

editors *Jessica Milner Davis* . *Sharyn Roach Anleu*

# JUDGES, JUDGING AND HUMOUR



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Jessica Milner Davis • Sharyn Roach Anleu  
Editors

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Foreword by the Hon. Michael Kirby AC CMG

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# Foreword

Hon. Michael Kirby AC CMG

This original and stimulating book provides an intriguing compendium of articles written by specialists on the use and misuse of humour as it relates to judges.

Anyone who, like me, has spent decades in courtrooms, first as a clerk, then as a junior lawyer, next as an advocate and eventually as a judicial officer, knows that humour is a regular companion. Generally, it is kept in the minor key because of the seriousness, solemnity and dignity of much judicial work. The litigants have come too far, they have felt too much stress, they have paid too much in fees, they have worried too much about the issues, to tolerate excessive humour concerning the matters for trial. Respect for the venue and the occasion, as well as respect for the litigants themselves, puts a brake upon too much humour, as this book demonstrates in several contexts. When that brake is released and humour overflows, it can sometimes be resented. It can even occasionally be called mockery, professional misconduct or contempt of court.

Nonetheless, humour is often the unconscious, spontaneous and innocent response to excessively stressful situations. It may be released, without too much thought, to lighten the mood of a difficult moment. Or to afford relief to the parties when the serious business of public disputation grows so intense that a little humour may afford to everyone “the pause that refreshes”. When this happens, the essential humanity of the actors in the courtroom may be unexpectedly revealed. Proportionality may be

restored to their disagreements. A new start may then be possible to the ascertainment of the facts in dispute and the thoughtful, professional analysis of the applicable law leading to resolution and hopefully peace.

Humour of this kind is generally ephemeral. Often it arises from the surprise of suddenly seeing facts, events and arguments in an unexpected light or recognising the incongruity of some aspect of the contest. If I count my years as an articled clerk, add the decade as a solicitor and another as a barrister and heap on top the 34 years I served in various judicial offices, I can recall a number of judges who had a marvellous gift of humour, which they offered as a healing balm to the often fraught circumstances of the cases before them. The balm was an ointment they applied like a kind of Biblical frankincense and myrrh. It was distributed rarely and frugally because its precious value was recognised. Anything so priceless had to be applied in tiny portions. Conserved in such a way, humour could be wondrously therapeutic.

Most judges do not have an abundant supply of these precious potions. Those who do are cherished because of their gift to keep the inevitable stresses and tensions of the courtroom environment under control. The most remarkable feature of this type of spontaneous humour lies in the fact that it is very hard, or impossible, to remember subsequently what was said or done. In a judicial environment, it generally arose because the purveyor of the balm of humour had a kindly heart. He or she would see the irony of the moment. And offer something with which both sides could empathise. Usually it depended upon a skill with words, because words are the tools of trade of those who labour in the courtroom. Even reluctantly they can acknowledge a well-meant witticism where it evidences swiftness of mind, neutrality as between the parties and a desire to lower the temperature where it risks boiling over and doing harm to those in danger of being scalded.

Most judges, in my experience, do not have a natural gift of humour. Most are very serious about their duties and conscious that, for the people before them, waiting anxiously for their decision, the trial is no laughing matter. If a judicial officer does not have dexterity with words, or the mastery of surprise, timing, incongruity and the unexpected, which usually explain the magic of humour, he or she would probably do best to leave it alone. That way lies safety. Some, however, press on, trying

desperately to demonstrate the talents that come so easily to the few. It is of these judicial practitioners that W.S. Gilbert spoke in his libretti for *The Mikado* and *Trial by Jury*. Listing a number of identifiable persons who should be added to a list for the attention of the Lord High Executioner of Titipu, one category identified is:

And that *Nisi Prius* nuisance, who just now is rather rife,  
 The Judicial humorist—I've got *him* on the list!  
 All funny fellows, comic men, and clowns of private life—  
 They'd none of 'em be missed—they'd none of 'em be missed.  
 ... [Chorus responds]  
 You may put 'em on the list—you may put 'em on the list;  
 And they'll none of 'em be missed—they'll none of 'em be missed!<sup>1</sup>

I have known some judges who definitely deserved a place of honour on the Lord High Executioner's list for forced humour, excessive jocularity, inappropriate jests, self-indulgence and misuse of power.

