5] Combine those roles with the growing amount of punditry in the news[6] and the citizenry's disillusionment with the media and politics—stir, and bake for twenty-three minutes. Now watch the satirical political news program rise.

With the Pew Research Center reporting in 2007 that 16% of Americans regularly watch these fake news shows, scholars questioned whether the rise in popularity of these shows is beneficial to the education of the public. What is the role of satirical news in democracy, and how has it evolved over time?

Traditional civic participation by way of voting, party affiliation, political knowledge, activism, has been on decline for the past forty years,[7] leading some

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[4] Pew Research Center, "Journalism, Satire or Just Laughs? The Daily Show with Jon Stewart," *Journalism.org*, May 8, 2008, accessed December 1, 2009, http://www.journalism.org/node/10953.

[5] In fact, the manipulation of footage by Hannity is not the only recent story fake news has scooped before the mainstream media. In December, *The Daily Show* broke the story on climate-gate before ABC, CBS, or NBC even could mention it. *See* Pew Research Center, "PEJ New Media Index: November 30-December 4, 2009, A Minaret Ban and 'Climate-Gate' Stir Online Discussion," *Journalism.org*, May 8, 2008, accessed January 1, 2010, http://www.journalism.org/index_report/swiss_ban_and_"climategate"_stir_online_discussions.

[6] Robert W. McChesney and Mike Nichols, *The Death and Life of American Journalism: The Media Revolution That Will Begin the World Again*, (Philadelphia: Nation Books, 2010), 52. McChesney and Nichols note the growth in political spinners as a consequence of the fall of journalism due to corporate access.

[7] W. M. Rhan and J. E. Transue, "Social trust and value change: The decline of social capital in American youth, 1976-1995," Political Psychology, 19, no. 3 (1998): 545-565. See also D. V. Shah and J. M. McLeod and S.Y. Yoon, "Communication, context, and community: An exploration of print,

scholars to question whether entertainment has distracted citizens from civic engagement and somehow produced this political apathy. Many theorists, such as Neil Postman, have posited a causal relationship between television entertainment and the decline of political intelligence.[8] In *Amusing Ourselves to Death* (1984), Postman envisioned an anti-utopian future wherein citizens medicate themselves on entertainment and bliss, voluntarily sacrificing their rights to an unconnected semi-totalitarian government. This result is imminent because television is popular and passive, Postman wrote, and is thus unable to facilitate debate and rational inquiry needed in the citizenry.

Robert Putnam argued in *Bowling Alone* (2000) that the collapse in social capital and political participation is substantially related to the rise of entertainment television.[9] However, both Postman and Putnam neglected to observe the *potential* of political entertainment to encourage political engagement. Other political theorists have contended that the blurring of the lines between politics and entertainment has simply altered the way citizens interact with politics. Liesbet van Zoonen argued that the modernist understandings of politics fail to see that entertainment can "invigorate a citizenry that is . . . increasingly

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broadcast, and Internet influences," Communication Research 28, no. 4 (2001): 464-506. See also C. J. Sirianni, and L. A. Friedland, Civic Innovation in America: Community, Empowerment, Public Policy, and the Movement for Civic Renewal, (Berkeley: University of California Press, 2001).

[8] Neil Postman, *Amusing Ourselves to Death: Public Discourse in the Age of Show Business*, (New York: Penguin Group, 2006).

[9] Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community*, (New York: Simon and Schuster, 2000).

alienated from politics."[10] This research project hypothesizes that satirical news programs, like *The Daily Show* and *The Colbert Report*, reach that potential and serve as facilitators of debate, discussion, and dissent, in several ways. First, *The Daily Show* mirrors the format and content of other seemingly legitimate news talk shows on channels like CNN, MSNBC, or Fox News. Then, the program uses the mirror to ridicule the traditional media for its poor or exaggerated news coverage, revealing hidden truths to a previously apathetic audience. More than two million viewers[11] tune in each night to these fake news programs; these same viewers are likely to score high on knowledge of political affairs.[12] Because it is unlikely that watching a half-hour of Stewart's program completely explains the political intelligence[13] of the viewers, most analysts assume these viewers also gather news and information from other sources. [14] If a correlation exists between highly informed audience and regularly watching *The Daily Show*, this research project also hypothesizes that it is possible that the program actually *causes* the audience to research, debate, and explore politics. Beyond quantitatively showing causation, this research project will look at the discussion-enhancing intentions of the First

[10] Liesbet Van Zoonen, *Entertaining the Citizen: Where Politics and Popular Culture Converge*, (Lanham: Rowman & Littlefield Publishers, 2005), 145.

[11] Michael Starr, "Jon's Got Game," *New York Post,* September 25, 2008, accessed February 16, 2010, http://www.nypost.com/p/entertainment/tv/item_ARuthNhfE W09txbCOTBNkO;jsessionid=DAC2419E6AF55EAC32A6717A5F8C3954.

[12] Pew Research Center, "Journalism, Satire or Just Laughs? The Daily Show with Jon Stewart."

[13] By political intelligence, the author refers to the amount of knowledge on political matters and current events as measured by Pew Research Center. Political intelligence does not refer to the IQ test or any other such measure of intelligence.

[14] Pew Research Center, "Journalism, Satire or Just Laughs? The Daily Show with Jon Stewart."

Amendment, the influences of the first satirical news shows, and the goals of satirists writing political comedy.

Purpose and Significance

The purpose of this thesis is to distinguish satirical news shows from typical TV entertainment and news punditry, framing the satirists as legitimate facilitators of debate and discussion and as important sources of information in the creation of an informed citizenry. News satire has an essential role to play in our democracy, one that existed even prior to the creation of the First Amendment. Other studies have shown the virtues of deliberative democracy, or studied the merits of satirical news shows reflecting the media, but none have made the connection of the latter's potential to affect the former. Furthermore, both the historical analysis of fake news shows and ethnographic research on the intentions of such political comedy are unique to this line of research. This research project will thus help to fill in the evolutionary gaps of satire as well as explain the true roles of these satirical news shows and their influence on educating the public. Future research will have a solid theoretical basis for examining the impact of satirical news based on these roles. In addition, this research project will recommend lessons that conventional news media should learn from satirical news in fostering and preserving critical discourse. In the final analysis, this research project will help distinguish satirical news programs from typical TV entertainment or regular news talk shows. In doing so, this research project can serve to encourage media analysts and political

scientists to frame these programs as legitimate and important contributors to political discussion.

Chapter Methodology and Summary

In order to illuminate the relationship between these satirical news programs and an informed and educated public, this research will be organized into six chapters, including this introductory chapter.

Chapter 2: *From Mediaocracy to Deliberative Democracy*. Beginning with the impact of entertainment on critical discourse and politics, the first chapter will review all relevant literature and provide a theoretical framework for analysis. Such concepts as mediaocracy, humor, and satire will be examined.

Chapter 3: *Meiklejohn and the First Amendment: The Role of Satire in Free Speech.* This chapter will use legal research methods and legal theory to critically analyze satirical news. Using Lexis-Nexis and other legal research databases, this chapter will offer evidence that satire is inextricably linked to the First Amendment. A review of all pertinent court cases to fake news will be examined through the Meiklejohnian frame[15], suggesting that speech relating to educating the citizenry and encouraging criticism is essential to democracy.

Chapter 4: *The Fake TV News Makes Political Enemies.* Jon Stewart and Stephen Colbert were not the first to satirize news; they are the progeny of a long line of political satirists. This chapter will feature original historical research on the

[15] Alexander Meiklejohn, *Free Speech and its Relation to Self-Government*, (Hoboken, NJ: Kennikat Press, 1972).

evolution of satirical news shows on broadcast television, beginning with BBC's *That Was the Week the Was* and ending with NBC's *Saturday Night Live*. Original episodes will be selected and analyzed for their content. In addition, the reactions of relevant government and media to the airing of these original fake news shows will be discussed. This chapter will consider how these fake news shows interacted with the critics, ratings, governments, and censorship.

Chapter 5: *Satirist Shield: Ethnographic Study of Intentions in Political Comedy*. Chapter 5 will present ethnographic research on the writing process of satirists, completed during the second half of 2010 at Comedy Central Digital. The intent of the writers and producers, whether to simply make a joke or to deliver a political message, is important in understanding the true value of these satirical news programs.

Chapter 6: *Conclusion: Can Truthiness*[16] *Help Citizens Find the Truth*? Finally, in Chapter 6, this paper will synthesize the conclusions drawn from each chapter to infer whether these satirical news programs should be elevated with regard to their contributions to the political education of society.

[16] Stephen Colbert invented the word "truthiness" – meaning the quality of preferring concepts or facts that you *wish* to be true, rather than concepts or facts that you *know* to be true – in his first television broadcast of *The Colbert Report*. Comedy Central, *The Colbert Report,* October 17, 2005, accessed September 22, 2009, http://www.colbertnation.com/the-colbert-report-videos/180903/october-17-2005/first-show.

Research Questions

Several questions, including those already mentioned, will be examined throughout the entire research project. The answers to these questions are pertinent to reach a conclusion on the relationship of fake news to a politically discursive and educated citizenry. They are as follows:

(1) What roles does satirical news play in American society?

(2) Does satirical news encourage genuine intellectual discussion and dissent?

(3) How has political satire evolved in the past century in the United States?

(4) Why is satire, in particular satirical news, afforded preferential treatment under the First Amendment?

(5) Does the entertainment feature of the satirical news programs detract from the political value of the message?

(6) Is satirical news recognized for its contributions to the political education of society?

(7) What can the mainstream media learn from satirical news in order to better educate the public?

Conclusion

Matthew Hodgart, author of *Satire: Origins and Principles*, argued that political satire requires four special conditions for its appearance in strength.[17] First, there must be a readiness for the educated to take part in political affairs; in

[17] Matthew Hodgart, *Satire: Origins and Principles*, (New Brunswick: Transaction Publishers, 2009), 77.

other words, the public must be ready to be shaken out of their media malaise and political apathy. Second, there must be confidence in the part of writers that they actually can influence public affairs. The ethnographic chapter will examine the intentions of satirists and their own views on how they impact society. Third, Hodgart maintained that there must be a wide audience who enjoys application of these ideas. This condition requires little attention since the United States is already media-saturated country. Finally, there must be free speech, at least to a certain degree. Whatever obstacles remain to complete freedom of speech, satirists are likely to put their pen to paper in order to ruthlessly ridicule such barriers.

By framing the satirical news as a spur for deliberative democracy, this research project will underscore one solution to apathy, media discontent, and declining standards in a time of mediaocracy.[18] Through this project's presentation of an organized synthesis of the past and present modes of satirical news shows, future scholarship will better be able to discuss with certainty the impact of satirical news shows rather than casting them aside as "pure entertainment." Furthermore, this research will help to elevate satirical news in society's eyes to the highest degree, a place satire already holds under the First Amendment.

[18] *See* Danny Schecter, introduction to *Media Wars: News at a Time of Terror*, (Lanham: Rowman & Littlefield., 2003), xxvi. The mediaocracy "sets the agenda and frames what issues get the focus, and which do not."

CHAPTER 2

From Mediaocracy to Deliberative Democracy

If entertainment media are becoming a more popular form of news dissemination, media malaise of such television is in direct conflict with deliberative democracy. This malaise connotes that the viewers simply swallow the news that is being fed to them without any discursive reaction. As Neil Postman feared, the citizenry is being numbed by entertainment. However, as we shall see, this is not the case with every form of entertainment media. Satirical news can elicit meaningful debate. This view—that satire is beneficial to the public because it encourages debate—assumes that deliberative democracy is an ideal state of citizenry.

Deliberative Democracy

Deliberative democracy is the focus of a multitude of recent literature. Scholar John Elster noted, "The idea of deliberative democracy, or decision making by discussion among free and equal citizens, is having a revival."[19] Its roots are as deep as the roots of democracy itself. Pericles declared in fifth century B.C.E. that in Athens, discussion is "an indispensable preliminary to any wise action at all." [20] The

[19] John Elster, introduction to *Deliberative Democracy*, (Cambridge: Cambridge University Press, 1998), 1.

[20] Thucydides., *The History of the Peloponnesian War: The Second Book*, trans. Richard Crawley, 431 B.C.E., accessed February 14, 2010, http://classics.mit.edu/Thucydides/ pelopwar.2.second.html.

concept was also revived in the early years of the United States' existence. In the nineteenth-century John Stuart Mill envisioned a government by public discourse, noting that people were no longer barbarians: "Mankind have become capable of being improved by free and equal discussion."[21] Discussion can help the public substitute truth for error, or at the very least, leave a "clearer perception and livelier impression of truth."[22]

More recently, researchers have attempted to define the process of deliberation more specifically. Susan Stokes' definition has particular salience when it comes to the topic of media: Deliberation is "the endogenous change of preferences resulting from communication."[23] Such deliberation occurs through the search for truth, a role that the news media is theoretically supposed to support.[24] However, this definition allows a wide range of communication to fit under deliberation umbrella; it is also the most applicable toward the study of satirical news and its ability to encourage public debate.

Professor Frank Michelman described the actions citizens take when engaging in deliberative democracy: "Participants direct their arguments toward

[21] John Stuart Mill, *On Liberty,* (London: Longman, Roberts & Green, 1869) accessed February 10, 2010, www.bartleby.com/130/.

[22] Ibid.

[23] Susan Stokes, "Pathologies of Deliberation," in *Deliberative Democracy*, ed. John Elster, (Cambridge: Cambridge University Press, 1998), 123-139.

[24] Jack Fuller, *News Values: Ideas for an Information Age*, (Chicago: University of Chicago Press, 1996). See chapter one, "The Truth of the News."

arriving at a reasonable answer to some question of public ordering . . . ."[25] Objectivity need not be discoverable in such a democracy, instead the aim is toward "conciliation within reason" and not "dissolution of difference." [26] Adam Przeworski illustrated the tendency for elite groups, such as politicians and the media, to impose beliefs in the guise of deliberation that benefit only themselves, not the general public.[27] True deliberative democracy, in summation, is viewed as an ideal form of democracy. It is a form that bridges the gaps between the elite and the common man by allowing the common man to question and discuss the beliefs being "imposed" from above. Media should serve the purpose of encouraging deliberative democracy.

James Fearon,[28] Joshua Cohen,[29] and James Johnson[30] all asserted that while improving the intellect of the participating citizen cannot be the reason for choosing the deliberative decision-making procedure, it might be a by-product. In terms of satirical news, the entertainment value may serve as a reason for choosing

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[25] Frank Michelman, "Conception of Democracy in America Constitutional Argument: Voting Rights," *Florida Law Review* 41 (1989): 447.

[26] Ibid., 448.

[27] Adam Przeworksi, "Deliberation and Ideological Domination," in *Deliberative Democracy*, ed. John Elster, (Cambridge: Cambridge University Press, 1998), 140-160.

[28] James Fearon, "Deliberation as Discussion," in *Deliberative Democracy*, ed. John Elster, (Cambridge: Cambridge University Press, 1998), 45.

[29] Joshua Cohen, "Democracy and Liberty," in *Deliberative Democracy*, ed. John Elster, (Cambridge: Cambridge University Press, 1998), 186.

[30] James Johnson, "Arguing for Deliberation: Some Skeptical Considerations," in *Deliberative Democracy*, ed. John Elster, (Cambridge: Cambridge University Press, 1998), 172.

this format to learn about politics; through questioning and attacking elitist beliefs, the desirable by-product of watching such shows is to become more deliberative in decision-making.

Mediaocracy

Nonetheless, most scholarship views the growth of entertainment in news and the unprecedented power of the media in a negative light. Journalist Danny Schechter defined the rise of "mediaocracy" as the expansion of the "rule by the agenda setting power of privately owned media corporations."[31] In effect, the mediaocracy utilizes propaganda, feeding viewers an opinion repeated in the news echo chamber without any meaningful discourse. Mediaocracy is also disparagingly referred to as "infotainment,"[32] which generally refers to media content mixed with entertainment to enhance popularity.[33] Studies have shown that although more people are turning to infotainment, such as Oprah and other talk shows, for their political news, there is not a positive association between infotainment and the

[31] Danny Schechter, *The Death of Media: And the Fight to Save Democracy*, (Hoboken: Melville House, 2005).

[32] "Primarily a pejorative term, infotainment is often used to denote the decline of hard news and public affairs discussion programs and the corresponding development of a variety of entertainment shows that mimic the style of news." See Geoffrey Baym, "Infotainment," in *The International Encyclopedia of Communication*, ed. Wolfgang Donsbach, Blackwell Reference Online, accessed November 1, 2010, http://www.communicationencyclopedia.com/subscriber/tocnode?id=g9781405131995_chunk_g978140513199514_ss32-1.

[33] David Demers, *Dictionary of Mass Communication and Media Research: A Guide for Students, Scholars and Professionals*, (Spokane: Marquette, 2005),143.

intent to vote or the desire for interpersonal political discussion.[34] Matthew Baum noted that soft news and infotainment are not associated with enhanced long-term store of political knowledge.[35]

Most of the scholarly concerns with infortainment deal with its encroachment into the field of news. Neil Postman, as discussed in the introduction, feared that infotainment was preferencing televisual spectacles over critical information.[36] Of course he was not alone; both David Altheide[37] and Doris Graber[38] argued that news was being packaged into emotion-invoking dramas since they made for a more marketable story line. Part of infortainment and the mediaocracy's emergence is enabled by a changing media landscape of simultaneous fragmentation and integration. Fragmentation occurs because of the evolving technologies and growing number of channels whereby the public can access its news. Integration is happening on an economic level with ownership of media now in "the hands of a small number of giant corporate conglomerates."[39] These corporate conglomerates seek to streamline the media process by

[34] Patricia Moy, Michael A. Xenos and Verena K. Hess, "Communication and Citizenship: Mapping the Political Effects of Infotainment," *Mass Communication and Society*. 8(2) (2005): 111-131, accessed September 25, 2010, doi: 10.1207/s15327825mcs0802_3.

[35] Matthew Baum, "Soft News and Political Knowledge: Evidence of Absence or Absence of Evidence?" *Political Communication* 20 (2003): 173-190.

[36] Postman, *Amusing Ourselves to Death.*

[37] See David L. Altheide, "Media Logic and Political Communication," *Political Communication* 21 (2004): 293–296.

[38] See Doris A. Graber, "The Infotainment Quotient in Routine Television News," *Discourse and Society* 5 (1994): 483–508.

[39] Baym, "Infotainment."

regurgitating certain media frames, thereby generating revenue and cutting costs. Robert McChesney and John Nichols concluded that the present-day mediaocracy is the summation of years of commercial media ownership: "[T]he commercial system of journalism that has defined and dominated our discourse for the past 150 years has entered the rapid process of decline that will not be reversed."[40]

However, not all messages in infotainment dumb down the citizenry, and not all news in the mediaocracy must be classified as propaganda. In his book *Entertaining the Citizenry*, Liesbet Van Zoonen wrote, "[T]here are good and bad expressions of politics in popular culture. The good ones may achieve a political awareness that other means of communication rarely produce."[41]Although Zoonen does not specifically identify these types of good expression in popular culture, satirical news programs fit neatly into her description. The importance of pleasure, entertainment, and fun are all regularly ignored when discussing deliberative democracy;[42] hence, the significance of these satirical news shows in relation to deliberative democracy has been similarly overlooked. Popular culture, Zoonen alleged, can encourage deliberation by virtue of it being popular. Shows like *The*

[40] Robert W. McChesney and Mike Nichols, *The Death and Life of American Journalism: The Media Revolution That Will Begin the World Again*, (Philadelphia: Nation Books, 2010), 214.

[41] Liesbet Van Zoonen, Entertaining the Citizen: Where Politics and Popular Culture Converge, (Lanham: Rowman & Littlefield Publishers, 2005), 149.

[42] Ibid., 148.

Daily Show and *The Colbert Report*, which bring in audiences of over two million,[43] clearly fit this mold.

The revival of theories on deliberative democracy also has implications for First Amendment theory. The concept of free speech must be reevaluated as to encourage the spread of opinions and facts. Since *Hustler Magazine v. Falwell[44] (1988)*, when Chief Justice William Rehnquist declared that the speech important for the "public discourse" can be outrageous or profoundly invasive of its target, the Supreme Court has continued to evaluate free speech in such a way to encourage diverse opinion and deliberation.[45] This First Amendment jurisprudence has been defined as individualistic by scholar Robert C. Post: "Individuals must be free within public discourse from the enforcement of all civility rules, so as to be able to advocate and to exemplify the creation of new forms of communal life in their speech." [46] Since the definition of civility changes with the decades, often seemingly outrageous speech is simply ahead of the times. This forward-looking stance is often seen in many types of comedy, including satire. Deliberative democracy looks beyond the aggregation of static majority preferences to the gradual evolution of

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[43] Michael Starr, "Jon's Got Game," *New York Post,* September 25, 2008, accessed February 16, 2010, http://www.nypost.com/p/entertainment/tv/item_ARuthNhfEW09txbCOTBNkO;jsessionid=DAC2419E6AF55EAC32A6717A5F8C3954.

[44] *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988).

[45] Robert C. Post, "The Constitutional Concept of Public Discourse: Outrageous Opinion, Democratic Deliberation, and Hustler Magazine v. Falwell," *Harvard Law Review* 103, no. 3 (1990): 604.

[46] Ibid., 647.

preferences by way of public discourse.[47] Comedic, outrageous, humorous, and satirical expression thus can be said to be leading the evolution of public discourse.

Humor

Serious consideration of humor as an influence on society is too often pushed behind the curtain. This research project, however, is not alone in contending that humor belongs on the center-stage because its power is far-reaching and transcendent.[48] Max Eastman and Murray S. Davis both argue that humor has been overlooked as inconsequential to society for far too long.[49]

This lack of careful consideration could be caused by the notorious difficulty to pin down a definition of humor. Davis notes that the logic of the definition is similar to the Supreme Court's logic in defining obscenity;[50] it's humor because, "I know it when I laugh at it."[51] In the mid-nineteenth century, Henry Reed defined

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[47] John Elster, "Introduction" in *Deliberative Democracy*, ed. John Elster, (Cambridge: Cambridge University Press, 1998), 1.

[48] See Max Eastman, *The Sense of Humor*. (New York: Scribners, 1921), 3-4. See also Murray S. Davis, introduction to *What's so Funny?: The Comic Conception of Culture and Society*. (Chicago: University of Chicago Press, 1993), 5.

[49] Ibid.

[49] Murray S. Davis, conclusion to *What's so Funny?: The Comic Conception of Culture and Society*, (Chicago: University of Chicago Press, 1993), 310.

[50] In *Jacobellis v. Ohio*, 378 U.S. 184 (1964), Justice Potter Stewart wrote in his concurring opinion, "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description ["hard-core pornography"]; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that."

[51] Murray S. Davis, introduction to *What's so Funny?: The Comic Conception of Culture and Society*. (Chicago: University of Chicago Press, 1993), 4.

that "untranslatable" term 'humor' as the "happy compound of pathos and playfulness."[52] The Oxford English Dictionary attempts to define humor—as dictionaries are apt to do—as "perceiving what is ludicrous or amusing," and offers a bevy of terms that could serve as synonyms, such as jocularity and facetiousness.

Some scholars, such as E. B. White[53] and Robert Benchley,[54] have purposely avoided analyzing humor since its potency must be dependant on its inscrutability. "[Humor] won't stand much poking. It has a certain fragility, an evasiveness, which one had best respect," White claimed.[55] As this research project explores in Chapter 5, failing to examine the intentions of a humorist can only serve to shield the humorist from criticism, which will not encourage the public discussion necessary for a deliberative democracy.

In examining humor, Murray pointed out that no matter the scholars' research background, they all come to the same conclusion: humor finds sociological structures and rips them down. "[H]umor needs stiff cultural and social structures to snap," Murray argued. "No structure, no snap, no laugh."[56] The humorist can substitute for a humanist, articulating a worldview that is balanced between two

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[52] Henry Reed. *Lectures on English literature a 1854, ii* (1855), 63.

[53] E. B. White, preface to *A Subtreasury of American Humor*, ed. E.B. White and Katherine S. White. (New York: Coward-McCann, 1941).

[54] Robert Benchley, "What does it mean?" in *The Benchley Roundup*, ed. Nathaniel Benchley. (Chicago: University of Chicago Press, 1983), 92.

[55] White, preface to *A Subtreasury of American Humor*, xviii.

[56] Davis, conclusion to *What's so Funny?,* 310, Note 5.

extreme philosophical positions.[57] Humanist schools of sociology, such as Marxism[58] and symbolic interactionism,[59] assume that humans construct societal structures. Humorists start from the same assumption, and then focus on the deconstruction of these processes, unlike humanists, which look at how the world is constructed.

