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NO LAUGHING MATTER: HUMOR AND CONTRADICTIONS IN STORIES OF LAW

Patricia Ewick*

Susan S. Silbey*

INTRODUCTION

Any serious attempt to study humor is fraught with risk. In focusing our analytic gaze on the joke, the funny story, or the trick—by interpreting them, contextualizing them, and speculating on their significance—we become the ultimate wet blanket. Poker-faced and pencil poised, we are the ones who need to have the joke explained to them, or worse, the ones who explain the joke to others. In fact, in seeking to assign meaning to the apparently meaningless, we *become* the joke. A “Far Side” cartoon, entitled “Analyzing Humor,” by Gary Larson¹ captures this irony beautifully. Pointing to a diagram of a clown, a professor is delivering a lecture to a room full of students. Pinned to the back of his lab coat is a sign that reads “kick me.” Knowingly assuming these risks, in this paper we intend to discuss and speculate on the meaning of humor and law.²

The social study of humor is at best a marginal sub-field of the sociology of culture. However, its peripheral status is in many ways perplexing due to the ubiquitous and distinctively social (some have even argued uniquely human) character of humor. Even in the most desperate and dire circumstances—in mental hospitals, prisons, and hospices—people make fun. They tell jokes, share humorous stories, and play tricks on one another.

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1. Gary Larson, *The Far Side Gallery* 162 (Far Works, Inc. 1984).

2. See PATRICIA EWICK & SUSAN S. SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* 1998 (analyzing the meanings of law and legality in everyday life). In this book, we distinguish between law, referring to the formal institutions, actors, and legality, an emergent structure of social life that manifests itself in diverse places, including, but not limited to, formal institutional settings and actors. We try to use the term “legality” to refer to the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends. Here, however, we eschew the term “legality” and direct readers who are interested in the sociological theory of structures of social action and legality as a structure of action to *The Common Place of Law*.

Furthermore, in ignoring, or assigning little importance to, humor, scholars commit the cardinal sin of social science: accepting as unproblematic and self-evident the folk meaning of some social practice. According to the folk understandings, humor, by definition, is not serious. Humor is fun precisely because it seems to stand outside, and denies tough, intractable, and often all too tragic reality. By contrast, humor is ephemeral. The joke and the funny story end with a punch line that elicits an immediate response, laughter, which itself is short-lived. Fantastic and fleeting, humor is fun and funny precisely because it makes such a small claim on us, unlike the serious. Or so it would appear.

II. "KICK ME:" ANALYZING HUMOR

In this paper we aim to identify and interpret humorous stories, as opposed to jokes (a distinction we will explain in a moment), that people tell about law. Our purpose in such an analysis will also become clearer shortly. We begin this exercise by assuming that something significant about the law and ordinary legal consciousness is revealed in humorous stories. In fact, we make a stronger claim that something serious is being accomplished, not merely depicted, in the telling of these stories. Before proceeding to our analysis of humor and the law, however, a few definitions and distinctions are required. First, what is humor, and how is it recognized? Secondly, what analytically useful distinctions can we draw among types or genres of humor?

III. WHAT'S (SO) FUNNY?

Anthropologists studying humor have traditionally assumed that humor is culturally specific and can reliably be identified by a cultural outsider (such as the anthropologist) only by the presence of laughter. For instance, while an American might be disturbed or disgusted by the Dogon practice of throwing excrement at one another, the Dogon apparently find this extremely funny as indicated by the hilarity and laughter it provokes.³

According to Professor Mary Douglas,⁴ however, laughter alone is not a valid indicator of a joke since people do not always laugh upon hearing a humorous story. Alternatively, people sometimes laugh when nothing funny has transpired (i.e., out of politeness, upon being

3. Radcliffe-Brown, A.R., *On Joking Relationships* in 13 AFRICA No. 3, 195-210 (1940).

4. Mary Douglas, *Jokes*, in *RETHINKING POPULAR CULTURE: CONTEMPORARY PERSPECTIVES IN CULTURAL STUDIES*, 291-310 (Chandra Makerji & Michael Schudson eds., 1991).

tickled, or as a result of extreme nervousness). Following Freud⁵ and Bergson,⁶ Douglas claims that there is a structure of ideas characteristic of humor, a “joke pattern,” that can be identified independently from any response on the part of the audience. This pattern consists of a play upon form which

brings into relation disparate elements in such a way that one accepted pattern is challenged by the appearance of another which in some way was hidden in the first . . . [A]ny recognizable joke falls into this joke pattern which needs two elements, the juxtaposition of a control against that which is controlled, this juxtaposition being such that the [subordinate] triumphs.⁷

