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### *American Freedom on Trial: The First Amendment Battle Between the Pornography Industry and Christian Fundamentalism*

#### ABSTRACT

**E**ste trabajo tiene como objetivo examinar la disputa judicial entre el pastor fundamentalista cristiano, Jerry Falwell, y el editor de la revista pornográfica Hustler, Larry Flynt, entre 1983 y 1988, sobre los límites de la Primera Enmienda de la Constitución de los Estados Unidos. El caso dio lugar a una nueva interpretación constitucional por parte de la Corte Suprema de ese país, que refleja una ampliación del discurso protegido por la Primera Enmienda, el resultado de décadas de luchas de grupos disidentes. La victoria de la visión de Larry Flynt no representó solo un logro individual, sino también la victoria de una interpretación restrictiva de la intervención estatal en el control de la

libertad de expresión y de prensa, así como, indirectamente, la defensa vehemente de la separación entre la religión y el estado. El trabajo demuestra que el contexto de la década de 1980, caracterizado por la historiografía como la "revolución" conservadora de la Era Reagan, vivió con discursos más progresivos, que a menudo sucedían victorias importantes, que requerían un cuestionamiento permanente del período.

Palabras clave: Primera Enmienda; Libertad de expresión; Fundamentalismo Cristiano; Pornografía

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**T***his work aims to examine the legal dispute between the Christian fundamentalist pastor, Jerry Falwell, and the editor of the pornographic magazine Hustler, Larry Flynt, between 1983 and 1988, about the limits of the First Amendment to the US Constitution. The case gave rise a new constitutional interpretation by the Supreme Court of that country, reflecting a broadening of speech protected by the First Amendment, the result of decades of struggles of dissident groups. The victory of Larry Flynt's view did not represent only an individual achievement, but also the victory of an opposite interpretation to the state intervention in the control of freedom of speech and press, as well as, indirectly, the vehement defense of the separation between church and state. The work demonstrates that the context of the 1980s, characterized by historiography as the conservative "revolution" of Reagan*

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***Era, lived with more progressive speeches, which often succeeded important victories, requiring a permanent questioning of the period.***

***Keywords: First Amendment; Freedom of Speech; Christian Fundamentalism; Pornography***

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## **Introduction**

The First Amendment judicial battle that took place between the pornographer Larry Flynt and the Fundamentalist Baptist Pastor Jerry Falwell in the 1980s, after Flynt published a satire of Falwell in *Hustler* magazine<sup>1</sup>, became a microcosm of the larger argument in American society about the meaning of freedom of speech as laid down in the First Amendment and, as a corollary, the importance of the separation of church and state.

Through the analysis of this judicial dispute, which was decided by the Supreme Court in 1988, as well as a study of the very different lives of Larry Flynt and Jerry Falwell, this article aims to show that these tensions highlighted how the idea of American exceptionalism was appropriated by Flynt

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<sup>1</sup> The satire, entitled "Jerry Falwell talks about his first time", contained a fictional interview in which the pastor stated that he had lost his virginity, whilst drunk, in an incestuous relationship with his mother. The satire was part of a series of Campari liquor advertisements published in *Hustler* magazine, which depicted different personalities from the music industry, television industry and politics associating the pleasure of their first sexual experiences with the pleasure of sampling a dose of the liquor.

and Falwell during the trial in two very different ways—ways that continue to affect the political discourse up to the present day.

The emergence of Jerry Falwell as a national religious figure accompanied the judicialization, at the Federal level, of many social issues in the 1960s and 1970s after important victories by progressive groups. As leader of the Moral Majority (a political conservative group founded in 1979), Falwell espoused a Christian collective morality directly opposed to the idea of individual secular rights and helped link conservative religious rhetoric with the neoliberal economic agenda of the Reagan administration.

On the other hand, Larry Flynt's trajectory reveals how the popular tradition of unrestricted individual freedom and expression permeates sectors of American society. Flynt formulated his idea of freedom without any formal study, but aligned neatly with the most popular sectors of American society. His victory during the Reagan administration indicates the need for a more complex view of the period.

In the field of historiography, it was long assumed that the arrival of the Puritans marked the beginning of the United States. However, as Karen Kupperman<sup>2</sup> states, this version of American history ignored other key actors in nation-building, who were

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<sup>2</sup> Karen Kupperman. *International at the Creation: early modern American history*. In: Thomas Bender (ed). *Rethinking American History in a Global Age*. Berkeley: University of California, 2002.

only referenced when they came in contact with the Puritans. Various modern historians have since cooperated in combating this simplification of American history, presenting research on the sixteenth century where Latinos, African-Americans, and Indigenous people, among others, are treated as protagonists alongside European immigrants.

