

A Scholarly Though Accessible Exploration of Humor and Law

Guilty Pleasures: Comedy and Law in America

Laura Little (Oxford University Press 2018), 214 pages

Jeff Todd, rev'r*

If Laura Little had limited *Guilty Pleasures: Comedy and Law in America*¹ to critiques of fictional characters and analyses of lawyer jokes, the book would be of but passing interest to this journal's readers, who expect pieces grounded in doctrine, research, and theory. Little does far more, however: she draws from humor scholarship² to consider the effect of law "on" humor, such as in intellectual property and defamation cases; humor "about" the law, such as jokes and other portrayals of lawyers, judges, and juries; and humor "in" the law, such as clever statements in transcripts and judicial opinions. Through a clear and sometimes funny style, and with the support of numerous examples, jokes, and 150 *New Yorker* cartoons, Little offers a book that is a good read (which is suggested by the pun in her title *Guilty Pleasures*) but that is supported by enough theory to pique the interest of legal academics and practitioners.

In some ways, her book does feel like an academic work with its 400-plus endnotes, Selected Bibliography, and sources that include law review articles or books by legal scholars.³ The Introduction describes the categories and theories of humor that inform the discussion in the book's three chapters. Scholars group humor into six basic types: formal jokes,

* Assistant Professor of Business Law, Department of Finance & Economics, Texas State University.

1 LAURA LITTLE, *GUILTY PLEASURES: COMEDY AND LAW IN AMERICA* (2018).

2 Yes, humor scholarship is a thing, and it traces its roots at least as far back as Plato and Aristotle. *Id.* at 10; *see, e.g.*, THOMAS HOBBS, *LEVIATHAN* 48 (G.A.J. Rogers & Karl Schuhmann eds., Thoemmes Continuum 2003) (1651); SIGMUND FREUD, *THE JOKE AND ITS RELATION TO THE UNCONSCIOUS* (Joyce Crick trans., Penguin 2003) (1905). Little cites too many sources to list here, but note how some of them sound so serious that they likely drain the fun out of funny. *See* SALVATORE ATTARDO, *HUMOROUS TEXTS: A SEMANTIC AND PRAGMATIC ANALYSIS* (2001); MICHAEL BILLIG, *LAUGHTER AND RIDICULE: TOWARDS A SOCIAL CRITIQUE OF HUMOUR* (2005).

practical jokes, sarcasm, parody, satire, and puns.⁴ Scholars also recognize three major theories of humor: superiority theory, which posits that people disparage others to enhance themselves; release theory, which posits that people use humor to release tensions about repressed pleasure or anxiety about taboo matters of sex and death; and incongruity theory, which posits that humor arises from the joining of “two or more otherwise diverse or contrary phenomena.”⁵

These categories and theories combine to support Little’s observation that incongruous humor, which is often presented through parody and pun, is favored, while superiority and release humor, which is often presented through sarcasm and satire, is disfavored. Little offers hundreds of examples, and often the genres bleed into each other (as when a parody satirizes its target or the punchline to a joke is a pun), so she avoids developing these observations into claims supported by more sustained analysis and observation. Indeed, a reader expecting a deep textual explication of any particular joke or case or transcript will be disappointed. She rarely spends more than a single paragraph on any one humorous text, preferring instead to fill the book with sample after sample. To call this approach a shortcoming, however, would be to ignore what *Guilty Pleasures* is: a 200-page survey of various ways that humor and law intersect. Little does something that seems less demanding but is subtly more ambitious than a monograph that focuses on humor in one discrete part of the law: she shows how numerous diverse aspects of law and humor interconnect. If your interest is in any one legal topic, *Guilty Pleasures* may not be your destination, but it is the map—a playful, engaging map—that can guide you there.