A number of elements of this definition bear emphasizing. First, a joke involves the juxtaposition of disparate elements. This feature of a joke imparts a quality of unpredictability and surprise. A second aspect of the definition is the idea of challenge. The two disparate elements are not simply juxtaposed, they are placed in a sort of competition. This contest imparts to the joke form the quality of suspense. Third, a joke is realized when the weaker of the combatants, the “controlled,” wins this competition. This feature of the joke pattern imparts the quality of justice.

Combining these elements we can see that a joke always provides a glimpse of a world up-ended, “the leveling of hierarchy, the triumph of intimacy over formality, of unofficial values over official ones.”⁸ While this humorous world may not be utopian, it always challenges the inevitability of the world as it is, and thus paves the way for a world as it might be. It is for this reason, we suspect, that George Orwell (the great dystopian) claimed that “every joke is a tiny revolution.”⁹

IV. TYPES OF HUMOR

In analyzing humor, it is useful to distinguish what have been called standardized and spontaneous jokes. The standardized form is what we typically refer to in the vernacular as a “joke.” A joke has a clear beginning, middle, and ending. As jokes circulate, in numerous tellings across social situations, they change over time. At the same time as standardized jokes evolve and transform over time, they also exist

5. SIGMUND FREUD, *WIT AND ITS RELATION TO THE UNCONSCIOUS*, (trans. after A. A. Brill, 1916).

6. See HENRI BERGSON, *LE RIRE: ESSAI SUR LA SIGNIFICATION DU COMIQUE* (1950).

7. See Douglas, *supra* note 4, at 296.

8. *Id.* at 297.

9. 3 GEORGE ORWELL, *THE COLLECTED ESSAYS: JOURNALISM AND LETTERS OF GEORGE ORWELL* 284 (Sonia Orwell & Ian Angus eds., 1968).

as cultural objects, transcending and resisting the particular experiences of any one person or group. The phrase, "did you hear the one about," linguistically indexes the imminence of a standardized joke. The phrase anticipates the possibility of a prior hearing, which would abort the telling insofar as it would deprive the joke of its unpredictability. The phrase, "did you hear the one about," also refers to the joke that is about to be told, rather than to a situation the teller claims to have experienced. Most importantly, the standardized joke contains the complete joke pattern in its verbal form. The disparate elements are juxtaposed in competition and the punch line declares the winner, all in the tidy package known as a joke.

The spontaneous joke is harder to recognize or interpret because the joke pattern is not fully contained in the utterance. A spontaneous joke corresponds more closely to a story about something we witnessed or experienced. In this sense, the spontaneous joke is particular and non-idealized. A spontaneous joke is not, in other words, a condensation of collective experience as much as a report of specific events. As such, the spontaneous joke tends to be less efficient in accomplishing the juxtaposition, competition, and triumph necessary for a joke. To achieve the status of a joke, a story must spill over into the social situation, drawing upon the tacit understandings and interpretive frames of the audience. When such a spontaneous joke fails to strike its audience as funny, the excuse typically offered by the would-be joke teller is that "you had to be there." The reason for the joke's failure suggests the importance of situationally embedded information to the organization of the elements of the joke.

For all that the spontaneous joke lacks in efficiency, in at least one important way, it trumps the standardized joke as a form of humor and social data. The glimpse of the "world as it might be" is all the more compelling because it is not abstracted from general experience. The spontaneous joke provides a glimpse of power upended despite the fact that the messy, intractable reality of everyday life tends to obscure the contradictions and social control that comprise the joke. What the spontaneous joke lacks in elegance and impact, it more than makes up for in terms of insight.

V. THE SIGNIFICANCE OF THE JOKE

The paradigmatic question for the sociologist of humor is this: what does the joke form reveal about the social situation in which, or about which, it is told? The assumption behind this question is that jokes reveal, or express, the contradictions and ambiguities that characterize social structure. Professor Douglas makes this point emphatically,

The one social condition necessary for a joke to be enjoyed is that the social group in which it is received should [display] the formal characteristics of a 'told' joke: that is, a dominant pattern of relations [should be ruptured or] challenged by another. If there is no joke in the social structure, no other joking can appear.¹⁰

Mary Douglas's use of the evocative phrase "joke in the social structure" may be misleading and therefore requires some clarification.¹¹ Douglas is not claiming that the structural joke is funny. Rather, she is asserting that the situation is structured in such a way as to contain the components necessary for the making of a joke: disparate, or contradictory elements, a tension between those elements, and the possibility of victory by a subordinate.

