On the Morality and Legality of Offensive Humor

## Abstract

Despite our ubiquitous use of humor in various aspects of life, and the growing body of humor research in the social sciences, there is little literature on humor in the legal sphere. Moreover, there is currently no theory pertaining to the encounter between humor and legal norms. The lack of such a theory creates a challenge especially in dealing with humorous speech of a potentially offensive nature – e.g. racist or sexist humor, or any other kind of disparagement humor.

Hence, the present paper seeks to fill in the gap in the legal literature, by proposing a normative theory that will define and determine the legal treatment of offensive humorous speech.

The main part of the paper is devoted to the definition of offensive humor, and to the comparison of offensive humorous speech – its intent, consequences and value – with its non-humorous, or “serious”, counterpart. Our discussion shows that, contrary to common intuition, there is usually no reason to treat humorous offensive speech any differently than serious offensive speech. From this we draw the conclusion of this essay: that with the exception of a few narrowly defined instances – such as black humor, irony and friendly teasing – courts must treat offensive humorous speech as equivalent to offensive serious speech.

Another conclusion emerging from this normative discussion relates to the particular case of offensive humorous satire. Here, we show the unique qualities of satirical humor as defining its distinct value, which – subject to certain ethical limitations drawn from theories of ethics in journalism – makes offensive expressions of satirical humor worthy of broader legal protection, compared to "ordinary" offensive humorous speech.

## 1. Introduction

Human use of humor in all its various derivations – situational humor, scripted jokes, social satire, etc. – applies to all aspects of life. Professional and academic literature lists a variety of different functions performed by humor, including socialization, communication and the transmission of information.[[1]](#footnote-1) Humor can be used as a tool for diffusing tensions and anger, as an outlet for relieving sexual frustration or a means of coping with traumas, as a mechanism for the airing of social taboos, as a significant factor in the cognitive development of human beings from childhood to adulthood, as a therapeutic-medical implement and as a means of intellectual stimulus.

Yet, despite the increasing volume and variety of academic literature dealing with subjects that are directly or indirectly related to humor and its repercussions in the social sciences (such as psychology, sociology, communications, anthropology and folklore studies), it appears that legal literature seldom addresses the interaction between humor and legal norms. In any case, there is certainly no coherent legal theory to be found pertaining to this interaction. The lack of such a theory is especially conspicuous when it comes to the attempts of the courts to deal with potentially offensive humor, e.g. racist or sexist humor, or any humor that has the potential to cause offense or insult certain members of society.[[2]](#footnote-2) As things stand, there are various legal norms that apply to offensive humorous speech (such as defamation laws, statutes that make it a criminal offense to incite to crime, sexual harassment laws, regulatory restrictions[[3]](#footnote-3), etc.) and one would expect the courts to adjudicate the question of whether or not humorous offensive speech should be judged by the same standards as a non-humorous expression of similar offensive contents in a systematic manner. Surprisingly though, such adjudication is missing from the legal literature.

Here we must stipulate that, more often than not, courts do intuitively recognize the various issues raised by the fact that the instance of offensive speech before them is of a humorous nature. However, their response to these issues is also more often than not ad hoc, in the absence of a general theory to define whether the humorous nature of offensive speech negates its offensiveness, aggravates it, or is irrelevant altogether, and consequently, assuming that humorous speech can still be deemed offensive, whether its humorous nature can be viewed as a protective merit or a redeeming value that would justify treating such offensive speech differently.

This article is part of a wide-scope project whose purpose is to answer the above-mentioned questions. In it, I will tackle the first of these questions, namely, whether the fact that an instance of offensive speech contains an element of humor affects the degree of its offensiveness.