Because advocates are commonly obliged to express enjoyment and mirth at the efforts, however paltry, of the judicial jokester, they are submitted to a kind of torture. Only those who feel obliged to laugh at an unlaughable joke will know what I mean. Such forced laughter is somewhere collected and recorded. By a technological miracle, it is "canned" so that it can be played as the background sounds to unfunny television soap operas, generally imported from the United States of America. Occasionally, this error of judicial ways can be forgiven. It may have arisen out of the judge's desperate attempt to secure personal relief from the tensions of the trial by injecting a baleful attempt at humour. Being rewarded undeservedly with laughter at the Bar table, the judicial humourist mistakenly infers that the audience of advocates wants more of the same treatment. Somewhere in the distance, at the back of the courtroom, quietly sit the astonished parties to the proceedings. They feel a mixture of rage and distress; but the circumstances force them to observe a prudent silence.

The essays in this book cover a cornucopia of experiences on four continents of our world, Europe, North America, South America and Oceania. They examine, tantalisingly, different aspects of the themes of

humour as it is displayed in the often dramatic circumstance of the courtroom, or in other equally theatrical performances, on stage or film, in modern times and in ancient times, in deliberately jocular exchanges and in anecdotes that laugh at the foibles of the law and reinforce the professional glue that binds the disparate players together, despite many other differences.

The book starts with an examination of the essential nature of humour. It does so, whilst acknowledging that “[h]umour can be dissected, as a frog can, but the thing dies in the process ... It has a certain fragility, an evasiveness, which one had best respect”.<sup>2</sup> The authors describe, throughout the book, the many differences that can be seen in the character of humour. Differences over the centuries; differences according to the culture and circumstances; differences in national traditions of humour; differences in gender; and differences in the context of expectations and sometimes in the applicable law.

There are also differences that some observers ascribe to “political correctness”. Others may put them down to growing enlightenment and a decline in the brutal patriarchal traditions of the judiciary of times past. One judge with whom I often sat in court was greatly loved by his colleagues at the Bar. He was a brilliant after-dinner speaker. Much of his humour was sardonic. He revelled in his deliberate political incorrectness. For decades it drew great crowds and thunderous applause. However, when this judge told his joke about “hairy legged lesbians” once too often, the laughter turned to ashes in his mouth. His put-downs and insults came to be seen as needlessly cruel. New generations came to view them as inappropriate to the holder of a judicial office. Was the loss of that genre of humour a blow to civilisation as we knew it? Or was it, instead, the rejection of harmful stereotypes that have no place in a modern courtroom? Judicial humour can come in many forms, not only verbal: it can sometimes be pictorial, musical, statistical, figurative and symphonic. To relieve tedium in a secluded appellate court, I occasionally sketched cartoons portraying judicial colleagues and hapless advocates and some were selected by a frequent judicial victim for publication in his biography.<sup>3</sup> While some treasured these drawings of themselves, others regarded them as most inappropriate (Fig. 0.1).





**Fig. 0.1** Playful cartoon of three judges sitting on the bench sketched by Michael Kirby, suggesting a party with cake and funny hats. Reproduced with kind permission of Michael Kirby and Damien Freeman. The cartoon first appeared in Freeman, Damien 2012, *Roddy's Folly: R P Meagher QC—Art Lover and Lawyer*. Ballan: Connor Court Publishing: p. 72.

Reflections upon changing styles and content in judicial humour constitute a reflection on changing times in the law and in society. Because humour often lives at the edge of social controversies, it can be risky to parade it when times change and attitudes change with them. After decades of general indifference towards humour and the judiciary, suddenly the topic is coming under serious scrutiny. Articles have begun to arrive in law journals.<sup>4</sup> Commentaries are now being published in professional news magazines.<sup>5</sup> Now analysis is offered in this readable book. No one is suggesting that humour should be greatly magnified in the environment of courtroom dramas. Nor that the judicial actors should aim for starring roles as comedians or tragicomic figures of fun. However, judges are now coming under the microscope both for how they reject, use and misuse humour and for how those who observe them perceive their conscious and unconscious humour as a way of coping with the burdens and duties they are obliged to carry.

Viewing humour in the courtroom from the perspective of outsiders looking at the judicial role is a function that this book has embraced whilst offering important and novel insights. Yet the book has also allowed some of the judicial actors to tell their version of the story and to explain the role of humour as they see it.