"Humor is produced," according to Professor Michael Mulkey, "out of the ambiguities, contradictions, and interpretive difficulties that occur regularly in [a social] context."¹² These contradictions constitute the raw materials out of which the told joke is constructed. The humor is a result of articulating those contradictions in such a way as to make them manifest.

For example, in a classic study of the role of humor in an institutional setting, Professor Rose Coser examined how psychiatrists used jokes to mediate the contradictions produced by the social organization of their professional practice.¹³ Coser observed professional staff meetings attended by senior psychiatric staff, junior psychiatric staff, visiting psychiatrists, and auxiliary staff. She found that the jokes told during these meetings (of which there was an average of five per meeting) tended to be directed downward in the hierarchy with senior psychiatrists telling more jokes at the expense of junior psychiatrists.¹⁴ Coser interpreted these jokes and their downward trajectory as reflecting a structurally produced tension in the relationship between junior and senior staff.¹⁵ The meetings were intended to provide a forum for practicing psychiatrists to present difficult cases and review their treatment protocols.¹⁶ The senior psychiatrists were expected to point out any problems or incompetence on the part of any junior staff. However, criticizing the junior staff in such a formal and public arena might undermine the junior psychiatrists' abilities to perform

10. See Douglas, *supra* note 4, at 298 (emphasis added).

11. *Id.*

12. MICHAEL MULKEY, ON HUMOR: ITS NATURE AND ITS PLACE IN MODERN SOCIETY 169 (1988).

13. Rose Laub Coser, *Laughter Among Colleagues: A Study of the Functions of Humor Among the Staff of a Mental Hospital*, 23 *PSYCHIATRY*, 81-95 (1960).

14. *Id.* at 81-95.

15. *Id.*

16. *Id.*

the vital and difficult tasks for which they may not have been fully qualified.¹⁷

Jokes became the way in which criticism could be voiced without humiliating or discouraging the junior members of the staff. For instance, in one case, a junior psychiatrist reported that he had adopted the practice of accepting his patients' delusions of having killed someone. A senior member of the staff responded to this unconventional approach by saying, "[l]et me mention that there [are] precedents [for] your method. There once was a patient who went around barking like a dog [laughter starts here] and the therapist barked back [rest of the sentence is drowned in laughter]."¹⁸

Coser attributes a safety valve function to humor. The jokes told at the expense of the junior staff members deflect attention away from the structurally generated tensions that might otherwise disrupt the conventional modes of apprenticeship training. We will address whether humor has a subversive or hegemonic role in greater detail later.

VI. LAW AND HUMOR

What types of humorous stories do people tell about law? What do these stories reveal about the joke in the social structure of law? From 1990 to 1993, we interviewed 430 randomly selected persons living in four counties in New Jersey. The interviews were lengthy (averaging approximately two or more hours) and relatively unstructured. The interview consisted largely of open-ended questions about how persons experienced and interpreted events in their lives. Overall, the interview was designed in such a way as to provide opportunities for people to offer narratives about law. We inquired about any problems, conflicts and experiences the interviewees had in the course of their daily interactions and relationships. We also asked about how each person responded to these problems, whether they invoked the law or pursued other non-legal means of redress or accommodation. Through the thousands of stories and accounts we collected in the course of these interviews, we mapped the law's presence or absence in everyday life.

In the 140 interviews we had fully transcribed, we identified humorous stories by relying on a number of indicators. First, we examined any story or anecdote that made an explicit reference to the situations as being funny or humorous. People often characterized their stories

17. *Id.* at 86.

18. *Id.* at 91.

with phrases such as, “this really cracked me up” or “it was hilarious.” We also included in our sample any story or remark accompanied by laughter (of significant duration to have been noted in the transcript). Finally, we analyzed these stories in terms of the joke pattern outlined by Douglas¹⁹ described above. In the spontaneous stories presented in the interview, these elements often emerged contextually and implicitly.

