

## Book review

**Milner Davis, Jessica & Roach Anleu, Sharyn (Eds.). (2018). *Judges, Judging, and Humour*. Switzerland: Palgrave Macmillan.**

The book *Judges, Judging, and Humour* edited by Jessica Milner Davis & Sharyn Roach Anleu is a collection of essays examining the unique and powerful intersection of humour and the judiciary. Although unexpected, and widely assumed as inappropriate and counter to the formality and magnitude of the judicial experience, humour is demonstrated readily in the courtroom. Underscoring its complexity, research in this area suggests that humour can epitomise quintessential risky courtroom behaviour, expose unprofessional antics, or serve as a valuable communicative tool. The multifaceted nature of humour is enacted beautifully in the judicial context. It is this sublime juxtaposition that focuses the edited collection.

The Foreword, written by Honourable Michael Kirby, introduces the legal context, and situates humour as a central and “regular companion” (p. v) to courtroom interactions. His first-hand accounts, examples, and interpretations set the tone for what is an enlightening and pleasurable read. As the editors explain, the ultimate goal of the text is to illuminate further how judges serve as the subject of humour, how judges employ humour, how legal decisions influence the interpretation of humour, and “how courts...feature in comedies and satires that exploit aspects of judicial or legal formalities and customs as entertainment” (p. 26). To that end, the text is organised into three parts, each part connecting contributions by respective overarching themes: *humour about judges, use of humour in the courtroom, and judicial decisions about humour*.

Anleu & Milner Davis’s introductory chapter, “Thinking about judges, judging, and humour: The intersection of opposites”, “introduces the multi-layered connections that unite the seriousness of the judiciary on the one hand with the lightheartedness of humour on the other” (p. 2). This chapter lays out the key features of humour as they relate to the examination of the judicial arena. Beginning with a brief review of the foundational aspects of humour research, the authors define humour, and reflect on the theoretical conceptions of humour production, appreciation, competence, functions, and styles. Noting pertinent research on gender differences in humour use, and health benefits related to humour enactment and enjoyment, the authors engage in a valuable discussion of the cultural specific qualities of humour and humour in the judicial workplace. The authors outline issues of in-group humour, superior/subordinate use of humour, and intra-cultural humour, as well as the management of authority, collegiality, and group cohesion as germane to humour use. Anleu & Milner Davis highlight key points of convergence between humour and the courtroom, and establish the necessary framework to interpret the research and perspectives addressed in the subsequent eight chapters.

### Part 1: *Humour about Judges*

In the first section of the text, three chapters examine the depiction of judges as the subject of fodder and joke telling, in all their proper and improper forms. The theatrical underpinnings that define the courtroom context are also discussed.

In the opening chapter of Part 1 “Judges and humour in Britain: From anecdotes to jokes”, Christie Davies purports scarcely any jokes centre on judges in Britain. Whether it is their majestic persona that inhibits joke telling or the fact that there are simply not many dishonest and scandalous judges to mock, no large corpus of “judge jokes” exist to examine. In the absence of jokes, the author argues that humour exists in the form of anecdotes—the true and sometimes fictional stories recounting absurd, unexpected, and inappropriate courtroom situations. His chapter discusses how anecdotes are used, how these demonstrate humour, and the ways they reflect relational tensions between judges and counsel. Davies concludes the chapter by highlighting how courtroom anecdotes have morphed and transformed in their depiction of how humour is enacted, making them “indistinguishable from jokes” (p. 68).

Marc Galanter’s contribution, “Funny judges: Judges as humorous, judges as humourists”, begins with an interesting and jarring comparison—the innocent comic persona of the American judge as court jester that is a familiar “bit of children’s lore” (p. 76), versus the censure and condemnation resulting from actual instances of judges’ improper use of humour in the courtroom. This stark contrast underscores the parameters of acceptable humour by and about judges. The author distinguishes jokes about judges from other courtroom humour as being focused solely on judges’ violation of the norms and expectations for the honourable position. The stereotypical white middle-aged male justice, either in or outside of the courtroom context, performs an ostensible infraction of his judicial identity, resulting in humour. For example, Galanter argues that these jokes differ greatly from the plethora of lawyer jokes that saturate American culture. Whereas lawyer jokes underscore the barrister’s dishonest, unethical, ambulance chasing persona, and perpetuate a negative view of those drawn to the profession, jokes about judges, no matter how aggressive, “turn(s) on the expectation of adherence to these admirable qualities” (p. 88). Although sharp and pointed, these jokes still leave intact the integrity and principled qualities of the ideal judge.