This double aspect of humour was illustrated recently in a jest, shared between Bench and Bar, at the welcome ceremony offered to a new judge of the Supreme Court of Victoria in Melbourne. He was a big man, with a booming voice. He never appeared to be plagued with self-doubt. Whilst these are wonderful attributes in an advocate, some members of the Bar wondered how they would play out on the judge's translation to the Bench. This is a common theme in the gentle chapter of this book written by Professor Leslie Moran. He recounts the welcome ceremonies of new or elevated judges in England. They have their counterparts in most countries of the world. In the Victorian case, the jocular presentation of the new judge was accompanied by the gift to him of an engraved sign intended to be placed on the judge's bench:

“Shut up! He just might have a point.”

However, the sign was no challenge to the new judge. He graciously accepted the gift. And immediately turned the sign around to face the bewigged advocates at the Bar table in front of him. For the judge, the message could not possibly apply to him. Its only application was to his new audience, entrapped for the duration of his judicial service.

Humour, like Janus, the Roman God of Beginnings, is often portrayed with a double face. This is equally true of judicial humour and humour about judges. There is the face of the humourist. There is also the face of the observer. In courts of law, it is best if they are both smiling. This book explains why that is so. When everyone in court is smiling, it is a precious day for justice. But as every judge, every advocate and every litigant knows, such days are few and far between. The contributors to this book will help us all, in the future, to cherish judicial humour when it is well deployed.

## Notes

1. Gilbert, W. S. and Arthur Sullivan. 2015 [1885]. *The Mikado*. New York: Dover Publications, pp. 9–10.
2. White, E. B. 1941. “Some Remarks on Humor.” In *The Second Tree from the Corner*. New York: Harper and Row, pp. 173–81: p. 173.
3. Freeman, Damien. 2012. *Roddy’s Folly: RP Meagher QC—Art Lover and Lawyer*. Ballan, Australia: Connor Court Publishing.
4. Such as Roach Anleu, Sharyn, Kathy Mack and Jordan Tutton. 2014. Judicial Humour in the Australian Courtroom. *Melbourne University Law Review* 38: 621–5; and Jack Oakley and Brian Opeskin. 2016. Banter From the Bench: The Use of Humour in the Exercise of Judicial Functions. *Australian Bar Review* 42: 82–106.
5. Allman, Kate. 2017. “No Laughing Matter”. *Law Society Journal (NSW)* 37: 40–43.

**Michael Kirby** AC CMG was a Justice of the High Court of Australia (1996–2009). Before his judicial retirement he held several judicial appointments, including as President of the Court of Appeal of Solomon Islands (1995–1996), President of the Court of Appeal of New South Wales (1984–1996) and as Judge of the Federal Court of Australia (1983–1984). Since judicial retirement he has undertaken many tasks for the United Nations, including as Chair of the Human Rights Council’s commission of inquiry on the Democratic People’s Republic of Korea (2013–2014) and as a Member of the Secretary General’s high-level panel on access to essential health technologies (2015–2016). He was President of the International Commission of Jurists in Geneva (1995–1998). In 1998 UNESCO named him as Laureate of its prize for human rights education.

## Editors' Preface

The idea for this edited collection was born during a morning tea break at the 2015 conference of the Australasian Humour Studies Network held in Adelaide, hosted by Flinders University. Meeting in person for the first time, Jessica and Sharyn recalled their exchange of emails about a study on humour and the courts authored by Sharyn and her colleagues Kathy Mack and Jordan Tutton. They conversed more generally about their mutual research interests in the work of courts and in research on courts and humour, and identified other colleagues and acquaintances who seemed to share this interest in two subjects that normally do not overlap. The discussion sparked a proposal to co-edit a scholarly collection dealing specifically with judges and humour. It would be multi-disciplinary, with authors from several countries, and would combine approaches from humanities, social sciences and law.

At the 2016 conference of the International Society of Humor Studies hosted by Holy Names College in Oakland CA, Jessica attended a panel on humour and the law that included presentations by two eminent scholars, Marc Galanter and the late Christie Davies. Both agreed to prepare chapters for the proposed book. Others followed: from the UK, Leslie Moran, expert on judicial imagery; from Scandinavia, Åsa Wettergren and Stina Bergman Blix, sociologists engaged in empirical investigation of judges and their courts in Sweden; from the USA, Laura Little, former Visiting Scholar at the University of Sydney and author of

studies comparing American and Australian law on humour; and from Latin America, João Paulo Capelotti, who has studied humour-related cases from Brazilian courts. Two years later, in the sweltering heat of the Australian summer of 2017–2018, we are nearing completion of the resulting book, one that we believe to be path breaking.