Examining American historiography, Thaddeus Russell<sup>3</sup> affirms that other relevant actors, such as prostitutes, pimps, drunks, and homosexuals, have been placed in a marginal position in the narratives of American history since the nineteenth century, and have aroused interest in the academy only recently. According to Russell, since independence, "marginal" groups have advocated a much broader idea of individual freedom than the Founding Fathers themselves advocated.

In sum, such pluralistic contributions to American national history suggest interpretative clues to the analysis of the judicial dispute between Larry Flynt and Jerry Falwell, in which we can perceive contradictory views about American national symbols, history, and destiny, being produced by both the civil society and the institutions.

### **Jerry Falwell: a nation under God**

Jerry Falwell was born on August 11, 1933, at the Guggenheimer Memorial Hospital, Lynchburg, Virginia. At that time,

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<sup>3</sup> Thaddeus Russell. *A Renegade History of the United States*. NY. London. Sydney. Toronto: Free Press, 2011.

Lynchburg was suffering from the effects of the economic crisis of 1929, namely rising unemployment and the spread of poverty. Although born in one of the worst economic times in American history, Jerry Falwell lived his early years in an environment of relative material comfort. His father, Carey Falwell, was an important local businessman, working in a variety of areas, such as bars, public transportation and the building industry, and he wielded considerable political influence in the city.

In the early 1950s, Jerry Falwell entered the University of Lynchburg to study mechanical engineering. Even though he took religion classes, Falwell showed little interest in the subject. If it were not for his mother's habit of listening to Pastor Charles Fuller's radio program, *Old-Fashioned Revival Hour*, every Sunday morning, Falwell's life might have taken a different path. In fact, Falwell has always shown indifference to the religious program his mother used listen to. However, as he recounts in his autobiography, upon waking up on the morning of January 20, 1952, something in the program caught his attention, something that would turn his life upside down:

"I succumbed to the smell of fresh molasses syrup, ran down the stairs, and entered the kitchen, willing to listen to the Chaplain's sermon in exchange for a hot homemade breakfast. Charles Fuller was just reading his text from his radio pulpit in the Long Beach Municipal Auditorium. Mom had the table set and the food in place so I wouldn't

miss a word. I humored my mother by actually listening to Fuller's sermon that morning. I don't remember his text, but I do remember feeling something that I had never felt before. I felt like crying but I wasn't sad. I felt excited, but there was nothing exciting in my schedule that day. Fuller was warming up to his text, and though I was listening to his words I remembered my roommate at Boy's State asking me the very same question. [...] I didn't know a thing about the Holy Spirit. If anybody had told me that day that God Himself was present in our family kitchen making His move to rescue me from my own sinfulness, I would have laughed out loud. But looking back, it was His presence that I was feeling. [...] He was calling me, but I didn't recognize His voice. I just felt edgy and excited like you feel before a storm strikes or that moment in the hospital just before your first child is born".<sup>4</sup>

According to Elizabeth Hale<sup>5</sup>, becoming a born again in the religious aspect of American Protestantism is not just a radical inner transformation movement, a drastic change in habits and values. Becoming a born again is first and foremost to tell and retell a story: the story of the reunion with Jesus.

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<sup>4</sup> Jerry Falwell. *An Autobiography: The Inside Story*. Lynchburg: Liberty House Publishers, 1997. pp. 118.

<sup>5</sup> Grace Elizabeth Hale. *A Nation of Outsiders: How the white middle class fell in love with rebellion in postwar America*. Oxford University Press: New York, 2011.

Jerry Falwell began to participate in numerous activities in the Park Avenue Baptist Church. He learned to recite a few passages from the Bible and began to visit homes around the region, taking his new religious doctrine to other people. He studied and discussed religious issues during his stay at Baptist Bible College. According to Michael Winters<sup>6</sup>, most of the teachers were Christian fundamentalists, and among the pedagogical practices was the reading of three chapters of the Bible each day, and, on Sundays, the number of chapters increased to five. Falwell stood out among the students of his class, graduating with honors in 1956. The young man who had resisted attending churches had now become an educated Christian fundamentalist pastor.

Falwell returned to his hometown to spend time with his family and visit some churches in the area. In Lynchburg, a group of thirty-five people, including Macel Falwell, his future wife, had left Park Avenue Baptist Church after disagreements with the new pastor. The so-called "dissenters", invited Falwell to take over a new Baptist church in Lynchburg. Then, the group began searching for a place to find the new church. An old building belonging to the Donald Duck Bottling Company, located in the far west of Lynchburg, a region that had been developed after the Second World War, was chosen as the site. The rent was affordable and the building had plenty of space. On Sunday, July 1,

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<sup>6</sup> Michael Sean Winters. *God's Right Hand: How Jerry Falwell made God a republican and baptized the American right*. New York: Harper One, 2012.