As previously mentioned, spontaneous jokes are more difficult to identify and appreciate than standardized jokes. The spontaneous joke, or story, is produced out of the stuff of everyday life, with all of its irrelevant and inconvenient details. The story is typically offered without the benefit of careful editing. The story also makes an implicit claim to be an accurate account of an actual event. Without the literary license accorded the standardized joke, the spontaneous joke tends to lack the elements necessary to produce the punch at the end of the story.

A number of interesting patterns emerged when we examined the stories people told. First, and most notably, was the relative scarcity of humor in these stories. People, it appears, rarely find anything funny about their first-hand encounters and experiences with the law. This fact is all the more puzzling given the abundance of law jokes that circulate.²⁰

Although it is possible that the interview format inhibits the telling of humorous stories, we do not think that this fully explains why humor is so rare. The interview was, as we explained, long, open-ended, informal, and in almost all cases, rated by the respondents to be a very pleasant experience. Moreover, the fact that we did collect a large number of stories also suggests that there was sufficient opportunity to share funny stories, if the respondent so chose.

The most plausible explanation for the dearth of humor stories is also the most obvious one. While people find the law funny, they do not tend to find their own experiences with the law humorous. Recall that one difference between a standardized joke and a spontaneous joke is the relationship each joke has to a lived experience. Standardized jokes distill events and experiences, condensing and typifying the events and characters. Additionally, standardized jokes are efficient and self-contained vehicles that convey the contest and triumph, thus offering vicarious experience. In contrast, humorous stories are usually (however loosely) based on the storyteller’s own experiences.

19. See Douglas, *supra* note 4.

20. See MARC GALANTER, 50 DEPAUL L. REV. *The Conniving Claimant: Changing Images of Misuse of Legal Remedies*, 647 (2001).

Therefore, it is clear that while we may laugh at the law from a distance, we are less likely to do so up close.

Humor was not, however, altogether absent from the stories people told. An analysis of these stories reveals something interesting about law in American popular culture and consciousness. As we predicted, at the heart of the joke was a contest between a citizen who experienced herself in the situation as less qualified, with fewer resources and connections, up against (at least ostensibly and initially) a more powerful opponent. However, the humor did not seem to come merely from the less powerful contestant winning against poor odds. The stories that were offered to us as funny, were those in which winning was a result of the law, or a legal actor, overplaying the power or authority brought to the contest. Therefore, the law is funny, it seems, when it becomes a caricature and reveals itself to be a buffoon.

A. *The Expert as Clown*

In one interview, a man, we call him Fred Bridges,²¹ related a confusing account of a traffic accident in which his wife had been involved. Two weeks after the accident, the man who hit Mrs. Bridges's car made a civil complaint against her for disregarding a stop sign. Mr. Bridges tells the following story:

So, we went to court in Nutley and the judge said that this is the way that it goes. My wife gets up and tells her side, the guy gets up and tells his side. They can question each other, and then the judge makes a decision. My wife gets up and says, "Your honor, I was sitting at the stop sign, I stopped, I looked, I didn't see anything. A woman came up to make a left turn in front of me. She waved for me to go. I looked again and still didn't see anything, so I just started to turn. Maybe five or ten feet and boom this guy came out of nowhere. I never saw him.

Fred Bridges went on in his story to contrast his wife's matter of fact account of the events preceding the accident with an account of the plaintiff's performance. According to Fred Bridges, the plaintiff

got up there and made a big speech about the clothes he had on [at the time of the accident]. He tried to introduce as evidence a bloody sock. I mean, the court was cracking up. This guy thought he was Perry Mason. You had to see it to believe it. He was a profes-

21. In accordance with Bluebook Rule 17.14., *The BLUEBOOK: A Uniform System of Citation* 121 (Columbia Law Review Ass'n et al. eds., 17th ed. 2000) the name of the interviewee and the location of the interview are required to be given. However, in order to remain consistent with the protocols of the National Science Foundation that supported the research (SES 9123561) and the Institutional Review Boards of Wellesley College and Clark University, the names of the interviewees will remain anonymous. In general, the interviewees were selected from the state of New Jersey and the interviews were conducted from 1990-1993.

sional too. He was a tax lawyer. He really thought he was it. He had a suit on. He had a sling on. He got up and said, "Oh your honor, I was going straight through the intersection when she was stopped at the stop sign." The judge said, "You just said that she was stopped at the stop sign; I can't give her a ticket if she was stopped. Case dismissed. Get out of my court." The guy was saying, "but, but, but," and everybody was laughing. He hung himself in court.