*Judges, Judging and Humour* endeavours to unite literary and cultural studies approaches, such as those by Galanter, Milner Davis, and Davies, with empirical research examining the reality of day-to-day courtroom procedure. As this book demonstrates, humour and joking appear in both. Although fictive accounts of this on stage and page may seem embellished for an audience, observational studies such as those by Roach Anleu and Mack, Wettergren and Bergman Blix, and Moran, show that fiction does not stray too far from reality. The relationship between literary fiction and everyday reality is, however, a complex one. It varies from court to court and from culture to culture, as well as from one person to another; but in a way presents two sides of the same coin. Judges and magistrates are after all human and, as Aristotle remarked, to laugh is an essentially human capacity (*On the parts of animals*, Bk 3: 10). That humour and laughter should intersect with judicial seriousness deserves exploration, which this book aims to provide.

This collection also strives to contribute a cross-cultural dimension to the emerging literature on legal cases that turn on humour. Issues of freedom of speech, personal reputation and social and economic benefit intertwine in balancing the interests of individuals and society, a process that Laura Little has called “regulating funny”. One vital point that emerges from her chapter and from that by João Paulo Capelotti is the influence—for both good and bad—that personal judicial taste in humour can have. This aspect deserves further study across more cultures than could be represented here.

Finally, this book seeks to mark a pathway through the maze of theoretical and practical studies on humour and laughter to identify those that are attuned to studying humour in a very particular workplace: the law courts. The first chapter (by the editors) provides a summary of prior research that is intended to assist others scholars who may follow this path. Indeed, we hope *Judges, Judging and Humour* serves to open up a little-explored field. Humour is important for the healthy and impartial

operation of courts and their staff. Whether used well or not, humour turns out to be far from a trivial matter. It deserves more serious thought than it has received to date.

Many people have contributed to the development and execution of this project. We appreciate their many and varied efforts. First and foremost, Jordan Tutton provided research assistance throughout this project and worked most carefully, checking references, formatting chapters, and preparing the final manuscript for submission. Other valued research and administrative assistance has come from Rae Wood, Colleen deLaine and from Sharyn's collaborator on the Judicial Research Project, Kathy Mack. Historical illustrations play an important role in this book, affording comparison and contrast with contemporary images of courts, their surroundings and inhabitants. Our especial thanks go to André Gailani from the London-based Punch Archive Collection (<https://www.punch.co.uk/>). His personal and professional interest in the project has enabled us to identify proper names and dates for the many Victorian and early twentieth-century artists who created the images we have drawn from *Punch's* rich treasures of legal and judicial humour—including the cover image for this book. Sincere appreciation is also extended to David Stone of The David & Annabelle Stone Gilbert & Sullivan Collection at George Mason University for his kind assistance with matters G&S. John Tabb DuVal's translations into contemporary English from the Old French have greatly enlivened Chap. 4. Officers of many courts, in Australia, Brazil, Sweden, the UK and the USA, have generously acceded to our requests to use pictures of their environs for which we thank them. We thank Leslie Moran and Linda Mulcahy for their expert detective work on the layout of No. 1 Court at the Old Bailey in 1907 (shown in Fig. 1.2). We also appreciate the generosity of Gilmar Luiz "Tacho" Tatsch for his illustration in Chap. 8. Our thanks also go to Australian cartoonist Michael Leunig and his staff for kind permission to use in Chap. 1 his inimitable creation named "The joke tribunal".

We express gratitude to Palgrave Macmillan for taking on this project. We appreciate the work of Julia Willan, Palgrave's (former) Senior Commissioning Editor, Criminology, who at the outset expressed enthusiasm and encouragement. We appreciate the work of her successors, Stephanie Carey and Josie Taylor, who have shepherded the book

through the transition from Palgrave to Springer, responded to our questions, provided helpful details and worked with us and the Art Department at Palgrave on designing the cover. We thank Ulrike Stricker-Komba and Ganesh Ekambaram and his colleagues for their assistance during production, and Marie-Pierre Evans for preparing the Index. Financial and other support for this project has come from Flinders University, an Australian Research Council Discovery Grant (DP15010663), and the Judicial Research Project. Sharyn also appreciates assistance from the International Institute for the Sociology Law, Oñati, Spain where she was a Visiting Scholar in 2017.

