

New York Times v. Sullivan Supreme Court decision: Freedom of Speech or a License to Lie?

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Abstract

This paper explores the freedom of speech and of the press precedent set by *New York Times Co. v. Sullivan* with regard to three ethical philosophies and social responsibility standards. This paper argues that the freedom of speech doctrine, as held in *NY Times Co. v. Sullivan* goes too far in protecting lies, falsity, and misrepresentation of facts. It asserts that the malicious intent requirement of law is too restrictive, truth should be the critical determining quality for freedom of speech even when it involves public and government officials, and that morality demands truth of the law. It further asserts that where the truth can easily or reasonably be known, publishers of falsity should be held liable, even absent proof of malice.

Keywords: freedom of speech, freedom of the press, actual malice, truth in media, Sullivan, New York Times Co., libel, defamation, civil rights, public accountability

I. Introduction

In 1964 a very important Supreme Court ruling changed liability law in the United States. The purpose of this paper is to evaluate the legal, moral, and social responsibility of the U.S. Supreme Court decision in *New York Times Co. v. Sullivan* case which significantly impacts the liability of false speech made in a public forum against public and political figures. The decision in the *NY Times v. Sullivan* case forever changed the way courts evaluate liable suits against public officials. This paper evaluates the impact of the famous *Sullivan* verdict within the context of moral, social, and legal standards. It examines the morality of the *NY Times v. Sullivan* decision against the ethical philosophies of Utilitarianism, Kantianism, and Aristotelian schools of thought. It proposes that the decision in the *NY Times v. Sullivan* case was wrongly influenced by political climate of the times and that the legal ramifications are far more hurtful to society than any temporary gain that may have been brought about by the decision. Against the backdrop of civil unrest in the 1960's, an important precedent was set that forever undermines truth and liability in the media.

When the Supreme Court heard the *NY Times v. Sullivan* case, civil unrest in the U. S. was paramount on the legal stage. With courts being charged with changing decades old legal standards of segregation, the political climate exerted a strong influence on law making and legal interpretation. The courts struggled to find equity in its decisions and guide the nation to a better moral climate based in sound legal decisions. Cases that went before the Supreme Court were heard within the context of the cry for civil rights, as should be. However, in the *Sullivan* case, the Court overstepped its boundary and created a dangerous precedent that outlasted the times it was formulated in and is used to buttress attempts to continue to mislead and misinform the public today.

II. Legal Issue

The United States Supreme court decision in the case *New York Times Co. v. Sullivan* in 1964 set a landmark precedent for freedom of speech. While this case has been lauded as a major victory for free speech, many feel that the decision goes too far in protecting false speech and should be revisited within the context of modern society. The right to freedom of speech is a foundational concept of our country. In fact the First Amendment to the Constitution guarantees it. The exact wording of the amendment states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (*First Amendment to the Constitution of the United States of America*, 1791)

The doctrine of Freedom of Speech holds that the good of the people relies on the free exchange of ideas especially when it comes to the political arena. The American Court system has long upheld this freedom to the highest degree. Yet, the courts have determined that speech can be limited in certain cases. Therefore the words "no law . . . abridging the freedom of speech or the press" have already been superseded. State as well as Federal courts have written laws that prohibit certain kinds of speech. At issue is whether the laws have gone far enough to protect the public from harmful, defamatory, or false speech.

While the courts have ruled to limit speech, they continue to grant the most protection to political speech. The

rationale holds that, “[t]he “antidote” for false political speech is true political speech, and thus emerges the “battle of ideas” in a democracy . . . where rational and free debate on the issues serves the public interest” (Cavico, *Legal Challenges*, 2008). This may hold true in the arena of “ideas” and opinions for which we hold the upmost due respect and allow free discourse. However, when facts are known or can easily or reasonably be known, publishing false speech, whether political or not, warrants sanctions.

In contrast, commercial speech is held to a much higher standard of truth than that of political speech. “Because the public does have a “right to know,” consumers do have a legitimate interest in the free flow of commercial information, which is deemed necessary for the consumer to make a well-informed decision” (*Ibid*). The courts have determined that a measure of truth is expected in advertizing and corporate speech. Therefore, our government, in the best interests of the people it supports, has determined that “we the people” need and deserve far greater truth in business dealings than political matters.

This very perpetration of allowing published lies to stand unquestioned simply because they relate to political issues or persons, raises troubling questions about what information the public receives, how accurate it is, and who is responsible for safeguarding public interests. If not the government and law institutions, then who will protect the truth? Why, for instance, is it more important to know the truth about the jeans one buys than the political candidate that one is asked to vote for? Shouldn’t the truth be even more important in political speech? Isn’t the “right to know” the truth in order to “make a well-informed decision” even more applicable in the political arena?