What everyone in court (including the storyteller) apparently found so funny about this event was the contrast between the tax lawyer's pretensions (his clothes, his use of the bloody sock as evidence) and his incompetence (in undermining his own case). In this story, legal authority and expertise, presumably held by the plaintiff, the professional, is revealed to be useless.

B. Law as Straight Man

Versions of this story were repeated a number of times by different respondents. In each of these stories, the law is revealed to be a fool, not by violating its authority, but by enacting that authority with an earnestness devoid of perspective or common sense. In one story, the law's foolishness lies in exaggerating the seriousness of a welfare violation and treating what the storyteller thought should be relatively minor as a serious crime. In this story, a former welfare mother recounts an experience she had in court involving a disputed welfare benefit. When asked if she could tell us more about this experience, she replied, "[i]t was funny." When probed as to what was funny about the story, the interviewee went on to explain,

[t]here were people up there that owed them like twenty-five, thirty thousand dollars (as opposed to her debt of \$3,200). And it was a really funny day. I mean, they fingerprinted us (here she laughs). Took our picture. But they told me all I had to do was go up there and get it expunged, or something. I said the heck with that. What do I want to do that for, I'm no big time criminal (laughs). I was just trying to survive and take care of my kids It was hilarious.

In this story, the down to earth, common sense logic of the respondent who is just trying to survive is contrasted with the extreme (and thus comical) measures taken by the court system that processes her as if she were "a big time criminal." The fact that the charges were subsequently dropped serves as the punch line to the developing joke about the excessive allocation of official resources and attention.

C. Peeking Beneath the Veil of Law

A great deal of what people find funny about law lies in exposing the mundanity of law. The stories accompanied with laughter typically

revealed law's power and grandeur to be a facade disguising its venality and fallibility.

In telling us about a court experience following a car accident, Paul Hughes mentioned that although he had consulted with his lawyer, they agreed that the lawyer did not need to be present at the hearing. However, the other driver involved in the accident did bring a lawyer. "Well, the guy was quite elderly, and he got very confused when his lawyer was questioning him. It didn't help him. The [elderly driver] guy kept saying, 'now what was it that you wanted me to say?' Everyone was laughing."

In this story, Mr. Hughes makes a number of observations about the law. First, he asserts, if only implicitly, that he was better off without a lawyer. Although the other driver had benefit of counsel, "it [having a lawyer] didn't help him," according to Paul. Second, the old man's naive queries about what he was supposed to say made the lawyer's scripting and prompting manifest. In illustrating the ways lawyers and clients construct the facts, the law was likewise revealed to be a game of strategy, rather than a search for truth and justice. Indeed, implicit in Mr. Hughes' account is the belief that both the elderly gentleman and the law were confused.

D. Playing a Joke on the Law

The most elaborate (and rehearsed) stories we heard were those in which the storyteller did not simply witness the law's weaknesses, flaws, and fallibility, but actually manipulated these features to their own advantage. In these instances, people were not simply peering beneath the veil of law's pretensions of power and grandeur. In manipulating the situation, citizens were exercising their own power over law. In these accounts, the storyteller is cast in the role of the protagonist who lays a trap for legal authorities in order to secure an advantage.

One woman, Nell Pearson, recounted the difficulty she experienced years before trying to get compensated by an insurance company for losses she had suffered in a car accident. When the insurance company's lawyer called her to negotiate a lower settlement, she realized the futility of her claim. With pleasure and pride, Nell told us how she used her knowledge of lawyers' billing practices to make the insurance company nonetheless pay the disputed amount (albeit not to her).

They turned it over to their insurance company (and I got a call from the insurance company's lawyer) wanting to settle the night before the small claims hearing. We were haggling over fifty dollars. I had already decided that he probably wasn't going to pay me

the fifty dollars but I would get fifty dollars of his time on the telephone. So, after about a half an hour, he was screaming And he said, "I'm just going to have to see you in small claims." I knew he didn't want to go. It was too small an amount of money. So I said, "That's okay, you don't have to do it, I've gotten my fifty dollars out of you." And he said "Is that what you were doing?" And I said, "Yeah. I know what lawyers are worth." And he said, "You've got your fifty dollars."