Finally, it has been a delight to work with each of the chapter authors. We appreciate their efforts and patience in the inevitable re-writing and revision that is part and parcel of a scholarly book that is worthy of that name. In particular, we thank the Hon. Michael Kirby AC CMG for his thoughtful Foreword. We hope that all our readers will find much to enjoy as well as to spark debate in the pages that follow.

A project such as this takes time away from life's other activities and responsibilities. Jessica would like to thank Jeremy in particular for his unflagging support for "yet another humour book" that arrived rather unexpectedly. Sharyn especially wishes to thank Lucinda, Tristan, Oliver and Edmer for their interest in the topic and their assistance, which has come in varying ways. As co-editors, we also thank each other for a fascinating, interdisciplinary and unexpected journey—it has entailed much toil but no tears and a great deal of shared laughter along the way.

Sydney, NSW, Australia  
Adelaide, SA, Australia  
February 2018

Jessica Milner Davis  
Sharyn Roach Anleu

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## Note on Cover Image

“Up Before the Beak”, drawn by Henry Stacy Marks, RA (1829–1898), was first published in *Punch Magazine* on 1 January 1882. It was so well received that it was re-used as the frontispiece for a collection of law-themed *Punch* jokes, anecdotes and comic illustrations, *Mr Punch in Wig and Gown: The Lighter Side of the Law* (part of *The Punch Library of Humour*, edited by J.A. Hammerton, and published by arrangement with *Punch* by The Educational Book Co. Ltd, London, in [?]1910). Of Dutch origin, the term ‘Beak’ or ‘Beck’ refers to any person in authority. In England, especially in London, the phrase ‘up before the Beak’ was a common expression for appearing before a magistrate. Now considered rather old-fashioned, the phrase is less used than in the past (see Frank Milton 1967, *The English Magistracy*, London: Oxford University Press). Reproduced with kind permission of Punch Ltd., [www.punch.co.uk](http://www.punch.co.uk).

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# 1

## Thinking About Judges, Judging and Humour: The Intersection of Opposites

Sharyn Roach Anleu and Jessica Milner Davis

### Introduction

Judges and humour are rarely thought of together; however, humour and the judiciary intersect in a wide variety of ways, as the contributions to this book demonstrate. Judges individually and collectively may be the subject or target of humour; judicial decisions may have to determine questions of humour and its effect(s); and judges may create and use humour themselves, often as a way of managing their work, especially in court, but also in the interface between the judicial role and personal life. Courts and their participants, both lay and professional, often feature in comedies and satires that present judicial or legal formalities and customs

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as entertainment. This chapter introduces the multi-layered connections that unite the seriousness of the work of the judiciary on the one hand with the lightheartedness of humour on the other. The book as a whole examines humour relating to the judiciary,<sup>1</sup> legal processes, cases and legal systems from a range of countries and over time in order to illuminate the many ways humour and the judiciary intersect.

The aim of this chapter is to open up a field rather than to arrive at a definitive account. This is partly because the task of studying humour in any domain is complex and demanding—even unlimited. Empirical research and interpretive analyses of writings on humour and the related topic of laughter reveal two fundamental issues:

- Differences in the ways researchers and scholars from various disciplines approach, define, categorise, conceptualise, and theorise humour and its cognate or allied terms—sense of humour, humorous behaviours and styles (or types) of humour.
- Attention to how humour emerges, functions and is used in everyday life, particularly in workplaces but also in theatre and entertainment, both in the past and the present.

Since these two issues are closely linked to ideas about the judge, judging and humour explored in this book, this introductory chapter addresses them generally and in light of particular themes raised by the other chapters.

## What is Humour?

Humour is “an umbrella term to cover all categories of the funny” including comedy, wit, satire and jokes (Lippitt 1994: 147). Humour embraces many structures and types of funny material such as canned jokes, spontaneous humour (such as jesting, witticisms, quips and wisecracks), anecdotes, wordplay or puns, and modalities such as irony, self-deprecation and sarcasm (Jorgensen 1996; Martin 2007), as well as comic entertainment of all kinds (such as sketches, comedies, parodies, comic novels and rhymes). Precise distinctions between forms and types of humour can be difficult to identify. Interpretations of images, gestures or speech as humorous are

often culturally specific, subjective, context-dependent and variable (Haugh 2014; Holmes 2000; Holmes and Marra 2002; Norrick 1993). There is no one agreed definition. Dictionary definitions generally struggle to reflect the breadth of its modern international usage (Milner Davis 2013).