Obviously in the realm of opinion, speech cannot be conscientiously and morally regulated. However, when facts can reasonably be ascertained, doesn’t the *responsible* journalist have an obligation to provide accuracy and truth? Further, doesn’t the public have the right to demand it? And shouldn’t the government and laws designed for public protection, insist on it? These seem like easy enough questions to answer with common sense, a rational mind, and even a modicum of morality, yet the legality remains far from the ideal.

In a landmark decision in 1964, the United States Supreme Court expanded the protection of freedom of speech to include even false speech if it is politically motivated. The case of *N.Y. Times Co. v. Sullivan* has set a precedent that libelous speech must, even if untruthful, be supported by a provable claim of “actual malice” (*NY Times v. Sullivan*, 1964). This case and decision are complicated and multi-faceted and deserve intense scrutiny due to the long range legal, moral, and social ramifications.

The facts: On March 29, 1960, an advertisement, called *Heed Their Rising Voices*, was placed in the New York Times, a well-respected news source. The purpose of the ad was to bring attention to the growing civil rights movement in the south. It cited many instances of abuse by public officials directed against men and women of color, including Dr. Martin Luther King and his family. The ad was a call to action and request for funds to support the civil rights movement. It was purportedly signed by many well-known and respected civil rights leaders of the time, both white and black. That many of the individuals listed did not consent to sign their names is another legal point at issue with the article. However, here the focus will be on the “facts” indicating police misconduct in Montgomery Alabama.

The advertisement claimed, among other things, that

In Montgomery, Alabama, after students sang “My Country, ‘Tis of Thee” on the State Capitol steps, their leaders were expelled from school, and truck-loads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was pad-locked in an attempt to starve them into submission. (*NY Times, Heed their rising voices*, 1960)

The plaintiff, L. B. Sullivan, an elected commissioner of the State of Alabama, filed suit against the *NY Times*. Sullivan claimed that since his duties include supervision of the Police Department, he was directly maligned by the ad and suffered damages to his reputation as a result. The investigation into the Sullivan’s claim revealed that many statements in the advertisement “were not accurate descriptions of events which occurred in Montgomery” (*NY Times v. Sullivan*, 1964). Among the fraudulent claims were: the fact that only nine students were expelled from school for demanding lunch service at a lunch counter, not for the purported protest in which many students took part by skipping class and not by refusing to register, as the advertisement claimed, the campus dining hall was not padlocked at any time, and the police never “ringed” the campus (*Ibid*).

Under Alabama law, public officers cannot claim punitive damages unless a request for retraction is made to the publication first. Sullivan requested such a retraction and was denied. The *NY Times* subsequently published a retraction at the request of the Governor of Alabama because the ad referred to State authorities and the Governor could be construed as being the “official chairman” of the government arm. However, the *Times* maintained that Sullivan was not named or implicated by the language in the ad (*Ibid*). Sullivan then filed suit.

During the original trial, the judge instructed the jury that the statements were “libelous per se” and not privileged. Therefore, the jury may find the petitioners liable if they found “that the statements were made “of and concerning” the respondent” (*Ibid*). Libelous per se implies “damage to the plaintiff’s reputation is presumed

by the law” (Cavico, *Legal Challenges*, 2008) and “falsity and malice are presumed” (*NY Times v. Sullivan*, 1964). Under Alabama law, once libel per se has been established, defendants have no defense to the stated facts except to “persuade the jury that they were true in all their particulars” (*Ibid*). Since “it is uncontroverted that some of the statements contained in the two paragraphs were not accurate descriptions of events”, the jury awarded Sullivan 500,000\$ in damages (*Ibid*). The State Supreme Court of Alabama upheld the decision, finding that the “verdict was not excessive” and “malice could be inferred by the Times “irresponsibility” in printing the advertisement while the Times in its own files had articles already published which would have demonstrated the falsity of the allegations” (*Ibid*).

The Supreme Court reversed and remanded the lower court’s decision on March 9, 1964. The High Court held that the Alabama Court’s decision was “constitutionally deficient” for failing to provide the safeguards for freedom of speech and of the press “guaranteed by the First and Fourteenth Amendments” (*Ibid*). Some scholars and historians have heralded the verdict as a great advancement for freedom. Legal scholar, Ronald Collins, calls the *New York Times Co. v. Sullivan* decision, “the case that changed First Amendment history” (New York Times Co v. Sullivan, 2004). Collins cites Justice Brennan in giving the Supreme Court opinion:

[W]e consider this case against the background of a profound national commitment to the principle that *debate on public issues* vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials” (emphasis added). With those 44 words Brennan captured the essence of freedom of expression, a principle born out of centuries of struggle.