Comedy not only takes apart societal structure, but also dismantles the concept of structure itself. "A joke confronts one relevant structure by another clearly less relevant, one well-differentiated view by a less coherent one," Mary Douglas observed.[60] In this way humorists can weaken the legitimacy of a dominant conceptual structure, [61] exposing the inadequacy of those same structures.

One of humor's great theorists, Mikhail Bakhtin, asserted that laughter is unique in "allowing social analysis, reflection and criticism."[62] Humor and laughter are not separate from serious analysis, and humor serves as a necessary device to

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[57] Davis, conclusion to *What's so Funny?,* 310.

[58] Marxism states that humans have constructed capitalism, a system whereby the working class is forced to sell their labor at a disproportional level. Marx's theory is one in which, according to Microsoft Encarta, "class struggle is a central element in the analysis of social change in Western societies."

[59] Society is based on the construction of interacting symbols. See Herbert Blumer, "Society as Symbolic Interaction," in *Human Behavior and Social Process: An Interactionist Approach*, ed. Arnold M. Rose (Boston: Houghton-Mifflin, 1962).

[60] Mary Douglas, "Jokes," in *Implicit Meanings: Essays in Anthropology*, (London: Routledge, 1979), 105.

[61] Ibid., 108.

[62] Jonathan Gray, Jeffrey Jones, and Ethan Thompson. *Satire TV: Politics and Comedy in the Post-Network Era*. (New York: New York University Press, 2009), 9.

halt the stranglehold a norm may have on criticism.[63] Bakhtin also discussed the medieval celebration, "carnival," as a time when the common people partied, practiced licentious behavior, and performed parodic plays with bawdy humor.[64] This carnival allowed the commoners refuge "from prevailing truth and established order," of which they were on the bottom.[65] Humor belonged in Bakhtin's carnival because it allows social controls to be resisted, rearranged, and renegotiated.

Of course, many of these theorists have been analyzing humor in broad terms; certainly sight gags and fart jokes, though types of humor, do not serve such a mighty purpose as encouraging deliberative democracy. The function of this research project is not to denigrate low-brow humor, which possesses a power of its own. This type of humor is simply not the focus of this research. I focus on a type of humor that, according to Charles Schutz, is like a puzzle of criticism, requiring "mental participation by the audience, and its lessons are not hortatory, but self-learned."[66] This research project intends to show that "[t]he highest form of

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[63] Mikhail M. Bakhtin, *The Dialogic Imagination*, trans. Caryl Emerson and Michael Holquist (Austin: University of Texas Press, 1981), 23.

[64] Mikhail M. Bakhtin, *Rabelais and His World*, trans. Helene Iswolsky (Bloomington: Indiana University Press, 1984), 123.

[65] Ibid., 10.

[66] Charles E. Schutz, *Political Humor: From Aristophanes to Sam Ervin* (London: Associated University Presses, 1977), 332. Schutz also argued that humor plays a cathartic role, providing a means of release of frustration. The type of cathartic venting that satirical news provides is somewhat different than traditional rhetorical definitions. Satirical news takes its catharsis from truthful, real social condition existing in the real world, as opposed to the Aristotelian concept of generating catharsis through narrative or plot.

humor," or satire, "points how arbitrary and tenuous our own self system is—which everyone tries to ignore."[67]

Satire

In order to prove that satire is the specific type of humor that spurs deliberative democracy, a scholarly examination of satire is necessary. As will be evidenced in Chapter 4, public acceptance of satire has been anything but static, particularly in the United States. In the 1930s, apologists saw "the derision of satire" as "a survival of our earlier barbarism which it is not honorable to cultivate."[68] Nonetheless, some literary scholars defended satire's cruelty as an "instrument of moral and social reform."[69] Louis Bredvold, writing in 1940, pointed out that there is a "profound distinction" between the derision found in ordinary comedy and the *indignation* found in satire.[70] Bredvold continued, illustrating the importance of indignation:

> Indignation is "an indictment, and as such appeals to some sort of categorical imperative, to what is right and just. It springs from some over-individual principle within us, not merely from our ego. Its harshness is not cruelty, but a judgment against the avoidable errors, vices, and absurdities of life…. It is more than a perception of comic incongruity; it is a reproach addressed to some responsible individual who has deviated from a right and reasonable standard."[71]

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[67] Davis, conclusion to *What's so Funny?*, 312.

[68] Louis Bredvold, "A Note in Defence of Satire," *A Journal of English Literary History* 7, no. 4 (1940): 255.

[69] Ibid., 256.

[70] Ibid., 258.

[71] Indignation is "an indictment, and as such appeals to some sort of categorical imperative, to what is right and just. It springs from some over-individual principle within us, not merely from our ego. Its

Satiric indignation is awakened when the audience understands the juxtaposition of a comic in an immoral situation. In order for satire to be successful, however, the audience must share the comic's antipathy toward the iniquity in question. Satire—when it's done correctly—pulls the audience from its apathetic state and restarts its "sluggish moral muscles," thus causing laughter *and* indignation.[72]

As previously discussed, satirical news programs like *The Daily Show* and *The Colbert Report* parody televised news. Most often, the object of their satire is directed at the media or hypocrisies in politics. According to Darrell West and John Orman, "[Satire] is a way to boost public interest in a subject about which many Americans are not deeply absorbed. The idea is that politics doesn't hurt as much if you are laughing at public officials."[73] Indeed, as Bredvold claimed, satire can be used to set aside apathy and invoke genuine interest in a political discussion. Joseph Kirman contended that satire can help deliberative debate by "giving people power… [as] a tool that can help to make them effective critics of politics and society."[74]

Craig Stark took these concepts even further in his discussion of satire's ability to help teach media literacy. Viewing the world through satire, Stark argued,

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harshness is not cruelty, but a judgment against the avoidable errors, vices, and absurdities of life…. It is more than a perception of comic incongruity; it is a reproach addressed to some responsible individual who has deviated from a right and reasonable standard." See Louis Bredvold, "A Note in Defence of Satire," 259.

[72] Louis Bredvold, "A Note in Defence of Satire," 264.

[73] John M. Orman and Darrell M. West, *Celebrity Politics*, (Alexandria, VA: Prentice Hall, 2002), 98.

[74] Joseph M. Kirman, "Using Satire to Study Current Events," *Social Education* 57 (1993):139-141.

could lead to students engaging in activism to help fix whatever structural incongruity the satire was aimed at.[75] Satire can potentially help a student see the world in a different way and even spur the student to work for change in the realm of politics or journalism.

"Where are the positive or negative sanctions for journalism? The only criticism consists of satirical spoofs such as that on the Puppets,"[76] sociologist Pierre Bourdieu wrote in *On Television*, referring to *Les Guignols*, a French weekly satirical program where political figures are represented with caricatured marionettes.

Bourdieu observed that traditionally, critics are concerned with attacking a particular hypocritical person. However, sociology teaches that these men and women are responsible, "but what they can or cannot do is largely determined by the structure in which they are placed and by the positions they occupy within a structure." [77]

Here is where satire can offer valuable criticism. Satire "often emphasizes the weakness more than the weak person, and usually implies moral judgment and corrective purpose,"[78] and is not to be confused with parody or caricature, which typically attacks only the weak person. Satire can answer Bourdieu's call for greater

[75] Craig Stark, "'What, Me Worry?': Teaching Media Literacy through Satire and Mad Magazine," *The Clearing House* 76, no. 6 (2003): 306.

[76] Pierre Bourdieu, *On Television*, (New York: The New Press, 1998), 53.

[77] Bourdieu, *On Television*, 54.

[78] Satire, Dictionary.com Unabridged, Random House, Inc, accessed September 25, 2010, http://dictionary.reference.com/browse/satire.

analysis and criticism of structure; after all, the entire purpose of satire is to call attention to society's follies and hypocrisies. In the book *Satire TV*, Jonathan Gray writes that modern political satire, such as *The Daily Show*, is "something that entertains, yet also makes us think critically, something that hails us as audiences looking for a laugh, yet also as citizens desiring meaningful engagement with public life." [79] This engagement, induced by political satire, causes critical discussion and debate that ultimately leads the way to a more deliberative democracy.

However, satire having the potential to spur this change does not address whether satirists intend it. In 1920, C.W. Mendell wrote that if we were to judge the satirists' intentions by their statements, we would conclude that ethics and practical philosophy was their principal field.[80] However, even the great satirist Jonathan Swift noted that his satire would not change the hearts or minds of those at whom it was aimed in an added passage to the Faulkner edition of *Gulliver's Travels* in 1735. In the passage, Captain Gulliver writes, "I cannot learn that my book hath produced one single effect according to my intentions…. And it must be owned that seven months were a sufficient time to correct every vice and folly to which Yahoos are subject…."[81]

In his book, *What's So Funny?: The Comic Conception of Culture and Society* (1993), sociologist Murray S. Davis argued that a comedian's role is to deconstruct

[79] Jonathan Gray, Jeffrey Jones, and Ethan Thompson. *Satire TV: Politics and Comedy in the Post-Network Era*. (New York: New York University Press, 2009), 32.

[80] C.W. Mendell, "Satire as Popular Philosophy," *Classical Philology* 15, no. 2 (1920): 139.

[81] Jonathan Swift, *Gulliver's Travels*, (New York: Palgrave Macmillan, 1994).

and debunk status quo social expectations and structures, reorder the audience's perspective, challenge hypocrisy, and compare social ideas to reality, among others.[82] "Many comedians have succeeded where most academics have not—they have captured the social conscience of the American public, and in that process, gotten Americans to think about important social issues,"[83] sociologists Shawn Bingham and Alexander Hernandez wrote.[84] Lawrence Mintz's research in the mid-80s led him to conclude that comedy in American culture is an important form of social commentary, challenging social norms.[85] Many comedians feel the same way. Lizz Winstead, the creator of *The Daily Show*, spoke about the value in comedy for people to mock political institutions. "In the world of sound bites and stump-speeching we live in now, none of it is very inspiring, and a satirist's job can be to break through. We have a freedom that politicians and journalists don't have; we have no agenda other than to speak our minds."[86]

Of course, satire is not known for directly changing the mind of the target, but instead influencing public opinion by encouraging discussion of the revealed hypocrisy. This nature of satire makes it an excellent tool for deliberative

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[82]Murray S. Davis, *What's so Funny?.*

[83] Shawn Chandler Bingham and Alexander A. Hernandez, "'Laughing Matters': The Comedian As Social Observer, Teacher, and Conduit of the Sociological Perspective," *Teaching Sociology* 37, no. 4 (October 1, 2009): 335-352.

[84] Ibid.

[85] Lawrence Mintz, "Stand Up Comedy as Social and Cultural Meditation," *American Quarterly* 37, no. 1 (1985): 71-80.

[86] Dan Dion and Paul Provenza. *Satiristas: Comedians, Contrarians, Raconteurs & Vulgarians*. (New York: Harpercollins, 2010), 148.

democracy, since the focus is on debate and consensus building. Satire also possesses the positive elements of infotainment—namely its popularity—as well as elements mediaocracy lacks, such as the encouragement of interpersonal discussion.

Mediaocracy and infotainment spawn apathy for the political process. This contention, however, does not mean that every political program on TV—or on the Internet—infects viewers with media malaise. Satire, particularly satirical news, works to counter any negative effects Neil Postman rails against, such as political stupidity. These shows use humor as a pin to pop the apathetic bubbles infotainment creates in place of political knowledge. "Satire is provocative, not dismissive," and that is "a crucial point that critics typically ignore when assessing its role in political discourse."[87]

Satirical News: *The Daily Show* and *The Colbert Report*

This literature review would not be complete without a discussion of all relevant research projects based directly on *The Daily Show* and *The Colbert Report*, many of which were integral in guiding the premise of this research project. Professor Matthew Jordan compared Jon Stewart to French sociologist Michel Foucault in that both focused their work on "critical irony aim[ed] at truth, a practice of both ironist [that] is more helpful than hurtful in today's mass media

[87] Gray, Jones, and Thompson, *Satire TV,* 13.

democracy."[88] This mediaocracy unleashes a wave of sensational stories, leaving important political and controversial topics marginalized in its wake. Jon Stewart uses *The Daily Show* to call "attention to the artificial discourse that offended their sense of truth."[89] Still, just as Neil Postman argued that entertainment media was causing voter disengagement, other critics claimed that pervasive irony gives rise to cynical views of culture and distaste for democracy. Satire only reveals constraints to truthful debate in the media or political sphere, they argued, thereby offering no solutions to the appropriate form of political discourse.[90] Jordan pointed out that such claims ignored the fact that the satirical shows are actually a model of communicative action for the public interested in examining the truth so often left behind by the mass media.

Geoffrey Baym also invoked Foucault when discussing political satire, claiming that the "spontaneous philosophy" of post-modern media is that all public speech is inherently propaganda, and thus journalists should go after motives rather than truth.[91] In *From Cronkite to Colbert: The Evolution of Broadcast News*, Baym traces the evolving face of journalism, of which *The Daily Show* and *The Colbert Report* are emergent. Unlike traditional news of the mid-nineteenth century, in which the press was the Fourth Estate, "the public searchlight of truth

[88] Matthew Jordan, "Thinking with Foucault about Truth-Telling and The Daily Show," *The Electronic Journal of Communication* 18 (2, 3, &4): 2008.

[89] Jordan, "Thinking with Foucault."

[90] Ibid.

[91] Geoffrey Baym, *From Cronkite to Colbert: The Evolution of Broadcast News,* (Boulder, CO: Paradigm Publishers, 2010), 172.

and accountability"—today's mediaocracy "that [Bill] Moyers[92] and Stewart criticize are largely engaged in the postmodern approach to news, the for-profit corporate product that is all too often complicit in the selling of political ideologies and agendas."[93] Colbert and Stewart's shows offer a new type of "democratic activism," that encourages truth-telling and public dialogue that is not restrained by corporate-controlled talking points. [94]

Noting that the mid-nineteenth century era produced a sharp division between the political-normative realms and aesthetic-expressive, Baym wrote, "the discourse of high-modern news paradoxically closed off all potential avenues for political engagement," including comedy.[95] *The Daily Show* and *The Colbert Report* are "the flip-side of infotainment," in that they engage the public in politics where previously the space was bereft of meaningful debate.[96]

Laura Feldman is a leading scholar of the nature of political entertainment and satire. In an September 2010 interview, Feldman pointed out that in the current fragmented media environment, politicians have accepted that appearing

[92] Bill Moyers is a PBS political correspondent, brought to prominence during the Walter Cronkite era of trusted and respectable journalism, is critical of the present media's corporate interests.

[93] Baym, *From Cronkite to Colbert,* 167.

[94] Geoffrey Baym, *From Cronkite to Colbert: The Evolution of Broadcast News,* (Boulder, CO: Paradigm Publishers, 2010), 167.

[95] Ibid., 170.

[96] Ibid., 173.

on late night comedy shows must be a part of the campaign strategy.[97] Feldman said that candidates and officials appearing on shows like *The Daily Show* are engaging in interviews that are politically substantive: "Ultimately, *The Daily Show*, *The Colbert Report*, [and] *SNL* … have become part of mainstream political discourse." Feldman's research has shown that *The Daily Show* influences mainstream press by "exposing its limitations and encouraging journalists to break from conventional norms."[98]

In *Entertaining Politics* (2005), Jeffrey P. Jones emphasized that political news shows, like *The Daily Show*, help identify audiences as citizens by encouraging the process of public thinking. These programs take "pluralism one step further by integrating culture and politics in ways that can enrich and enliven the processes of a discursively active citizenship."[99]

In addition to qualitative research, there has been a limited number on quantitative research studies performed on *The Daily Show* or *The Colbert Report*. Several studies have found that entertainment media in the form of political talk shows increased or contributed to increases in knowledge about politics.[100] A few

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[97] Matthew Nisbet, "Distraction or Engagement? Researcher On What Viewers Learn from The Daily Show," *Big Think*, accessed October 16, 2010, http://bigthink.com/ideas/24063.

[98] Ibid.,

[99] Jeffrey P. Jones, *Entertaining Politics*, (Lanham, MD: Rowman & Littlefield Publishers, 2005),196.

[100] See Jack M. McLeod, Zhongshi Guo, Katie Daily, C. A. Steel, H. Huang, E. Horowitz, *et al*, "The Impact of Tradition and Nontraditional Meda Forms in the 1992 Election," *Journalism and Mass Communication Quarterly* 73 (1996): 401-416; Richard Davis and Diana Owen, *New Media and American Politics,* (New York: Oxford University Press, 1998); Barry Hollander, "Late-night Learning: Do Entertainment Program Increase Political Campaign Knowledge for Young Viewers?" *Journal of Broadcasting and Electronic Media* 49 (2005): 402-415.

researchers have argued that entertainment media do not promote accurate information holding, resulting in little actual impact of political knowledge.[101] It must be noted, however, that such studies finding little impact did not distinguish between political punditry, talk radio shows, and satirical news shows. In 2008, a study by Young Mie Kim and John Vishak concluded that compared to the news media, *The Daily Show* and entertainment media are slightly less effective in acquiring factual information, specifically related to retaining issue and procedural knowledge. Their research implied that study participants formed different information processing goals depending on the type of media being viewed: for news, participants' processing was based on surveillance, whereas for *The Daily Show*, processing was based on relaxation, implying catharsis.[102] The main problem with this study is that it leaves out deliberation from the equation, an important resulting process from satire that leads to the "correct" information and decision within democracy. Overall, qualitative research on satirical news suffers from an inability to define the roles of the medium. Research does little to distinguish different types of entertainment media and infotainment or consider the specific influences of satire on gaining knowledge.

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[101] See Stephen E. Bennett, "American's Exposure to Political Talk Radio and their Knowledge of Public Affairs," *Journal of Broadcasting and Electronic Media* 45, no. 4 (2001): 72-86; Markus Prior, "Any Good News in Soft News? The Impact of Soft News Preference on Political Knowledge," *Political Communication* 20 (2003): 149-171.

[102] Young Mie Kim and John Vishak, "Just Laugh! You Don't Need to Remember: The Effects of Entertainment Media on Political Information Processing in Political Judgment," *Journal of Communication* 58, no. 2 (June 2008): 338-360.

Conclusion

This literature review has revealed that satirical news has many unique features that must be taken into consideration during subsequent research. Satirical news cannot be classified as mere infotainment; its truth-revealing function offers an important critical voice that enhances political discussion. Certainly such influential and politically important speech must be highly protected by laws from governmental interference in satirical speech. In the following chapter, this research project will show how First Amendment protection of satire has developed and expanded over the past several centuries. Satire is inextricably linked with dissent and diverse, deliberative free speech.

CHAPTER 3

Meiklejohn and the First Amendment: The Role of Satire in Free Speech

Rodney Smolla remarked that governments, in different times and places, have surrendered to the urge to control speech. "Censorship is a social instinct. Neither an open culture nor an open government comes easily."[103] This research project asserts that satire's historical role as a purveyor of political dissent has stood face to face with the governmental instinct of censorship. According to Meiklejohnian theory,[104] satire, as a form of political criticism and dissent, has the highest degree of protection under the First Amendment. However, this was not always the case. It took hundreds of years for political dissent to finally win full First Amendment protection in *Brandenburg v. Ohio* (1969).

Satire's role has consisted of fighting for freedom of speech and protection of political dissent under the First Amendment. Prosecutions of libel or sedition for satirical publications are—for most purposes—non-existent. Satire has served as a facilitator of debate through its vocal criticism of government and public officials. At no time is this more pronounced than when the government has, in the past, taken steps to silence satire. This chapter aims to distinguish satire's role as a

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[103] Rodney A. Smolla, *Free Speech in an Open Society*.

[104] Alexander Meiklejohn, *Free Speech and its Relation to Self-Government*. Meiklejohn argues that for democracy to work, an informed electorate is needed. In order to educate the citizenry, there must be no constraints on political, or public, speech. If governments withhold information or stifle criticism, then theirs is not a true democracy.

facilitator of dissent and free speech and to analyze the function the First Amendment and copyright law have played in limiting or enhancing satirical speech.

Through the Meiklejohnian lens, satire embodies the First Amendment by informing the public on political issues. Nonetheless, the First Amendment cannot protect satire from copyright laws that have left open the prosecution of such speech, enabling the eventuality of a chilling effect. Before reaching such contemporary issues in copyright law, this chapter will begin by reviewing satire's historical role in challenging the government and encouraging political speech.

Part I of this chapter will look at satire's historical connections with government censorship and seditious libel. Part II will review struggles with libelous satire in the past century. Part III will demonstrate how present copyright law still leaves room for restriction of political satire and thus suppression of criticism by creating a false dichotomy between satire and parody. Finally, Part IV will synthesize the research and discuss current perspectives on satire's role in free speech and politics.

By revisiting the legal history of satire, as well as pertinent legal theory, this research project will clarify satire's role under the First Amendment so that it may be accepted as a legitimate and important form of criticism and dissent in the public sphere.

Part I. History of Free Speech and Satire

In order to understand the evolution of satire and free speech in the United States, readers must first look to pre-revolutionary British law, which would become the foundation of common law. In England, satire was not always protected in the eyes of the law. In 1599, the Archbishop of Canterbury John Whitgift, whose office licensed books for publication in England, issued a decree banning verse satire.[105] England was experiencing a satire boom at the time;[106] the decree included burning satire written by John Marston, Thomas Middleton, and Joseph Hall, among others. Looking back on the time period leading up to the decree, eighteenth century satirist Daniel Defoe recalled "the Days of King Charles II when the License Tyranny Reign'd over the Press." [107] The result of licensing was not less dissent; instead, critics began using "Lampoons, Pasquinades, and Inveterate Satyrs, . . . whose Darts [were] keener, and Poisons stronger than any Thing Printed."[108] Satire played a key role in encouraging criticism of licensing and censorship practices.

Beginning in the sixteenth century, political thinkers in England began to believe that dissent, although still illegal, should be protected from prior restraint.

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[105] Edward Arber, ed., *A Transcript of the Registers of the Company of Stationers of London, 1554-1640*, Vol. III, (London, 1875-94), 677.

[106] Dustin Griffin, *Satire: A Critical Reintroduction,* (Kentucky: University Press of Kentucky, 1995), 135.

[107] Daniel Defoe, *A Review of the British Nation*, vol VIII, (1711), 6-7. Defoe also notes that the satire of Marvell and Rochester caused the people to be far angrier at their government than would have been possible with an unlicensed press.

[108] Ibid.

In his 1644 address to Parliament titled *Areopagitica*, John Milton argued in favor of free speech: "Let [Truth] and Falsehood grapple; who ever knew Truth put to the wors, in a free and open encounter."[109] Milton sought unlicensed printing, a "free press." At his time, the government would determine beforehand what was truth and error and only allow licenses for those who agreed. Milton would later influence the "Market of Ideas" free speech concept that allowed dissenting ideas to compete with government-sanctioned ideologies.[110]

By the mid-eighteenth century an influential legal scholar had accepted freedom of speech and the liberty of the press as essential to democracy. At the time, English Judge Sir William Blackstone noted that the free man may be able to criticize whomever he wants in public, but "if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity."[111] Such a view of freedom of speech did not take into consideration the subsequent chilling effect—that some may not publish their views for fear of being punished or jailed for them.

There were those, however, who spoke out against such punishment of speech. In the early eighteenth century, "Tory Author" argued it was wise for public officials to tolerate the defamation of themselves "on the theory that great

[109] Herbert Brucker, *Freedom of information*. (New York: Macmillan Co, 1949), 34.

[110] *See* Rodney A. Smolla, *Free Speech in an Open Society* (New York: Knopf, 1992).

[111] William Blackstone, *Commentaries on the Laws of England*, Volume 4, (Oxford 1765-1769), 156.

people could afford to…."[112] The Tory Author also quoted another unnamed Whig: "There never was good Government that stood in fear of Freedom of Speech, which is the natural Liberty of Mankind; nor was any Administration afraid of *Satyr* but such as deserv'd it."[113] The remark assumes that governments that feared satire and criticism did so because their actions merited such dissent.

In 1722, James Franklin of Boston began publishing religious and political satire in his unlicensed *New England Courant.*[114] Franklin implied that the Massachusetts government was ineffective and slow when he ran a satirical notice that government was preparing a ship to stop coastal pirates "sometime this month, wind and weather permitting."[115] Franklin was arrested for this affront to government and imprisoned for the remaining month of legislative session. After being released from jail, Franklin returned to the *Courant* and continued to mock the politicians with innuendo and satire.[116] Again, the government released a report ordering Franklin to cease publication unless he first posts bond and passes the paper through the government. Again, Franklin disobeyed, this time publishing the *Courant* and going into hiding to evade the warrant for his arrest. After being

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[112] Leonard Williams Levy, *Legacy of Suppression: Freedom of Speech and Press in Early American History*, (Cambridge: Belknap Press of Harvard University Press, 1964), 114.