After all, while legal professionals and law students will likely form a big part of the audience for this book, Little writes for a general audience—or, more accurately, an audience that can include educated non-lawyers, as suggested by the inclusion of so many *New Yorker* cartoons.⁶ Note that the cartoons are not mere ornamentation; *Guilty Pleasures* references each one in the text so that—along with the jokes and quotations from cases, opinions, and transcripts—they serve as examples

³ For example, she cites one book and four law review articles studying lawyer jokes written by Marc Galanter. LITTLE, *supra* note 1, at 5 n. 13 (citing MARC GALANTER, *LOWERING THE BAR: LAWYER JOKES & LEGAL CULTURE* (2005); Marc Galanter, *Changing Legal Consciousness in America: The View from the Joke Corpus*, 23 *CARDOZO L. REV.* 2223 (2002); Marc Galanter, *Anyone Can Fall Down a Manhole: The Contingency Fee and Its Discontents*, 47 *DEPAUL L. REV.* 457 (1998); Marc Galanter, *Lawyers in the Laboratory or, Can They Run Through Those Little Mazes*, 4 *GREEN BAG 2D* 251 (2001); Marc Galanter, *The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, and Political Discourse*, 66 *U. CIN. L. REV.* 805 (1998).

⁴ LITTLE, *supra* note 1, at 5–6 (citing JON E. ROECKELEIN, *THE PSYCHOLOGY OF HUMOR* 13 (2002)).

⁵ *Id.* at 10–14.

⁶ *Id.* at 3–4.

of each point under consideration.⁷ In addition, while Little’s writing is not simple, she does strive for common words rather than legal jargon. Indeed, one subsection looks at humor about the complexity of rules of procedure and of tax law.⁸

This general-interest reader would likely find the first of the three chapters the most challenging because it deals with how substantive law treats humor. Chapter 1 covers trademark, contract, discrimination, defamation, and other torts. Though potentially difficult and dry, Little does not venture too far into the weeds, and her explanations of legal concepts should be clear enough for any reader. For example, she opens the subsection on defamation by defining “defamatory statement” and explaining the requirement to show falsity to segue into the issue of defendants asserting that the statement was “just a joke.”⁹ Yet the subsection contains enough references to legal and theoretical sources that someone like myself who has a scholarly interest in this topic can flip to the endnotes, where she cites twelve federal and state cases with parenthetical descriptors to support her claim that jokes that suggest real facts are defamatory while those that do not are non-actionable opinion.¹⁰ Readers are on notice that throughout *Guilty Pleasures*, she does not shy away from quoting profanities or the racist and sexist comments that formed parts of lawsuits.¹¹

Chapter 2 focuses on the portrayal of law in popular cultural outlets like jokes, cartoons, and movies and television shows. While the single largest part of this chapter deals with three stereotypes of lawyers as crafty and cunning, money-grubbing, and proliferating, Chapter 2 also addresses humor about judges, juries, gender and race in the law, and the legal system and legal texts. Because most of the examples involve satire—including almost all of the humor portraying lawyers—this chapter has a darker feel than the other two, particularly when one considers that some humor contrasts the common sense of the non-lawyer juror seeing

7 In discussing humor suggesting that physical desirability rather than professional merit is preferred for female attorneys, one cartoon features a woman sitting across from a man at a desk in an office setting and telling him, “I’d like to have myself declared legally blonde.” *Id.* at 113–15 (citing Leo Cullum, *Cartoon 58—TCB 22412*, THE NEW YORKER COLLECTION, THE CARTOON BANK).

8 *Id.* at 134–40.

9 *Id.* at 29.

10 *Id.* at 30, 30 n.20 (citing, *inter alia*, *Knieval v. ESPN*, 393 F.3d 1068, 1071, 1077–78 (9th Cir. 2005) (finding that a photograph with the caption “Evel Knieval proves that you’re never too old to be a pimp” could not reasonably be interpreted as actual fact); *Hamilton v. Prewett*, 860 N.E.2d 1234, 1245–47 (Ind. Ct. App. 2007) (deciding whether parody is protected as hyperbole and asserting that parody “is speech that one cannot reasonably believe to be fact because of its exaggerated nature”).