In her second chapter “Justices on stage: Comic tradition in the European theatre”, Jessica Milner Davis chronicles the depiction of the comic judicial figure from its classical origins to its contemporary emblematic portrayals. Beginning with the inept Athenian magistrate in Aristophane’s *Lysistrata*, who suffers humiliation at the hands of a woman, through the 15<sup>th</sup> century emergence of legal farces, to the iconic courtroom scenes of Monty Python, the author discusses these and other seminal examples. In tracing the evolution of the theatrical characterisation of judges, Milner Davis underscores the constant and consistent comic qualities that have kept and continue to keep audiences entertained.

### Part 2: *Judges’ Use of Humour in the Courtroom*

As the section heading establishes, the three chapters included in part 2 discuss the variety of ways in which judges employ humour in the courtroom, and how inclusion of humour influences legal interactions and notions of appropriateness and judicial misconduct.

Sharyn Roach Anleu & Kathy Mack weigh how the use of judicial humour impacts the organisational structure of the court in their chapter “Judicial humour and inter-professional

relations in the courtroom”. Aiming to identify how judicial humour use influences organisational goal attainment and the professional interactions of court participants, the authors scrutinised nearly 2000 pages of typed transcript from observed and recorded courtroom proceedings. Although not a frequent occurrence in the courtroom, they reported that magistrate humour includes witticisms, repartee, quips, and sarcasm. The results of detailed transcript analysis reveal four clear classifications that define how judges use humour to communicate with other court professionals: managing time and flow of proceedings; relieving courtroom tension; relaying judicial officer’s expectations; and controlling others’ use of humour. This research classifies judicial humour as a useful and practical tool that aids in managing courtroom interactions, as well as a “normative mechanism to maintain the parameters of judicial authority” (p. 167).

In the paper “Humour in the Swedish court: Managing emotions, status, and power”, Stina Bergman Blix & Åsa Wettergren cast a wider net than in the preceding chapter. They parse humour use by both judges and prosecutors in Swedish district courts. The authors utilise an emotion sociological perspective to understand better “*when, what, by whom, and why* numerous interactions are allowed to break the routine of seriousness in the typical Swedish courtroom” (p. 204, emphasis in the original). Through observations, interviews, and the shadowing of participants, Bergman Blix & Wettergren identify intentional and unintentional uses of humour by judges and prosecutors during formal court proceedings, as well as during backstage interactions. Their analysis of scenarios and courtroom exchanges reveals the ways in which humour can be used positively to shift the emotional atmosphere during trial.

Leslie J. Moran’s contribution entitled “What’s a box of “Blackwell tarts” got to do with it? Performing gender as a judicial virtue in the theatre of justice” centres on the judicial installation ceremony as a unique and rich context to investigate how humour and gender come together. Although occurring in the courtroom, swearing in ceremonies do not reflect the typical and expected qualities of most other legal proceedings. Moran explains that the purpose of swearing in events is to “transfer to the duly invested holder the capacities and powers that are connected to the office” (p. 219). However momentous and significant establishing a new judicial figure might be, in many ways, the actual ceremony itself seems to contradict the magnitude of the event making humour acceptable and even welcome. Swearing in ceremonies take place outside the normal business hours of the court and although open to the public, are more likely to be observed by an audience of fellow judges, legal professionals, and court staff. Finally, “as a general rule, the humour of the swearing in events is not conversational in form. It occurs in formal speeches” (p. 222). Together, these conditions provide a unique setting for the author to explore how speakers’ gender and gender references intersect with the types of humour that are employed.