[113] *The Thoughts of a Tory Author, Concerning the Press: With the Opinion of the Ancients and Moderns, About Freedom of Speech and Writing*, (Missouri: Gale Ecco, Print Editions, 2010),13.

[114] Levy, *Legacy of Suppression*, 36.

[115] Isaiah Thomas, *The History of Printing in America With a Biography of Printers, and an Account of Newspapers*, (New York: General Books LLC, 2010), 217.

[116] Levy, *Legacy of Suppression,* 37.

found and captured, the government—sure of his guilt—requested an indictment from a grand jury. Although seditious libel was then considered punishable, "the grand jury returned the bill ignoramus," and Franklin went free.[117] Isaiah Thomas proclaimed this event to be the end of prior restraint of press in Massachusetts.[118] However, this trial did not settle the question of free speech and free press, since Massachusetts convicted publishers of seditious libel in the years that followed.

Around this time, in England, a debate arose as to the relation of satire to libel.[119] The New Yorker Lewis Morris, who was removed from his position as Chief Justice by Governor William Cosby, was familiar with English satirists. In England, a journal called *The Craftsmen* had been printing satirical attacks of Sir Robert Walpole. Satire was seen as the only valid way of attacking government corruption: "Where law cannot extend its awe and authority, satire wields the scourge of disgrace."[120] The English believed that satire "shake[s] the writer beyond the reach of law."[121] *The Craftsmen*'s editor had been to trial for libel twice for publishing satires, and in one trial, a jury refused to convict him.

Morris followed *The Craftsmen*'s lead, and with the use of the *New York*

[117] Ibid., 38.

[118] Isaiah Thomas, *The History of Printing in America With a Biography of Printers, and an Account of Newspapers*. (New York: General Books LLC, 2010), 219-222.

[119] Alison Olson, "The Zenger Case Revisited: Satire, Sedition, and Political Debate in Eighteenth-Century America," *Early American Literature* 35, no. 3 (2000): 233. [Gov. William Cosby of New York prosecuted John Peter Zenger in 1734 for seditious libel for attacks in the *New York Weekly Journal*; Olson offers an excellent list of references.]

[120] George Alexander Stevens, *An Essay on Satire*, (London: G. Kearsley, 1785), 100.

[121] Walter Harte, *An Essay on Satire, Particularly on the Dunciad*. (Los Angeles: Clark Memorial Library, 1968), 1.

Weekly Journal, printed by Peter Zenger, Morris satirically attacked Governor Cosby and his cronies. “If an overgrown criminal . . . cannot immediately be come at by ordinary Justice,” argued a *Journal* writer in one article, “let him yet receive the lash of satire.”[122]

Apparently, Cosby did not feel the same way; he decided to prosecute the printer, Zenger, for seditious libel in 1735. First Amendment scholars often reference the infamous Zenger trial as the first time that truth was used as a defense to seditious libel.[123] It is often left out that the alleged libels against Governor William Cosby of New York were satirical articles, adding another layer of complication to the trial.

Zenger’s lawyer, Andrew Hamilton, argued that Zenger’s publications of criticisms of the Governor should not result in prosecution for seditious libel because the publication was telling the truth. Indeed, “the Journal showed its attacks were largely perceived as being based on truth” by the mere success of the paper.[124] Hamilton contended that "[m]en who injure and oppress the people under their administration [and] provoke them to cry out and complain" will also suppress such protest by "mak[ing] that very complaint the foundation for new

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[122] “An Essay on the Liberty of the Press,” *New York Weekly Journal*, November 12, 1733.

[123] See Irving Brant, *The Bill of Rights – Its Origins and Meaning*, *(*Indianapolis: Bobbs-Merrill Co.,1965) See *Revisionary Interventions into the Americanist Canon (New Americanists)*, (London: Duke University Press, 1994). See Julie Hedgepeth Williams, *The Early American Press, 1690-1783 (The History of American Journalism)*, (New York: Greenwood Press, 1994). Finally, see Leonard Williams Levy, *Legacy of Suppression.*

[124] Olson, "The Zenger Case Revisited,” 234.

oppressions and prosecutions."[125] The court rejected Hamilton's argument, but the jury disregarded the common law and acquitted Zenger. The significance of this satire-libel case as the beginning of a trend toward stronger tolerance of free speech has been debated.[126] History can reveal, however, that satire enjoyed fewer restrictions in the period following the Zenger trial.

In 1764, Benjamin Franklin mocked the Pennsylvania governor for not putting down the corrupted Payton Boys.[127] He was never accused of libel. In 1766, the Virginia governor brought Robert Bolling to trial for seditious libel. The jury refused to convict him, and in response, Bolling once again attacked the governor by publishing *A Satire on the Times*.[128] Finally, the governor of Massachusetts had to watch silently as Joseph Greene attacked the governor's Masonic influences with sharp satire.[129] Historian Alison Olson concluded that after the Zenger trial, "No governor successfully undertook such a public trial again, and most of them did not

[125] *The Trial of John Peter Zenger*, 17 Howell's St. Tr. 675, 721-722 (1735) (argument of counsel to the jury)

[126] One scholar argued that the case was "nothing more than a matter of historical accident" in Stephen Botein, *Mr. Zenger's Malice and Falsehood*, (Worcester, Mass.: American Antiquarian Society Facsimilies, 1985), 11. Others make similar arguments. See Leonard W. Levy, "Did the Zenger Case Really Matter, Freedom of the Press in Colonial New York." *William & Mary Quarterly* 3rd ser. 18 (1960): 35–50. See also Stanley N. Katz, *Brief Narrative of the Case and Trial of John Peter Zenger*, (Cambridge, Mass.: Harvard University Press, 1963), 34. Finally, see William Smith, *The History of the Late Province of New York from its Discovery to the Appointment of Governor Colden in 1762*, vol 2. (New York: New York Historical Society, 1830), Chapter 18.

[127] Benjamin Franklin, "Narrative of the Late Massacres in Lancaster County," in *The Paxton Papers*, ed. John R. Dunbar, (The Hague: Martinus Nijhoff, 1957, 55–76.

[128] J. A. Leo Lemay, "Robert Bolling and the Bailment of Colonel Chiswell," *Early American Literature* 6, no. 2 (1971).

[129] David S Shields, "Cleo Mocks the Masons: Joseph Greene's Masonic Satires," in *Deism, Masonry, and the Enlightenment. Essays Honoring Alfred Owen Aldridge*, ed. J. A. Leo Lemay (Newark, DE: University of Delaware Press, 1987), 109–26.

even try."[130]

Satire had become a matter outside of government control. Such a shift in free speech officially established in 1789, when the First Amendment of the United States Constitution was ratified in congress along with the rest of the Bill of Rights. This was a mere twenty years after Blackstone's statement on facing consequences for temerity in speech. The First Amendment stated, "Congress shall make no law… abridging the freedom of speech."[131] There would be no government censorship or restraint of speech, including satire.

However, after the Alien and Sedition Acts in 1798—designed to stifle criticism of the government—passed, the true understanding of the central meaning of the First Amendment took shape.[132] This meaning emphasized that "the censorial power is in the people over the Government, and not in the Government over the people," according to James Madison, who later protested the sedition statutes.[133] Madison had argued previously that the First Amendment, and other state-adopted free speech laws, opened up freedom of speech in a way that the strict limits of the common law would never allow.[134]

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[130] Olson, "The Zenger Case Revisited," 238.

[131] U.S. Const. amend I.

[132] Levy, *Legacy of Suppression*, 258.

[133] *Annals of Congress* 1794, 934.

[134] *Elliot's Debates Vol. 4*, The Library of Congress (1787), 570, accessed at http://memory.loc.gov/cgi-bin/ampage?collId=lled&fileName=004/lled004.db&recNum=581&itemLink=D%3Fhlaw%3A3%3A.%2Ftemp%2F%7Eammem_m0XZ%3A%3A%230040612&linkText=1.

Writing the opinion for *New York Times v. Sullivan* (1964), Justice William Brennan concluded that these "views reflect a broad consensus that the Act, because of the restraint it imposed upon criticism of government and public officials, was inconsistent with the First Amendment."[135] Brennan added that "free public discussion of the stewardship of public officials," in Madison's view, was a fundamental right in American government.[136] Indeed, the people seemed to agree with Madison's view, for in the next election, Thomas Jefferson defeated John Adams, largely because Adams and Congress had used the Alien and Seditions Acts to silence Jefferson's supporters.[137] After entering office, Jefferson allowed the Acts to expire.

Twentieth Century: Political Dissent Earns Protection

Throughout the nineteenth century, there were no substantial decisions made in government on the degree of freedom satire or political dissent should be afforded. Satire as a literary form, however, thrived during this period. Mark Twain wrote many satires, including *The Gilded Age: A Tale of Today* (1873), which criticized the conspicuous consumption and corruption in post-Civil War America. Still, this time period lacked any clear evolution of satire's role in relation to free speech and the First Amendment. The twentieth century, however, would prove

[135] New York Times v. Sullivan, 376 U.S. 275 (1964).

[136] Id.

[137] D.W. Sloan and J.D. Startt, *The Media in America: a History*, (Northport, AL: Vision Press, 1999).

pivotal in determining the amount of protection dissent—and by extension, satire—could attain under the First Amendment.

Free and robust political dissent witnessed tough restrictions imposed by the Espionage Act of 1917, which punished activities and utterances encouraging the forceful overthrow of federal government.[138] The Espionage Act attacked the civil liberties, eliciting assertions of its unconstitutionality by intellectual elites such as the Federal Judge Learned Hand[139] and First Amendment professor Zachariah Chafee.[140]

Justice Oliver Wendell Holmes eventually responded to these calls; in *Abrams v. U.S*. (1919), Justice Holmes eloquently dissented in the conviction of Abrams under the Espionage Act.[141] Thus, the year 1919 marked the first articulation of the modern meaning of the First Amendment in regard to protecting dissent. In his dissenting opinion, he urged that the prosecution of dissent should only take place if the speech "is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States

[138] Espionage Act of June 15, 1917, c. 30, tit. 1, 3, 40 Stat. 217, 219 (Comp. St. 1918, 10212c)

[139] Hand's influence in crafting modern understanding of the First Amendment followed his outrage at the Espionage Act. For a detailed analysis of Hand's assertions, *see* Geoffrey R. Stone, "Judge Learned Hand and the Espionage Act of 1917: A Mystery Unraveled," *The University of Chicago Law Review* 70, no. 1 (2003): 335-358.

[140] Examples of Chafee's views on the importance of protecting free speech even during times of war—considered very liberal at the time—can be found in his book *Freedom of Speech*, (New York: Harcourt, Brace And Howe, 1920).

[141] Abrams v. United States, 250 U.S. 616 (1919).

constitutionally may seek to prevent."[142] Holmes' interpretation of the meaning of the First Amendment was influenced by the writings of Harvard professor Zachariah Chafee, Jr. In "Freedom of Speech in War Time," Chafee echoed the thoughts of Milton, arguing that representative democratic government depended on open political discourse. Thus, Chafee believed, the justices should overturn the Espionage Act.[143]

It took nearly forty years[144] for Holmes' strong interpretation of the First Amendment to be accepted by the majority of the Supreme Court. In *Yates v. U.S* (1957), the Supreme Court overturned the convictions of alleged Communist party members. Justice John Marshall Harlan wrote for the majority that the law must distinguish between advocacy of abstract doctrines and advocacy of unlawful action.[145] *Yates* concluded that advocacy of action could be prosecuted but the First Amendment protected advocacy of abstract principle. Twelve years after *Yates*, the Supreme Court ruled that the government could not punish inflammatory speech unless directed to inciting and likely to incite *imminent* lawless action in

[142] Abrams, 250 U.S. 627 (1919), Justice Holmes, dissenting.

[143] Kermit Hall, *Major Problems in American Constitutional History*, (Lexington, MA: D.C. Heath, 1992).

[144] In the meantime, Holmes continued to dissent on First Amendment cases squashing political dissent. In Gitlow v. New York, 268 U.S. 652, 673: "If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of community, the only meaning of free speech is that they should be given their chance and have their way." As the Court admits in Brandenburg v. Ohio, 395 U.S. 444 (1969): "We have never been faithful to [Holmes'] philosophy of that dissent." The clear and present danger test was bastardized beyond recognition in Dennis v. United States, 341 U.S. 494 (1951), when the court used the test to sustain convictions of several Marxists. The Court in *Brandenburg* concluded per curiam that the clear and present danger test had become too flexible and in Dennis was interpreted in a "free-wheeling" manner.

[145] Yates v. United States, 354 U.S. 298 (1957).

Brandenburg v. Ohio.[146] *Brandenburg*'s unanimous decision was the first time that the Supreme Court gave dissent full protection under the First Amendment as Holmes had intended in *Abrams*. As of today, the *Brandenburg* test is still the standard used for evaluating government attempts at punishing inflammatory political speech.[147]

The First Amendment protects political dissent from direct censorship or punishment by the government. However, unpopular speech still grapples with other legal restrictions. In the past, public officials have sued press agencies for libelous speech.[148] The next section examines the recent history of libel cases related to satire or political dissent that have successfully strengthened First Amendment protection for such speech.

Part II. Libel, Satire and *Hustler*

According to Gilbert Highet, satire "deals with actual cases, mentions real people by name or describes them unmistakably (and often unflatteringly), talks of this moment and this city, and this special, very recent, very fresh deposit of corruption whose stench is still in the satirist's curling nostrils."[149] Such attacks on particular persons have made satire ripe for libel suits over the past century. In that

[146] Brandenburg v. Ohio, 395 U.S. 444 (1969).

[147] *Brandenburg* remains the standard, but exceptions to the standard have also been found. In Virginia v. Black, 538 U.S. 343 (2003), a fractured court ruled that a ban of cross-burnings was constitutional because the First Amendment allows the banning of "true threats." See Susan M. Giles, "Brandenburg v. State of Ohio: An Accidental, Too Easy, and Incomplete Landmark Case," *Capital University Law Review* 38, 3 (Spring 2010), 517-534.

[148] Libel refers to a malicious, false, or defamatory published statement made about an individual.

[149] Gilbert Highet, *Anatomy of Satire*, (New York: Princeton University Press, 1971), 16.

time, the courts began moving toward giving satire and humor broader First Amendment protection.

In *Triggs v. Sun Printing and Publishing* (1904), an English professor sued Sun Publishing for attempting to "portray the plaintiff in a ridiculous light" through use of satire, thus going beyond fair and honest criticism.[150] In this case, it was no defense that the articles were written in jest and were not meant to be read as factual statements. In its opinion, the court referenced a similar 1831 decision: "The principle is clear that a person shall not be allowed to murder another's reputation in jest…. If a man in jest conveys a serious imputation, he jests at his peril."[151]

The *Triggs* case was important in distinguishing between criticism that attacks an individual, which can be libelous, and criticism attacking an individual's work, which may legitimately call for public comment. As James Naughton pointed out,[152] the rule has allowed courts to punish a myriad of satirical criticism, from a cartoon that implied that a State Legislator used undue influence (liquor and money) in passing a bill,[153] a printed article inferring that a foreign aristocrat was only in the United States to avoid work,[154] to a gossip column that joked that a certain thrifty Yankee had built his own casket and dug his own grave to avoid the

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[150] Triggs v. Sun Printing & Publishing Association, 179 N.Y. 144 (1904), 71 N.E. 739.

[151] Donoghue v. Hayes (1831), Hayes, Irish Exchequer, 265, 266.

[152] James M. Naughton and Eric R. Gilbertson, "Libelous Ridicule by Journalists," *Cleveland.-Marshall Law Review* 18 (1969): 451.

[153] Randall v. Evening News Association, 79 Mich. 266, 44 N.W. 783 (1890).

[154] Pignatelli v. New York Tribune Inc., 117 Misc. 466, 172 N.Y.S. 605 (1921).

expense.[155] Following the rule articulated in *Triggs*, all comedic pieces were held libelous per se since they were not included in the fair comment privilege. Satire's role as a form of dissent did not invoke sympathy.

Federal Circuit Judge Learned Hand, who had been among the first to point out the unconstitutionality of the sedition acts, could not deal as sternly with libelous humor as he had with seditious libel. Hand wrote that "a man must not be too thin-skinned or a self-important prig," in the opinion of *Burton v. Crowell Publishing* (1936).[156] Hand nonetheless found a publication of a caricature[157] of the plaintiff actionable because it "was calculated to expose plaintiff to more than trivial ridicule." Obscene humor earned no protections in the early 1900s since "it pander[ed] to prurient curiosity" and it was "in the duty of all courts to uphold public virtue, and [to] discourage and repel whatever tends to impair it."[158]

Just as prosecutions for seditious government libel began to wane in the latter half of the twentieth century, prosecutions for satirical libel began to be far less actionable. In 1948, a Massachusetts court held that "fair comment may be

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[155] Powers v. Durgin Snow Publishing Co., 144 A. 2d 294 (Me. 1958)

[156] Burton v. Crowell Publishing 82 F.2d 154 (2nd Cir. 1936).

[157] Caricature may not be the correct word. The image was a photo taken of horse rider Crawford Burton carrying a saddle. Due to the angle of the camera and placement of the saddle, it looks almost as though Burton's penis is exposed. "Had such a picture been deliberately produced, surely every right-minded person would agree that he would have had a genuine grievance; and the effect is the same whether it is deliberate or not." See Burton v. Crowell Publishing 82 F.2d 154, 155.

[158] Martinetti v. Maguire, 16 F. Cas. 920 (C.C. Cal. 1867) (No. 9,173), applying the English standard that courts may grant injunctive relief to stop morally objectionable works.

severe and include ridicule, sarcasm, and invective."[159] The court pointed out that there was a difference between "severity and vigor" in expression and actual malice in the motive. That decision influenced a Federal court that, two years before the Supreme Court's 1957 decision in *Yates*, determined that a newspaper article ridiculing a candidate for public office "did not exceed fair comment" on a matter of public concern, making it impervious to libel.[160]

In 1964's *New York Times v. Sullivan*, the Supreme Court crafted a landmark decision in libel law when it ruled that public officials accusing publications of libel must prove actual malice.[161] It was not until *New York Times v. Sullivan* that a public official's ability to win a case of libel was greatly diminished by the requirement that the plaintiff must prove malicious intent.

In this case, a political advertisement soliciting funds to defend Martin Luther King, Jr, was not found to be libelous of Montgomery Public Safety commissioner, L.B. Sullivan. Although not directly named, Sullivan had claimed references to police included him. Furthermore, there were some minor factual inaccuracies. The Court ruled that Sullivan would need to prove that the Times published the ad either with knowledge of falsity or reckless lack of investigation. In the case's concurrence, Justice Goldberg wrote that he agreed, "Prosecutions for

[159] Hartmann v. Boston Herald Traveller Corp., 323 Mass. 56, 80 N.E. 2d 16 (1948)

[160] Hammett v. Times Herald Inc., 227 F. 2d 328 (4th Cir. 1955), cert. denied.

[161] New York Times Co. v. Sullivan, 376 U.S. 254 (1964). This decision gave the actual malice standard constitutional significance. Private individuals, however, would not have to prove actual malice after being libeled.

libel on government have [no] place in the American system of jurisprudence."[162] Goldberg then noted that the Court has in the past claimed that the Constitution does not protect libelous publications.[163]

By giving the actual malice standard constitutional significance, the Court erected a higher wall in free speech's defense. In 1969, James Naughton and Eric Gilbertson argued, "this ruling, while not specifically indicating it, would permit (so long as malice is not involved) ridicule of a public official as well as straightforward criticism."[164]

Several decisions around the time of *Sullivan* illustrated that point. In *Hammet v. Times Herald Inc*. (1955), the Fourth Circuit Court of Appeals ruled that ridiculing a political candidate was privileged under fair comment, and that there existed no actual malice in the paper's satire of the candidate's self-laudatory brochure.[165] Similarly, in *Hartmann v. Boston Herald Traveler Corp* (1948), the Massachusetts Supreme Judicial Court ruled that mocking a professor involved in an unpopular peace movement may have involved offensive language, but actual malice could not be established.[166]

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[162] City of Chicago v. Tribune Co., 307 Ill. 595, 601, 139 N.E. 86, 88.

[163] *See* Robert C. Post, "The Constitutional Concept of Public Discourse: Outrageous Opinion, Democratic Deliberation, and *Hustler Magazine v. Falwell,*" *Harvard Law Review* 103 (1990).

[164] Naughton and Gilbertson, "Libelous Ridicule by Journalists," 453.

[165] Hammett v. Times Herald Inc., 227 F. 2d 328 (4th Cir. 1955), cert. denied 76 S.Ct. 546, 350 U.S. 996 (1955).

[166] Hartmann v. Boston Herald Traveler Corp., 323 Mass. 56, 80 N.E. 2d 16 (1948).

It appeared as though for the most part, the actual malice standard served to protect satire from being declared libelous, restoring its role as a legitimate purveyor of speech and dissent. By "[r]ecognizing that American society places a high value on free debate and creative expression of ideas and that satire is universally recognized as an effective means of expressing criticism and opinion," legal scholar Jan Kipp Kreutzer observed in 1984, "the courts have afforded such expression a high degree of constitutional protection."[167] Kreutzer concluded that when satire is brought to court on charges of libel or intentional infliction of emotional distress, the satirical statements should qualify under strict scrutiny as long as the humor is "intended to make a statement about a 'higher truth.'"[168] James Naughton agreed, but noted that whether satirizing *personal* characteristics of pubic officials required the actual malice standard of protection was still contentious.[169]

Finally, in the mid 1980s, a case came to court that would settle comedy's role in political discourse once and for all. Before the *Hustler* case[170] could reach the Supreme Court, the Fourth Circuit Court of Appeals found Hustler magazine guilty of intentional infliction of emotional distress, proving that there still was room for ambiguity on whether satire could be punished. Hustler Magazine had run an ad parody of fundamentalist preacher Jerry Falwell in a 1983 issue that insinuated that

[167] Jan Kipp Kreutzer, "Defamation: Problems with Applying Traditional Standards to Non-Traditional Cases - Satire, Fiction and Fictionalization," *Northern Kentucky Law Review* 11 (1984): 149.

[168] Ibid., 158.

[169] Naughton and Gilbertson, "Libelous Ridicule by Journalists," 455.

[170] Hustler Magazine v. Falwell, 485 U.S. 46 (1988).

Falwell had sexual relations with his mother. In that Fourth Circuit ruling, Judge J. Harvie Wilkinson dissented, defending satire's deserved free speech protections based on Meiklejohnian theory. "Satire is particularly relevant to political debate because it tears down facades, deflates stuffed shirts, and unmasks hypocrisy," Wilkinson contended. "By cutting through the constraints imposed by pomp and ceremony, it is a form of irreverence as welcome as fresh air."[171]

The Court carefully considered Wilkinson's remarks in the landmark *Hustler Magazine v. Falwell* decision (1988). The Court ruled that a parody ad was not libelous because satire "does not seem to us to be governed by any exception" to general First Amendment protection.[172] The Court found that false statements of fact needed to be made with *actual malice* in order for a public figure to be awarded for intentional infliction of emotional distress. The ad parody in question was clearly a joke and thus not factual. *Hustler* thus applied *Sullivan*'s actual malice rule from libel to intentional infliction of emotional distress.

In the ruling, Chief Justice William Rehnquist reviewed a myriad of political parodies and cartoons that have been integral to free speech in American's past. Among them, Rehnquist referred to Thomas Nast's cartoon parodies[173] printed in *Harper's Weekly* after the Civil War. These cartoons depicted William M. "Boss" Tweed and his corrupt association in New York. Rehnquist noted, "Despite their

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[171] Falwell v. Flynt, 805 F.2d 484, 487 (4th Cir.1986) (Wilkinson, J., dissenting), rev'd sub nom. Hustler Magazine v. Falwell, 485 U.S. 46, 108 S.Ct. 876, 99 L.Ed.2d 41 (1988).

[172] Hustler, 485 U.S. 56 (1988).

[173] Morton Keller, *The Art and Politics of Thomas Nast* (Oxford: Oxford University Press, 1968), 177.

sometimes caustic nature, from the early cartoon portraying George Washington as an ass down to the present day, graphic depictions and satirical cartoons have played a prominent role in public and political debate."[174]

Rehnquist argued that without these satirical cartoons lampooning public figures, "our political discourse would have been considerably poorer." [175] Furthermore, the butts of these cartoon's jokes were typically unhappy with the portrayal and use of their name. As shown in *Hustler*, distaste does not give one any standing to collect damages. Scott Long, a former political satirist for the *Minneapolis Tribune,* once said, "The political cartoon is a weapon of attack, of scorn and ridicule and satire; it is least effective when it tries to pat some politician on the back. It is usually as welcome as a bee sting, and is always controversial in some quarters."[176] Reviewing the Court's opinion, constitutional scholar A.W. Langvardt observed, "Falwell's protective shield for parodists and satirists is constitutionally formidable."[177] After *Hustler v. Falwell*, it was clear that satires of public officials had strong First Amendment protection against a range of claims, including libel, slander, and intentional infliction of emotional distress.