11 *E.g., id.* at 41 (quoting three jokes that disparage African-Americans that were part of an employment discrimination lawsuit); *id.* at 158 (quoting an exchange between a judge and criminal defendant with multiple obscenities).

through lawyerly spin or questioning judicial instructions.¹² Little's tone reveals some irritation with how non-humorous portrayals of lawyers often reveal them as virtuous and hard-working yet the humorous ones focus almost exclusively on negative—and largely untrue—qualities.¹³ Perhaps this darker side makes *Guilty Pleasures* more interesting for readers of this journal. For example, Little connects humor characterizing female lawyers as sexual objects, youthful, and “plucky” to the exodus of women from the legal profession: do such jokes mask the fact that more women than men get pushed out of practice before they can become older lawyers, or do they point to the legal industry's glass ceiling and thus bring the potential for awareness and change?¹⁴ Given the debate about the “transformative power” of satire—about whether it shines a light and thus inspires change, or it elicits only laughter rather than action and thus reinforces the status quo—this question may have no answer.¹⁵

Guilty Pleasures maintains a healthy balance of such serious implications of humor and law and the “fun” side of funny. Consider Chapter 3, which deals with humor that arises within legal proceedings and legal texts. Judges often write with an impersonal, detached voice, so rhetorical scholars have long argued that a more personable style would connect better with the audience and tacitly recognize that close cases are indeed close but decided fairly.¹⁶ When judges turn to satire or sarcasm to mock a party or its counsel, however, that superiority humor degrades the respectability of the judicial branch. For example, Judge Richard Posner inserted pictures of an ostrich and of a suited man with their heads buried in the sand to express his distaste for attorneys avoiding dispositive precedent.¹⁷ Lawyers and even mainstream media commentators criticized Judge Posner for bullying.¹⁸ Contrast that opinion with Justice Breyer's comment during arguments on a case involving strip searches of students about having items put in his underwear while he was a student.¹⁹ Though bordering on the taboo, the incongruity of this “oddly indecorous confession from a refined gentleman in a ceremonial posture” considering

12 *Id.* at 108–12.

13 *Id.* at 76; *see id.* at 79 (recognizing an “unfortunate truth” that “as much as Americans need them and view them as a crucial part of life in a free society, lawyers are a profession for which most citizens bear serious ill-will”).

14 *Id.* at 113–19.

15 *Id.* at 140–42.

16 *E.g.*, Sanford Levinson, *The Rhetoric of the Judicial Opinion*, in *LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW* 187, 188–89, 211 (Peter Brooks & Paul Gewirtz eds., 1996); Gerald B. Wetlaufer, *Rhetoric and Its Denial in Legal Discourse*, 79 VA. L. REV. 1545, 1589–90 (1990).

17 LITTLE, *supra* note 1, at 166 (citing *Gonzalez-Servin v. Ford Motor Co.*, 662 F.3d 931, 934 (7th Cir. 2011)).

18 *Id.*

19 *Id.* at 159.

a serious legal issue “is surprising and charming.”²⁰ Indeed, this statement makes a weird but honest connection between a seemingly distant judge and his audience.²¹ This chapter provides many other examples for legal advocates and judges—and likely several pedagogical gems for legal writing and advocacy instructors—about weighing the perils against the potential of humor.

A question that recurs throughout *Guilty Pleasures* is whether the combination of law and humor is a bad thing because the entertainment value distracts us from the misuse of power, or a good thing that makes for better understanding of the law and legal processes and thus empowers us.²² The book never answers this false-choice question because humor, depending upon its type, can do either. This possibility of a greater understanding about the law is another reason I am glad that Little eschews a purely academic treatise or a book targeted only to those with inside knowledge of the legal profession. Readers are invited to look beyond the caricature of the dishonest lawyer by recognizing and questioning the superiority humor that masks the good that lawyers and judges do.

²⁰ *Id.*

²¹ *Id.* at 160–61.

²² *Id.* at 182–84.