Freedom of expression does hold a dear meaning in the freedoms our country was founded on and we cherish so much. However, “vehement, caustic, and sometimes unpleasant attacks” are not the same thing as outright lies, falsehoods, mistakes of fact, or mistruths. The reader has a moral sense that these “attacks” hold truth as the basis for their accusations. While Collins feels the decision in this case captures the “essence of freedom of expression . . . born out of centuries of oppression” (2004), I argue that it mislays the truth in favor of the political influences of the time. While opinions and political climates may change drastically over the decades, truth in the form of known and knowable facts is constant and should be the guiding principle in selecting which speech to censor. Unfortunately, this case was never really about freedom of speech and should not have been used to set such an enduring precedent.

The *Sullivan* case was decided within the social context of the civil rights movement of the 1960’s. The decision was reached during the critical period of unrest in the United States when millions of blacks fought for equal rights. The climate of hate, racism, and prejudice was rampant, especially in the south. This case was considered a victory over suppression of the media and an advancement for the civil rights cause. Aimee Edmondson evaluates the impact the *Sullivan* verdict has had and why it was reached in the first place in the article, *In Sullivan’s Shadow: The Use and Abuse of Liable Law Arising from the Civil Rights Movement 1960-89*. “It has been well established that had the Supreme Court failed to overturn *Sullivan*, the case’s impact on the civil rights movement would have been staggering” (2011). That *Sullivan* was used as a spotlight to “provide a view for a national audience of the racial injustices in the Alabama legal system” (Smith, *Casual conversation or Constitutional Conspiracy*, 2005) is very disturbing.

In *A Proposal to Rescue New York Times v. Sullivan by Promoting a Responsible Press*, Benjamin Barron addresses some of the problems inherent in this controversial decision. “The actual malice standard has also been criticized for inadequately protecting the reputations of plaintiffs” by immediately placing them “in defensive postures” (2007). Further, following *Sullivan* “the actual malice standard does not deter the press from negligently investigating leads . . . and increase[s] the likelihood that the press will publish injurious falsehoods” (*Ibid*). Ronald Nachman, *Sullivan*’s attorney, argued that the “promise of *The New York Times v. Sullivan* was a virtual absolute immunity from private libel suits” (Smith, *Casual Conversation*, 2005). While this case was decided against a backdrop of social change for the better, the decision, subsequent outcome, and lasting effect for years to come seriously undermines the public trust in the media, the ability to defend one’s reputation against false smears, and encourages blatant and rampant falsehoods to be published with not legal recourse for victims. In fact the Times could have avoided litigation altogether with a modicum of professionalism.

The irony of *Sullivan* is that the Times would have avoided liability if it had satisfied any of the proposed criteria of responsible journalism. Editors at the Times could have contacted the signatories of the political advertisement, checked the facts with their Alabama reporter or against their own articles, or published a timely correction. Each was a cheap and easy option. (Barron, *Proposal to Rescue NY Times*, 2007)

In fact, this verdict has done more to strip the public of rights than it does to uphold and affirm them.

The courts went too far in trying to suppress the climate of hate in the south through allowing the press to publish what amounts to opinion speech in the cloak of factual reporting. The High Court would have done well to judge this case on its merits alone and allow the civil rights movement to proceed with truth as a guiding principle. The “[Supreme] Court noted that it could have reversed solely on the narrow ground that the

references to the police in the advertisement were insufficient a cause of action for the defamation of an unnamed county commissioner” (Barron, *Proposal to Rescue NY Times*, 2007). The premise in this case was always a slim leap from the references in the advertisement to “the police” and defamation of Sullivan. The courts had ample evidence at their disposal to stem the influx of liable cases coming from southern officials about press coverage over alleged abuses. This decision has had a long standing effect on the relationship between the press and the public which undermines the public’s belief in goodwill, the integrity of the media, and legal retribution for damages. “Indeed, the Sullivan standard itself, although fashioned with the objective of protecting press speech needlessly sacrifices the best interests of the public” (*Ibid*).

III. Ethics

Our forefathers demanded moral responsibility of government to its citizens. They obviously believed strongly that our freedom must be predicated on the ability to speak one’s mind openly without fear of reprisal. However, one’s thoughts or opinions are quite different from knowable facts. Open discourse is an important prerequisite for a free populace, as is truth! In the realm of philosophy, truth is a measure of “the good” and most philosophical inquiry seeks truth as its ideal. The question remains; is suppression of truth a change for the better? An ethical evaluation of the ramifications of the *New York Times Co. v. Sullivan* case against three important well-known ethical doctrines, Utilitarianism, Kantian, and Aristotelian schools of thought will provide some insight.

Philosophy encompasses the study of “fundamental questions such as the nature of reality, conduct, and thoughts” (Cavico, *Business Ethics*, 2009). The study of philosophy is divided into three main subjects. Metaphysical philosophy seeks meaning and attempts to explain the inherent nature of the universe and man’s place in it. The philosophy of knowledge addresses the concept of knowing and correct mental processes. The field of political and ethical philosophy examines such practical issues as human beings’ nature, relationships to others, and their place in the larger world in an attempt to determine a right or best way of living (*Ibid*). Ethics forms a branch of philosophy which specifically exams human actions and assigns a moral judgment to actions of either good or bad.