Since *Fallwell*, several similar cases of satirical publication being sued as libelous have made it to court; few have passed the constitutional muster needed for

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[174] Hustler Magazine v. Falwell, 485 U.S. 46, 54 (1988).

[175] Id., *55.*

[176] Scott Long, "The Political Cartoon: Journalism's Strongest Weapon," *The Quill* 50 (1962): 56, 57.

[177] A.W. Langvardt, "Stopping the End-Run by Public Plaintiffs: Falwell and the Refortification of Defamation Law's Constitutional Aspects," *American Business Law Journal* 26 (1989): 665-708

a full trial,[178] and still fewer have returned a guilty verdict of the satire defendant, only to be overturned on appeal.

Over the past fifty years, satire's First Amendment protection against libel, slander, and intentional infliction of emotional distress has been raised to strict scrutiny, in part due to the actual malice standard. Satire has successfully surpassed the hurdles of seditious libel, libel of public officials, and intentional infliction of emotional distress of public officials.

Satire's successes have been the public's free speech gains. But there are limits. The First Amendment has not sanctioned satire's unrestrained use of commercial speech via parodies. Satire's protected role as a social critic is often at odds with another Constitutional provision—copyright.[179] Satirical publications must be careful not to borrow too much from another copyrighted piece, especially if that from which they borrow is not necessarily the object of their criticism. Starting in *Campbell v. Acuff-Rose Music*[180] (1994), the court began making a legal

[178] In Dworkin v. Hustler Magazine, Inc., 867 F.2d 1188, 1193-94 (9th Cir. 1989), the court ruled that Hustler's mentioning of Dworkin's name in a derogatory way was "privileged opinion" because it could not be "reasonably understood as statements of fact." In San Francisco Bay Guardian, Inc. v. Superior Court, 17 Cal. App. 4th 655, 21 Cal. Rptr. 2d 464, 467 (Cal. Ct. App. 1993), the court claimed that a satirical letter to the editor would be regarded by the average reader as "a fake and a joke." In Garvelink v. Detroit News, 206 Mich. App. 604, 522 N.W.2d 883, 886 (Mich. Ct. App. 1994), the satirical article could not "reasonably be interpreted as stating actual facts about the plaintiff and . . . is , therefore, protected speech."

[179] Article 1, Section 8, Clause 8 of the United States Constitution empowers Congress "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

[180] Campbell v. Acuff-Rose Music, 510 U.S. 569 (1994). The Supreme Court found that a rap group's spoof of Roy Orbison's "Oh Pretty Woman" fell within fair use, and thus did not infringe on copyright.

distinction between satire and parody, giving more "fair use" exemption[181] protection to the latter. The First Amendment protects parody's use of copyrighted material in the same way it protects criticism and reviews. Unlike parody, satire is not criticizing the original creation, but instead is using the creation as a conduit for its scathing disparagement of societal mores or structures. The distinction has led the courts to decide that satire requires more justification for borrowing, and thus less protection from the First Amendment and legitimacy for its role.

Part III. Copyright Diminishes Satire's First Amendment Protection

This issue has become salient in the past thirty years partly through the rise of mediaocracy and the commercialization of culture. The issue of fair use arises when the parody is aimed at slogans, trademarks, songs, books, or any other copyrighted material. This issue is amplified when the commercialization of American culture is considered. Throughout history, parodies most often targeted politicians holding power, and satire often mocked our societal strata and government malfunctioning. Today, the commercialization of U.S. culture is a

[181] In terms of Fair Use, delineated in Section 107 of the Copyright Act, parodies and satires need to pass four factors to qualify. The following factors are not exclusive and do not all hold equal weight:

> "**1**. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
>
> **2**. The nature of the copyrighted work;
>
> **3**. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
>
> **4**. The effect of the use upon the potential market for or value of the copyrighted work."

common feature of society to satirize.[182] In doing so, often the best vessel for satire is a parody of an actual commercial product. Arguably, satires only borrow from copyrighted material to accelerate recognition or "to avoid the drudgery in working up something fresh."[183] Oftentimes, lawyers pretend that their satire is really parody as a thin guise to pass fair use. This method can work because the division between parody and satire is too blurred to be sure of the true target of the joke. Assuming the material in question is a satire, and not parody, it is doubtful that copyrighted material is ever used simply because the author is too lazy to create something original. Typically, the copyrighted material is chosen for a specific purpose, and that purpose should allow satire the same protection as parody.

As mentioned previously, most answers to questions of why satire and parody are treated differently derive from *Campbell*. The decision emphasized the distinction between parody and satire. Justice David Souter wrote, "Parody needs to mimic an original to make its point, and so has some claim to use the creation of its victim's imagination, whereas satire can stand on its own two feet and so requires *justification* for the very act of borrowing."[184] In practice, courts interpreted the justification requirement as the High Court devaluing satire while giving preference

[182] Eileen Hintz Rumfelt, "Political Speeh: Priceless–Mastercard v. Nader and the Intersection of Intellectual Property and Free Speech," *Emory Law Journal* 55, no. 2 (2006). "We live in a consumer-driven society, where product promotion is common in even the most unlikely places, and where brand icons are often the most powerful tool for companies to connect with the American Public." See also John Colasanti, *The Simpler the Better: Protect Single-minded Positioning in the Creative Brief*, ADWEEK, Apr. 5, 2004, at 16 (noting that Americans are exposed to between 3000 and 8000 daily media messages).

[183] Campbell, 510 U.S. 569, 580 (1994).

[184] Campbell, 510 U.S. 569, 580 (1994).

to parody under the fair use doctrine.[185] In a footnote, however, *Campbell* did open up the interpretation for a weaker dichotomy. Souter continued:

> "A parody that more loosely targets an original than the parody presented here may still be sufficiently aimed at an original work to come within our analysis of parody…. By contrast, when there is little or no risk of market substitution, whether because of the large extent of transformation of the original work, the new work's minimal distribution in the market, the small extent to which it borrows from the original, or other factors, taking parodic aim at an original is a less critical factor in the analysis, and looser forms of satire may be found to be fair use, as may satire with lesser justification for the borrowing than would otherwise be required." [186]

Most litigants deduced from Souter's comments that it is a smarter tactic to claim a weak parody under fair use than a satire under fair use.[187] Almost every opinion in federal courts since *Campbell* has supported this line of reasoning, albeit to different degrees.

Since Campbell, several cases have adopted a "bright line" approach to the dichotomy between satire and parody. The United States Court of Appeals for the Eleventh[188] and Ninth[189] Circuits as well as by the Southern District of New York

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[185] J.W. Marshall and N.J. Siciliano, *The Satire/Parody Distinction in Copyright and Trademark Law—Can Satire Ever Be a Fair Use?.* ABA Section of Litigation Roundtable Discussion, 6 (2006). Retrieved from http://www.abanet.org/litigation/ committees/intellectual/roundtables/0506_outline.pdf

[186] Campbell, 510 U.S. 569, 581 (1994).

[187] *See* Marshall and Siciliano, *The Satire/Parody Distinction in Copyright and Trademark Law."*

[188] SunTrust Bank v. Houghton Mifflin Co., 268 F. 3d 1257, 1265, 1229 (11th Cir. 2001). The court found that the novel *The Wind Done Gone* was a parody of Margaret Mitchell's *Gone With the Wind* and not a satire of the era of slavery in the South.

[189] Dr Seuss Enters., L.P. v. Penguin Books USA, Inc., 109 F. 3d 1394, 1401 (9th Circuit 1997). The court held that the book *Dr. Seuss Enterprises* broadly mimicked Dr. Seuss's characteristic style in order to retell the story surrounding the infamous O.J. Simpson trial, and that satire may be too gratuitous in its borrowing from copyrighted material, especially when being used to poke fun at something other than the original.

United States Court[190] have all ruled in cases where parody was distinguished from satire as earning fair use protection.

In *Mastercard International Inc. v. Nader 2000 Primary Committee, Inc.* (2004), Mastercard argued that ads mimicking Mastercard's own trademarked "priceless" ads were not commenting on or referring to the actual ads, but instead referred to the nature of presidential elections, and therefore were satirical in nature.[191] The fact that Nader's ads loosely target the "priceless" ads allows for the classification of parody, according to the Southern District of New York interpretation of the footnote in *Campbell*. The court found that the parody "may be subtle rather than obvious."[192] This court crafted a looser meaning of parody that essentially encompassed a large chunk of satire. Literally, however, it is satire that typically contains parody, and not the other way around. *World Encyclopedia* defines *satire* as a "work in which human foibles and institutions are mocked, ridiculed and *parodied*."[193] Fortunately, this political satire was found to be protected–but only by parading the satire as parody.

Not every court has allowed satire to define itself as parody for purposes of fair use. Had *Mastercard* been argued in front off the Ninth Circuit, based on *Dr.*

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[190] Mastercard Int'l Inc. v. Nader 2000 Primary Comm., No. 00 Civ. 6068, 2004 WL 434404, at 13 (S.D.N.Y. Mar. 8, 2004)

[191] Id., 13.

[192] Id., 25.

[193] *Oxford Reference World Encyclopedia*, s.v. "satire," accessed December 1, 2009, http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t142.e10293.

Seuss Enterprises,[194] Nader's ads may have been considered satire and this in violation of copyright. Mastercard could have applied for an injunction against the Nader ads simply because Mastercard did not support Nader's politics. The result of such a silencing of satire would arguably be without a countervailing social benefit, such as encouraging the creation of the arts.

The main issue with the parody/satire distinction is the concern that satirists will begin to fear copyright infringement and thus abandon their work. It is true that satirists can simply ask for permission from the copyright holders. However, it is possible that copyright holders would be abhorrent of satires conveying commentary on society with which they disagree. The Capitol Steps, a political satirist group, has said, "asking permission for such uses is interpreted by music publishers as seeking their endorsement of the political ideas contained in our lyrics."[195]

In terms of deliberative democracy, satire's role may be even more potent than parody's in encouraging free, open, and robust public debates. Tyler Ochoa, a

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[194] The Ninth Circuit found in Dr. Seuss Enterprises, L.P. v. Penguin Books USA, Inc. (1997) that satire may be too gratuitous in its borrowing from copyrighted material, especially when being used to poke fun at something other than the original. The court held that the book *Dr. Seuss Enterprises* broadly mimicked Dr. Seuss's characteristic style in order to retell the story surrounding the infamous O.J. Simpson trial. In Justice Anthony Kennedy's concurrence in *Campbell*, he writes, "The parody must target the original, and not just its general style, the genre of art to which it belongs, or society as a whole (although if it targets the original, it may target those features as well)." In *Dr. Seuss Enterprises*, the bright line was drawn with the book landing on the side of satire, even though the defense argued that the book was written "in the form of a Dr. Seuss parody that transposes the childish style and moral content of the classic works of Dr. Seuss to the world of adult concerns." See *Dr Seuss Enters., L.P. v. Penguin Books USA, Inc.,* 109 F. 3d 1394, 1401 (9th Circuit 1997) (Apellants's Opening Brief). The court disagreed, saying the book "does not hold his (Dr. Seuss's) style up to ridicule."

[195] Amici Curiae Brief of Capitol Steps Prods, Inc., Mark Russell, et al., in Support of Petitioners, Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994) (No. 99-1292)

commentator of the parody/satire dilemma, also argued that social criticism in the form of satire is debatably "even more valuable to society than criticism of particular works of art" such as parody.[196] Ochoa and others made the case that whenever the copyright owner refuses an offer to license the work for reasonable compensation, fair use should protect satire just as it does parody.[197]

Eileen Rumfelt noted that satire or subtle parody remains vulnerable even when the court uses a balancing test, weighing the First Amendment implications of restricting parody against the likelihood of confusion with the original.[198] Recently, "[s]ome courts ostensibly balancing the interests have paid the First Amendment little heed."[199]

The ambiguity surrounding the parody/satire dilemma could have a chilling effect on some protected speech. This issue becomes particularly salient when dealing with copyright law. Because the majority of the vetting comes in the prepublication process,[200] copyright attorneys must interpret the conflicting precedents. However, there can be no chilling effect as a result of the prepublication process if all types of critical speech are completely protected as the First

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[196] Tyler Ochoa, "Dr Seuss, the Juice and Fair Use: How the Grinch Silenced a Parody," *Journal of the Copyright Society of the U.S.A.* 45 (1998): 611.

[197] Ochoa, "Dr Seuss, the Juice and Fair Use," 611.

[198] Cliffs Notes, Inc. v. Bantam Doubleday Dell Publ'g Group, Inc., 886 F.2d 490, 494 (2d Cir. 1989) [citing Rogers v. Grimaldi, 875 F.2d 994, 998–99 (2d Cir. 1989).]

[199] Rumfelt, "Political Speech: Priceless–Mastercard v. Nader," 401.

[200] P. Johnson, interview with author, November 25, 2009. P. Johnson is Senior Counsel for the Turner Entertainment Group, Inc.

Amendment intends.[201] Satire is a type of such critical speech. The stakes are high in these fair use decisions; their outcomes "define the contours of the private and public domains of human expression and, in doing so, directly impact our capability for human flourishing."[202]

The Second Circuit has noted, "the 'fair use' exception applies where the copyright act's goal of encouraging creative and original work would be better served by allowing the use than by preventing it."[203] In all cases where parody garners protection, satire should as well. Satires, like parodies, are transformative by their very nature. Judges should keep in mind that the copyright act's goal is to protect the creation of new works, and certainly, works transformative of an original also deserve protection under the Act.

To date, intellectual property issues remain the only roadblock to complete protection of the role of satire as a purveyor of dissent and speech.[204] For public officials or corporations wishing to suppress satirical speech, copyright remains the

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[201] *See* Jessica Litman, "The Public Domain," *Emory Law Journal* 39 (1990): 1005. The "chilling effect" created by the vague interpretations of the fair use doctrine make fair use a First Amendment problem. The Eleventh Circuit never determined whether The Wind Done Gone was actually fair use. The uncertainty could cause truly protected forms of satire to be "chilled" out of fear of litigation. See also Rebecca Tushnet, "Copy this Essay: How Fair Use Doctrine Harms Free Speech and How Copying Serves It," *Yale Law Journal* 114 (2004): 547-553.

[202] Barton Beebe, "Does Judicial Ideology affect Copyright Fair Use Outcomes?: Evidence from the Fair Use Case Law." *Columbia Journal of Law & Arts* 31 (June 2008), 522.

[203] Arica Inst. Inc. v. Palmer, 970 F. 2d. 1067, 1077(2d Cir. 1992)

[204] *See* Daniel Austin Green, "Gulliver's Trials: A Modest Proposal to Excuse and Justify Satire," *Chapman Law Review* 11, 1 (Fall 2007), 183. Green wrote, "Satire is the unequivocally underprivileged, when not categorically disallowed, genre in fair use evaluations…. Protection, as fair use, for satire [should be] constitutionally consistent—and indeed, compelled—by both copyright and First Amendment jurisprudence…."

only potentially successful route. Columnist Jack Balkin observed that copyright and trademark have "now become general-purpose device[s] for private parties to use when they want the state to suppress speech they do not like. And they are trying to suppress the speech of others not merely to protect their legitimate economic interests but because of aesthetic and political disagreements."[205]

Part IV. Perception of Satire's Role

Satire is "a joyous criticism of life, made possible by the greatest audacity in claiming the right to free speech,"[206] wrote Matthew Hodgart. Freedom of speech is the essential condition to satire, he said. Unfortunately, the legal legitimacy of the role of satire does not mean the culture has accepted the role as legitimate.

Today the First Amendment has matured to the point that no comedian should fear government censorship or imprisonment for producing political satire. However, it appears as though the true beneficiaries of satire—the people—are not giving it the respect it has earned. Robert McChesney argued in *The Political Economy of Media* that "it would be far better if the [viewpoints of comedians and social critics] were not dismissed as outside the range of legitimate debate, even lunacy, as soon a we entered the world of journalism."[207] In certain parts of the

[205] Jack M. Balkin, "Fox' s Trademark Suit Infringes on Free Speech," *Sun-Sentinel* (Fla.), August 19, 2003, 17A.

[206] Matthew Hodgart, *Satire: Origins and Principles*, (New Brunswick: Transaction Publishers, 2009), 37.

[207] Robert McChesney, *The Political Economy of Media: Enduring Issues, Emerging Dilemmas*, (London: Monthly Review Press, 2008), 127.

world, such as Brazil, political satire can still get you fined or thrown in prison. These countries take serious offense to political dissent, and punish and censor accordingly. The public in such countries understands the important role of satire, and have in recent times fought to reinstitute the legitimacy of satire.

A ban on all broadcasted satire during election season was quietly passed in December of 2009 in Brazil. When election season rolled around eight months later, comedians protested, taking to the streets for their "right-to-ridicule."

"Taking the humor out of the electoral process does not elevate the level of the campaigns, it doesn't enlighten people, and it doesn't make our politicians more respectable," Helio de la Pena, a star of *Casseta & Planeta*, one of Brazil's most popular satire shows, told *Time* magazine. "Quite the contrary, it weakens the debate [and] removes the presidential race from the conversations that take place on street corners and in company cafes."[208]

Weeks after the protests began, in late August, the Brazilian Supreme Court heard the case. Judge Ayres Britto ruled that the 1997 law [which was amended in December 2009] does not intend to allow censorship of Brazilian media because such censorship is unconstitutional in Brazil.[209]

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[208] Andrew Downie, "Banning Political Humor: No Satire Please, We're Brazilian," *Time,* August 28, 2010, accessed September 2, 2010, http://www.time.com/time/world/article/0,8599,2013163,00.html.

[209] "Brazilian Supreme Court lifts ban on political candidates and parties satire," *MercoPress,* August 28, 2010, accessed September 10, 2010, at http://en.mercopress.com/2010/08/28/brazilian-supreme-court-lifts-ban-on-political-candidates-and-parties-satire.

That such a law—punishing satirists with fines of up to $60,000—could exist in a democratic country seems preposterous to Americans today. Viewers can tune in to *Saturday Night Live*, *The Daily Show*, and *The Colbert Report* to see our politicians regularly lampooned, especially during election season. In Brazil, the law banning such lampooning, which was passed "supposedly to level the playing field for candidates," left the country unable to humorously criticize politicians, chilling political speech.[210] Brazil's political struggle with satire and free speech clearly illustrates that comedy's importance in free speech is not a settled issue everywhere. Historically, it was not even a settled issue in the United States until the modern meaning of the First Amendment was solidified in *Brandenburg*.

If the First Amendment was created, as McChesney writes, to protect minority political opinions from harassment from government,[211] the United States should take the protection of political satirical dissent seriously and acknowledge its elevated status under the First Amendment.

Furthermore, the courts should address satire's diminished protection under copyright law. It is outrageous that not only speech, but *political* speech, can face the possibility of copyright infringement if presented as a satire or subtle

[210] Downie, "Banning Political Humor: No Satire Please, We're Brazilian."

[211] McChesney, *The Political Economy of Media,* 256. McChesney writes, "Indeed, there is little dissent to the argument that the free press clause was inserted in the First Amendment to protect democracy. As the press system of that era was explicitly connected to political parties and factions, such protection was necessary in to protect minority political opinion from direct harassment by the dominant political party that controlled Congress and the government."

parody.[212] Political speech, no matter what form it takes, should have the highest form of First Amendment protection according to Meiklejohn. For political self-government, "the point of ultimate interest is not the words of the speakers, but the minds of the hearers." Any public debate should end in "the voting of wise decisions. The voters, therefore, must be made as wise as possible."[213] Meiklejohn emphasized the decision process as particularly important for intelligent governance. Satire's role sustains this deliberative decision process.

Conclusion

As argued in Chapter 2, the speech form of satire has a unique ability to deconstruct situations and traditional mores and reveal the truth. If Meiklejohn believed "[i]t is the mutilation of the thinking process of the community against which the First Amendment to the Constitution is directed,"[214] then surely any restriction of satirical comment of public affairs would cause such a mutilation. As this chapter has shown, satire's role has been historically linked with the fight for freedom of criticism and dissent. Although restrictions on satire do exist as a result of lingering issues in copyright law, for the most part, satire has full First Amendment protection. The U. S. government and public officials are essentially blocked from claiming a satire libelous and deserving of punishment or censorship.

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[212] The political speech referred to here is that of Mastercard Int'l Inc. v. Nader 2000 Primary Comm., No. 00 Civ. 6068, 2004 WL 434404, at*13 (S.D.N.Y. Mar. 8, 2004).

[213] Alexander Meiklejohn, *Political Freedom,* 26.

[214] Ibid., 27.

Before this research project moves on to analyze satirical televised news in the last half century, consider that the First Amendment's strong free speech protection does not exist everywhere, and sometimes, does not even exist here. As recent events have exemplified,[215] the United States government is still capable of tyrannical actions in the face of satirical dissent. For modern citizens, the First Amendment provides armor against such actions, despite recent threats from intellectual property rights. With the knowledge of satire's historical and present legal struggles, the public can learn not only to protect these freedoms, but respect these freedoms as well.

[215] In Pakistan, Badr Zaman Badr and his brother were imprisoned in Guantanamo Bay for three years for running a satire magazine in Pakistan that poked fun at corrupt clerics. On *This American Life*, Jack Hitt described the magazine as "the Pashtu edition of 'The Onion.'" In the magazine, Badr wrote a poem about a Pakistan politician, which included lines inferring that the leader had gotten fat since being elected. That politician told authorities that the satirists were linked to Al Qaeda, which lead the U.S. to grow concerned about an article Badr had written in the 90s, when he issued his bounty for the capture of President Bill Clinton for $113. Tortured and repeatedly asked whether he intended to kill Bill Clinton, Badr responded, "'No', that it was only satire, and only a way of expression. It's allowed, it's protected, in your country, in American law." Ira Glass, "HABEAS SCHMABEAS," Show 310, *This American Life*, Public Radio International, MP3 audio file, http://www.thisamericanlife.org/radio-archives/episode/310/habeas-schmabeas.

CHAPTER 4

The Fake TV News Makes Political Enemies

In 1963, BBC's Roy Kinnear appeared at a news desk, staring into the camera, and offered the news-viewing audience a sobering update: "On Wednesday, a 35-year-old white man making a protest walk [against racial discrimination] through Alabama to Jacksonville, Mississippi, was found shot dead at the side of the road." Suddenly, a music score began behind him, playing a minstrel ballad. The camera moved to reveal Millicent Martin, dressed as an American showgirl with an Uncle Sam hat. She began to sing.

> "I wanna go back to Mississippi,
> Where the scent of blossoms kiss the evening breeze,
> Where the Mississippi mud,
> Kinda mingles with the blood,
> Of the niggers who are hanging from the branches of the trees."[216]

A news ticker was running across the bottom, informing the viewers that the admission of a black student (James Meredith) to an all-white university sparked lynch mobs in the southern United States.

Clearly, this was no regular news show. Among the most influential programs after *TW3* were *Rowan and Martin's Laugh-In*, which featured a fake news segment, and later *Saturday Night Live's Weekend Update*, which still runs to this day. Using letters, published interviews, media coverage, and the actual

[216] BBC, "That Was the Week That Was," October 1962.

televised programs, this chapter will trace the beginnings of influential satirical news programs up until *Saturday Night Live*, at which point the genre became popular and sustainable in the United States. Political coverage and government as well as institutional censorship will be discussed in order to reveal the ceilings that these shows needed to break to entertainingly criticize the norms of politics and media. There have been a number of books covering the histories of each show,[217] but never has the lineage of these satirical programs been traced alongside their tribulations with the censors, government regulation, and audience distaste of social criticism.

TW3 may have broken boundaries by putting satirical news on television, but the concept was not necessarily new.