Within this umbrella term there is a subordinate specialist meaning for humour as good-natured humour, as distinct from sarcasm or irony. This reflects the etymological development of the word humour from its original medieval sense of various bodily “humours” governing different types of personality or behaviour such as the choleric or angry person or the cheerful, sanguine person (Milner Davis 2011; Ruch 1998; Wickberg 1998). In a related aspect of modern usage, humour also harks back to these origins by referring to a particular (usually admirable) aesthetic world-view: one that triumphs over the adversities and imperfections of life by smiling at them in the philosophical tradition originally attributed to Democritus.<sup>2</sup> Both the broad and the narrower, benevolent meanings need to be acknowledged, and both are included within the scope of humour as used in this book.

It is important to distinguish the thing (what is funny), firstly from the audience or perceiver’s cognitive experience of “getting” the humour and secondly from the affective response—which may or may not be one of enjoyment and pleasure. While attempted or failed humour may not amount to humour according to some interpretations, it does at least indicate that the speaker or proponent intended or thought the communication would be humorous or amusing, even though the audience or other observers failed to comprehend it as such, or disagreed (Bell 2009, 2013; Hay 2001; Schnurr and Chan 2009). This is consistent in part with Holmes and Marra’s (2002) approach to studying humour in the workplace: “Humorous utterances are defined as those which are identified by the analyst on the basis of ... clues, as intended by the speaker(s) to be amusing and perceived to be amusing by at least some participants” (Holmes and Marra 2002: 1693, also see Holmes 2000: 163). Several chapters of this book include things said or written which are identified as having been intended to be humorous, even where the apparent humour was not perceived as amusing by the intended audience (see Chap. 8). Including failed humour helps to illuminate the circumstances in



which humour succeeds or not, and to identify the normative limits of humour (Bell 2009; Coser 1960: 82–3, Footnote 86).

Sense of humour is another thing altogether. A modern (and modernising) concept that evolved specifically in nineteenth-century English culture, a sense of humour is bound up with the idea of the individual and so links to psychological studies of humour discussed below. Ever since the development of early personality tests in the 1930s by Gordon Allport at Harvard University, having a sense of humour has been considered a desirable trait. Allport himself came to regard it as indicative of maturity and good mental health (see Wickberg 1998). This view appears to be shared by some judicial officers. A national survey of the Australian judiciary finds that over half the respondents assessed having a sense of humour as essential or very important in their everyday work (see Chap. 5). At the ceremonial sittings of courts for the swearing in or farewelling of a judge, the particular judge's sense of humour is often a subject of positive comment (and humour) made by senior legal personnel—such as law society and bar association presidents, government legal officers, or other judges.<sup>3</sup>

Another terminological issue concerns the notion of humour styles or styles of humour which means one thing in literary terminology but something quite different in the psychology of humour. For those who study the things that are in and of themselves comic or humorous, style is a matter of the flavour or tonality of the piece. This can vary from being savagely biting (ironic or satiric or even sarcastic in style), to benign and warm-hearted (like a sitcom or a romantic comedy), or perhaps be characterised by knock-about slapstick and physical gags (farce) (Milner Davis 2003; Ornstein 1994). For psychologists, since the work of Rod Martin (Martin et al. 2003), humour styles mean the ways that individuals tend to *use* humour in their daily life. Recent studies recognise these two different usages (Chen et al. 2011; Ruch et al. 2018), which helpfully allows for usage in the sociology of humour where the term indicates very broad styles of humour appreciated by or associated with different “taste-cultures” in localised societies (Kuipers 2009).

In its broad sense, humour is a term now used in ordinary language and recognised in everyday situations around the world (see Milner Davis 2013). It is the subject of considerable academic and scholarly inquiry

and empirical research. Interpretive analyses of humour are found across many fields of academic inquiry, including anthropology, cultural studies, history, linguistics, literature, neurobiology, philosophy, politics, psychology, religious studies, sociology and theatre studies. Applications of humour are examined in the workplace, particularly in management and advertising, education and learning, problem solving, health and wellbeing. A complex and multi-faceted, multi-dimensional notion, humour is at one and the same time subjective, situational, shared and social, with powerful effects for good and ill.