Ethics is prescriptive. It defines what is moral and seeks to regulate human behavior. Accordingly, “[e]thics is the sustained and reasoned attempt to determine what is morally right or wrong” (*Ibid*). For this reason, ethical philosophy is widely utilized in law and business practices. Ethics provides a standard with which to test the moral correctness of a person’s or societies’ beliefs, actions, and rules. Ethical theories contain “formal, systematic, and ethical principles” that make hard moral judgments of right and wrong (*Ibid*). In ethical evaluations, there is only one right or moral answer and it can be arrived at rationally.

The express purpose of ethics is to arrive at principles that can be used in specific situations to evaluate moral correctness of actions and practices. In this way, one can use ethics to determine the moral validity of business practices, social norms, and laws. However, there is no one determinant set of ethical theories. Many ethical theories contradict each other. Each ethical theory emphasizes a moral principle or set of principles which prescribe correct behaviors that will ultimately lead to the “good life” (*Ibid*). The definition of the “good life” and the way to attain it is frequently debated by ethical philosophers.

The ethical theory of Utilitarianism was developed by British philosopher, Jeremy Bentham to promote social and legal reform in England (Cavico, *Business Ethics*, 2009). Bentham’s theory provides an objective empirical means of determining morality which focuses on consequences of actions, not only on oneself, but for society as a whole. Commonly called the “Greatest Happiness Principle”, a system of Utilitarianism seeks to maximize pleasure and minimize pain for the greater number of people. According to John Stuart Mill, Bentham’s primary advocate, the Utilitarian standard “is not the agent’s own greatest happiness, but the greatest amount of happiness altogether” (*Utilitarianism*, 2011). Mill argues, not that society as a whole should merit more freedom, pleasure, etc. *than* the individual, but that

utility would enjoin, first, that laws and social arrangements should place the happiness, or . . . the interest, of every individual, as nearly as possible in harmony with the interest of the whole; and secondly, that education and opinion, which have so vast a power over human character, should so use that power as to establish in the mind of every individual an indissoluble association between his own happiness and the good of the whole. (*Utilitarianism*, 2011)

In other words, for Mill, the happiness of the individual is *tied* to the happiness and well-being of society. One cannot and should not take precedence over the other.

Further, Mill also insists on a standard of morality, virtue, and “nobleness of character”. He states that Utilitarianism “could only attain its end by the general cultivation of nobleness of character, even if each individual were only benefited by the nobleness of others” (*Ibid*). The cultivation of a free and happy society depends in great part on the cultivating the character of virtue in its citizens. Utility “maintains that not only that virtue is to be desired, but that it is to be desired disinterestedly, for itself”. Virtue is capable of becoming part of

the end “and in those that love it [virtue] disinterestedly it has become so, and is desired and cherished, not as a means to happiness, but as a part of their happiness” (*Ibid*). The love of virtue must be cultivated in citizens. It cannot be expected to just spring naturally from all men.

While we allow that men have and should have the greatest amount of freedom to make choices, the value they add to society can be increased and can increase the overall happiness of the whole. “The utilitarian standard, while it tolerates and approves those other acquired desires . . . requires the cultivation of the love of virtue up to the greatest strength possible, as being above all things important to the general happiness” (*Ibid*). Utility, therefore, demands that virtue be encouraged in men so as their value in society is increased.

Mill claims that “everyone who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest. This conduct consists first, in not injuring the interests of one another” (*On Liberty*, 1975). The interests of people in general are best served by the truth of facts, as lies, by their nature, are harmful. Mill insists, “a person may possibly not need the benefits of others; but he always needs that they should not do him hurt” (*Ibid*). While freedom of speech is one of the most protected rights in the United States, legislation has placed limits on speech in certain cases, such as harmful, untruthful, or threatening speech.

One must ask; is it moral for the Supreme Court to allow that false speech against public or government officials be publicized, only be held libel if malice can be proven, and who could potentially be affected? How can one determine with any accuracy the morality of the *NY Times v. Sullivan* decision? Since Utilitarianism deals primarily with numbers of people rather than with strict morality in terms of individual actions, a mathematical formulation can be used to calculate the overall good v. bad of individual’s actions and their effect on society.

The *Sullivan* decision affects every individual in our country and potentially even the world due to the widespread dissemination of information in today’s day and age. The ramifications are far-reaching for society as a whole, especially within the modern global context of both business and politics. Utilizing a Utilitarian analysis where the stakeholders involved include every single person in our nation, we can assign numerical values to pain and pleasure to determine overall value to society. Based on a system laid out by Cavico (*Business Ethics* 2009), we will use assigned numerical values ranging from -5 (most pain) to +5 (most benefit) to determine the morality of the *NY Times* case.