Part 1: Satirical News Before Television

Satire's history spans as far back as Aesop's fables to Aristophanies' mocking of political figures in Athens all the way up to Jonathan Swift's novels. The history of satirical news, however, has a much shorter history. Before satirists could parody

[217] For a comprehensive background on *TW3*, see Humphrey Carpenter, *That Was Satire, That Was: Beyond the Fringe, the Establishment Club, "Private Eye," and "That Was the Week That Was"* (New York: Weidenfeld & Nicolson, 2000). For a comprehensive background on Rowan and Martin's *Laugh-In*, see Hal Erickson, *From Beautiful Downtown Burbank: A Critical History of Rowan and Martin's Laugh-In,* (Jefferson, N.C.: Mcfarland & Company, 2000). For a comprehensive background on *Saturday Night Live*, see James Andrew Miller and Tom Shales. *Live from New York: An Uncensored History of Saturday Night Live* (London: Little, Brown and Company, 2002). A brief overview of American television shows that influenced *The Daily Show* can be found in the Forward of Gray, Jonathan, Jeffrey Jones, and Ethan Thompson. *Satire TV: Politics and Comedy in the Post-Network Era* (London: NYU Press, 2009). For the historical similarities among satirical news shows over time, see T. Henderson, "Not Necessarily All That New: An Analysis of the Satirical/Fake News Format and Its Critical and Cathartic Functions over the Past Four Decades of American Television" (MA thes., University of North Carolina, 2005).

the media, newspapers would have to permeate culture. Although *Publick Occurrences*, arguably the first American newspaper, appeared in Boston in 1690,[218] it would take the help of the industrial revolution for papers to garner a high enough circulation to become all-pervading. One of the first news satirists of the nineteenth century was Richard A. Locke, who published letters pretending to be an astronomer who saw the moon's landscape in the *New York Sun* in 1835, helping increase paper circulation.[219] During the Civil War, Robert Henry Newell wrote fake letters under a pseudonym to the *New York Mercury* Sunday newspaper.[220] He posed as a Union soldier reporting on the happenings of his brigade, satirizing the Union military and its conduct. Newell's satirical letters could be said to cause confusion since they apparently first appeared in the form of Washington correspondence to the *Mercury*.

Fake News, Broadcasted

On radio, one of the first programs to regularly feature news satire was *The Bob and Ray Show*, which moved between NBC, CBS, and National Public Radio from 1946-1985. It featured many satirical sketches, with a few that lampooned the news. Bob Elliot would parody a remote location interviewer and Ray Goulding,

[218] Stephen Vaughn, *Encyclopedia of American Journalism* (New York: Routledge, 2009), 225. *Publick Occurrences* only ran for one issue.

[219] Matthew Goodman, *The Sun and the Moon: The Remarkable True Account of Hoaxers, Showmen, Dueling Journalists, and Lunar Man-Bats in Nineteenth-Century New York* (New York: Basic Books, 2008).

[220] See Robert Henry Newell, *The Orpheus C. Kerr Papers* (Charleston, SC: Bibliobazaar, 2009).

who started out as a news reporter for WHDH in Boston, would play a tipsy sportscaster.[221] Elliot's reporter, named Wally Ballou, looked to the absurd for the comedy in his parodies, rather than any type of political or social commentary that invoked indignation.[222]

In addition to radio, the mid-50s saw political satire arrive in the form of the magazine. More so than radio, political satire boomed in the print business; it did not take long for MAD magazine, first published in 1953, to become required reading for high school and college students.[223]

Although these newspapers and radio programs engaged in some news satire, the inspiration for shows like *That Was the Week That Was* came more directly from stand-up acts and improvisational comedy. Leland Howard, the producer of the American version of *That Was the Week That Was,* pointed to "The Second City"—a Chicago-based improvisational comedy company—as the inspiration for *TW3*.[224] Howard hired Mike Nichols of The Second City, as well as Audrey Meadows, a writer for Bob and Ray, to join the first episode of the American version of the show.[225]

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[221] Vincent Terrace, *Radio Programs, 1924-1984: A Catalog of over 1800 Shows* (Jefferson, N.C.: Mcfarland & Company, 1998).

[222] In one show, Wally Ballou interviews a man who can't pronounce his name because it is spelled WWQLCW. See Museum of Broadcast Communications, *Encyclopedia of Radio* (New York: Fitzroy Dearborn, 2004), 186.

[223] Gray, Jones, and Thompson, *Satire TV,* 20.

[224] Larry Wolters. "New TV Show's Debt to Chicago Is Told." *Chicago Tribune,* January 9, 1964, accessed April 21, 2010, http://www.proquest.com/.

[225] Ibid.

England's Satire Boom

The satire boom of the 60s really got its start in England. *TW3* was actually born from a 1960 British comedy stage revue, called "Beyond the Fringe" featuring Peter Cook, Dudley Moore, Alan Bennett, and Jonathan Miller. The show was the first to popularize satire both in England and in America when it crossed the Atlantic.[226] The show debunked figures of authority, including parliamentarians Sir Winston Churchill and Harold Macmillan, and took aim at the establishment in general.[227]

Peter Cook, who wrote a majority of the revue, founded a London club called "The Establishment," which became famous for hosting comedians focused on political satire, including Lenny Bruce. "The Establishment" also threw its financial support behind a magazine that remains popular in England to this day. For this magazine, called *Private Eye*, its "raison d'etre has always been to laugh in the face of the establishment."[228] Although Cook was not credited with the idea of *TW3*, John Bird claimed the two were developing a television satire show based on comedy from the Establishment club. Bird said they introduced the idea to Stuart Hood and Donald Baverstock of BBC, who "made encouraging noises."[229] The two would later state that they felt Baverstock and Ned Sherrin stole their idea for a show. Their

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[226]Michele Hilmes, ed., *NBC: America's Network* (Berkeley: University of California Press, 2007), 195.

[227] Humphrey Carpenter, *That Was Satire, That Was: Beyond the Fringe, the Establishment Club, "Private Eye," and "That Was the Week That Was"* (New York: Weidenfeld & Nicolson, 2000), 122.

[228] BBC, "Satire's thin line," *BBC News*, July 30, 2001, accessed April 12, 2010, http://news.bbc.co.uk/2/hi/uk_news/1464724.stm.

[229] Carpenter, *That Was Satire, That Was,* 203.

influence on the TV satire genre would later become recognized when George Schlatter, *Laugh-In*'s producer, noted that the show was influenced by the comedy of "Beyond the Fringe" and a large group of British comedians, including Cook and Bird.[230]

In both England and America, satire crested after developing an audience of dissidents who appreciated underground humor during the 1950s. Stephen Kerchner designates 1962 as the height of the boom, saying that in America, "with the young, witty, urbane John Kennedy in the White House, satiric expression, long a resource for cultural dissent, became for many American liberals a source of affirmation and a sign of better days to come."[231] 1962 also marked the year that, across the pond, a little show called *That Was the Week that Was* made its debut.

Part 2: That Was The Week That Was

At the height of the program, the original British *TW3* "was given more latitude than any television program before or since on either side of the Atlantic," and its audience peaked at over 12 million.[232] Although *TW3*'s popularity was an achievement on its own, the larger achievement may have been getting on the air in the first place. BBC was a government-funded yet independent broadcasting

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[230] George Schlatter, preface, *The Best of Rowan and Martin's Laugh-In 2* Dir. George Schlatter (Rhino Home Video, 2001).

[231] Stephen E. Kercher, *Revel with a Cause: Liberal Satire in Postwar America* (Chicago: University of Chicago Press, 2006), 194.

[232] "Britons' 'Week That Was' TV Show Ended: Excuse: Satire Could Influence Election." *Chicago Tribune,* December 30, 1963, accessed April 18, 2010, http://www.proquest.com/.

corporation, meaning that the postmaster general had the final say as to the kind of content that made it on the air. *TW3* appeared at the time in England when BBC had just abandoned its 16-page guidebook to good taste. Clean humor and banned jokes on religion, the royal family, homosexuality and prostitutes, were no longer considered BBC law.[233] The BBC was facing competition from the edgy Independent Television (ITV), and the new director general Hugh Carleton Greene wanted to sharpen BBC's image in order to compete with ITV. [234] Greene wanted to create a show that would "prick the pomposity of public figures."[235] Ned Sherrin, Alasdair Milne and Donald Baverstock took Greene's idea and developed the satirical news concept into a successful format. At the time, theatre and cinema in Britain were becoming increasingly liberal, so the new late-night Saturday program *That Was the Week That Was* seemed to be only following their lead. *TW3* "discuss[ed] and dissect[ed] the week's news and newsmakers using startlingly direct language and illustration."[236] *TW3* was "savage, unflinching in its devotion to highlight cant and hypocrisy and seemingly fearless in its near libelous accusation and innuendos."

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[233] Eddy Gilmore. "B. B. C. Acts to Shed That Stodgy Look." *Chicago Daily Tribune,* January 20, 1963, accessed April 8, 2010, http://www.proquest.com/.

[234] Bernard Hollowood, "This Is the Satire That Is," *New York Times*, July 7, 1963. Accessed April 11, 2010. http://select.nytimes.com/gst/abstract.html?res=F20E14F93A5C14738DDDAE0894DF405B838AF1D3.

[235] Horace Newcomb and Museum of Broadcasting Communications, *Encyclopedia of Television* (New York: Taylor and Francis, 2004), accessible at http://www.museum.tv/eotvsection.php?entrycode=thatwasthe

[236] Ibid.

Political pressure from the Tories came down on Hugh Greene, but he stood by his creation.

The Format of Parodying News

TW3 created a style that blended the formats of straight news and variety/revue shows. Based off the West End's popular show *Beyond of Fringe*, *TW3* opened with Millicent Martin singing the title song, with new lyrics written each show reviewing the week that was. Host David Frost would imitate the TV news anchor, introducing stories and serving as a transition between sketches. Bernard Levin, another cast member, would interview people in the news, often challenging them with his "acid wit."[237] Levin occasionally caused flare-ups and violence in his interviews, including one time when a member of the studio audience grew so infuriated by a scathing review of a piece the member had written that he punched Levin on stage.[238] Ned Sherrin later characterized the Levin interviewing slot as "baiting rather than debating."[239] Although much of the show parodied the news, the shots would begin with cameras casually panned out, revealing the audience as well as the set, alerting the viewers to the fact that the show was not an actual news program. The show eventually recruited actual journalists to write its satirical news. "Old-style revue writers are no good," Frost

[237] Harry Castleman and Walter J. Podrazik, *Watching TV: Six Decades of American Television (The Television Series)* (Syracuse University Press, 2004), 174.

[238] Castleman and Podrazik, *Watching TV,* 174.

[239] Carpenter, *That Was Satire That Was,* 240.

told the *Observer*, "We've got to get at the basis of a subject—journalists are what we like."[240] Indeed, journalists like David Nobbs of the *St. Pancreas Chronicle* and Peter Tinniswood of the *Sheffield Star* were recruited directly from the reporter's room.[241]

On camera, William Rushton imitated Prime Minister Macmillan on nearly every episode, and the writers often spliced together silly sounding and contradictory quotes by politicians in their speeches.[242] David Frost frequently parodied a news commentator covering a live event, which once involved the royal family drowning as Frost calmly described what the Queen was wearing.[243]

TW3 Ruffles Political Feathers

By the end of its two seasons, *TW3* prompted a parliamentary debate when it ridiculed thirteen members who had not made a speech in three years[244] and inspired ten libel suits.[245] The British audience thoroughly enjoyed *TW3*'s prodding

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[240] Carpenter, *That Was Satire That Was,* 234.

[241] Ibid*,* 236.

[242] Sydney Gruson,"B.B.C. SATIRE SHOW TO TAKE BREATHER: 'That Was the Week That Was' Stirs Bitter Dispute. " *New York Times,* May 2, 1963, accessed April 1, 2010, http://www.proquest.com/.

[243] BBC Broadcasting, "That Was The Week That Was*,"* December 28, 1963.

[244] Paul Gardner, "TV in U.S. Enters World of Satire: Leland Hayward to Offer a Preview on N.B.C.. " *New York Times,* October 14, 1963, accessed April 1, 2010, http://www.proquest.com/.

[245] Paul Gardner and Art Selby, "'That Was the Week That Was' Tonight: People and Places Banning the Bomb Small Cast. " *New York Times,* Nov. 10, 1963, accessed April 1, 2010, http://www.proquest.com/.

of political figures. Millions of viewers rushed home to their TV sets to watch *TW3* on Saturday nights, hurting sales for pubs throughout the United Kingdom.[246]

Although the show naturally attacked most often the conservative Tory party in power at the time, it was not always poking fun at the conservatives. Another sketch, written by Waterhouse and Hall, featured two workman trade unions arguing over who would fix the hole in the road, since neither union knew to whom the hole belonged. One sketch mocked Labour's uncertainty in policy, saying, "We're in favor of nationalization in principle, but against it in practice." Writer Ned Sherrin was a member of the conservative Tory party. [247]

Nevertheless, *TW3* was not a hit with the Tory government that was so often lampooned on the show. Allegations of political interference continued long after the show's demise. Lord Aldington told BBC's Director-General Hugh Carleton Greene in a letter from February 13, 1963 that "I am now more worried after Saturday's *TW3*. The Government's defence policy takes knock after knock from remarks that are only part relevant to the fun of the piece." Aldington believed the host of the program, David Frost, clearly nursed a hatred for the prime minister. The lord insinuated that the Conservative Party, the Tories, should demand balance, no matter what. "Once targets, policies or persons become discernible we

[246] Carpenter, *That Was Satire, That Was.*

[247] Ibid., 240.

shall all be in trouble and no doubt we shall take up the cudgels," Aldington wrote.[248]

Mr. Gresham Cooke, a conservative member of the House of Commons, requested for the Postmaster General Mr. Bevins (who had power to ban content on BBC) to "cease making references to the Royal Family and religion in satirical programmes."[249] Although the British government would eventually intervene to end the popular program, not all government officials wanted to ban the program. Sir Edward Boyle, the Minister of Education, told the Fleet Street Column Club that what *TW3* did was essential to democracy. "It is mixing satire with genuine, honest criticism. I think this has enormous possibilities…. There is no single right of liberty more important than the right to criticize one's rulers."[250]

Traveling Across the Atlantic

More so that its democratic message, it was *TW3*'s popularity that caught the eye of executives at NBC. NBC, the self-proclaimed "channel most likely to take comedy risks,"[251] contacted David Frost about an American version of the show. Such a move would be riskier with American audiences. Before the U.S. version's preview show on November 10, 1963, Larry Wolters, a columnist for the Chicago

[248] Chris Hastings, "Tories helped take *TW3* off the air." *London Telegraph*, June 17, 2007, accessed March 15, 2010, http://www.telegraph.co.uk/news/uknews/1554790/Tories-helped-take-TW3-off-the-air.html.

[249] Hollowood, "This Is the Satire That Is."

[250] Ibid.

[251] See *NBC: America's Network* (Berkeley: University of California Press, 2007), 192.

Tribune, commented, "Satire is on of the most difficult of the arts and one of the least appreciated by the mass audience on American television."[252] At the time, *The Beverly Hillbillies*, *Bonanza*, and *Petticoat Junction*—nobody's idea of biting satire—were topping the Nielsen ratings. Francis Coughlin of the *Chicago Tribune* commented that for NBC "to propose satire, some of it exceedingly sharp, for an American audience long pap-fed on mild situation comedy and embarrassing sight gags was genuinely daring."[253]

As *TW3* began its second season in England, the American version prepared for its preview show. American *TW3* writer Robert Emmett told reporters, "Television needs topical humor. Everything is situation comedy and it isn't impudent. I hope we're impudent."[254] Although the writers may have been planning a show with political bite, producer Leland Hayward's took a defensive position with the press, concerned that the show could insult and isolate viewers. Hayward told Larry Wolters of the *Tribune*, "[*TW3]* will pull no punches in its comments about politics…" which will make it differ from its British predecessor that was "critical of the government, the church, and … the crown."[255] In fact, both visions of

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[252] Larry Wolters. "Satire to Be Tried on NBC-TV Nov. 10." *Chicago Tribune,* October 17, 1963, accessed April 11, 2010, http://www.proquest.com/.

[253] Francis Coughlin, "NBC to Brave New TW 3 Series in Fall." *Chicago Tribune,* April 28, 1964, accessed April 11, 2010, http://www.proquest.com/.

[254] Gardner and Selby, "'That Was the Week That Was' Tonight."

[255] Larry Wolters, "U. S. Week That Was to Be on NBC Sunday." *Chicago Tribune (1963-Current file)*, November 7, 1963, accessed April 11, 2010, http://www.proquest.com/.

the show were realized; unfortunately, this meant that the American version was seen as both too harsh and lacking satirical sting.[256]

At 9 p.m. on November 10, *TW3*, hosted by Henry Fonda, took aim at people and events in the American news. The preview received critical acclaim,[257] convincing NBC executives to go ahead with the season premiere in January. "By network standards, the show marked a new and welcome freedom in irreverent comment,"[258] *New York Times* TV critic Jack Gould wrote after the premiere. "'TWTWTW' at times appeared more determined to shock than amuse." Although some critics found the show too "controversial" to be funny, most agreed that the show was a step in the right direction, especially since NBC had kept its censors away from the preview show. The predictable numbers of viewer protest letters "were drowned in the larger tide of applause."[259]

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[256] See Jeffrey S. Miller, *Something Completely Different: British Television and American Culture* (Minneapolis: University of Minnesota Press, 2000). Miller goes into depth discussing *TW3* in his chapter "(Naughty) Bits of Limey Eccentricity: That Was the Week that Was and Monty Python's Flying Circus." He notes that the American version was much less likely to push the envelope. In addition, though satirical humor was accepted and enjoyed by cosmopolitan Americans, it did not appeal well enough to the American mainstream.

[257] "Other 39 -- No Title." *Chicago Tribune,* January 4, 1964, accessed April 8, 2010, http://www.proquest.com/.

[258] Jack Gould, "TV: 'That Was the Week That Was': U.S. Version of British Program on N.B.C.." *New York Times,* November 11, 1963, accessed May 1, 2010, http://www.proquest.com/.

[259]Jack Gould and Jerry Fitzgerald, "Turning Point: N.B.C. Lets New Revue Throw Barbed Shafts Second City" Better Moratorium." *New York Times,* November 17, 1963, accessed May 4, 2010, http://www.proquest.com/.

Politics End British *TW3*

Despite the success of the American version, just three days after its preview, the BBC announced the original *TW3* would take its final bow December 28th. "This decision has been taken for one reason only: 1964 will be a general election year," the BBC said. "Political activity will be mounting to a height as the date of the election nears." Rather than dilute *TW3*'s content, BBC thought it best to shut the show down completely. Harold Wilson, the leader of the Labor party opposition spoke out, saying he deplored the decision to abandon the show for political reasons, and that he enjoyed attacks on himself as much as attacks on the Tories.[260] Frost was delighted that the program was taken so seriously as to be taken of air for political reasons, but wondered out loud whether the election year would not be "when [*TW3*] is needed most."[261] It was now the American *TW3*'s turn to shake things up at home.

Same Format, Poor Ratings

The American version of *TW3* premiered January 10, 1964, less than a month after its British predecessor signed off. It was billed as a "satirical revue of topical comment on practically anything and anybody currently in the news." The set-up was an exact replica of BBC's version; David Frost came to America to host

[260] "Election Rings Down Curtain on BBC Satire," *Chicago Tribune,* November 14, 1963, accessed April 18, 2010, http://www.proquest.com/.

[261] James Feron, "B.B.C. Satire Show Off For Election: 'That Was Week That Was' Dropped for Campaign Called a Compliment No Decision Here," *New York Times,* November 14, 1963, accessed May 1, 2010, http://www.proquest.com/.

and Nancy Ames replaced Millicent Martin as the female singer. The US version of *TW3* attempted to closely follow the news just like its predecessor. Often, the performers would get a sketch only few minutes before going on the air live. Alan Alda, a regular on the show, recounted rehearsing lines for a sketch two minutes before going on air with Frost through the door as Frost sat in the bathroom.[262]

Despite its early popularity, when the new *TW3* was well into its first season, the critics began turning on the show. Television columnist Wolters wrote, "It will take more than a half dozen tired and worn Goldwater jokes to give its satire any bite or interest…. *TW3* has become a major disappointment…."[263] *New York Times* critic Gould did not appreciate the mocking of the Vietnam crisis or the invitation to viewers to say why they dislike certain Presidential candidates, noting in May that the show had sunk "further into the rut of dullness and tastelessness."[264] Faced with such reviews, producer Leland Howard decided he needed to shave off the fat in order to save the show. Howard chose to start the second season with a new director, a new set, shorter sketches, and a permanent

[262] Archive of American Television, "Alan Alda talks about appearing on That Was the Week That Was and rehearsing," accessed April 20, 2010, http://www.youtube.com/watch?v=WVjsXap1xLI&feature=related.

[263] Larry Wolters, "Doors Are Opening on TV for the Girls." *Chicago Tribune,* June 25, 1964, accessed April 18, 2010, http://www.proquest.com/.

[264] Jack Gould, "'TV: Paar vs. 'T.W. 3': He Is Beating Satirical Revue at Its Game," *New York Times,* May 25, 1964, accessed May 1, 2010, http://www.proquest.com/.

but smaller company made up of Frost, Ames, Phyllis Newman, and Burr Tillstrom.[265]

When critiquing the first show of the second season, Larry Wolters couldn't seem to make up his mind whether the jokes were tired or vitriolic. "If Britain didn't want [David Frost] around whooping it up for the Labor party, it seems to us that we don't need him here as a spokesman for the Democrats." Wolters seemed to think that satire was ineffective if it is administered with a sledgehammer, and *TW3* satirizes Republicans using "everything from clubs to cannon."[266]

Some historians have blamed *TW3*'s downfall on low ratings and a change in attitude of the viewers after the enthusiastically received November 1963 preview show. In the time following the preview, President Kennedy was assassinated, leaving viewers with feelings of confusion and resentment. "Fewer and fewer people felt like laughing at anything so close to home as the news."[267] Although serious events may have weathered Americans' responses to satire, it was party pressures and politically charged criticisms that ultimately led to the show's cancellation.

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[265]Paul Gardner, "'Week That Was' Won't Stay as Is Next Season: Hayward Wants Changes in Cast and Set for an 'In' Show That Went 'Out'," *New York Times,* July 10, 1964, accessed April 18, 2010, http://www.proquest.com/.

[266] Larry Wolters, "*TW3* More Political than It Is Politic," *Chicago Tribune,* October 1, 1964, accessed April 18, 2010, http://www.proquest.com/.

[267] Harry Castleman and Walter J. Podrazik, *Watching TV: Six Decades of American Television,* 174.

Party Pressure and Show Delays

In England, when election season rolled around, *TW3* was taken off the air. In the United States, when election season rolled around, *TW3* was *also* taken off the air—however, it wasn't cancelled. Instead, it was moved to Tuesday nights, during the time period when political parties could buy time on the air. And that's exactly what the Republican Party did. The Republican National Committee purchased the time period on October 6 and 13, effectively delaying the premiere of the second season. Hayward claimed the show wanted to keep both parties happy, by confining all political observations and criticisms to the equal time of four minutes from Democrats and Republicans. Nonetheless, "it looks as if the Republicans would like to keep us off the air until November," Hayward observed.[268]

Apologizing for Jokes

Despite being kept off air, *TW3* did manage to get one show on the air—not that it helped. *New York Times* columnist Gould called the premiere of the second season "embarrassing in its persistent clumsiness and poor taste."[269] Despite the

[268] Paul Gardner, "'Week That Was' Won't Stay as Is Next Season: Hayward Wants Changes in Cast and Set for an 'In' Show That Went 'Out'," *New York Times,* July 10, 1964, accessed April 18, 2010, http://www.proquest.com/.

[269] Jack Gould, "TV: Tasteless Satire: 'That Was the Week That Was' Displays Neither Wit Nor Humor in Return," *New York Times,* September 30, 1964, accessed April 1, 2010, http://www.proquest.com/.

reviews, the premiere was able to ruffle some feathers. The show included this news bulletin:

> "Another item from the Vatican. The Ecumenical Council announced a plan today for the foundation of the Order of Deacons, which will be open to married men. Ordained priests still will not be allowed to marry, however, although the Council said nothing about going steady."[270]

NBC and producer Hayward were made to apologize for their "poor taste" to the shows' sponsor, the Speidel Jewelry Manufacturing Division of Textron, Inc. Speidel's advertising agency sent a telegram to NBC's vice president, Max E. Bucket, questioning "the wisdom of this type of senseless ridicule of the sacred beliefs of so many Americans."[271] In this way, the American *TW3* differed from its predecessor in having to deal with advertisers' complaints due to the commercially funded—as opposed to publicly funded—environment of the media in the United States.

By this point, the poor reviews coupled with political maneuverings to keep the show off air had completely scared away any audience. Nonetheless, the National Association for Better Radio and Television, or NAFBRAT, issued a booklet called "Television for the whole Family" in which it defended *TW3*, noting, "This program is what television needs. We must have one show aimed at bigotry and complacency—this is the only one we have." Again, Larry Walters let his opinion of NAFBRAT's analysis be known: "[*TW3*] has been largely … devoted to insulting and

[270] Val Adams, "N.B.C. Apologizes to 'T.W.3' Sponsor: Reference to Catholic Clergy Was Criticized by Speidel," *New York Times,* October 3, 1964, accessed April 1, 2010, http://www.proquest.com/.