1956, the Thomas Road Baptist Church (TRBC) began its work. Falwell developed an aggressive strategy to win over new members. Along with some members of the TRBC, he would go from door to door, visiting the houses of the area, always carrying a Bible and a small notebook in which he wrote down information about the people he talked to, especially how many people lived in the residence and what personal problems the interviewees reported. In the first few weeks, Falwell and a few collaborators produced an informative newspaper about the weekly activities at the TRBC. The newspapers were mailed to households visited in previous weeks. According to Macel Falwell<sup>7</sup>, one evening, Jerry Falwell remembered how he had been touched by the word of God when he heard Charles Fuller's radio program. This gave him the idea of going to the local radio station to rent a timeslot in which to deliver a lecture and also publicize the weekly schedule of the TRBC. In fact, Falwell realized that the radio was switched on in most of the houses he had visited during the morning, but during the night the television had stolen the attention of a lot of families.

Falwell's original idea was to create a weekly program. However, upon arriving at the newly opened WBRG radio station, the pastor found a more audacious project. Brent Epperson, the station owner, wanted a daily religious program in the mornings. Falwell accepted the challenge, and then, developed the Old Time Gospel Hour.

The radio program's range was short, but it made it possible for Jerry Falwell to be heard not only in Lynchburg but also in Amherst and Campbell counties and, above all, to reach different social classes. Thanks to the radio program, Falwell was invited into the wealthier circles of the area. The results achieved by the radio program exceeded Falwell's expectations, eventually leading him to dream about having his own television program.

"In December 1956, I decided it was time to act. One Monday morning I drove to the small studio and office building of our ABC Television affiliate. [...] The station offered to sell me one half-hour slot a week for \$90. I signed their contract immediately. [...] Later on Sunday afternoon Macel, Bill and I arrived at the studio with absolutely no instructions as to what we should do. At 5:30 pm a red light began to flash at the studio door, and the cameraman/director motioned me to begin the program. 'Hello,' I said, looking to Macel and Bill for support, 'My name is Jerry Farwell. I am the pastor of the Thomas Road Baptist Church'.<sup>8</sup>

From that moment on, Jerry Falwell was entering the select group of televangelists pastors. In the first year of its activities, the TRBC saw the number of members grow exponentially, reaching a total of 500 in 1957. Few sermons given by Falwell in his early years were recorded, of which the

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<sup>7</sup> Macel Falwell. *Jerry Falwell: his life and legacy*. New York: Howard Books, 2008.

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<sup>8</sup> Jerry Falwell; *An Autobiography*. Opacity. pp. 223-25.

vast majority were related to topics such as conversion, methods of prayer, interpretation of biblical passages, etc. However, a controversial sermon delivered in 1958 was chosen by Falwell to be transcribed and mailed to the viewers of his television program. The sermon entitled "Segregation or Integration, which?" made direct reference to the 1954 Supreme Court decision in *Brown v. Board of Education*. According to the pastor, the 1954 decision had created social chaos and spurred racial tensions that had not existed in the United States until then<sup>9</sup>. This speech was aligned with the political conservative voices around the country. However, Falwell found in the Bible the justification for maintaining segregation in public schools. More than considering the Supreme Court decision an undue intervention by the judiciary in the legislative field, Falwell considered it a judicial intervention in the precepts of the Bible. Interpreting racial issues through a literal and specific reading of the Bible, Falwell warned about the dangers of disobeying God's commands, subjugating the American Constitution to the scripture. Interracial couples, he claimed, would bring divine vengeance, resulting in a breakdown of the American society. Falwell, establishing an interesting relationship between Christianity, internal politics and foreign policy, stated that the greatest beneficiary of the end of segregation in public schools would be the Soviet Union (USSR):

"Who then is propagating this terrible thing? First of all, I see the hands of Moscow in the background. Secondly, we see those who would use such a terrible tool to gain political power. Finally, we see the Devil himself behind it. What will integration of the races do to us? It will destroy our race eventually [...] Christian friend, we need to pray as never before. Prayer change things. If we pray fervently enough, God can touch the hearts of our leaders in Washington, and something will be done. Pray for the Supreme Court. Pray for the administration in power".<sup>10</sup>

It is important to note that the *Brown v. Board of Education* decision has resulted in strong protests by non-liberal Protestant churches. Conservative religious leaders such as Billy Graham, Carl McIntire and Francis Spellman organized noisy protests condemning the new directions of the judiciary and drafting a constitutional amendment bill that would allow Christian religious practices in public educational institutions.

Falwell began to criticize the participation of pastors in the Civil Rights movement, although he was also entering the debate through his sermons on TV. In the early 1970s, Jerry Falwell began traveling around the country spreading his ideas and getting in touch with politicians and conservative intellectuals. Slowly, other secular

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<sup>9</sup> From the late 1970s, Jerry Falwell went on to justify this sermon as a reflection of the segregationist influence inherited from his father.

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<sup>10</sup> Jerry Fawell. *Integration or Segregation, Which?* 1958. Susan Harding particular archive.

"enemies", such as sexual freedom, homosexuality, pornography and feminism were added to communism as vectors of the imminent destruction of American society.

Although other prominent Christian fundamentalist leaders refused to take on political militancy, Jerry Falwell accepted the challenge and became one of the leaders of the Christian Right movement, leading the political group the Moral Majority. In fact, the Moral Majority was not a personal project of Jerry Falwell. In May 1979, a group of conservative politicians visited Falwell in Lynchburg to recruit him for the project. Jerry Falwell was, in fact, the second choice; the pastor televangelist Pat Robertson, the first choice, declined the leadership of the new political group. The meeting was organized by Robert Billings, who previously directed the *National Christian Action Coalition*. Also, in the conversation were Ed McAteer, leader of the *Religious Roundtable*, and conservative intellectuals and political strategists Howard Phillips and Paul Weyrich. Falwell initially did not feel comfortable in synthesizing politics and religion, mirroring Pat Robertson's stance. However, he was convinced by Paul Weyrich after analyzing a national survey where the majority of voters viewed such a combination positively.

Founded on June 6, 1979, just one month after the first meeting, which suggests that there was already a prior structure, the Moral Majority has defined itself as a traditional pro-life, pro-Israel and pro-family institution, opposing gay marriage, abortion and divorce. Economic factors also

drew the attention of the Moral Majority. It is important to note that in his book *Listen, America! The Conservative Blueprint for America's Moral Rebirth*, published in 1980, Jerry Falwell devoted the entire first chapter to discussing the economic aspects of the United States and the Cold War. In the first chapter, titled *Liberty - Will We Keep It?* Falwell criticizes welfare state politics and makes an important defense of Margaret Thatcher's economic plans in Great Britain. Topics such as family, homosexuality, pornography and education appear only in the second chapter, titled *Morality - The Deciding Factor*. In this sense, Falwell demonstrates how fundamentalist Christian rhetoric, mostly directed towards the preservation of traditional moral values, has incorporated the presuppositions of neoliberalism<sup>11</sup>.

Jerry Falwell began an alliance with the Republican party, which would reach its peak during the two administrations of Ronald Reagan in the 1980s, when he became the leader of the Moral Majority and one of the most prominent religious figures in the United States in the late twentieth century.

However, in attacking different perspectives in American society, such as feminism, the gay movement and the pornographic industry, Falwell set himself on a collision course with groups that were prepared to fight for their own ideas of America.

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<sup>11</sup> See, FALWELL, Jerry. *Listen, America: The conservative blueprint for America's moral rebirth*. New York: Doubleday, 1980.

### **Larry Flynt: *a nation under sex***

Larry Flynt was born on the first of November 1942 in Lakeville, Kentucky. He grew up surrounded by bootlegging, the illegal trade of alcoholic beverages, a practice he himself would later carry out. In fact, apart from the surrounding poverty and family problems, Larry Flynt does not characterize his childhood memories as sad, yet he leaves readers of his autobiography with doubts about how painful they may have been. "Perhaps what I've forgotten is as significant as what I remember."<sup>12</sup>

After one attempt to flee from home and a quick pass in the Army when he was sixteen years old, after presenting false documents, Flynt settled in Dayton, Ohio, working at General Motors. Proletarian life did not please Larry Flynt and the young man was determined to become an entrepreneur. He decided to invest his few savings into something profitable. He opted for a region and a commercial activity he knew well: the illegal liquor trade in Lakeville. Flynt's business quickly became a success. It is noteworthy that one of his clients was his own father, which ended up generating some friction between the two.

The success of the business eventually caught the attention of local authorities, and Flynt found it wiser to leave Lakeville, returning to Dayton, hoping to resume his work at General Motors.

But one night Flynt saw, through the window of his hotel room, a young sailor walking down the street. The scene inspired him to pursue a career in the navy. His years in the navy are remembered as a period of gaining self-esteem, not only from successfully performing his duties as a Radar Technician, but for having been able to travel through different regions of the world. Flynt summed up this experience with three words: books, women and poker.

In 1965, Flynt had his first daughter, Tonya, and decided he wanted to run his own business. He bought his mother's bar in Dayton:

I had hung out in a lot of bars in my young life and thought I had a little insight into what made some succeed and others fail. It seemed to me that the key was knowing your customers. [...] The customers I knew best, of course, were working-class people like myself. [...] I've never considered myself a violent man, but my first months in the bar business were extraordinarily bloody. But I was aiming to serve a blue-collar clientele, the kind that could drink a dozen beers in one sitting. When they got drunk, they liked to fight. These were factory workers, truck drivers, and construction workers: people who settled differences with their fists<sup>13</sup>.

After three years of intense work, Flynt began to feel tired and realized that he was

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<sup>12</sup> Larry Flynt. *An Unseemly Man: my life as pornographer, Pundit, and social outcast*. Dove Books: Los Angeles, 1996. pp. 3

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<sup>13</sup> Idem. pp. 57



unable to sustain that lifestyle. He decided to open a different bar, aiming to attract other kind of customers, with less violence and confusion. In the late 1960s, bars with dancers had become a major phenomenon in California, and quickly the model spread to other regions of the United States. Meanwhile, Flynt realized there was no such bar on the East Coast and traveled to California to learn more about the Go Go Clubs. By 1973, Flynt had already opened eight *Hustler Club* locations in Ohio, with more than 300 employees. The clubs had a membership card and Flynt decided to start a newsletter that would introduce new dancers and let members know if their favorite girl had moved to a different location. From this relatively modest idea, Flynt would plant the seeds for the rise of *Hustler* magazine.

Anyone could be a *Playboy* and have a *Penthouse*, Flynt said, but only a real man could be a *Hustler*. *Hustler* magazine's first issue was published in July 1974. The magazine was born out of the *Hustler Newsletter* and *The Hustler for Today's Man*, both promotional inserts for Larry Flynt's strip club:

"My guiding principle was 'give them what they want'. I wanted to respond to people as they really were or should be. The question I had to face right away was whether the magazine ought to include lifestyle issues, movies reviews, and interviews with mainstream figures, as *Playboy* did. My instinct was to try something different. It seemed to me that if the theme and focus of a

magazine is sex, then its whole content ought to serve that purpose. If a guy is going to jerk off looking at a centerfold, does he care about what kind of stereo to buy? I wanted a sex magazine free of pretense and full of fantasy, fiction, satire, and biting humor".<sup>14</sup>

*Hustler* built its own identity, fueled by increasingly audacious and explicit photos, as well as ironic and offensive text about public figures. In 1976, the boldness of posting pictures of Jackie Onassis, former First Lady, going topless during a trip to Greece, drew even the attention of housewives who decided to buy that edition of the magazine. The great press and television reported the great search for the magazine in the newsstands. Ohio's governor, James Rhodes, was filmed buying a copy of *Hustler*. The justification given by Rhodes at the time was that it was a research for the book he was writing about the First Ladies of the United States. In 1996, Flynt would write, "I'm still looking for that book."

Flynt realized that polemics generated repercussions in the media, resulting in free national advertising for the magazine. In 1976, while parties and civic parades celebrating the bicentenary of American Independence filled the streets of America, *Hustler* published a cartoon of Henry Kissinger, Gerald Ford and Nelson Rockefeller raping the Statue of Liberty.

As *Hustler* magazine gained ground in the American public, it also caught the attention

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<sup>14</sup> *Ibidem*. pp.91

of conservative society and conservative politicians in the country. According to Flynt, the main question was not necessarily the pornographic content of the magazine, but its political position: “Hustler was political and class-oriented. For example, I had started a feature called ‘Asshole of the Month’, in which I lambasted politicians, religious figures – anyone in the public life – who I thought were phony or hypocritical”.<sup>15</sup>

The Statue of Liberty cartoon caused a furor in American politics. The Mayor of Cleveland held a press conference just to condemn the joke. In Cincinnati, *Citizens for Decency Through the Law* (CDL), a conservative Catholic group led by Charles H. Keating, became Hustler magazine’s number one foe.

“[Charles Keating] employed six full-time lawyers to help root out the ‘evil’ from newsstands and provide legal support to supposedly overburdened prosecutors. Among his services was reading and viewing of pornographic magazines and films that his organization would analyze, summarize, and make available to prosecutors and legislators. Thus, the organization simultaneously provided a vehicle for its staff members to pursue their own obsession with smut in a socially sanctioned way and condemn it at the same time. Freud would have had a field day: several guys sitting around watching porno flicks,

saying, ‘God, that was disgusting – would you rewind the film and play it again?’”<sup>16</sup>

Larry Flynt faced a lot of state lawsuits intending to limit the production of the obscene material in *Hustler*, but he also he faced other serious accusations, such as gang formation and drug trafficking. In fact, as Flynt asserts, the experience of having to defend his freedom of speech through courts across the country has ultimately made him a radical advocate of the First Amendment, or rather, the advocate of a radical interpretation of the First Amendment. “I never thought about the First Amendment and civil liberties until I was facing a judge who was set on putting me away for twenty years.”<sup>17</sup>

In 1978, Flynt prepared to face a new lawsuit in Lawrence, Georgia. The relative calm and lack of anti-pornography protests around the courthouse made Flynt dismiss his bodyguards. During a trial recess, Flynt and his lawyer, Geene Reeves, left the main building. As they walked along the sidewalk, three shots were fired in their direction, striking Flynt.

The attack on Larry Flynt generated a great national response, mainly because the police had no idea who was behind the crime. The doubts were not caused by a lack of potential enemies, but the opposite. Flynt had annoyed a lot of people. It was only in 1980, when Joseph Paul Franklin, a white supremacist linked to the Ku Klux Klan, was

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<sup>15</sup> *Ibidem*. pp. 121

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<sup>16</sup> *Ibidem*. pp. 130

<sup>17</sup> Larry Flynt. *Sex, Lies & Politics: The naked truth*. New York: Kensington Books, 2004. pp. XIII.

arrested in Salt Lake City after shooting and killing two black men on the street, that the mystery of the attack on Flynt was solved. The shots caused irreversible damage to Flynt's spine, placing him permanently in a wheelchair. In the process of recovery, Flynt and his wife Althea decided to move to Los Angeles, where *Hustler* was building a new office.

The year 1983, in fact, saw an increasingly active Larry Flynt. A new surgery drastically reduced his constant pain, giving him energy to become more and more involved in public affairs. Later that year, Flynt would put forth his own name for the presidential primaries in the Republican Party, fiercely criticizing President Ronald Reagan, whom he called the "nuclear-mad cowboy". In fact, the candidacy did not last long, but it represented an important moment in Larry Flynt's public life.

It may be noted that in the late 1970s and early 1980s, although Flynt was rather ironic and aggressive in the pages of *Hustler*, attacking politicians and media personalities, a public position predominated that could be characterized as defensive. In other words, Flynt was regularly prosecuted in various states and, during the trials, defended his interpretation of freedom of speech and the press. From 1983 on, Flynt went on the attack, so to speak, extrapolating the scope of his defense of his interpretation of the First Amendment to include his opinion on many different political and social issues: "My candidacy had served its purpose, garnering much publicity for *Hustler* and drawing attention to several political and

social issues I cared about. In the spirit of my new civic involvement, I decided to continue to enlighten members of the US Congress and Senate on a regular basis".<sup>18</sup>

Combining political engagement and publicity, Flynt went on to send the monthly issues of *Hustler* to the Supreme Court ministers and US deputies and senators. With his increased political commitment to a progressive, secular country, Flynt ended up representing the "moral decline" that the United States, according to Pastor Jerry Falwell, was overcoming with Ronald Reagan's rise to the White House. On the other hand, in Flynt's view, Falwell represented "the biggest hypocrite in the United States" and someone should stop him. In an interview for the production of material for this work, Larry Flynt revealed that the main reason for attacking Jerry Falwell's mother in the parody was the fact that the mother of one of his lawyers in the early 1980s sent all the money she received from social security to the Thomas Road Baptist Church:

For ten years he preached about me, blaming me for every evil society embodied. And all the time he was taking these poor old ladies' money and flying around his jet airplane, you know? Living the high life, you know? And not caring anything about them. I just thought this guy is so phony somebody needs to bring him down from his pedestal. And that's what I tried to do<sup>19</sup>.

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<sup>18</sup> Larry Flynt. *An Unseemly Man...*; Op. cit. pp. 202  
<sup>19</sup> Interview granted on January 29, 2013.

## Judicial Debates and Political Cultures:

After receiving news of the parody's publication, Jerry Falwell wrote to about 500,000 members of the Moral Majority asking for financial donations with which to sue Larry Flynt. Shortly thereafter, a second shipment of letters was sent to the group of 26,000 honorary members, reproducing the content of the parody and directly attacking the expansion of pornography. In just three days, Falwell sent messages to the 750,000 viewers enrolled in his Old Time Gospel Hour program seeking funds to keep the show afloat and start a real crusade against pornography.

Larry Flynt counterattacked in two ways: he republished the parody in the March 1984 issue of *Hustler*, and sued Jerry Falwell for distributing copies of the parody to honorary members of the Moral Majority without paying royalties.

“At Stake was more than a set of legal issues [...] For Flynt and those who defend his right to publish satire, the First Amendment was sacrosanct, designed to protect precisely the kind of vile, offensive speech that Flynt published. For Falwell, his suit was about protecting decency in society. Flynt’s America was about money and sex and doing whatever one wanted. Falwell’s America was all about decorum and morals, and doing God’s will”.<sup>20</sup>

Larry Flynt was convicted in the Virginia Court of inflicting psychological damage on the pastor, and was ordered to pay \$200,000 in damages.

The American press, which had hitherto discreetly followed the case by advocating *Hustler's* right to publish what it saw fit while also making sure to clarify its philosophical differences, initiated a strong lobby in the Supreme Court, together with groups engaged in the defense of the freedom of speech and the press. An *Amicus Curiae* case was formed. In these cases, the Supreme Court accepts a specific appeal due to requests from civil society.

The Flynt defense's tactic was to rebuild *Hustler's* image as a space for discussion of sex, politics, and humor, which for years had had to deal with innumerable attacks by Jerry Falwell as a sewer of misconduct. Surprisingly, Alan Isaacman, Flynt’s lawyer, tried to put Flynt and Falwell as political opponents, deconstructing the pastor's sanctified public image before the Supreme Court.

In his oral argument, Isaacman was emphatic in proposing an expansion of that which is protected under the First Amendment, including political satires and parodies. In this sense, the central idea was to characterize Falwell as a political actor who, when attacking his opponents, was also preparing to be attacked.

“In judging the publication that's at issue here, I think it's important to look at the context in which it appeared. The speaker of course was

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<sup>20</sup> Michael Sean Winters. *God's Right Hand...* Op. Cit. p. 252.



Hustler Magazine, and Hustler Magazine is known by its readers as a magazine that contains sexually explicit pictures, and contains irreverent humor. [...] It focuses on three subject areas primarily. It focuses on sex, it focuses on politics and it focuses on religion. Hustler Magazine has been the target of attacks and critical commentary by Jerry Falwell for years and for years prior to this ad publication. Hustler Magazine is at the other end of the political spectrum from Jerry Falwell. [...] Jerry Falwell is the head of the moral majority. The moral majority, he testified at the trial, numbers some six million people. It's a political organization, he indicates. It was set up to advance certain political views. One of the foremost views is to attack what he considers to be pornography, and to attack kings of porn, in his words. And foremost among those kings of porn in his mind is Larry Flynt. He includes in that group others as well, such as Bob Guccione of Penthouse and such as Hugh Hefner of Playboy. The moral majority and Jerry Falwell also attack sexual conduct that they don't consider appropriate. He has spoken on the subject of extramarital and premarital sex. He doesn't approve of heterosexuals living together outside of wedlock. He also doesn't approve and condemns homosexuality. Now, these aren't private views he has kept to himself or just shared with his family. These are views that he's gone on the

political stump and tried to convince other people about. He has been known in his words, as he testified, by the Good Housekeeping magazine which did a survey as the second-most admired man in the United States, next to the President."<sup>21</sup>

By placing the issue politically, and by characterizing *Hustler* as a magazine publishing political opinion about American society, Issacman sought to argue that its publications were relevant to society, since they stimulated public debate. It is noteworthy that unlike the defense in the Virginia Court, when Issacman stated that parody was obviously a joke and could not be taken seriously by anyone, in the oral argument before the Supreme Court Justices, he turned to history to insert Flynt into a tradition of acidic commentary on public personalities by the American press:

We have a long tradition, as Judge Wilkinson said, of satirical commentary and you can't pick up a newspaper in this country without seeing cartoons or editorials that have critical comments about people.

And if Jerry Falwell can sue because he suffered emotional distress, anybody else whose [sic] in public life should be able to sue because they suffered emotional distress<sup>22</sup>.

<sup>21</sup> *Hustler Magazine v Falwell* (1988) 485 US 46. <http://www.law.cornell.edu/supremecourt/text/485/46>

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<sup>22</sup> *Idem*.

Jerry Falwell's lawyer, Roy Grutman, meanwhile sought to demonstrate that freedom of speech and press should be categorized as responsible and non-responsible, suggesting a moral agenda to what should or should not be published by the press. According to his interpretation, bizarre and repulsive jokes were not protected by the First Amendment. It was then up to Judge Antonin Scalia to remind Grutman of the long tradition of cartoonists in the United States.

It should be noted that at this point Judge Scalia indirectly accepted Issacman's thesis that Falwell was a public political figure and could be criticized by his opponents, even though satires and parodies, something which was present in the American and English tradition.

From this point, Judge William Rehnquist began to make a historical and sociological analysis of satire and cartoons in the American tradition:

"The appeal of the political cartoon or caricature is often based on exploitation of unfortunate physical traits or politically embarrassing events -- an exploitation often calculated to injure the feelings of the subject of the portrayal. The art of the cartoonist is often not reasoned or evenhanded [...] The political cartoon is a weapon of attack, of scorn and ridicule and satire; It is usually as welcome as a bee sting, and is always controversial in some quarters. Several famous examples of this type of intentionally

injurious speech were drawn by Thomas Nast, probably the greatest American cartoonist to date, who was associated for many years during the post-Civil War era with Harper's Weekly. In the pages of that publication Nast conducted a graphic vendetta against William M. "Boss" Tweed and his corrupt associates in New York City's 'Tweed Ring'. It has been described by one historian of the subject as "a sustained attack which in its passion and effectiveness stands alone in the history of American graphic art." M. Keller, *The Art and Politics of Thomas Nast* 177 (1968). Another writer explains that the success of the Nast cartoon was achieved 'because of the emotional impact of its presentation. It continuously goes beyond the bounds of good taste and conventional manners' [...] Despite their 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. [...] From the viewpoint of history, it is clear that our political discourse would have been considerably poorer without them"<sup>23</sup>.

The Supreme Court thereafter reversed the previous ruling by 8 votes to 0, and *Hustler*, along with its publisher Larry Flynt, was cleared of all charges.

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<sup>23</sup> *Idem*.

According to Michael Winters, Falwell was furious at the decision:

He was genuinely shocked that the Supreme Court did not see the issues through his own lens. They did not see what he saw: that a freedom that permitted such evil to flourish and granted it the protection of law was a freedom that itself threatened a moral chaos far different from ideas of ordered liberty he championed.<sup>24</sup>

The decision was considered a celebration of freedom of speech and the supposed American rebel spirit. In fact, shortly after the decision, a version of American exceptionalism based largely on Larry Flynt's points of view was born. However, this is still far from being crystallized in American jurisprudence. The interest in the case, which perseveres in law courses in the United States to the present day, rather than representing a victory of the thesis of Flynt, demonstrates that the debate is open, and that the First Amendment will be, for a long time, the subject of dispute between different American political ideologies.

## Conclusion

The judicial dispute between Larry Flynt and Jerry Falwell in the 1980s about the limits of the First Amendment revealed the different interpretations in society at the time about the meaning of freedom of speech and the separation of church and state. Although the latter—that is, the

separation of church and state—was not a direct subject in the process, it was significant not only as a driver of the satire published in *Hustler* magazine in 1983, but as a central pillar of the defense strategy of Larry Flynt in seeking to desecralize the figure of Jerry Falwell before the judges of the Supreme Court.

The First Amendment was greatly influenced by the notion of freedom of speech in English tradition, which envisaged a narrow interpretation of the constitutional provision. However, just as in England, in the United States, different social groups, ranging from prostitutes to newspaper editors, began to defend for themselves a much broader freedom of speech than the one proposed in the original amendment.

In a broader sense, the very idea of individual liberty advocated during the independence of the United States was extremely restricted, as can be seen from the examples of maintaining slavery, curtailing the female vote, and also the persecution of groups with sexual or social behaviors considered inadequate for the new republic.

On the other hand, the second pillar of the First Amendment, the separation of church and state, had the support and encouragement of several religious groups, such as Baptists, indirectly reflecting tensions in the colonial period. However, such groups focused on non-interference of the federal government in religious matters, which did not mean abandoning religious pretensions in influencing politics at the local and state level.

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<sup>24</sup> Michael Sean Winters. *God's Right Hand...* Op. Cit. p. 272.

The characterization of this scenario is important because it translates a reality that is often misinterpreted by historiography, interpreting any restricted definition of freedom as a "deviation" from the original American proposal.

It is necessary, therefore, to take into account that different visions of individual freedom, freedom of speech and the press have coexisted (and still coexist) within that society, irrigating different political groups and generating social, political and legal tensions.

Through the analysis of the life trajectory of Larry Flynt and Jerry Falwell, the article tried to show how these tensions unfolded in the second half of the 20th century. In this sense, it was necessary to use different scales of analysis, extrapolating the macro-institutional bias.

The consolidation of the religious figure of Jerry Falwell accompanied the federal judicialization of various social issues in the 1960s and 1970s, with important victories for progressive groups.

In the late 1970s, Jerry Falwell led the Moral Majority to a defense of Christian collective morality against the idea of individual secular law and helped approximate conservative religious rhetoric with the neoliberal economic agenda of the Ronald Reagan government.

On the other hand, Larry Flynt's trajectory reveals how the popular tradition of unrestricted individual liberty and expression permeates some sectors of

American society. Flynt developed his idea of freedom without any formal study but, rather, in coexistence with the most popular sectors of American progressive society.

His 1988 victory, which took place during the "conservative revolution" of the Reagan administration, indicates the need for a more complex view of the period, setting the boundaries of conservative reaction. Progressive groups persevered through the 1980s, and the moral agenda of Christian fundamentalists was not fully embraced by the Republican government, as we can see through the continuance of several progressive gains, especially the abortion law.

The social advances achieved and the current constitutional understanding of the First Amendment have not yet been set in stone. The story of the First Amendment is not an evolutionary story; it's the story of disputes between these different constitutional interpretations, of disputes between different ideological groups within society and, in the broad sense, of the history and destiny of the United States itself.



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