## Approaches to Humour

Humour has been described as a “double-edged sword” (Meyer 2000: 310), “a puzzling phenomenon” (Robinson and Smith-Lovin 2001: 124), and “by definition an ambivalent form of communication” (Kuipers 2015: 9). In discussing humour, it is important to distinguish between what makes something funny; what structures might be basic to (some or all) humour; how different people (and cultures) use humour; how tastes and cultures (including workplace or professional cultures) vary in terms of what is considered proper and improper in using humour; and the kinds of impact humour might have on its tellers, its audiences and on wider groups. The book’s authors have striven to be clear in addressing such issues. The holy grail of humour research remains a distillation of the essence of humour and a single unifying “theory of humour.” Not surprisingly, efforts to achieve this have met with only limited success. There is no single accepted formal theory of humour in the sense of a reproducible recipe that can be theoretically outlined and which, when you fill in the ingredients, makes humour. Even the most concise of theories—the General Theory of Verbal Humor (GTVH) put forward by Raskin (1985) and Attardo (2001)—is contested.<sup>4</sup> At the other extreme is the analysis of humour by semiotician Arthur Asa Berger, whose studies in popular culture led him to formulate 45 different “humour techniques” or elements of humour, classified into four different “theoretical perspectives”: the humour of language, of logic, of identity and of the visual (Berger 1995: 54–5). This approach has wide embrace but does

little to explain why such elements create humour when they are assembled and is almost certainly not exhaustive.

It is often claimed that, historically, there are three broad categories of theory or classical approaches to explaining the phenomena of humour and laughter (Kuipers 2008: 388, also see Meyer 2000; Olin 2016; Scheel and Gockel 2017). These are: *superiority theory*—we find humour in the misfortunes of others; *relief theory*—humour and laughter serve to release emotional or psychological tension thus producing pleasure; and *incongruity theory*—the perception that there is a gap between the expected and the real that generates laughter. Self-evidently, these broad categories are “overlapping and complementary rather than competing or contradictory” (Watson 2015: 409). Other more recent theories (such as the GTVH noted above) can be considered a variant of one or the other (Oring 2016).<sup>5</sup> Most likely, any individual humorous occurrence will contain elements of incongruity, superiority and relief as well as other factors.

Linguistic studies of humour examine the ways in which humour can be analysed verbally, often concentrating on the dissection of tropes such as jokes and puns, but extending to humorous narrative. Attention focuses on the pragmatics of humour, or how oral humour is exchanged between people. This emphasises the essentially social nature of humour and links to a sociological approach to humour and its shared enjoyment. Proceeding on this basis, Kuipers (2009) helpfully enumerates a limited number of possible ingredients of humour, although she notes these are neither necessarily present in all humour nor does their presence automatically signify humour. She continues: “these ingredients are building blocks not for a theory of humor, identifying the necessary and sufficient conditions for humor, but rather a theory about humor, which tries to understand how humor works” (220–21, emphasis in original). Several of Kuipers’ ingredients can be categorised within the classical tripartite structure introduced above. For example, she recognises that a key ingredient of all humour is incongruity, often arising from the transgression of social norms and deviation from social expectations, though she cautions that not all incongruities (or deviations) are funny (Kuipers 2009; Martin 2007; Roach Anleu 2006). This emphasis on the social, on norms and patterns, points to the

relief or release functions of humour, highlighting the extent to which humour is necessarily situation- and culture-specific.

Research on the emotions indicates the ways that humour as relief can manage situations of embarrassment. These are created by moments of incomprehensible incongruity, or incompatibility, by unfulfilled expectations, and by conflict in identities between individuals in interaction:

At such moments “joshing” sometimes occurs. It is said to be a means of releasing the tension caused either by embarrassment or by whatever caused embarrassment. But in many cases this kind of banter is a way of saying that what occurs now is not serious or real. The exaggeration, the mock insult, the mock claims—all these reduce the seriousness of conflict by denying reality to the situation. And this, of course, in another way, is what embarrassment does. It is natural, then, to find embarrassment and joking together, for both help in denying the same reality. (Goffman 1967: 112, Footnote 10)

In such a situation, the humour and the embarrassment are interactive: banter involves at least two people who have some kind of relationship to each other. The elements of incongruity, incompatibility or simply deviance from situational expectations can generate banter as a humorous interchange offering a way of managing possible embarrassment. Thus humour neutralises or denies the incongruity, but can also be didactic. This point is developed in the context of courtroom exchanges in Chap. 6.