[271] Adams, "N.B.C. Apologizes to 'T.W.3' Sponsor."

degrading Americans and its society." Nonetheless, effective May 11, NBC and the show's sponsors cancelled *TW3*.[272]

Looking back on the demise of *TW3*'s run in the United States in the turbulent 60s, David Frost said, "It came on during a difficult time, because after the death of JFK the republic was in a slightly shaky condition because the people wondered if we'd survive that trauma. It wasn't a time for an irreverent demolition job." Frost thought stability was needed in the country before such irreverence as was on *TW3* could be accepted. Frost did not realize that it would only take a few years for such political satire to hit it big on TV. However, it was not stability that would allow *Rowan and Martin's Laugh-In* to find success, but more balanced political attitudes and softball satire that would allow *Laugh-In* to accomplish what *TW3* could not.

Rowan and Martin's Laugh-In

The end of *TW3* was not the end of political satire, although producer George Schlatter would later note that its failure set back the creation of *Laugh-In* a few years.[273] Before *TW3*'s termination, another duo of comedians, Dan Rowan and Dick Martin, had just had a comedy special preview on ABC in September in 1964

[272] Larry Wolters, "A Critic Looks at TV Criticism," *Chicago Tribune,* April 18, 1965, accessed April 8, 2010, http://www.proquest.com/.

[273] Schlatter said, "*TW3*'s failure set it back; that was an angry show with great venom in it." This quote can be found in Joan Barthel, "Hilarious, Brash, Flat, Peppery, Repetitious, Topical and in Borderline Taste: Hilarious, brash, topical and in borderline taste Fee for a one-night stand at Indiana's State Fair: $25,000," *New York Times,* October 6, 1968, accessed April 21, 2010, http://www.proquest.com/.

called *The Rowan and Martin Show*. Although the show did poorly with the critics, the show's quick sight gags would be the catalyst that helped spur *Rowan and Martin's Laugh-In* four years later. More importantly, this ABC special introduced the weekly news program sketch, based on the soon to be cancelled *TW3*. Rowan and Martin had a gaggle of girls singing to introduce the news, which brought to mind Millicent Martin and Nancy Ames. Like smarmy emcees, Rowan and Martin would deliver the news with a huge smile, no matter how disturbing or ludicrous the picture they painted.

Rowan even elaborated on his inspiration for the weekly news program piece in a letter to writer John D. MacDonald. Rowan had always gotten the news from TV regardless of how "galling" it had become, and found that the local newscasters were the "worst offenders." These newscasters "just don't listen, care, read," Rowan wrote. "And the news talkers on TV who report disaster as cheerfully as ball scores continue making their unique contribution to this idiot culture."[274]

But before Rowan and Martin could make the satirical news a running sketch on their show, they had to work nightclubs for 15 years. Prior to the pair meeting, Dan Rowan, after a tumultuous childhood in which he spent four years in a Colorado orphanage arrived in Hollywood as a teenager and worked his way up from the Paramount mailroom to junior writer. He left to sell cars in San Fernando Valley. Dick Martin, on the other hand, moved to Southern California from white middle-class life in Detroit, and took several jobs involving writing, publicity, and

[274] Letter from Rowan to MacDonald, September 17, 1967, found in *A friendship: The letters of Dan Rowan and John D. MacDonald, 1967-1974* (NY: Random House, 1986).

acting. The two met when comedian Tommy Noonan gave them both the opportunity to write material for him. Noonan didn't like what Rowan and Martin wrote, but the duo did, enough to try it out on their own.[275] So in 1953 their career as a stand-up team began. It would last 14 years before the duo hit it big when *Rowan and Martin's Laugh-In* premiered on NBC on September 9, 1967.

New Format, Not Content

The content and the jokes weren't new. The anti-establishment topical satire had been done by *TW3* years before. What was new was the format. Rowan explained how the news satire had evolved to work for television:

> "Humor today has to be graphic and fast. And it should really say something, although our approach to humor in the beginning and now is primarily to entertain. We are not trying to break down hypocrisy, as Lenny Bruce did; we are not trying to make a political point, as Mort Sahl does. The primary obligation we have is to entertain, and only after that to prick as many balloons as we can. The mistake that "That Was the Week That Was" made was that it didn't satisfy the first requirement. They got so message-oriented that they forgot to be funny."[276]

Compared to the original and even American versions of *TW3*, however, *Laugh-In* attacked satire with a feather. It may have been because of the still mostly conservative American audience, but some jokes were far from liberal-minded. In one opening, Dan Rowan asked Dick Martin if he was for women's rights. Martin's

[275] Barthel, "Hilarious, Brash, Flat, Peppery, Repetitious, Topical and in Borderline Taste."

[276] Barthel, "Hilarious, Brash, Flat, Peppery, Repetitious, Topical and in Borderline Taste."

response was, "Yeah, baby, and their lefts aren't bad either."[277] This joke, typical of *Laugh-In*, may have been the "humor of the time," but it was still a sexist jibe lacking any social commentary. Conservative jokes emphasizing stereotypes frequently made their way on the program.

"News of the Past, Present, and Future"

Laugh-In's "News of the Past, Present, and Future" segment, the actual satirical news portion of the show, had a more reasonable mix of silly with poignant content. It also happened to be one of the most popular regular routines is a satirical news show.[278] Dick Martin presented the News of the Present, typically imitating *Tonight Show* host Johnny Carson in his delivery. Typically, Martin's jokes were silly:

> "News item: Curators of the London Art Museum announced today they are still awaiting further development on the long-overdue bust of Twiggy. When contacted in London, Twiggy said, 'Me, too.'" [279]

The News of the Future, the segment delivered deadpan by Dan Rowan, typically packed the hardest punches. Rowan would begin his joke with a plausible news bulletin, often in some way critiquing the inability for government to solve a current situation, and often end with a humorous twist. For example:

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[277] George Schlatter, preface, *The Best of Rowan and Martin's Laugh-In 2* Dir. George Schlatter (Rhino Home Video, 2001).

[278] Robert E. Dallos, "TV's Quiet Revolution: Censors Giving In :Once - Taboo Topics Are Common in Today's Fare Industry Says Shift Reflects a More Liberal Society," *New York Times,* April 29, 1968, accessed April 21, 2010, http://www.proquest.com/.

[279] Ibid.

> "Berlin, 20 years from now, 1989: There was dancing in the streets today, as East Germany finally tore down the Berlin wall. The joy was quickly replaced, however, when the wall was quickly replaced with a moat full of alligators."
>
> "Item: Washington, DC, 1988: President Ronald Reagan (laughter) again denied once again that he is a candidate for the office of governor of California."[280]

The foresight of these jokes is not lost on the viewer of the early twenty-first century. Even more startling than their precision is the observation that these were *jokes* at the time, meaning the two predictions were funny because many felt they would likely never happen. The Reagan joke also successfully poked fun at Reagan's constant denial of his political ambitions.

NBC: Looser Censors than ABC

Laugh-In was also getting away with more raucous jokes than ever before in America. At the time of *Laugh-In*'s premiere, ABC's *The Smothers Brothers Comedy Hour*, another political satire variety show that lasted from 1967-1969, was having serious issues with censors. Although Tom Smothers did not see *Laugh-In*'s premiere, he told the *New York Times* that he heard "they're way ahead of us in what they can say."[281] When *Laugh-In* began, Rowan admitted to the *New York Times* that the network had not objected to the jokes on politics, morality, religion,

[280] NBC, "Rowan and Martin's Laugh-In," February 12, 1968.

[281] George Gent, "Smothers Brothers Winning A Long Battle With Censors," *New York Times,* January 25, 1968, accessed April 21, 2010, http://www.proquest.com/.

and race.[282] Dick Martin would later acknowledge that the Smothers Brothers helped prepare the world for the indecency of *Laugh-In*. "I think the Smothers paved the way for us."[283]

In early 1969, *The Smothers Brothers Comedy Hour* was cancelled over a censored show featuring Dan Rowan. Tom Smothers commented that the brothers' main concern is "that in America it is more than ever necessary that unpopular opinion and divergent views be shown on television. The network presidents say that the airwaves belong to the people. We believe that."[284] The brothers also criticized ABC for not giving them the same freedom NBC gave *Laugh-In*.

Martin may have appreciated the Smothers' comedy, but Rowan thought the reason *Laugh-In* was more successful was its different approaches to politics. Rowan felt that all the Smothers political material was "slanted," a problem Rowan would go to great lengths to avoid. "If we knock LBJ or the Vietnam War, we knock Ronnie Reagan too," [285] Rowan said.

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[282] Calvin Kentfield, "Far Right, Far Left and Far Out :Rowan, Martin." *New York Times,* April 14, 1968, accessed April 21, 2010, http://www.proquest.com/.

[283] Barthel, "Hilarious, Brash, Flat, Peppery, Repetitious, Topical and in Borderline Taste."

[284] George Gent, "Smotherses Insist They Are Right, but Won't Sue," *New York Times,* April 8, 1969, accessed April 21, 2010, http://www.proquest.com/.

[285] Calvin Kentfield, "Far Right, Far Left and Far Out: Rowan, Martin," *New York Times,* April 14, 1968, accessed April 21, 2010 http://www.proquest.com/.

Hippie Culture Liberalizes TV

Indeed, *Laugh-In* began a mere three years after *TW3* was cancelled, but in those three years, there was a clear difference with the material in 1968 compared to 1965. *Laugh-In* was franker, industry observers said, than any other show. Network officials agreed that neither *Laugh-In* nor *The Smothers Brothers Comedy Hour* program would have been considered a few seasons earlier, possibly even in 1967.[286] Different members of the network community tried to make sense of this sudden leniency in material.

Robert D. Kasmire, vice president of corporate information of NBC, said, "If TV is more permissive, it is because the audience—indeed the whole society is going along. Girls are wearing miniskirts, universities and colleges are more permissive. It is the whole attitude toward sex. We try to keep up with social changes."[287] Whereas in previous years one complaint was thought to represent the views of thousands of people, censors were beginning to envision a society with a myriad of points of view. William H. Tankersley, vice president of program practices of the Columbia Broadcasting System, frequently had large stacks of protest letters sitting on his desk. The letters did not tell him his content was too extreme; the letters told him the world was too extreme. "We no longer shut our

[286] Dallos, "TV's Quiet Revolution."

[287] Ibid.

eyes or shut of the facts. The world is a madhouse. TV gives some voice to what is going on in the world."[288]

Probably more than the Smothers Brothers, miniskirts or universities, the ability for *Laugh-In* to get material on the air was occasioned by the race riots, Civil Rights marches, and the escalating activity in Vietnam. Reflecting on the time period, producer George Schlatter concluded that *Laugh-In* was a cathartic release for the serious times. "You watch the news and you're getting the body count from Vietnam, you're watching interviews with the wounded, you're watching a helicopter crash…. People want to laugh much more now, so you reach out and make them laugh, quick!"[289] Many involved with *Laugh-In* echoed David Melnick's observation that a blue or political joke is not as unsettling when viewers are watching "a South Vietnamese general shoot a defenseless Vietcong in the head."[290]

Politics and Laugh-In

Certainly, people wanted to laugh, but unlike *TW3*, those involved with *Laugh-In* realized that to be a popular hit show on network TV, it is necessary to walk a fine line politically. Dan Rowan and George Schlatter both agreed that their ability to walk that line was aided by their politically diverse staff. The ten writers ran "from right to left, Far Right to Far Left. Our chief writer writes speeches for

[288] Ibid.

[289] Barthel, "Hilarious, Brash, Flat, Peppery, Repetitious, Topical and in Borderline Taste."

[290] Dallos, "TV's Quiet Revolution."

Richard Nixon."[291] George Schlatter would later describe chief writer Paul Keyes as "Nixon's closest friend."[292] Digby Wolfe, the writer who coined the phrase "*Laugh-In*," was an anarchist – the "Far Left" writer in the group.

The show may also have helped Nixon fulfill his political ambitions to become President. On the second season premiere, Richard Nixon, then a presidential candidate, went on and said: "Sock it to me?"[293] Dick Martin recalled, "The network said, 'But what if he becomes President?' They were scared to death. We said, 'So what?'" [294] A candidate for the most dignified office coming on a comedy show in front of 40 million viewers was shocking to many. Some Nixon supporters felt he was feeding into a communist conspiracy by going on the show.[295] But when Alan Keyes asked Nixon to come on the show, he knew it would be a beneficial public relations move, making Nixon seem younger and hipper. John MacDonald would later ask Dan Rowan to support a candidate for Senate, saying, "I mean, man, if you got Nixon elected by accident, how about helping me get Collins into the Senate for six years on purpose."[296]

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[291] Kentfield, "Far Right, Far Left and Far Out."

[292] George Schlatter, preface, *The Best of Rowan and Martin's Laugh-In 2* Dir. George Schlatter (Rhino Home Video, 2001).

[293] The show's most often repeated phrase, becoming for several years part of the American lexicon.

[294] Dallos, "TV's Quiet Revolution."

[295] Federal Bureau of Investigation. Rowan & Martins *Laugh-In* Cross References. 1968-1971.

[296] Letter from MacDonald to Rowan, September 21, 1969, found in *A friendship: The letters of Dan Rowan and John D. MacDonald.*

Laugh-In lasted from 1968 to 1973, through two national elections and one midterm campaign. Although the show was never kept from airing, as *TW3* had been during election season, censors did exercise more control during these times. Because the show was taped five weeks ahead of airing, the writers began feeling the pressure from censors in September of an election year. "Of course the network is up so tight with every show now that the campaign is getting closer to the final weeks," Rowan wrote to MacDonald in 1970, not long after the Democratic National Convention protests. "They even make us soften the blows at Mayor Daley and the Chicago police."[297]

Laugh-In Fizzles Out

For *Rowan and Martin's Laugh-In*, it was not the audience, nor the government, but the creators that grew tired of the show. Rowan admitted in 1970 that he felt the show had gone from "deterioration to decay" and simply didn't think the show was funny anymore.[298] A year later, the thrill was gone, and Rowan decided to end his 17-year relationship as a comedy team with Dick Martin, at least on stage. [299]

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[297] Letter from Rowan to MacDonald, September 23, 1970, found in *A friendship: The letters of Dan Rowan and John D. MacDonald.* In August of 1968, thousands showed up to protest the war at the Democratic National Convention. The mayor of Chicago, Richard Daley, refused to allow protest permits in the city, and sanctioned 23,000 policeman and National Guardsmen to meet the protestors. Riots and police brutality followed the arrival of the protestors.

[298] Letter from MacDonald to Rowan to MacDonald, August 21, 1970 found in *A friendship: The letters of Dan Rowan and John D. MacDonald.*

[299] Letter from Rowan to MacDonald, June 23, 1971, found in *A friendship: The letters of Dan Rowan and John D. MacDonald.*

The show, however, continued on until 1973. *Laugh-In* continued to attack topical issues in the news. A show on March 8, 1971, aired a sketch satirizing the FBI and alleged wiretapping and paranoid surveillance, as well as the age of Edgar Hoover. This sketch was a response to the FBI leak to several leading newspapers, including the *New York Times* and *Washington Post*, that the FBI had dissenters of the political left—including students, minorities, and war protestors—under surveillance.

The FBI did not enjoy being mocked. One letter received by the FBI called the show's sketch "an insidious propaganda effort to undermine the public's confidence in [Hoover] and the FBI."[300] Many sent letters to NBC asking *Laugh-In* to "try to use comedy to paint a better picture of your comedy and government" or at least hire writers that "believe in the American system or at least act like they want to make it work." [301] Although the FBI took no action against the show, the fact that it was a "matter" to be responded to was telling. The agency even made a sound recording of the show so Hoover could review it. Advertisers were also receiving complaints such as these about the episode. Ford Motors dropped advertisements from *Laugh-In* after too many customers complained.[302]

As the show entered its final season, Rowan made some last minute attempts to sharpen the show's humor. In particular, Rowan commented that fake

[300] Federal Bureau of Investigation. Rowan & Martins *Laugh-In* Cross References. 1968-1971.

[301] Ibid.

[302] Ibid.

news segment was now "predictable" and wanted to institute some changes.[303] Among his ideas, Rowan wanted the fake news to more closely parody a real newscast by nixing the singing and dancing intro and instead open with an announcer saying, "And now to the R&M news desk for a look at the week's news in review." He wanted to tape the fake news segment last, so that the show could take "an honest look at the real not fictional news."[304] Rowan wanted to recruit younger writers from *Rolling Stone* or campus newspapers for a youthful view on real news events. He also proposed adopting another news segment, strikingly similar to CBS's "Point/Counterpoint" segment on *60 Minutes*, which debuted in 1971.[305] It would begin with a claim:

> "'President Nixon denies any knowledge of the Watergate case.' We go to *two* desks where both sides give their views, as funnily as possible of course, of this case. The two sides will be given on all controversy hopefully getting around the network fiat against political comment because of equal time."[306]

However, it appears that Rowan was never able to get any of these changes through the networks. He lamented that by the final season, the network would not even allow any jokes attacking the elderly. According to Rowan, there had been a change in censorship since *Laugh-In* began four years ago. "We are again in that

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[303] Letter from Rowan to MacDonald, October 20, 1972, found in *A friendship: The letters of Dan Rowan and John D. MacDonald.*

[304] Letter from Rowan to MacDonald, October 20, 1972, found in *A friendship: The letters of Dan Rowan and John D. MacDonald.*

[305] Madsen, Axel. *60 Minutes: The Power and the Politics of America's Most Popular TV News Show.* Dodd, Mead and Company: New York City, 1984.

[306] Letter from Rowan to MacDonald, October 20, 1972, found in *A friendship: The letters of Dan Rowan and John D. MacDonald*

eerie area of broadcasting when 50 letters of approval can be outweighed by 4 strongly against," especially if those against threaten to boycott sponsors, Rowan wrote.[307]

Now sitting 37th in the ratings, the end of show came swiftly for Rowan and Martin. On April 4, 1973, the *New York Times* announced, "Missing from N.B.C. television after this season will be "*Laugh-In*," canceled after a five-year run."[308] *Laugh-In's* last show in May 1973 followed a season of traditional comedy that did not push the edge as it had in 1968.[309] Nevertheless, Rowan and Martin briefly attempted to revive the series. That September, the special *Rowan & Martin Starring in R.C.A.'s Opening Night* aired, showing the comedian duo attempting to "wrung the last ounce of life out of the "*Laugh-In*" format… It was comfortably safe." [310] Defeated, Rowan mourned the end of the *Laugh-In* style:

> "We have become terribly bland . . . the network has gotten very skittish. Little doubt it's the result of [Vice President Spiro] Agnew's attacks and the possibility of FCC's licensing control. We are becoming a vanilla custard and it bothers me, but here are so many things we can't talk about because they are running so damned scared. We have been trying to get a gun control piece on since the beginning of the season and they are so afraid of the NRA lobby we haven't been able to…. The network and TV critics scream for originality and would like

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[307] Ibid.

[308] Albin Krebs, "N. B.C. to Offer 9 New Series For Prime Time Next Season" *New York Times,* April 4, 1973, accessed May 1, 2010, http://www.proquest.com/.

[309] Hal Erickson, *From Beautiful Downtown Burbank: A Critical History of Rowan and Martin's Laugh-In (*Jefferson, N.C.: Mcfarland & Company, 2000).

[310] John J. O'Connor, "TV: 'Chase' Leads Off N.B.C. Season: TV Review," *New York Times,* September 14, 1973, , accessed May 4, 2010, http://www.proquest.com/.

> to see something different but when one tries, there's no way they will help. "[311]

Looking back at the program's run, the *Laugh-In* jokes were often "right-of-center**,"** and it overall lacked the satirical bite of *That Was The Week That Was* or its future satirical news descendant, *Saturday Night Live*.[312] Unlike *TW3*, however, *Laugh-In* was able to make satire accessible to America, staying high in the ratings its first few seasons. *TW3* dealt with political maneuverings to censor whereas *Laugh-In* dealt with advertisers and network insistence to censor; their trials would not be in vain. Both programs would set the scene for a new satirical program that would have more freedom to comment and humorously criticize than ever before in the United States.

Saturday Night Live and "Weekend Update"

SNL revived the live variety show format that *Laugh-In* had pushed aside in favor of fast-paced editing and sight gags. *Laugh-In* relied on form over content. *SNL* reversed the preference bringing in unique content with a fresh attitude, approach, and collective mind-set.[313] The show did not appear because NBC executives wanted to push the boundaries; instead, it appeared because Johnny Carson wanted

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[311] Letter from Rowan to MacDonald, October 20 (?), 1973, found in *A friendship: The letters of Dan Rowan and John D. MacDonald.*

[312] Henry Jenkins, "Rowan and Martin's *Laugh-In*," *The Museum of Broadcast Communications,* accessed May 1, 2010, http://www.museum.tv/eotvsection.php?entrycode=rowanandmar.

[313] James Andrew Miller and Tom Shales, *Live from New York: An Uncensored History of Saturday Night Live* (London: Little, Brown and Company, 2002), 3.

the network to stop rerunning episodes of his *Tonight Show* on Saturday nights.[314] Lorne Michaels, who had earned his chops writing for *Laugh-In*, was named executive producer of the new project set to fill the time slot.[315] To NBC's credit, network President Herbert Schlosser did take a chance on Michaels – had the network "known of its form and content in advance, [the show] might never have seen the light of day."[316]

Just as *Laugh-In* had begun experiencing problems toward the end of its tenure, *Saturday Night Live* "made censors batty and sponsors skittish" in the beginning.[317] Over time, *SNL* received an uncountable number of protests about news items on "Weekend Update" from offended special interest groups.[318]

SNL Mixes Young Comedians with Traditional Format

On October 11, 1975, *Saturday Night*[319] premiered at 11:30 p.m., hosted by George Carlin. The original cast, recruited heavily from improvisational revues, included Chevy Chase, John Belushi, Gilda Radner, Jane Curtin, Garrett Morris, Laraine Newman and Danny Ackroyd, also referred to as the "Not Ready for Prime-

[314] Ibid., 4.

[315] Ibid., 4.

[316] Miller and Shales, *Live from New York,* 4.

[317] Ibid., 6.

[318] Ibid., 8.

[319] The show was originally called "Saturday Night," and only adopted the "Live" after the ABC show of the same name was cancelled. Also referred to as "*SNL*" for short.

Time Players." The *New York Times* reported that Lorne Michaels wanted "to allow writers and performers to stay as close as possible to their material and talent, with the minimum of laundering or processing for mass consumption."[320] Michaels' mission was adopted in reaction to his experience at *Laugh-In*, where he felt depressed by what his material turned into after being filtered through the network censors, producers, and performers.[321] He later told *Rolling Stone* that *Laugh-In*'s writing process was for each writer to write alone, separately, and then hand the piece to the head writer.[322] Michaels wanted *SNL* to be different; he wanted collaboration. It was when it was announced that Richard Nixon would appear on *Laugh-In* that Michaels quit, ready to pursue comedy in a purer form "without network and technological barricades."[323]

"Weekend Update"

The "Weekend Update" segment quickly became one of *SNL*'s most popular. Chevy Chase anchored the segment until his departure at the end of season one for personal reasons,[324] and Jane Curtin took over as anchor. Breaking news stories

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[320] John J. O'Connor, "TV VIEW :Sprightly Mix Brightens NBC's 'Saturday Night', " *New York Times,* November 30, 1975, accessed May 4, 2010, http://www.proquest.com/.

[321] O'Connor, "TV VIEW :Sprightly Mix Brightens NBC's 'Saturday Night'."

[322] Marianna Partridge, ed., *Rolling Stone Visits Saturday Night Live,* (Garden City: Dolphin Books, 1979), 29.

[323] Ibid.

[324] Chevy Chase left the show to marry his then-girlfriend and pursue a career as producer. Many sources incorrectly state that Chase left the show to pursue a move career, when it was actually his marriage that moved him.

were often the basis of outrageous reports. For example, one running joke mentioned Gerald Ford being prone to accidents and its coverage by the media: "At a state dinner tonight, President Ford pierced his left hand with a salad fork."[325]

The first season, Chevy Chase would open his "Weekend Update" shtick with, "I'm Chevy Chase, and you're not," and end with "That's the news, and have a pleasant tomorrow." The format carefully imitated that of a newscast, dropping any musical lead-in that *TW3* and *Laugh-In's* "News of the Past, Present, and Future" had relied on. The anchor would sit at a desk, shuffling papers on the desk, and read news items typically accompanied by pictures. Jane Curtin's anchor character mocked the seriousness of journalism by closely parodying a somber, stern anchor. "If you don't report the news accurately, we'll have to let you go," Curtin would tell Gilda Radnor's commentator who often misheard a prominent news story.[326] Writer Alan Zweibel noted that they worked on "Weekend Update" right up until the show aired, often watching the eleven o'clock news for material right before taping. "There were two shows where I was literally under the 'Update' desk writing stuff and handing it up to Chevy while he was actually on the air," Zweibel admitted.[327]

In this way, *SNL*'s "Weekend Update" was able to do more topical comedy à la *TW3*. "Weekend Update" would even use Rowan's idea of a parody of the

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[325] NBC, "Saturday Night," November 22, 1975.