A person or entity which publishes lies will have a motive to influence people in some way by the information. Whether the courts determine if the motive is malicious or not does not discount that there is a motive, even if the motive may be for a good aim. Therefore, if the lies are taken for fact one assumes the motive was achieved and therefore the benefit to the “liar” would great. One may even assign a value of +5 to it. However, in the instance that lies can be propagated at will, one can assume that even if motive and benefit are achieved by a lie, the fact that others can also be allowed to lie negates part of the benefit (Kant, *Metaphysics*, 1998). Therefore, since some “bad” consequences can potentially weigh against the “good”, a resultant +4 benefit will be assigned to people who lie to achieve their means.

Whereas, the rest of society is impacted by published lies and even though freedom of expression may be constrained by the facts, the advantages of truth being known in a political arena far outweigh the alternative of allowing publication of rampant lies. Therefore, as the law stands now, -4 score will apply to the public at large because the exposure to lies creates more pain than restricting speech to true facts. To contrast, if the courts allowed that the same precedent of truth be the determinate of speech in politics that it holds in the commercial arena, the resulting score for the public would soar to a +4, even allowing for a slight restriction of freedom in exchange for a truth requirement.

As far as the government and courts can be assigned separate values not inclusive of that of the general public, at the present time the courts must decide issues of malice and motive in speech. These elements are very difficult to prove and remain ambiguous and hard to define. Therefore, if the courts were allowed to use truth of fact as a guiding principle rather than the actual malice standard, the job of evaluating cases would be much easier to determine. Thus, as the statute reads now, the pain inflicted in time, effort, and public tax dollars exceeds the benefit of a clear definition of legal accountability in false speech. Therefore, a score of -5 will be assigned to government offices and court workers including attorneys and judges.

Finally, the person against whom false lies were published is hurt most by the belief that what is published is true. Therefore the pain inflicted by the actual malice standard on the plaintiff is assigned a -5.

To conclude, an assignment of numerical value to pain and pleasure in the case of the actual malice standard established by the Supreme Court in the *NY Times v. Sullivan* case reveals the following: Pleasure or benefit to the liar = +4, the pain to society in general = -4, the pain of proving malice by the courts = -5, and the effect on the individual, group, or entity that was the brunt of lies = -5. Following that +4-4-5-5=-10, the overall pain inflicted on society by an actual malice standard rather than a truth standard indicates that the law is immoral as it pertains to the overall good of society.

Of course, some will argue (and the Supreme Court did) that the “chilling” of free expression hinders public

discourse and does far greater harm than restricting speech. However, utilizing the Utilitarian method and numerical (albeit hypothetical) values assigned above, even if one were to assign a value of +5 to the public for mostly unrestricted freedom of speech, it would render a verdict of $+4+5-5-5=-1$ still indicating that more value is gained from truth than lies.

Mill has always been a primary advocate of freedom. He acknowledges that “every law imposes some restriction on the natural liberty of mankind, which restriction is an injustice, unless legitimated by tending to their good” (*Utilitarianism*, 2011). In this case, the result of the Supreme Court decision renders far more pain and future harm to the public and to potential victims of untruthful published speech. When this case was decided, it was heralded as victory for the civil rights movement (Edmondson, *In Sullivan’s Shadow*, 2011). However, the long term effect has nothing to do with promoting equality. It only renders lying about facts or failing to check facts legal. Therefore, according to Utilitarianism, for the good of the overall society, some sanctions should be applied to speech. Mill asserts,

inasmuch as any, even unintentional, deviation from truth, does that much towards weakening the trustworthiness of human assertion, which is not only the principal supporter of all present social well-being, but the insufficiency of which does more than any one thing that can be named to keep back civilization, virtue, everything on which human happiness on that largest scale depends.

(*Utilitarianism*, 2011)

Unfortunately, not all individuals possess the requisite virtue to contribute to society positively. While some people can regulate their behavior willingly and independently out of moral duty others cannot. Therefore, laws were created to force standards of virtue and morality on the general populace. Mill advocates such “sanctions” as necessary to promote and increase individual virtue and contribute to the overall happiness in society. “Undoubtedly, this sanction [of inner conscience] has no binding efficacy on those who do not possess the feelings it appeals to; but neither will these persons be more obedient to any other moral principle than to the utilitarian one. On them morality of any kind has no hold but through the external sanctions” (*Ibid*). It is only through “external sanctions”, i.e. laws and punishment, that society can enforce moral standards on those with no internal predisposition toward virtue and morality.