What apparently made this ruse funny, and not simply crafty, was the fact that Nell neither deceived, misled, nor in any way corrupted the law or legal ethics. She merely took advantage of what lawyers routinely do, reckon their time as more valuable than anyone else's time. Once again, the pretensions of law, in this case represented by the attorney, made it an easy target.

VII. NO LAUGHING MATTER

A negative example supports our interpretation that law's joke is internal to legality, that it consists of catching the law doing (or perhaps over-doing) precisely what it is supposed to be doing. In the following story, a woman told us about the time she pulled over a police officer for going through a traffic light. Notably, she did not think that this reversal of roles was at all funny, although the police officer did find it amusing.

I was riding down Hadden Avenue one day and the cop pulled up in back of me. All of a sudden, he turned on his lights and siren. Scared the mess out of me. I almost hit a parked car. And the only thing he did it for was to pass the light. Then he turned everything off and was cruising on down the road, you know? And I very nicely cruised on down the road and pulled him over and told him exactly what I thought about it. [Interviewer: What did he say?] I didn't appreciate it. He laughed. I told him you wouldn't be laughing if I turned his badge number in . . . because they are supposed to observe all speed laws just like we are.

If we contemplate what is not considered humorous in this story, we catch additional glimpses of the sources and meanings of what is defined as funny. On its surface, this story may seem to conform to the conventional joke pattern: a contest between a superior and a subordinate culminating in the triumph of the less powerful. The story encapsulates the reversal of the expected that is so often defined as the *sine qua non* of a joke or funny story. However, in the encounter that Olive Washington had with the cop, she found nothing funny. This negative example leads us to conclude that a law which secures its advantage by violating its own rules of play is not funny. Rather, such situations present us with bully cops, corrupt judges, or incompe-

tent lawyers. For there to be a joke, it must, as Douglas pointed out, inhere the social structure.²² Therefore, what is the joke in law's structure?

VIII. LAW'S JOKE

Recall that the structural joke refers to ambiguities and contradictions in the situation that permit the told joke. In contrast to humor, the register of seriousness requires an univocality, an insistence that there is one truth, one reality. However, the univocality assumed by the serious mode rests precariously on a pile of assumptions (assertions) about the world that are unsustainable. Social life is, if nothing else, dynamic, and continually undoes its own claims. As Mulkay has noted, "[h]umor occurs because mundane, serious discourse simply cannot cope with its own interpretive multiplicity."²³

According to this argument, humor can be traced to internal contradictions that exist within social settings or social institutions. In the case of law, we did find some clear and persistent contradictions woven throughout the stories (funny and not funny) that people shared. People did not experience or interpret the law in a singular, consistent way. At times, people depicted the law as sublime and transcendent. This image was a face of law that stood apart and above the fray of daily disputes and disappointments. This face of law was associated with impartiality, disinterestedness, and power, both governed and enabled by known rules and procedures.

At other times, people (often the same person) spoke of the law as a game in which individuals pursued their own interests, and the ensuing contest produced winners and losers depending upon the skill and craft of the contestants. This face of law was associated with the mundane, the venal, and the self-interested. In such situations, people domesticated the law, rendering it accessible, relevant and responsive to their daily lives.

These vastly different understandings of law, as we mentioned, were invoked in relation to one another. Out of these contradictory versions of the law, a durable legal fabric is woven; together they constitute the warp and woof of law's legitimacy, power, and meaning. These alternative, contradictory images actually work in tandem to insulate law from sustained and disabling critique. If law were believed to be all that it claimed—a government of laws and not of men, providing equal justice for all who come before it—its legitimacy and du-

22. See Douglas, *supra* note 4, at 299-300.

23. See Mulkay, *supra* note 12, at 214.

rability would be fragile. Support for the rule of law would easily evaporate in the face of abundant evidence of unequal treatment, indeterminate rules, corrupt police, and incompetent lawyers. Recognizing that law is also a game played by interested actors, not only levels our aspirations, it leavens out commitments to the rule of law and generates support by authorizing ordinary citizens as central players. If, however, law is understood only as a game through which better endowed players secure their advantage, it would be impossible to generate the legitimacy and support necessary to sustain it as an institution.

In fact, Americans see the law as both sacred and profane, transcendent and very much a part of the truck of everyday life. As such, it derives its power by straddling the everyday and the sublime.²⁴ These contradictions thus represent the so-called joke in the social structure of legality.²⁵ The funny stories people tell about law are one of a variety of ways which they navigate through these contradictions.