[326] NBC, "Saturday Night Live," January 15, 1977.

[327] James Andrew Miller and Tom Shales, *Live from New York: An Uncensored History of Saturday Night Live* (London: Little, Brown and Company, 2002), 61.

"Point/Counterpoint" segment from *Sixty Minutes*. *SNL* also adopted specific tactics for getting around the censors. Lorne Michaels' go-to strategy was either to feign resignation or go ahead with the sketch anyway. For example, when NBC told Michaels that Richard Pryor could not host, he replied, "You can't do a contemporary comedy show without Richard Pryor," and walked out on the show for a week, claiming he was resigning in protest.[328]

Ignore the Censors, Critics

Michaels did not want the content of his comedy show to focus on ratings, success, or critical acclaim. He later explained that he wanted to redefine comedy, which "required not pandering . . . removing the need to please . . . we are only going to please people who are like us. The presumption was there was a lot of people like us."[329] Fortunately for Michaels, this turned out to be true. *SNL*'s ability to continue with little censorship was largely due to the popularity of the program.[330] Unlike *Laugh-In*, however, the popularity was not dependent on the show toeing a line down the political middle or filling the show with conservative jokes.

[328] Miller and Shales, *Live from New York,* 64.

[329] Ibid., 69.

[330] Ibid,. 95.

The show sparked an "age of liberation" on TV, with more shows following *SNL*'s lead and pushing the edge.[331] *SNL*'s golden age lasted until 1980, when Lorne Michaels and the entire cast left. The show would struggle to regain the glory from those first for years, even after Michael's return to the show five years later. The "Weekend Update" has remained a staple of the shoe throughout its thirty-five year tenure, showing that satirical news had durability to weather future bouts with censorship and poor ratings.

Conclusion

In a recent interview, when *Time* asked Chevy Chase about his opinions on political comedians like Jon Stewart and Stephen Colbert, the *SNL* pioneer replied, "I think we need it. My ego tends to think that, you know, I started it with my Weekend Update…."[332] "Weekend Update" may be the predecessor of shows like *The Daily Show* and *The Colbert Report*, but it was only one in a longer line of ancestry. Since the 60s, starting with *TW3*, parodying the news has become a staple in TV culture. This chapter has attempted to reveal the trials and tribulations of those producers and writers attempting to bring biting political satire to America through the TV. Politics would remain influential in the lives of some writers even after leaving these programs. Some comedians involved in these shows would go onto find success in the political arena.

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[331] Miller and Shales, *Live from New York,* 95.

[332] Carolyn Sayre, "10 Questions for Chevy Chase," *TIME.com*., April 11, 2007, accessed May 1, 2010, http://www.time.com/time/arts/article/0,8599,1609309,00.html.

After *TW3*, David Frost would continue producing in starring in political programs, most notably interviewing former President Richard Nixon about the Watergate abuses, which would later become a Broadway play and movie.[333] Al Franken, an original writer on *SNL* and briefly the anchor of "Weekend Update" in the early 90s, is presently the junior U. S. Senator from Minnesota. It appears that politics and comedy can mix, even if early fake news shows had to battle against political parties, censors, and critics. Their battles paved the way for public criticism of government and media through new parody, ultimately allowing dissent from mainstream norms to be better accepted into American culture.

It also appears that media critics of today are quick to forget comedy's past that is so intertwined with "traditional" media and politics. Following Jon Stewart's 2009 interview with Jim Cramer of CNBC's *Mad Money*, James Fallows, a National Correspondent for *The Atlantic*, anointed Stewart as the new "Edward R. Murrow." Stewart "did the journalistic sensibility proud," Fallows declared.[334] Fallows compared the interview to David Frost's interview with former president Nixon. Fallows failed to mention that Frost's background was in political satire and that Frost had once hosted *That Was The Week That Was*—from which Jon Stewart's *The Daily Show* descended.

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[333] *See* Peter Morgan, *Frost/Nixon: A Play* (Oxford, Faber & Faber, 2007) and *Frost/Nixon* (Universal Studios, 2008).

[334] James Fallows, "It's true: Jon Stewart has become Edward R. Murrow (updated)," *The Atlantic*, July 17, 2010, accessed August 28, 2010, http://www.theatlantic.com/science/archive/2009/03/it-apos-s-true-jon-stewart-has-become-edward-r-murrow-updated/9731/.

Before Jon Stewart began hosting *The Daily Show* in 1999, other satirical news programs found success on television. Unfortunately, these other satirical news progeny, such as *TV Nation* and *Politically Incorrect with Bill Maher*, would have their own gripes with the censors and be cancelled soon after.[335] Unless a show is an unstoppable commercial success, American media will take shows off the air that ruffle too many feathers. Becoming a sustainable and "popular critic" is an impressive feat, as this chapter's history has proven.

These comedians are due credit for their influences, but it often seems as though they will go to great lengths to avoid such credit. Their roles as entertainers often appear to denigrate their roles as social commentators. In the following chapter, this research will turn to present day, and through limited ethnographic and case studies, reveal how and why political satirists hide their intentions beyond causing laughter.

[335] For a detailed case analysis of censorship issues on *TV Nation* and *Politically Incorrect,* see David S. Silverman, *You Can't Air That: Four Cases of Controversy and Censorship in American Television Programming (Television and Popular Culture) (*Syracuse: Syracuse University Press, 2007). For more information of politics and entertainment colliding on present-day TV, see Liesbet Van Zoonen, *Entertaining the Citizen: When Politics and Popular Culture Converge* (Lanham, Rowman & Littlefield Publishers, Inc., 2004).

CHAPTER 5

Satirist Shield: Ethnographic Study of Intentions in Political Comedy

Comedy production, like so many creative disciplines, is a difficult process to pin down. Comedy communities can potentially offer a rich research site because they can (1) uncover intentions of political comedy writers, and (2) reveal how creation processes are affected by cultural norms within the community. Despite these benefits, the intention behind political comedy has been understudied. Through interviews, observations, and case studies, this chapter will uncover such intentions in order better situate the comedians' role against personal and outside conceptions of what this role should be.

Time and again, scholars of mass communications look to satirists like Stewart to get at the truth more often than traditional journalists. Their trust is not without cause; Comedians do play an influential role in challenging hypocrisies and uncovering dormant truths. As leaders of dissent in society, satirists require a closer analysis of their intentions and community norms. If comedians are merely trying to make us laugh, does that denigrate any important message they may communicate?

Recall the quote about the comedian's current role in the public by Lizz Winstead, the creator of *The Daily Show*: "In the world of sound bites and stump-speeching we live in now, none of it is very inspiring, and a satirist's job can be to

break through. We have a freedom that politicians and journalists don't have; we have no agenda other than to speak our minds."[336]

This research project found repeated examples of this role during research and observations. As beloved as satirists and comedians may be, they are not without flaws; they do not always successfully encourage discourse and reflection. If a comedian—in particular those critiquing the political sphere—encounters failure in his or her capacity as a social commentator, it is a norm within the community to claim the only real purpose for comedians is to make the audience laugh. Comedians frequently hide behind this excuse, using it as a shield against critics who may point out that a particular comedian failed to challenge hypocrisy. The comedian plays an important role in society; therefore, it is important to understand and recognize (1) the intent of jokes, particularly in the political sphere, and (2) the norm whereby comedians may pull out their "satirist shield" when faced with failure or criticism.

Dennis DiClaudio, the head writer at *Indecision*, the Comedy Central political comedy blog, said in an interview, "There's a saying, 'truth in comedy' that I think could apply.... To be really funny—like [*The*] *Daily Show* or Louis CK funny—you have to drill down through perceptions and biases and expose the uncomfortable truth about a subject. And then you present it with a spoonful of sugar."[337]

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[336] Dan Dion and Paul Provenza. *Satiristas: Comedians, Contrarians, Raconteurs & Vulgarians*. (New York: Harpercollins, 2010),148.

[337] Dennis DiClaudio, interview by author, Comedy Central Digital, New York, New York., Fall 2010.

Comedians stand outside the world and from that vantage are able to point out hypocrisies and false dogmas. What happens when the comedian fails to penetrate the uncomfortable truth—and simply offers the spoonful of sugar? This research reveals a tool comedians repeatedly use if criticized for failing at this role: the "satirist shield."

In the following pages, this research project argues that most political comedy does come packaged with an intention from the comedian to persuade an audience of a certain view or ideology. There are exceptions, but for the most part, the often-repeated claim that the only concern of the comedian is "to make people laugh," is an oversimplification and now more commonly a defense mechanism. The increasing impact of satirists, such as Jon Stewart and Stephen Colbert, has given them more power, and with that, more influence in their criticisms. However to the contrary some fans may want to believe, comedians are not flawless; they often try to deflect their importance and influence on society but stepping behind the satirist shield. Specifically, this research project will reflect on numerous interviews with political comedy writers. Accusations of sexism within *The Daily Show* workplace in the summer of 2010 served as an ideal case study of the comedy community's shortfalls in fighting hypocrisies and challenging the status quo. It also appears that the targets of criticism embrace the satirist shield as an excuse that allows them to disregard the satirist's critiques, regardless of original intent. As satirist step deeper into the realm of media and politics, such norms—including the satirist shield—may have to be abandoned in order for criticisms to be taken seriously. For

deliberative democracy to work, the public must except the comedian's criticism as legitimate and the satirist must put down the shield.

Method and Setting

Cardiff University professor Simon Cottle wrote, "Ethnographic studies of news production provide invaluable insights into the nature and determinants of news production and a necessary corrective, therefore, to grand speculative claims and theories about the news media."[338] By extension, ethnographic studies of satirical news production can reveal the nature of political comedy, as well as help debunk or solidify theories on such political comedians. Although Chris Paterson and Anna Zoellner[339] questioned the potential loss of objectivity due to intimacy with research subjects in ethnographic studies, access to the political comedy environment was dependent on attaining an internship and thus intimacy in the field. Therefore, after accepting a placement at Comedy Central Digital working on *The Daily Show*, *The Colbert Report*, and *Indecision* websites, I gave my employer full transparency as to the limited ethnographic research that would be performed over a three month period, in addition to all regular work and projects.

As an intern, I was able not only to be placed in the ideal spot for observing all of the producers, editors, and writers involved in the political comedy writing,

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[338] Simon Cottle, "Ethnography and News Production: New(s) Developments in the Field," *Sociology Compass* 1, no. 1 (2007): 1-16, accessed September 1, 2010, http://onlinelibrary.wiley.com/doi/10.1111/j.1751-9020.2007.00002.x/citedby.

[339] Chris Paterson and Anna Zoellner, "The Efficacy of Professional Experience in the Ethnographic Investigation of Production," *Journal of Media Practice* 11, no. 2 (2010): 97-109.

but was also to judge my own processes and intentions when writing. In addition to using ethnographic methods in the work environment, I also performed both informal and semi-structured in-depth interviews with different writers and producers involved in political comedy production. The Comedy Central Digital workplace[340] was located in New York City, as were *The Daily Show* and *The Colbert Report* studios. Only the Digital team and writers on the *Indecision* blog knew of my role as a participant-observer.

The producers and writers often too pride in their political media accomplishments. Comedy Central's *Indecision* actually broke the news that Donald

[340] Viacom owns MTV Networks, which includes Comedy Central.Beyond their power to educate the public, the news media and fake news media have another aspect in common, at least in the United States: Ownership by corporations. Because MTV's policy did not allow for the release of in-house ratings statistics, I will speak only in imprecise terms. In terms of the network, 65% of the audience is composed of men. Comedy Central's prime audience target is males ages 18-34. This audience is important because advertisers seek out this age group as powerful consumers. *The Daily Show* and *The Colbert Report* bring in the key demographic is droves.

In fake news, corporate control actually had the opposite effect. Because comedy news shows are so successful, and the advertisers are fighting for sponsorship, the writers and producers are given complete freedom to create; money is no object. MTV corporate was highly hands-off, and *The Daily Show* in particular had little integration with the rest of the network. It was only until after *The Colbert Report* sanctioned a separate digital media team to work on its website that Jon Stewart's show followed suite. It is important to note, however, that such "hands-off" ownership is not a result of corporate-controlled media. *The Daily Show* and *The Colbert Report* are given freedom because they bring in the viewers and make the advertisers money. As a bonus for American public, this independence also insulates them from political and corporate influences. As such, these shows can impress media scholars with their truth-telling and fact-checking skills. Because traditional press is not a type of "infotainment," its commercial potential is comparably low. "Media organizations may be left with a professional desire for more substantive content but they may also perceive themselves to be constrained by their bottom line to continue coverage the way it is," Kenneth Dautrich and Thomas Hartley wrote over ten years prior, before the epic rise of punditry, *see* ***How the News Media Fail American Voters: Causes, Consequences, and Remedies,*** (New York: Columbia University Press, 1999), 167. It seems that when faced with the bottom line, media can either force their product to become more entertaining, i.e. infotainment, or make serious cutbacks in staff and newsgathering technology.

Rumsfeld was stepping down from the Bush Administration in late 2006.[341] While for the most part, satirical news shows and political comedy blogs do not break the news, they often are they first to draw attention news events overlooked by the traditional media. The website draw hundreds of thousands of views, which pale in comparison to the over two million regular viewers of *The Daily Show* or *The Colbert Report*. Nevertheless, both the websites and the programs demand serious attention as purveyors of political dissent.

Intent of Comedians in Politics

In his ethnographic chapter on stand-up comedians, Paul Sturges noted that "comedians, like authors and journalists who pursue difficult and dangerous subjects, are obliged to work through their personal position on the issues as a matter of prime personal significance" when writing.[342] In other words, before the comedian can put the finishing touches on a political joke, s/he must deeply examine his or her own views on the subject. Professional comedians and writers attempt to do more than simply making the audience laugh. Sturges quoted British comedian Omid Djalili, who suggested, "There is a responsibility to be something a

[341] Michael Brendan Dougherty, "12:15a ET – Only Like the Biggest (Maybe) Newsbreak of the Night," *Comedy Central Insider*, November 8, 2006, accessed September 8, 2010, http://ccinsider.comedycentral.com/2006/11/08/1215a-et-only-like-the-biggest-maybe-newsbreak-of-the-night/.

[342] Paul Sturges, "Comedy as Freedom of Expression," *Journal of Documentation* 66, no. 2 (2010): 291.

bit more than just funny. You have to be entertaining, educating, and enlightening."[343]

The argument is not that every comedian forces upon its audience a political agenda. Bill Maher, a prominent political comedian and host of *Real Time with Bill Maher*, argued that an agenda alone "can't be your raison d'etre."[344] The argument is that political satire requires breaking down the news from a point of view of the comedian, a view that cannot be divorced from the jokes. Political intentions are inherent in this type of satire, and to claim otherwise is to claim one person has no ideology, no interpretation of the world. And, as Maher explained, if your joke is producing laughter, it's because the joke reveals an unspoken truth, one that would require introspection. "When they can't help laughing, they kinda have to question it," Maher pointed out.[345]

Dennis DiClaudio of *Indecision* described the intentions in his jokes as being on a spectrum. At his purest, DiClaudio said he is "just trying to make people see the story from a different angle than they might have elsewhere and maybe take something else away from it, while trying to be funny about it."[346] In the middle of the spectrum his intentions are to "express my opinion of what is morally right and wrong, hopefully without engaging in actual political partisanship." DiClaudio made

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[343] Sturges, "Comedy as Freedom of Expression," 291.

[344] Dion and Provenza. *Satiristas,* 298.

[345] Ibid.

[346] Dennis DiClaudio, interview by author, Comedy Central Digital, New York, New York., Fall 2010.

clear that he saw a difference between pushing a moral agenda in comedy versus pushing a political agenda. To him, having a political agenda insinuated that the comedian works at the behest of a political party. Finally, at the cheapest end of the spectrum of intention, "I'm making fun of conservative figures that I hate because I hate them," DiClaudio admitted.

Sara Benincasa, who joined the *Indecision* writing staff in the summer of 2010, was well known for her comedy stints on *Huffington Post* where she satirized Sarah Palin and later Michele Bachmann on *Wonkette.com*. For Benincasa, not all of her writing is done with an intention to spread a message. However, Benincasa pointed out that her writing is often the best when she is passionate about an injustice or hypocrisy. She explained:

> "There are days when something catches my eye and makes me angry. That's when I do my best writing; when I'm fired up. It doesn't happen all the time. I don't want to live in a constant state of rage in order to be a better, um, blogger. But when I see injustice or abuse and it hits home, that's when I try to convey a message through bitterly angry humor."[347]

These writers on *Indecision* aren't alone in their personal involvement with political satire. Comedian Paul Provenza recently published a book, *Satiristas!*, in which he interviewed a wide range of satirists and socially critical comedians. Provenza explained that as a comedian, "You have to say what you truly believe, you have to be able to be as wrong as you are right, and you have to be honest about what you feel and who you are," or else the audience will smell it.[348] And they won't laugh.

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[347] Sarah Benincasa, interview by author, Comedy Central Digital, New York, New York., Fall 2010.

[348] Dion and Provenza, introduction to *Satiristas.*

Infusing an argument with comedy is like adding a spoonful of sugar to help the medicine go down. Julie Ann Pietrangelo, a senior writer and Comedy Central Digital, remarked, "It is much easier to make your point if you're doing it humorously. People can relate to it a lot better than just shoving your opinion down their throat."[349]

I was also able to examine my own intentions during my stint as an intern/writer for *Indecision*. Looking back at the articles written, I can conclude that almost all of my pieces came from wanting to mock or break down a particular political viewpoint. In "[Handel] Found Dead [in Election]; Latest Victim in Grizzly [Palin Endorsement] Attacks," I parodied a news report of a grizzly bear attack in order to argue my point that Sarah Palin's endorsements have been detrimental to many candidates.[350] This personal experience may have been limited, but I was still able understand that political comedians tried to convince audiences to change the way they think by using comedy as a tool. I recognize that some comedians do not consider themselves to be political in their intent, but after observations, research, and interviews, it appears as though the denial of such intentions deals more with definitions of what is *political* than the underlying issue. Is change or laughter a goal of political comedians? If a satirist is successful, the goals are inseparable.

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[349] Julie Ann Pietrangelo, interview by author, Comedy Central Digital, New York, New York., Fall 2010.

[350] Sarah Burton, "[Handel] Found Dead [in Election]; Latest Victim in Grizzly [Palin Endorsement] Attacks," *Comedy Central's Indecision,* August 11, 2010, accessed November 10, 2010, http://www.indecisionforever.com/2010/08/11/handel-found-dead-in-election-latest-victim-in-grizzly-palin-endorsement-attacks/.

The Satirist Shield: Why Comedians Hide Intent

Although I conclude that the majority of political comedy is produced with the intent—no matter how organic—to enlighten audiences, there is a benefit in claiming a piece of satire or comedy lacks substance beyond making the audience laugh. Satirists' freedom to speak and target political structures is balanced by comedians' use of their "satirist shield"—in other words, their claims that their intentions are only to make the audiences laugh, not to think critically. Comedians therefore do not challenge authority without their own armor, namely, their "harmless" intent. It is beneficial to comedians to keep this shield should they be attacked or criticized.

The concept of the satirist shield is not in itself a *negative* hidden attribute of the comedy community. The shield allows comedians to criticize openly and pointedly without fearing repercussions. As discussed in earlier chapters, the First Amendment itself encourages the formation of a satirist shield. In *Hustler v. Falwell* (1988), the Supreme Court noted that in order to charge a writer of libel or slander of a public figure, there must be evidence of actual malice in the false accusation.[351] Yet because parody does not make false statements that were implied to be true, it cannot be the subject of damages under the *New York Times* actual-malice standard. Essentially, a writer of parody's defense is it's "only a joke." Such a defense both denigrates the political intent of the parody, but also protects it as speech. In his

[351]*New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

dissertation, Ken Willis distinguished between innocent ("only a joke") and contentious (political) jokes. Phrases such as "only a joke" are introduced into regular dialogue when the joke-giver wishes to distance himself from a joke that caused offense.[352]

When a comedian pulls out the satirist shield, they are demoting their joke to innocent status. Sturges pointed out, "Jokes are usually regarded as existing in a realm not wholly governed by the everyday requirements of tact and consideration for others...."[353] When a comedian goes out of the way to claim something was "just a joke" or that s/he is "just a comedian," they are acknowledging tact and consideration for others.

Some critics of Jon Stewart have claimed that he must acknowledge his status as an educator among young Americans. "Stewart needs to be more self-aware," media critic Dan Kennedy was quoted in the *New York Times* in 2004. "By offering serious media criticism, and then throwing up his hands and saying, in effect, 'Hey, I'm just a comedian,'. . . Stewart came off as slippery and disingenuous. Sorry, Jon, but you can't . . . still say you're just a comedian."[354]

Kennedy's claim is a common misconception. Of course, comedians like Stewart are very self-aware, and that's exactly the reason why they continue to pull

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[352] Ken Willis, "Merry hell: humour competence and social incompetence", in *Beyond a Joke: The Limits of Humour*, ed. Sharon Lockyer and Michael Pickering, (New York: Palgrave Macmillon, 2005).

[353] Sturges, "Comedy as Freedom of Expression," 282.

[354] Damien Cave, "If You Interview Kissinger, Are You Still a Comedian?," *New York Times*, October 24, 2004, accessed September 1, 2010, http://www.nytimes.com/2004/10/24/weekinreview/24cave.html.

out their satirist shield. Comedians recognize the power inherent in comedy and wish to keep it. They can do the preaching of a politician or a preacher, the informing of a journalist or educator, and still be safe from criticism as to their intentions because comedians are "only trying to make people laugh."

A Case Study of *The Daily Show Women Speak*

Comedians pulling their shields can degrade the deliberation occurring on certain issues. Over the course of this research, one event stood out as an ideal case study of the inner-workings of the satire community. *The Daily Show* was accused of partaking in sexism, evidenced by the few female writers and correspondents, and Jon Stewart decided a response was necessary.

The head producer of *The Daily Show* website asked the staff in the weekly production meeting on July 6th, 2010, if an article that Jon Stewart requested had been posted yet. At the time, not everyone even knew what the post was about or what it was in response to, but they quickly found out.

Two weeks before, the website *Jezebel*, a *Gawker*-owned women's issues blog, had put up an article titled "The Daily Show's Women Problem."[355] The article accused *The Daily Show* of being "a boy's club" and Jon Stewart of being sexist, claiming that getting women on air was "his major blind spot." On the June 29th

[355] Irin Carmon, "The Daily Show's Woman Problem," *Jezebel,* accessed July 6, 2010, http://jezebel.com/5570545/comedy-of-errors-behind-the-scenes-of-the--daily-shows-lady-problem.

episode of *The Daily Show*, Stewart off-handedly commented, "Jezebel thinks I'm a sexist prick."[356] Apparently that was not enough of a response.

The rejoinder post was called "The Women of *The Daily Show* Speak."[357] It was a letter supposedly written by the women of *The Daily Show* rebuking rumors of sexism, sprinkled with jokes and sarcasm. Upon reading the response letter, I was very disappointed with the content, which was a reaction shared by many coworkers. Dennis DiClaudio commented that he didn't think they should have responded at all if they were going to be "surfacey" and "not substantive."[358]

It was likely unfair that *The Daily Show* and Jon Stewart were pointed out as having a sexist workplace, since the issue is not unique to *The Daily Show*. However, instead of responding to the bigger issue—namely, sexism in comedy—the letter ignored any issues of substance. The letter came off as snarky and overly defensive. The letter included rebuttals such as, "And we're not thinking about how to maximize our gender roles in the workplace on a daily basis. We're thinking about how to punch up a joke about Glenn Beck's latest diatribe...."[359] Among the points in the Jezebel article that the letter completely rejected: "Women are universally scarce, whether in the writer's room or on the air." Many former female workers interviewed pointed to larger societal forces and institutionalized sexism as the

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[356] Comedy Central, "The Daily Show with Jon Stewart," June 29, 2010.

[357] Comedy Central, "Women of The Daily Show Speak," *The Daily Show with Jon Stewart*, accessed July 6, 2010, http://www.thedailyshow.com/message.

[358] Dennis DiClaudio, interview by author.