Even those with a virtuous bent of nature still need to instill habits to bring forth that which they desire. Mill insists that until virtue has acquired the support of habit, “[o]nly by making the person *desire* virtue-by making him think of it in a pleasurable light, or of its absence in a painful one. It is by associating the doing of right with pleasure, or the doing wrong with pain . . . that it is possible to call forth the will to be virtuous” (*Ibid*). Through sanctions on behavior, one realizes what constitutes acceptable acts. As one punishes or rewards a child’s behavior so as to shape his habit and character, so too does society shape its cultural character through the use of law and sanctions to guide acceptable behavior. Therefore one can measure morality and values based on a country’s legal system. Law must reflect the virtues the people admire. Utility demands that one’s actions and desires “harmonize” with the society.

The decision by the Supreme Court in the *Sullivan* case over five decades ago is immoral by almost any definition. Based on a Utilitarian model, this extremely well established and powerful precedent hurts more people than it could possibly help. Denying people the right to have truth as the standard by which speech should be evaluated not only denies them a basic “right to know” it also inflicts unnecessary harm through the propagation of misinformation as well as promoting and legalizing an activity that is immoral i.e. lying about knowable facts.

Mill makes strong points for freedom as well as limits on individuals for the good of the populace, However, Utilitarianism suffers criticism for its ends v. means approach. Philosopher, Immanuel Kant, posits that man’s actions should always be virtuous regardless of the end result. The Utilitarian philosophy put forth by Bentham and Mill focuses on the result of actions rather than the motives or even the actions themselves. In direct contradiction of Utilitarian principles, Kantian ethics focuses on the motivation behind actions rather than the actions themselves or their consequences.

Immanuel Kant rejects the Utilitarian precept of happiness as the supreme good. Instead, he insists that morality must be grounded in human dignity and worth (Cavico, *Business Ethics*, 2009). Kant asserts that moral actions form an imperative or command that instructs how one ought to act even if the command contradicts what one desires (*Ibid*). Therefore, Kant’s moral philosophy contradicts the Utilitarian idea of pleasure as the ultimate end of actions. Kant defines the essence of morality as pure innate reason, not intuition, law, or utility (*Ibid*). The emphasis in Kant is on inner strength, constancy of purpose, self-discipline, and mastery of oneself (*Ibid*). Further, Kant’s ethical theory is based on duty. Morality is not circumstantial. It is absolute. A person *must* act out of duty or the act is not moral even if the outcome produces a good or moral outcome. This duty or command to act is called an imperative, which can be either hypothetic or categorical.

A hypothetic imperative is based on the end result. One commits act A because one wants to attain B and A leads to B. Utilitarianism is based on the hypothetic imperative. In contrast, a Categorical Imperative insists on

actions that are moral in themselves and do not lead to other ends. The Categorical Imperative requires one to act in a certain way regardless of outcome. These kinds of actions are objective and absolutely necessary (*Ibid*). Kant's moral philosophy relies on the premise of Categorical Imperative.

Kant's Categorical Imperative involves three tests to determine morality. If an action fails to meet any one of the three imperatives it is deemed immoral. The three requirements of the Categorical Imperative are universality of actions, respect for the dignity of individuals as ends not means, and a systematic relationship between rational beings (*Ibid*). The first Categorical Imperative states that one must *will* that an action become a universal law (Kant, *Metaphysics*, 1998). In other words, if one's actions were committed by every person and such actions then became self-contradictory or nonsensical they would be considered immoral (Cavico, *Business Ethics*, 2009). "We must *be able to will* that a maxim of our action become a universal law: this is the canon of moral appraisal of action in general" (Kant, *Metaphysics*, 1998)

The second requirement for Kant's Categorical Imperative asserts that all men are ends unto themselves and should never be used as a means to another's end (*Ibid*) "rational beings are called *persons* because their nature already marks them out as an end in itself" (*Ibid*). Kant's second test insists that individuals be treated with dignity. One cannot morally abuse or use another to one's advantage. The third requirement of Categorical Imperative holds that individuals are necessarily part of a kingdom. Kant specifies that a Kingdom of Ends requires, "a systematic union of various rational beings through common laws . . . from this there arises a systematic union of rational beings through common objective laws, that is, a kingdom, which can be called a kingdom of ends" (*Ibid*). The Kingdom of Ends must respect the autonomy of rational beings and never seek to diminish any individual. It is very clear to rational beings that lies seek to diminish in some way.

In the *NY Times v. Sullivan* case, falsity and lies have been given legal authority and upheld as morally sound. Clearly this precept violates Kant's first Categorical imperative test. If every newspaper, magazine, or internet blog published false information on a constant basis, one would disregard everything one read, thus canceling out the need for a free press in the first place. "Lying, for example, according to Kant, is immoral. A rational person simply cannot logically will that lying become a universal law" (Cavico, *Business Ethics*, 2009). Kant's Categorical Imperative requires that actions be evaluated in and of themselves without regard for outcome. The Supreme Court's actual malice doctrine violates the principle of duty by negating the dignity of a person by legally allowing lies.