However, not all of the accounts of law that we collected affirmed the hegemony of law. Many stories, what we have called resistant or subversive stories,²⁶ confronted and engaged rather than avoided the internal contradictions of law. These storytellers described themselves as caught within a foreign and powerful system. Rather than understand legality as an arena of transcendent authority to which one defers, it is understood to be an ascendant power to which one conforms. Rather than perceiving legality as a game that one plays in order to seek one's interests and values, people describe legality as a net in which they are trapped and within which they struggle for freedom. Resistant stories were those that recounted how people found ways of avoiding, if only momentarily, law's power by taking advantage and inverting the structural and organizational resources of law. These resistant stories do not simply draw upon law's contradictory structure, they employ the structure.

24. See PETER FITZPATRICK, *THE MYTHOLOGY OF MODERN LAW* (1992). In general, Fitzpatrick argues that modern law is mythic insofar as it achieves the dual effect such that the sacred breaks through to, and exists within, the profane. See also 2 CLAUDE LEVI-STRAUSS, *STRUCTURAL ANTHROPOLOGY* 22 (1968). "Figures are created in myth mediating between the diverse plane or sites in oppositions. Heroes or monsters straddling the chaos and order will often have a parent who is divine . . . [A]ll mediating figures must retain something of that duality, namely an ambiguous and equivocal character."

25. See FITZPATRICK, *supra* note 24 135-144 (discussing the analytic distinction between legality and law). Legality refers to the structure of social action associated with law and legal institutions but not confined to the formal official agencies and actors of law.

26. See EWICK & SIBLEY, *supra* note 2. See also Patricia Ewick and Susan S. Silbey, *Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative*, 29 *LAW & SOC. REV.* 197-226 (1995).

For instance, Aida Marks, an African-American woman living in Newark, told us about her difficulty getting her telephone service repaired. After many ignored requests, written and verbal, Ms. Marks decided to abandon the legitimate bureaucratic route and obtain what she needed through a ruse. Ms. Marks relied upon the same features of racial and gender subordination which were, no doubt, implicated in her inability to assert her rights as a consumer of a public utility in the first place. Counting upon the prevailing assumption that poor, black women disproportionately work as housekeepers for upper-class families, Ms. Marks called the office of the president of the telephone company. While claiming to be the president's housekeeper (rather than a consumer with a complaint), she was immediately put through to him and was able to voice her complaint. This ruse worked and her service was immediately restored.

In this story, as in most stories of resistance, there is recognition of law's power to define and constrain. Mrs. Marks understood her rights as a consumer, and the obligations of a public utility to respond to consumer complaints. At the same time, the story reveals Mrs. Marks' acute recognition of the failure of the consumer protection apparatus established by law to deliver on its own promises of equal protection, accessibility, or justice. In resisting, citizens like Aida Marks insert themselves within the cracks that lie between law's power and its failures to mitigate their own powerlessness.

IX. CONCLUSION

We assumed at the outset, not yet having performed a systemic analysis of humor in the narratives of law we collected, that the funny stories in our data would most likely be those we categorized as resistant. In fact, when analyzing and interpreting those stories that were coded as humorous, few were tales of resistance. Our incorrect impression that the resistant stories would be the funny stories came from our own delight and amusement in hearing these stories. In other words, we found these stories funny. What we had not fully recognized was that while people took some pride and perhaps pleasure in having outsmarted the law, they rarely, if ever, found the law, or the situation in which they resisted, funny.

The role of contradiction in sustaining legal hegemony, and the fact that subversive stories exposed law's contradictions, casts some doubt on Orwell's assertion that every joke constitutes a tiny revolution.²⁷ These humorous stories of law seem to recuperate, rather than revolu-

27. See Orwell, *supra* note 9, at 284.

tionize, structure. The funny stories deflect, rather than make manifest, the ideological penetrations upon which they are dependent. The circus, like the joke and other momentary and licensed acts of resistance, entails an upending of the world, a reversal or inversion of categories and hierarchies. Humans put their heads willingly in the mouth of the lion, fly through the air, and eat fire. However, the up-ended world tends to be righted quickly, all the more secure for having been mocked. As Balandier has claimed, “[t]he supreme ruse of power is to allow itself to be contested ritually in order to consolidate itself more effectively.”²⁸ It is not at all clear, in other words, who is laughing last.

28. GEORGES BALANDIER, *POLITICAL ANTHROPOLOGY*, 41 (1970).