[359] Comedy Central, "Women of The Daily Show Speak."

reason behind the dearth of women on air and off. The co-creator of the program, Madeleine Smithberg, said:

> "I don't think Jon is sexist. I don't think that there is a double standard at the *Daily Show*. I do think that by the time it gets to the *Daily Show* it's already been through the horrible sexist double standard of the universe. You're not hiring someone right out of school. By the time they get to the candidates of the *Daily Show*, the herd has been thinned by the larger societal forces."

The response neglected to mention any of these claims.

Essentially, instead of starting an honest and intelligent discussion about sexism in the workplace, the writers of the response chose to pull out their satirist shield, deflecting further discourse on the issue by saying, "There's no sexism here, and we're comedians!" This episode illustrates the failures behind satirist's method of hiding behind their title to deflect criticism. After the post, no more discussion was given to the idea of sexism in the workplace, whether in the comedy community or writing community. As Amanda Hess of the Washington City Paper noted, "[Stewart]'s the head of a comedy institution, one with the power to either contribute to or counteract the overwhelming sexism of the field," and denying that power feels like a cop-out.[360] But again, that's the purpose of the satirist shield—to deny having power so that one can retain it.

The satirist shield has also enabled political-media elites to ignore criticism from comedians. As *The Daily Show and The Colbert Report* move deeper into the mediaocracy realm, their criticisms become more powerful. Those criticized,

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[360] Amanda Hess, "The Daily Show's Hiring Inequality," *Washington City Paper*, accessed July 8, 2010, http://www.washingtoncitypaper.com/blogs/sexist/2010/07/07/hiring-inequality-through-the-daily-show/.

however, can simply point to the satirist shield. “You are a comedian. We are adults having serious talks,” they seem to say. “Leave us be.” In September of 2010, Stephen Colbert—and subsequently, democratic debate—felt the negative effects of this dispensation when he brought satire directly inside Capitol Hill.

Take My Comedy Seriously: Negative Perception Effects of the Shield

"I think [inviting Colbert to testify] was a mistake,"[361] Democratic Representative Steve Cohen of Tennessee told *The Hill*, an online political news site. Cohen was referring to Stephen Colbert testifying before the House immigration subcommittee about the day he spent as a migrant worker as part of the “Take Our Jobs” campaign by the United Farm Workers of America. He was invited to speak by California Representative Zoe Lofgren.

"Picking vegetables for 10 hours doesn't make you an expert in anything…. I think using an actor in character to give testimony makes a mockery of the committee process."[362] Apparently Representative Cohen did not understand the point of satire, which is to mock a subject, such a society’s mores, or in this case, Congress’s handling of the immigrant workers issue.

However, it was not just politicians who said Colbert’s testimony was a joke. Many journalists agreed, viewing Colbert’s political satire in a negative light. Karen

[361] Christina Wilkie, "Colbert appearance causes mixed feelings," *The Hill*, accessed at September 25, 2010, http://www.thehill.com/homenews/house/120695-colbert-appearance-causes-mixed-feelings-on-capitol-hill.

[362] Ibid.

Finney, a liberal MSNBC commentator, claimed on NPR's *All Things Considered* that she cringed while watching the testimony. "[U]nfortunately, I don't think this levity actually furthered the cause…. Levity, in this sort of situation, only works if it's helping to point out the irony and sort of move the cause along."[363] I can only assume that Finney missed the irony in all of Colbert's lines, like this one:

> "I don't want a tomato picked by a Mexican. I want it picked by an American, then sliced by a Guatemalan, and served by a Venezuelan in a spa, where a Chilean gives me a Brazilian. Because my great-grandfather did not travel across 4,000 miles of the Atlantic Ocean to see this country overrun by immigrants."[364]

Nonetheless, many members of the media shared Linney's sentiments. The *Washington Examiner*, a daily tabloid, published that Colbert's testimony "fell flat" as the question "Why are we allowing this clown to make a mockery or our hearing and take up our time?" seemed to linger in the congressional air.[365]

Elites in media and politics stereotyped Colbert as a mere clown before he even reached the microphone. As this research project has shown, satire has great power to criticize. Although some satirists do not wish to admit it, their colorful criticisms can help shed light on hypocrisy that the public failed to otherwise notice

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[363] All Things Considered, "Week In Politics: Colbert Testifies On Migrant Workers : NPR," *All Things Considered*, accessed September 25, 2010, http://www.npr.org/templates/story/story.php?storyId=130107434.

[364] C-SPAN, "House Judiciary Subcommittee Hearing on Immigration and Farm Labor," C-SPAN, accessed September 25, 2010, http://cspan.org/Watch/Media/2010/09/24/HP/A/38516/House+Judiciary+Subcmte+Heairng+on+Immigration+and+Farm+Labor.aspx.

[365] Devonia Smith, "Stephen Colbert's congress routine fell flat," *Examiner.com*, accessed September 24, 2010, http://www.examiner.com/political-buzz-in-dallas/stephen-colbert-s-congress-routine-fell-flat-full-transcript-video-of-testimony.

or discuss. If the history of satirical news programs has shown anything, it is that governments know, fear, and have attempted to suppress satirical speech because of its perceived impact on public opinion. For politicians and journalists to sneer at Colbert's profession and ignore the content of his criticism, they must truly fail to see the impact satire can have on encouraging deliberative democracy.

To those outside the political/media realm, Colbert's impact was clear. As commenter "Ibisko ren" noted on the website of *All Things Considered*:

> "[D]o we need commentary from 3 doltish boring non-journalists to tell us what we think about Colbert? [M]ark [T]wain, [W]ill [R]odgers, [L]enny [B]ruce, [M]ort [S]ahl, [and] the [S]mothers [B]rothers did way more to advance political discourse than the drips on [All Things Considered]. [T]he tradition of the jester speaking to power persists."[366]

Colbert's appearance brought the most media attention to the subcommittee since Clinton's impeachment in the late 1990s, according to Representative Lofgren. The crowd overflowed into separate rooms, and cameras were wall to wall. Compare this gathering to the subcommittee's meeting just two weeks before Colbert's congressional appearance, where there was not a single camera.[367] Although most journalists would concede that Colbert brought attention to the

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[366] Ibisko Ren, September 24, 2010 (8:29 p.m.), comment on All Things Considered, "Week In Politics: Colbert Testifies On Migrant Workers : NPR," *All Things Considered*, September 24, 2010, accessed September 25, 2010, http://www.npr.org/templates/story/story.php?storyId=130107434.

[367] CBS News, "Colbert's Three-Ring Congressional Circus - CBS News Video." *Washington Unplugged*, accessed September 25, 2010, http://www.cbsnews.com/video/watch/?id=6897600n&tag=contentBody;featuredPost-PE.

issue, they still implied that as a comedian, most of his points of view were not to be taken seriously.[368]

Laughter is not the enemy of serious and informed political debate. On the contrary, laughter triggered by satire is apathy awakened from its slumber; it is a newfound realization of a hypocrisy being silently rendered. Comedy, in the form of satire, offers real and serious criticism of societal issues. Stephen Colbert's appearance in front of Congress and the reactions that ensued from politicians and journalists clearly reinforces the purpose for writing this thesis. Satirists' views, especially those that evoke laughter, should be taken seriously. These views encourage debate among the ordinary public. It is only those prominent politicians and journalists who can shun satirists as being beneath their profession. After all, in terms of *The Daily Show* and *The Colbert Report*, political viewpoints and coverage by media outlets are most often the target of ridicule and criticism.

Conclusion

Every single comedian or satirist does not believe one can enact political or social change through jokes. David Feldman, a former writer at *The Daily Show* and *Real Time with Bill Maher*, doesn't have much hope that satire can help educate the citizenry. "You can't change anyone's mind, certainly not with political humor. I

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[368] On *Washington Unplugged*, Nancy Cordes stated, "He's a celebrity who also happens to be a comedian, and he can have a serious point of view *from time to time,*" [emphasis added]. CBS News, "Colbert's Three-Ring Congressional Circus - CBS News Video." *Washington Unplugged*, accessed September 25, 2010, http://www.cbsnews.com/video/watch/?id=6897600n&tag=contentBody;featuredPost-PE.

think all you can do is provoke them."[369] Provocation implies that satirical news invokes a purely emotional response, void of rationale and lasting impact. However, in my research and observations, Feldman's view was not supported. Most can and do recognize the innate power in comedy. Eddie Ifft, a comedian who has toured extensively around the globe, said that he heard that the role of satirists in ancient Greece was "to embarrass politicians to the point where the politicians would sometimes kill themselves to save face.... How amazing is this power?"[370]

As researcher Paul Sturges explained, "Comedy is sometimes treated as if it were inconsequential, a means of amusement, merely merriment." But even the most light-hearted comedic commentary takes on a broader significance. "Dismissing comedy as just a laughing matter misses the point."[371]

This research has aimed to conceptualize the intentions of writers using comedy as a political tool (or politics as a comedic tool) based on a limited ethnographic examination of political comedy blogs and *The Daily Show* and *The Colbert Report* websites. By focusing on observations and interviews, I defined the norms of intentions in political comedy, as well as the shortfalls of the political comedians observed.

The satirist shield is a powerful tool in the comedy arsenal. At the same time, it is the only object in the way of legitimizing their criticisms, especially among

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[369] Dion and Provenza. *Satiristas,* 172.

[370] Ibid., 184.

[371] Sturges, "Comedy as Freedom of Expression," 280.

media and political elites. Once removed, the targets of criticism may still claim, "They're just stooges," but the public will know better. The indignation invoked by satire reveals that within these jokes, there's truth, and where there's newly exposed truth, there's discussion.

CHAPTER 6

Conclusion: Can Truthiness[372] Help Citizens Find the Truth?

In a November 2010 interview on her show, Rachel Maddow asked Jon Stewart whether he thought the role *The Daily Show* played in the public sphere went beyond entertainment. "Satire—it's more than entertainment," Maddow pointed out. "It is engagement and it is criticism."[373] Stewart's response was that his process had more in common with *Seinfeld*[374] than the news.

This research project did not seek to explain the processes behind satirical news. It sought to distinguish the role of satirical news, which as Maddow understood, is "more than entertainment." Satire has played an essential function in educating the public through criticism and dissent. Satire has served as an important check of government corruption, a role the press was thought to solely hold.[375] Most importantly, satirists have fought to spread truth and break down

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[372] Stephen Colbert invented the word "truthiness" – meaning the quality of preferring concepts or facts that you *wish* to be true, rather than concepts or facts that you *know* to be true – in his first television broadcast of *The Colbert Report*. Comedy Central, *The Colbert Report,* October 17, 2005, accessed September 22, 2009, http://www.colbertnation.com/the-colbert-report-videos/180903/october-17-2005/first-show.

[373] Jon Stewart, interview by Rachel Maddow, *The Rachel Maddow Show*, MSNBC, November 11, 2010, accessed November 13, 2010, http://www.msnbc.msn.com/id/40194651/ns/msnbc_tv-rachel_maddow_show/.

[374] Seinfeld was an American television sitcom that aired from 1989 to 1998. It has since become a cultural phenomenon, and in 2002, TV Guide named it the greatest television program of all time. See Bootie, Cosgrove-Mather Bootie, "TV Guide Names Top 50 Shows," CBSnews.com, accessed November 18, 2010, http://www.cbsnews.com/stories/2002/04/26/entertainment/main507388.shtml.

[375] The press is called the "Fourth Estate" because of its role in checking government corruption. *See* Matthew Gentzkow, Edward L. Glaeser, and Claudia Goldin, "The Rise of the Fourth Estate: How Newspapers Became Informative and Why It Mattered," *National Bureau of Economic Research Working Papers* no. 10791 (2004).

sham societal structures even in the face of censorship, whether in the form of licensing, libel, copyright laws, low ratings or political maneuverings. The end result is a public better informed and interested in discussing societal and political issues.

Satire must be distinguished from other forms of political entertainment in future research. Satire's role in discourse, although often unrecognized, is integral to the operation of a deliberative democracy. Satire helps spread information and enlightenment. The publication behind the Zenger trial—the first time in U.S. history that truth was used as defense for seditious libel—was a satire. Satire reveals truth. Its role as a form of criticism of societal structures reorganizes the public's beliefs and expectations, resulting in new ways of thinking about and discussing political problems.

Both the First Amendment and satire encourage free speech and dissent. A robust debate and dialogue are necessary to achieve deliberative democracy. According to current media law scholarship, the First Amendment was seen as an integral part of democracy because it encouraged such debate, partly by offering protection for minority views and dissent. Satire, as a form of dissent and criticism, helped form free speech ideals that were solidified by the First Amendment and its subsequent evolving interpretation. Today, free speech law has progressed so that satire is completely protected from suppression from the government via licensing, prior restraint, or libel.

Implications

The implications of this research project primarily lay in providing theoretical and historical background to satirical news, situating the genre as a legitimate critic instead of mere entertainment. This research has implied the role of satirical news is more closely related to that of the press, the original "Fourth Estate," than to opinion-laden pundits of the mediaocracy.

In an interview with Jon Stewart, Bill Moyers said, "You've said many times, 'I don't want to be a journalist, I'm not a journalist….' But you're acting like one. You've assumed that role. The young people that work with me now, think they get better journalism from you than they do from the Sunday morning talk shows."[376] Jon Stewart argued that *The Daily Show* functions more like an editorial cartoon, while a few moments later, seemed to contradict himself: "People don't understand that we're not a warrior for their cause…. We want to write jokes about the absurdity that we see in government and the world…."[377] In the end, who is correct about the satirist's role? Is it the role of a journalist, spreading facts and truth and checking government corruption, or is it the role of an editorial cartoonist, giving the world a humorous, exaggerated message?

This research project asserts that both Moyers and Stewart are correct; the roles can be one in the same. Satire was often used in journalism and publications in our early years. Television reinvigorated the genre, allowing the satire to reach and eventually keep a wider audience.

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[376] Jon Stewart, interview by Bill Moyers, *Bill Moyers Journal*, PBS, April 27, 2007, accessed November 13, 2010, http://www.pbs.org/moyers/journal/04272007/transcript4.html.
[377] Ibid.

Private Eye's Bruce Petty once said with mock humility that the political cartoonist "most always chooses entertainment over truth."[378] Stewart and the satire genre are distinct in their preference for truth; any claims Stewart makes similar to Petty's are his attempt to misguide our perceptions of the satirist's true role. Because satirists are "wise in their own conceit," they often pull out the satirist shield, deflecting criticism and praise of importance. The separation of the roles of entertainer and truth-teller creates a false dichotomy because both apply to news satirists. This research reveals that this is an underlying belief in the comedy community, which I call the "satirist shield." Comedians believe that a satirist can more easily fulfill the role of spreading truth through indignation and laughter if the audience does not expect a truth claim to be revealed. Apparently, nobody is supposed to expect wisdom from the town fool—unless they've read Shakespeare.

Would Jon Stewart lose his power if the public understood satire's roles and influences? His and other satirists' use of the shield would have us believe so. This research has found no indication of such a correlation. However, because such a connection cannot be empirically excluded from consideration, I would encourage further investigations as to whether the satirist's influence decreases when the public views the comedians as legitimate critics.

This research project also showed that the concept of satirical news playing an important role in politics is not new, especially in the United States. Satirists aim

[378] This quote comes from the famous political cartoonist for *Private Eye*, Bruce Petty. Peter Coleman, "Political cartoons," *The Oxford Companion to Australian Politics*, eds. Brian Galligan and Winsome Roberts, Oxford Reference Online, accessed November 13, 2010, http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t250.e264.

their jokes at whatever obstacle exists in the way of free speech, dissent, and ultimately, deliberative democracy. In the past, satire often fought against government censorship. Today, shows like *The Daily Show* and *The Colbert Report* most often aim their criticism at the media. As Jon Stewart pointed out at his 2010 rally, "If we amplify everything, we hear nothing." Satirical news is no longer necessarily fighting for a greater freedom of speech, as it has in the past. There is too much emoting and spinning in the current mediaocracy; satirists must fight for speech based around truth and discussion. My research implies that satirical news is responsible for creation of the very same informed citizenry that Neil Postman and Robert Putnam claim is being decimated by entertainment.

Directions for Future Research

In the land of mediaocracy and infotainment, the political pundit has come out on top. Stephen Colbert created his on-screen persona to parody Fox News pundit Bill O'Reilly. Jon Stewart said that as a satirist, he tries to avoid the demagoguery of pundits. "We're not provocateurs, we're not activists; we are reacting for our own catharsis."[379] Although this language evokes the shield once more, it also reveals Stewart's need to distinguish himself from political news pundits. Both pundits and satirists succeed in the world of infotainment, but as Stewart wishes to make clear, the two types of political entertainment are playing

[379] Chris Smith, "Why the Worst of Times for Politics and Media Has Been the Best of Times for Jon Stewart and 'The Daily Show'," *New York Magazine*, September 12, 2010, accessed September 25, 2010, http://nymag.com/arts/tv/profiles/68086/.

on opposite teams. One is rabble-rouser, the other, a civilized critic, enhancing democratic dialogue. More research needs to be completed in distinguishing political comedians and political pundits. This research project recommends a study of the evolution of both comedians and pundits alongside the development of infotainment.

Furthermore, more qualitative testing on the amount of political knowledge viewers can gain from watching *The Daily Show* or *The Colbert Report* could help researchers to understand the vital political information provided by satirists. These measurements, however cannot be divorced from the amount of interpersonal discussion of politics that is directly or indirectly inspired by these satirical shows. Such a measurement could empirically answer whether satirical news encourages deliberation over political issues. This research project cannot persuade journalists and politicians to take the people mocking them more seriously without making the same proposal to communications researchers. It is true that humor is difficult to define, and the specific causes for laughter are far from concrete. Nonetheless, once researchers push forward to study and explain the power and influence of satirical news, society will follow suit.

International communications scholars should take a further look at different country's laws regarding free speech and satire. As evidenced in Chapter 3's discussion of Brazil, the issue of whether politicians can be openly ridiculed—and whether it benefits the voting public—is still being debated in other democracies. Are other countries lacking strong free speech protection for satire,

as afforded under the First Amendment? Is there a cultural difference in how humor or criticism is valued?

Finally, detailed case studies on individual satirical events and their impact would benefit communications research as well as the general public. Society can learn from satire's criticism. When asked what news media could learn from *The Daily Show*, host Jon Stewart responded, "fact-checking. The thing about comedy is that it's only funny if it's true, so facts are important to us."[380] As evidenced in the introductory chapter, Stewart has been known to reveal misstatements of fact and the hypocrisies of pundits often on his show. The question persists, however, of whether exaggerating hypocrisies and societal wrongs—making them "truthier"—will help to provide any solution to an issue. An excellent case study on satirical comedy's impact presented itself in the autumn of 2010, and is detailed below.

On October 30th, 2010, Jon Stewart and Stephen Colbert hosted "A Rally to Restore Sanity and/or Fear," an obvious parody of the "Restoring Honor" rally held by Fox News host Glenn Beck the previous August in Washington, D. C. As journalist David Carr noted, the choice to actually lead a rally was odd since Stewart's "influence is built on observing politics from a coolly ironic distance."[381] Of course, as evidenced in Chapter 5, Stewart creates this distance—this satirist shield—to buffer himself from criticism. Was Stewart finally putting down his shield? The

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[380] Jon Stewart, Interview by author during Question and Answer segment prior to taping of *The Daily Show,* New York, New York, July 6, 2010.

[381] David Carr, "Blurring Satire and Politics," *New York Times*, September 19, 2010, accessed September 20, 2010, http://www.nytimes.com/2010/09/20/business/media/20carr.html?src=busln.

Washington, D. C. event encouraged a hoard of media coverage, placing "Mr. Stewart into the realm of commented upon."[382]

Tucker Carlson, a former CNN conservative pundit who has fought his own battles with Stewart, told the *New York Times*, "He'll try to pass this off as an extended bit, but on some level it's real."[383] Carlson said he believes that Stewart's step deeper into the political sphere will make him "increasingly less funny."[384] Carlson again[385] wishes to denigrate the importance of Stewart's satire. As discussed in Chapter 2, satire requires a reality to deconstruct. Stewart imitated a rally, and at the same time, deconstructed a rally's fear- and emotion-inducing tendencies, revealing political calls-to-action to be shams of human construction and hypocrisy. It is satire that "snaps" that reality and elicits that gut reaction of laughter. It's serious and funny; the two are not at odds in satire.

Conclusion

The role of satire in political affairs has evolved over time, but many factors have remained constant. Satire has an innate ability to reveal hidden truths through

[382] Carr, "Blurring Satire and Politics."

[383] Ibid.

[384] Ibid.

[385] Tucker Carlson appears to be on a vendetta against Stewart ever since Stewart shamed Carlson on his show *Crossfire* in 2004: "Stop hurting America…. You are partisan, what do you call it, hacks," Stewart said. CNN, "Jon Stewart's America," CNN Crossfire, October 15, 2004, accessed September 28, 2009, http://transcripts.cnn.com/TRANSCRIPTS/0410/15/cf.01.html, More recently, in March of 2009, Tucker wrote an article on his news site *The Daily Beast* called "How Jon Stewart Went Bad." Tucker Carlson, "How Jon Stewart Went Bad," *The Daily Beast*, March 18, 2009, accessed September 28, 2010, http://www.thedailybeast.com/blogs-and-stories/2009-03-18/how-jon-stewart-went-bad/.

indignation and laughter. Satire has played an essential role in the expansion of free speech rights both before and after the First Amendment. Finally, satire has the ability to influence the public's view of political issues by encouraging critical thinking and debate. When satirical news hit television, and thus a greater audience, politicians and public figures reacted to this critical speech by restricting airtime, by censoring intransigent content, or was the case in England, by canceling the show.

This research project has fully examined the roles of satirical news from a legal, historical, and observational perspective. These roles demand respect and further scholarly examination. Strict-separationist interpretations of satire that place laughter and serious discussion on opposing ends do not take into consideration the roles of satirical news, such as spreading truth and encouraging discourse. By understanding these roles, the public can accept satirists as legitimate critics, enabling comedians to step out from behind their shield and fully absorb the First Amendment's protections, while fulfilling its original intent: to promote "debate on public issues [that] should be uninhibited, robust, and wide-open, and that may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."[386]

[386] *New York Times Co. v. Sullivan,* 376 U.S. 254, 270 (1964).

APPENDIX A

Interactive Online Satirical News Thesis

This thesis has a complementary online component. This research has been translated to an interactive website, which can be accessed as of November 22, 2010 at the following address:

www.satiricalnews.weebly.com

As websites are often transient, please feel free to contact me if unable to locate the website at my permanent e-mail: sarahjeanburton@gmail.com.

APPENDIX B



Informed Consent Form for Ethnographic Research, IRB #34664

ORP OFFICE USE ONLY
DO NOT REMOVE OR MODIFY
IRB# 34664 Doc. #1001

Implied Informed Consent Form for Social Science

The Pennsylvania State University

Title of Project: Fake/Satirical News Writers Study

Principal Investigator: Sarah Burton

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814.863.7990; meh21@psu.edu

1. **Purpose of the Study:** The purpose of this research is to examine the impact satirical news programs have on education the citizenry and encouraging intelligent discourse.

2. **Procedures to be followed:** You will be asked to take part in 1-3 interviews that will be audio recorded.

3. **Discomforts and Risks:** There are no risks in participating in this research beyond those experienced in everyday life.

4. **Benefits:** The benefits to others include knowledge of the inner-workings of the fake newsroom and the intentions of the writers of fake news.

5. **Duration/Time:** Interview will last between 15-20 minutes each unless you wish to meet longer.

6. **Statement of Confidentiality:** Your participation in this research is confidential. The recordings will be stored on the principal investigator's computer in a password-protected file. Only she will have access to the recording. The recordings will be destroyed once the interview has been transcribed verbatim. The Pennsylvania State University's Office for Research Protections, the Institutional Review Board and the Office for Human Research Protections in the Department of Health and Human Services may review records related to this research study. In the event of any publication or presentation resulting from the research, no personally identifiable information will be shared.

7. **Right to Ask Questions:** Please contact Sarah Burton at (484) 459-9087 with questions, complaints or concerns about this research. You can also call this number if you feel this study has harmed you. If you have any questions, concerns, problems about your rights as a research participant or would like to offer input, please contact The Pennsylvania State University's Office for Research Protections (ORP) at (814) 865-1775. The ORP cannot answer questions about research procedures. Question about research procedures can be answered by the research team.

8. **Voluntary Participation:** Your decision to be in this research is voluntary. You can stop at any time. You do not have to answer any questions you do not want to answer. Refusal to take part in or withdrawing from this study will involve no penalty or loss of benefits you would receive otherwise.

You must be 18 years of age or older to take part in this research study.
Completion of the interview implies that you have read the information in this form and consent to take part in the research.

Please keep this form for your records or future reference.

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Video Blogger for IES Abroad in Dublin, Ireland *SPRING 2009*
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