At first glance, one may assume that since, for Kant, morality is determined by motive that the actual malice standard meets Kantian morality standards by ascertaining the motive behind action. However, on careful analysis of Kant's philosophy, one can only assume that *NY Times v. Sullivan* fails the Categorical Imperative test on all three levels. First, lying in any form or for any reason cannot possibly become universal and remain effective. Kant uses such an example of lying for personal gain. If lying for gain became universal, "no one would believe what was promised him" (Kant, 1998). Therefore, when the law sanctions lies out of respect for expression, it negates the validity of expression for all.

Second, lies to gain advantage whether for personal, professional, or political means, undermines the dignity of the listener and the person about whom the lies are told. Specifically by treating people (the listeners as well as the one the lies are told about) as a means to the end (which is some advantage or benefit to the liar) lying about known or knowable facts violates Kant's second test. Clearly, allowing lies of fact does not treat individuals as ends unto themselves.

Further, when one diminishes the dignity of the individual, the kingdom of ends is compromised. "In the kingdom of ends everything has either a *price* or a *dignity*. What has a price can be replaced by something else as its *equivalent*; what on the other hand is raised above all price and therefore admits of no equivalent has a *dignity*" (*Ibid*). We can see that lies in any form violate Kant's Categorical Imperative on all levels. While, our society has deemed that lies of opinion are permissible so as to allow the utmost freedom for the individual, we must make a moral determination that when and where facts are or can be easily or reasonably known, that at least there, truth can be determined and legislated. While Kant for the most part works with ideals, Aristotle can be looked at for a moral theory grounded in more practical application.

Aristotle, well-known student of Plato, diverged from his teacher's concept of the ideal forms and instituted a more prescriptive practical doctrine of morals grounded in actions. Aristotle claims, "every action and pursuit, is aimed at some good" (*Nicomachean Ethics*, 2007). For Aristotle, happiness is the ultimate end of all human actions. While Aristotle admits that some people equate happiness with good fortune, others, himself included, identify happiness with virtue (*Ibid*). Therefore, happiness is something permanent and does not depend on the changes of success or failure in man's life. "[V]irtuous activities or their opposites are what constitute happiness or the reverse" (*Ibid*). Thus, Aristotle defines the "good" life as synonymous with a virtuous life which produces happiness or pleasure for the individual and in turn to society.

Aristotle's Doctrine of the Mean identifies extremes of actions that produce bad or unhappy results for people. The extremes lay at opposite ends of human inclination and are vices. These extremes are identified as either a

vice of deficiency or a vice of excess (Cavico, *Business Ethics*, 2009). In between the extremes lies virtue, which balances the extremes against each other to produce moderation. The Doctrine of the Mean seeks a practical rational balance and moderation in human emotion and action.

Cavico asks if we can apply Aristotle's Doctrine of the Mean to truthfulness (*Business Ethics*, 2008). While Aristotle addresses a mean between mock modesty and boastfulness, these apply only to self. What of lying and truthfulness with others? With respect to the American doctrine of Freedom of Speech, one could place the extreme vices thus. On the one hand is ultimate freedom of expression as set out in the Constitution with absolutely no restrictions which would constitute a vice of excess. On the other hand could be placed complete censorship which would be considered a vice of deficiency. The tough choice is finding the mean between them. The courts have long strived to strike a mean between the extremes of the two vices by limiting restriction of speech to only the most necessary cases, most notably of harm, threat of harm, and truth of fact (except in opinion speech which has very little restriction at all). For the most part, the courts have erred on the side of excess as an accepted foundational principle of freedom in the United States. However, the *NY Times v. Sullivan* case perpetrates a climate where clear exceptions to truth are allowed to go unchecked because of a stringent burden of proof. Thus limiting of liability for false statements does not follow as virtuous or balanced. Therefore, one concludes Aristotle would endorse a policy that sanctions lies and upholds truth as a virtue to be admired and striven for in society.

One can see by careful analysis of the three philosophies presented, that the *NY Times v. Sullivan* case presents a moral dilemma. The precedent set by the *Sullivan* case is not morally sound. It was not based on legal precedent. In fact it broke with all legal precedent before it and basically established new ground for looking at liable cases. The decision reached in the case was wrong on many levels including moral and legal grounds. The case does little to validate morality as it holds such a low standard for the press to follow. Because of the great impact this case and the subsequent readings of the law have on society as a whole. One must look at the social responsibility of the *Sullivan* decision to determine if any merit exists for the betterment of society.

