

Jessica Milner Davis & Sharyn Anleu Roach. 2018.
Judges, Judging and Humour.
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Book review

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Judges, Judging and Humour is an edited volume in which legal and humour scholars contribute to a still underdeveloped area of research, namely the intersection of humour and the law. The editors, Milner Davis and Roach Anleu, open the collection with an introduction Chapter that eases the reader into the unexpected interconnections between what at first sight appear to be two opposites; humour and the law. However, the collection is made accessible to scholars of all fields thanks to the succinct and detailed way through which the editors outline classical theories of humour. Judges, Judging and Humour is divided into three sections in which the potential of the interdisciplinarity nature of humour and the law achieves its culmination in the final part, which explores exactly how and where humour is seated within the law.

Christie Davies opens the book with his posthumous account of how forms of humour such as jokes and anecdotes are used to make fun of members of law enforcement. Davies shows how the development of this type of humour is strictly connected to the legal system in which it flourishes. Because in the UK legal system judges are not elected by the public and are associated with values such as incorruptibility and impartiality, humour punches down at them as thick, eccentric or biased. His vivid analysis of the differences between jokes (meant to be funny), anecdotes and wit (both context related and not necessarily funny) show that a change on anecdote irrelevant details create jokes which travel in time and space.

Galanter's chapter looks at humour about US judges, whose high status seems incompatible with laughter. He associates their seriousness and ceremonial solemnity to mother figures as in both cases, their high normative status makes them uncorrupted, impartial and sexually imperturbable. There are many jokes about lawyers' weaknesses as the judicial system places them in an inferior position compared to judges. Still, because of judges' higher status, they are never characters within lawyers' jokes. In fact, most jokes concern judges who have lower status in judicial branches of government (e.g. trial courts).

Part I ends with a different angle on humour about judges thanks to Milner Davis' account of comedies in dramatic settings which resemble the seriousness and power of judges' sentences. There is drama in courtrooms where judges' actions, although predictable, determine the future of those involved in a dispute. Judges are symbolically positioned in a trial, because of their impartiality and

Milner Davis stresses that the focus is on their ‘mental activity, not bodily, on the impersonal rather than the personal’ has ‘comic potential’ if acted by humans instead of superheroes. Her account of the role of judges in different times and cultural comedy settings highlights how the ‘incongruity between symbol and body’ and the unexpected human fallibility of the judicial role triggers laughter. Still, despite the comic settings, judges retain their authority, which in comedies has been used to either end a play or to excuse and show humanity to the comic victims and the audience. Milner Davis demonstrates that humour and ‘flawed human means’ are tools to achieve judicial ends which could prescribe how judicial power should be exercised.

The second part of the book opens with Roach Anleu and Mack’s findings of humour within the formal working environment of Australian court proceedings as having a practical function, such as lightening the mood in a serious working environment, facilitating its organizational flow through time management and future scheduling, or as having a normative function. Significantly, this type of humour preserves boundaries and hierarchies reminding other courtroom’s professionals about the work-related chain of command. However, courtroom’s time constraints might require judges to defer from joking when humour is not welcomed. The authors stress that humour can form the courtroom’s collegiality while also re-establishing judges’ authority in a pleasant manner, but towards the end of the chapter, they foreshadow that authority itself is actually negotiated through humour. This seems to be key in their argument and it would be interesting to read more about these aspects in future research.

In a similar key, Bergman Blix and Wettergren look at how humour is used in Swedish Courts, but through an innovative emotional sociological and interactional perspective showing the links between humour, power and group solidarity. Judges’ reliance on humour might be connected to their understanding of other people’s emotions to achieve courtroom decorum. However, as their neutrality and objectivity virtues expects them to be a-emotional, the irrationality of their laughter is not always welcomed limiting their jokes to the enhancement of legitimacy and easement of courtroom tension. Emotional and rational actions link when by laughing together individuals feel included as belonging to a same group.

Part II ends with a legal scholar’s original account of judges’ humour in the context of swearing and sexuality, where women have long been excluded from initiating jokes (Moran 2011). Moran argues how swearing is a solemn rite of passage where new judges are appointed and which is open to the public, but its humour nonetheless targets the member of the judges’ elite triggering various possibilities of laughter (Glenn 2003). This study is the cherry on top of the cake of Part II as it eases the reader into a practical example of humour in the courtroom working environment; the case of swearing. Judges, usually men, use their superior position (e.g. Lord Chief Justice) to make their peers, i.e. other judges, laugh by referencing their common social class, educational privilege and inter-professional rivalries. In the final example of swearing humour, however, the author looks at how women themselves are able show comic potential by challenging the status quo.

The third and final part of *Judges, Judging and Humour* really nails the connection between humour and the law. It goes beyond looking at jokes about or within legal settings and it delves into where and how humour is seated within the law (Condren et alia 2008). Capelotti looks at how humour is protected under Brazilian law where jokes with generic targets, such as a category of people, are admissible under the law, but jokes targeting specific individuals will trigger legal liability because of political (in)correctness. Capelotti argues that the engenderment of a ‘good humour’ according to judges’ personal tastes, might leave out the kind of exaggerated, grotesque and obscene humour which is nonetheless a crucial way of joking. Capelotti’s study ends with promising advice on how sentences on humour should be delivered. He suggests that they should look the target of the joke, whether that

person has a public position and whether those initiating humour meant to be funny. Finally, he suggests that judges should consider social evolution with which the law is well known for struggling to persevere, so as to avoid condemning humour out of personal preferences.

Little closes the collection with an insightful account of how US courts deal with humour. Significantly, even though the US heterogeneity produces different types of jokes, US judges generally agree that humour is protected under the American Constitution first amendment of freedom of speech unless sensitive issues such as indecency, obscenity or terrorism are tackled. In line with the other contributors to the book, Little highlights judges' preferences for incongruity humour and word play. As elements of exaggeration and distortion would hardly deceive consumers, US courts favour the use of parody and puns under trademark law; parody has the power of depicting the object of the joke in a manifestly different way from the original object. It would be difficult to sustain that consumers are deceived into buying an original product when a parody has clearly transformed the latter into something different. Little's analysis of sexual harassment as a sexual joke modifying conditions of employment is also revealing. By relying on superiority theory, she grasps the reason why judges often condemn this sexist type of humour that disparages the target of the joke making them feel uncomfortable. Little recalls how the work of Bourdieu (1984) is often employed to justify the fact that puns show intellectual capability, meaning a certain type of cultural capital that will thus be preferred by courts. The book ends with Little's discussion on whether the enforcement and legality of humour in terms of Kuipers 'good humour' and the condemnation and illegality of 'bad humour' out of judges' tastes risks losing the potential of the humour itself, which might not and should thus not coincide with illegality (2011). This discussion is promising for future investigations on the contemporary legal constraints of the potential connections between humour and the law opening up a variety of innovative opportunities to investigate how the solemnity and seriousness of the law interplays with the emotional sphere of humour.

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Biography

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Rebecca Rose Nocella is a PhD candidate in law at the University of Reading researching the relationship between gender, sexuality and the law. She investigates how to enforce the legal rights and freedoms of workers in the British online pornography industry. She holds a five year law degree from the University of Bologna and an LLM in International Law from Reading