Kuipers (2009) goes on to identify non-seriousness as a second ingredient of humour, referencing the approach to humour taken by anthropological linguist, Wallace Chafe. He observes that the rules of serious, normal interaction and communication are suspended in many cultures in order to induce the feeling of non-seriousness and the pleasure related to playfulness—whether that occurs in interpersonal exchange or within the comic framing found in literature, joke books, cartoons and theatre (Chafe 2007). On the positive side, humour thus provides an agreeable affective component and can be (and is) used for positive interventions as well as for simple entertainment. It promotes tension reduction, smooths over difficulties and expresses a common sense of achieving resolution at the end of debate or of triumphing over difficulties. Nevertheless, when

such a sense of playfulness is not shared, negative emotions can emerge. Indeed, in styles of humour (adopting the literary sense of the term) like satire and sarcasm, negative intentions such as aggression, contempt and humiliation are intended, along with amusement. Not all joking is benign, although both sarcasm and teasing can sometimes be more positive, memorable and creative than direct communication (Huang et al. 2015).

Another implication of this non-serious quality is that humour can be seen as allowing rude, offensive and vulgar communications. Humour often transgresses by touching on taboos or sensitive topics and in these ways it can be seen by some people risky. “Both in Academia and in society at large, the most heated debates have been around ethnic and sexist humor, the most contested forms of humor in modern Western societies” (Kuipers 2008: 387). To this list one might now add religion. The potential for hurt and offence is particularly evident in cross-cultural contexts and many contemporary workplace studies focus on negative aspects such as teasing, impoliteness and derogation in humour (Hodson and MacInnis 2016; Holmes and Schnurr 2005; Schnurr 2009; Schnurr and Chan 2011). Aspects of censorship (legal and political) as well as cultural control also form part of the corpus of studies (e.g. Handsley and Phiddian 2008 on cartoons running foul of the law in Australia). Chapters 8 and 9 of the present book address the important topic of legal cases concerning humour and transgression, while several other chapters survey humour that “got away with it” at the time or did not raise a legal issue. An underlying theme of this book is the careful balancing act that we all necessarily perform when using humour in any context and especially in the serious and hierarchical environs of a courtroom.

## Psychology of Humour and Laughter

While overlapping with laughter, humour is neither perfectly correlated nor synonymous with it (Glenn 2003). Laughter is usually the desired or anticipated response to humour—although some forms such as so called “dad jokes” expect to provoke groans. Humour can evoke a wide range of possible emotions ranging from mirth and playfulness to disgust and anger. Brain research using functional magnetic resonance imaging

(fMRI) and positive emission tomography (PET) scans demonstrates that widely disparate pathways in the brain involving affective as well as cognitive responses contribute to the experience of humour (Goel and Dolan 2001; Wild et al. 2006). Although the social bonding and interactional benefits of genuinely shared mirth have been well established (Manninen et al. 2017), laughter can also be faked, uneasy or constrained. It is not always a sign of amusement, nor is it always pleasant. Chapters 2 and 5 show that this is true in some cases of judicial courtroom humour and laughter from lawyers. Laughter does not necessarily indicate agreement that something is funny or humorous.

Psychological studies also throw light on the use of humour by individuals. The field differentiates among humour production, humour appreciation, humour understanding (“humour competence”) as well as humour responses such as laughter. It aims to describe, explain, predict and influence what might be termed humorous behaviours. Martin points out that “[f]rom a psychological perspective, the humor process can be divided into four essential components: (1) a social context; (2) a cognitive-perceptual process; (3) an emotional response; and (4) the vocal-behavioral expression of laughter” (Martin 2007: 5). Here, laughter is the short-form compaction of a very wide range of possible physical reactions to humorous stimuli: human sounds, gestures and facial expressions including smiles (both fake and real, technically known as Duchenne and non-Duchenne smiles, see Ekman et al. 1990), groans (at failed humour for example) and even physical collapse in which someone may roll around on the floor in spasms of uncontrollable laughter. In very extreme cases, laughter can be positively dangerous. Historic accounts tell of individuals said to have died laughing (e.g. the fifth-century BCE painter, Zeuxis, who reportedly died of laughing at a painting he had just completed of an ugly old woman, as recorded by Festus in his second-century CE redaction of Flaccus’ lexicon, *De Significatu Verborum*). Modern research has shown that localised brain damage can produce uncontrollable and extremely unpleasant laughter (for a recent case, see Rose 2017).

Habitual patterns of using humour interpersonally have been categorised in psychology as four humour styles, forming a settled part of a person’s psychological makeup or profile (Martin et al. 2003). They are: