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A doctoral candidate at Tel Aviv University School of Law. My doctoral dissertation, supervised by Prof. Menahem Mautner and Prof. Asa Kasher, aims to develop a theory of ethics in humor, with implications on the field of law.

“Only Joking” as Legal Defense: How Offensive is Offensive Humor?

Despite our ubiquitous use of humor in various aspects of life, and the growing body of humor research in the social sciences, there is little literature on humor in the legal sphere. Moreover, there is currently no theory pertaining to the encounter between humor and legal norms. The lack of such a theory creates a challenge especially in dealing with humorous speech of a potentially offensive nature—e.g. racist or sexist humor, or any other kind of disparagement humor.

The present paper seeks to fill in the gap in the legal literature, and questions whether humor negates, minimizes or aggravates the offensiveness of offensive speech. The discussion is conducted in two stages. First, we study the question of whether or not humor can have the effect of negating or minimizing offensiveness, while referring to interpretative and consequentialist theories dealing with offensive humor; and second, we address the question of whether humor can amplify the offensiveness of offensive speech, while emphasizing the pragmatic aspects of the utterance.

The paper shows that, as a rule, the element of humor does not have the capacity to diminish the offensiveness of speech, with the exception of a few specific cases: irony, black humor and friendly teasing the final part of the paper briefly touches upon several core issues that are likely to raise up the question of whether the humorous nature of speech can be viewed as a protective merit or a redeeming value that would justify treating such offensive speech differently than non-humorous offensive speech. This succinct discussion touches on the aesthetic value of offensive humor, the value of offensive humor as means to vent aggressions, and the unique case of offensive satire.