### *Part 3: Judicial Decisions about Humour*

In the final section of the book, two chapters explore central issues that influence freedom of speech and humour regulation.

João Paulo Capelotti discusses how Brazilian courts navigate between freedom of speech and individual dignity in his chapter “How judges handle humour cases in Brazilian courts: Recent case studies”. His analysis of humour-related legal cases between 1997-2014 identifies what he refers to as key points of reference that serve to guide judicial decision-making. Whether the target of the humour is a particular category of professionals or a specific individual, it is critical to first determine whose reputation, identity, or privacy is being jeopardised as a result of the

joke. “If the plaintiff is not the target of the joke or if the joke is too generic to affect an individual personally, the case tends to be dismissed at this stage” (p. 273). A second important condition is to ascertain the intentionality of the statement or image in question. Determining the goal of the humour “to joke or to offend—can usually only be done with full understanding of the social circumstances surrounding the remark” (p. 273). Capelotti asserts that these fundamental steps are essential to safeguarding judicial impartiality.

In her paper “Judicial regulation of humour in the United States,” Laura E. Little identifies the common forms of humour highlighted in US case law consistently favoured by judges. In her discussion of the direct and indirect regulation of humour, Little argues that “indirect regulation can (thus) reveal more about courts’ implicit disposition towards humour, since courts’ sense of justice is not distracted, constrained, or ‘hijacked’ by parts of the US constitutions” (p. 292). Her analysis reveals three types of preferred humour; incongruity, parody, and word play. Explicit incongruity can safeguard jokes against civil liability as demonstrated in the *Leonard v. PepsiCo* case. In this example, the clear and numerous incongruities embedded in the Pepsi advertisement characterised the campaign as funny and not a legal binding offer. Parody is another protected form of humour. When done well, the deliberate exaggeration ensures that the imitated idea or product is not likely to be interpreted as fact but seen as funny. Finally, Little’s review of employment discrimination cases revealed that “patterns do emerge whereby courts prefer puns and other word-play over alternative forms of humour, the result being to protect linguistic jokesters from liability” (p. 300).

As the first book to collect and organise research on judicial humour, the contributions of this edited text are considerable. The degree of diversity reflected in this timely examination is by far its greatest feature. The editors integrate diverse disciplines, cultural perspectives, and methodological approaches to explore the convergence of humour and the judiciary. Contributions draw from the social sciences, humanities, and the law and the authors represent leading scholars in the fields of sociology, English, and law. The chapters also reflect a variety of cultural perspectives, discussing courtroom humour in the context of British, Swedish, Australian, Brazilian, and American legal systems.

The editors remarkably have united “the literary and cultural studies approaches... with empirical research examining the reality of day-to-day courtroom procedure” (p. xiv). They counterweigh observational studies with case studies and literary analysis to provide a breadth of analytical methodologies. The range of these different research tactics allows insights that otherwise would only be a look into the shallow end of this pool.

With regard to the written explications in the nine chapters, several features operate to develop the reader’s perspective. Rich and robust examples illuminate the theoretical underpinnings of each of the chapters. For example, Capelotti provides elaborate descriptions of case studies to establish and make clear how judges manage humour cases in Brazilian courts and, in chapter 7, Moran’s detailed and descriptive field notes provide a vivid image of how humour is employed in installation ceremonies. A substantial reference list accompanies every chapter. The references are solid, representing known and familiar citations along with distinctive and less usual scholarly works. The editors have organised the chapters in a taxonomy that reflects three significant categories. This system does well to provide focus while also allowing freedom in how contributors explore the themes.

In sum, this edited volume marks a unique space—illuminating the issues that connect humour and the law. Culling together research and insight on how judges use humour, how they are the subject of humour, and how they regulate and protect humour, Jessica Milner Davis &

Sharyn Roach Anleu bring attention to this relatively under examined subject and help set the trajectory for future research. This noteworthy research tool will no doubt have an impelling effect on the study of humour and the judiciary.

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