IV. Social Responsibility

One aspect of a company or government's public image can be linked to its social responsibility to the community at large. Social responsibility goes beyond merely not doing anything morally wrong. Social responsibility refers to actions that lead to a betterment of society. These actions, in the corporate setting, could be anything from giving to charity or promoting economic growth by buying supplies locally to adhering to humane work requirements and using environmentally friendly policies, i.e. not using sweatshops to produce goods or overproducing in an area thereby stripping it of natural resources. What distinctions separate corporate from governmental social responsibility?

Corporate social responsibility goes beyond mere legal requirements. "The law defines legal accountability, ethics determines moral accountability" (Cavico, *Legal Challenges*, 2008). While corporations may not be required legally or morally to be socially responsible, governments *must* be held accountable for the general welfare and wellbeing of the public. "Government officials, elected by the people, rightfully are thought of as the social guardians of the people" (*Ibid*). Therefore, it is a *requirement* of the government including the high court to protect the public. Part of this responsibility lies in giving a legal recourse to people who have been defamed by public speech.

Our country has long maintained that the best interests of the public lie in utmost free discourse. Yet, still we have recognized that certain limits apply. In fact, one of the most basic limits on the validity free speech is whether it is truthful or not. For that reason, the courts have allowed tort compensation for defamation. Cause for defamation includes: false defamatory language that identifies the plaintiff, is published to a third party, and results in injury to the plaintiff's reputation (Cavico, *Legal Challenges*, 2008).

In a recent article, *Corporate Social Responsibility*, published in the International Journal of Management Reviews, Adam Lindgreen and Valerie Swaen define corporate social responsibility as a "continuing commitment by an organization to behave ethically and contribute to economic development, while also improving the quality of life of its employees (and their families), the local community, and society at large" (2010). Lindgreen and Swaen go on to differentiate between strategic and moral action. "[S]trategic action pursues personal or corporate ends; moral action instead attempts to achieve genuine understanding through communication" (*Ibid*). While this article examines social responsibility at the corporate level, governmental institutions also can utilize these defining principles as a guideline. Our government institutions such as the courts should always act to "improve the quality of life" of the citizens especially when legislating such important concepts as fundamental rights.

If indeed moral action seeks to "achieve genuine understanding through communication" then how can falsity and lies contribute to any genuine understanding? Why should commercial speech be censored based on truth while political speech protects falsehoods? By allowing misrepresenting facts without any legal sanctions, the

courts have undermined truth as prerequisite for morality. The courts have failed in this decision to uphold the public faith and protect individuals from defamatory speech. It is socially irresponsible of the court system to protect the press for publishing untruths.

V. Conclusion

The courts need to reevaluate the *NY Times v. Sullivan* decision within the context the public's right to know the truth instead of on the basis of the political climate in which the decision was first made. While the justices at the time probably thought the decision was morally as well as legally sound, the result leaves much to be desired. Barron asserts,

The New York Times rule thus countenances two evils: first, the stream of information about public officials and public affairs is polluted and often remains polluted by false information; and second, the reputation and professional life of the defeated plaintiff may be destroyed by falsehoods that might have been avoided with a reasonable effort to investigate the facts. (*Proposal to Rescue NY Times*, 2007)

According to the three value examination of *New York Times Co. v. Sullivan*, the decision by the Supreme Court is legally, morally, and ethically unsound. The Supreme Court basically rewrote liable law in response to social and civil change in our country. However, the change set forth a precedent with longstanding effects not directly related to the civil rights movement of the 1960's. This case, in itself, was not about civil rights or the black movement. It should never have been decided in response to social pressure. The civil rights leaders had and should have used the truth of actual abuses to support their claims rather than resorting to falsity or shoddy reporting. "The Times employees acted in good faith, yet they wantonly brought the litigation upon the newspaper by failing to adhere to a baseline standard of professionalism" (*Ibid*). The impact of this case far outweighs the climate of the times in which it was decided.

Careful analysis of the precedent set by the *New York Times v. Sullivan* case shows it is immoral with regard to Utilitarianism, Kantian, and Aristotelian philosophies examined here. It violates the principles of greater good found in Utilitarianism, rejects personal dignity and duty in Kantian philosophy, and does not adhere to Aristotle's virtue philosophy or establish a mean between two vices. The repercussions of the case are socially irresponsible. It doesn't even seem to meet the requirement of common sense i.e. truth is good lies are bad. Its only merit remains in legality and even that is in question.

It is time to revisit the impact of this case and redefine what our values as a society really are. While certainly expression and freedom are chief among the aims of our founding principles, we owe an obligation of truth in reporting to the public. "What the Sullivan Court failed to recognize is that it is not just a fearless press that is imperative; the public needs, and the First Amendment requires, a competent press as well." (*Ibid*). Our forefathers fought for our right to hear the truth, not have it suppressed by misguided legality. Whether the *Sullivan* verdict remains unchallenged and stands as written or is struck down in the future, this case will continue to be a controversial part of our history as a country.

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