I will preface my discussion with the statement that I have no intention to reopen the discussion on free speech or on what constitutes speech. My basic assumption is that there is a balance to be maintained between the freedom of speech and other fundamental values, a state of things which is already manifest and encoded in the existing law (such as defamation laws, laws pertaining to incitement and harassment, etc.). This paper will not weigh in on controversial questions pertaining to the proper balance in the legal treatment of “serious” or non-humorous speech. It will not seek to determine the appropriate place to draw the line between “serious” speech that constitutes an offense or a civil wrong and “serious” speech that does not constitute an offense or a civil wrong. Thus, for instance, it is not the purpose of this article to discuss the question of whether an utterance – said in earnestness – *should* be considered slander, sexual harassment, etc. The article takes for granted the balance that already exists in the law and devotes itself solely to the question of whether or not offensive speech of a humorous nature, as defined by positive law and custom, should be treated equally to or differently from an identical instance of offensive speech that is of a serious nature. The sole focus of our research is thus the repercussions that the humorous nature of speech has in the law: does the humorous aspect of the speech in question have the power to affect the way the existing law is applied to it, and if so – in what fashion?

In other words, the present paper *does not* seek to criticize existing law pertaining to non-humorous speech. The treatment of non-humorous offensive speech in the law is taken as a given, even though the reader might feel that in some instances it deserves criticism. However, as stated previously, it is not the goal of this article to present such criticism since the law’s treatment of non-humorous speech is outside the purview of our discussion.

Part of our effort will be to present new consequentialist justifications (as opposed to a generalized application of consequentialist theory) for adopting a moralist-ethicist approach (whose specific characteristics I will detail further on), based on research from the social sciences. In addition, we will engage in a thorough discussion (also of the consequentialist variety) of the value of offensive humor, based on research from the fields of psychology, sociology, folklore studies and linguistic pragmatics.

We must clarify in advance that using consequentialist arguments does not necessarily entail an overall adherence to a consequentialist theory of ethics. Even though consequentialist claims are clearly an essential part of consequentialist ethics, they are also consistent with deontological ethical theories.[[4]](#footnote-4) Deontological theories may often recognize the validity of consequentialist arguments as long as they don’t infringe on the deontological boundaries set by the theory, and even when, beyond a certain threshold, they overstep the deontological boundaries (thus, for example, in threshold deontology).[[5]](#footnote-5) Therein lies the advantage of consequentialist arguments – they are deemed valid both by those who hold an overall consequentialist approach, and by those who hold an overall deontological approach (as long as they don’t defy the deontological boundaries).

Much of the analysis in this paper will be conducted in the realm of moral philosophy. We will turn to the social sciences when the philosophical discussion touches on empirical questions that may be answered within the frame of these disciplines. Similarly, we will refer to linguistic pragmatics in places where this field can enrich our understanding and elucidate the distinctions between different types of speech and the ways we employ them, in as far as it is relevant to the claims raised on the plane of moral philosophy.

The discussion will unfold as follows:

In the next chapter I will describe the current legal situation, i.e. the current legal stance on the subject of offensive humor in the context of adjudication. In this part I will show how courts tend to rely on an intuitive analysis of humorous speech and how the adjudication process is lacking a structured and systematic interpretative theory of humorous speech, a fact that creates, for the most part, incoherence in the verdicts, sometimes even going so far as to negate the core principles upon which the laws in question are founded.

This will be followed by a discussion of whether humor negates, minimizes or aggravates the offensiveness of offensive speech. The discussion will be conducted in two stages: first I will study the question of whether or not humor can have the effect of negating or minimizing offensiveness, while referring to interpretative and consequentialist theories dealing with offensive humor; and secondly, I will address the question of whether humor can amplify the offensiveness of offensive speech, while emphasizing the pragmatic aspects of the utterance. As part of the discussion I will show that – as a rule – the element of humor does not have the capacity to diminish the offensiveness of speech, with the exception of a few specific cases, which are: irony, black humor and friendly teasing. At the end of this part I will present a few clarifications regarding the circumstantial analysis of offensive humor, in particular its implementation in the cases of self-deprecating offensive humor, i.e. offensive humor directed at one’s self.

In the interest of presenting a comprehensive picture, I must emphasize once more that this article aims only to answer the preliminary question of whether the fact that an offensive statement is made with humor negates, aggravates or has no effect on the offensiveness of the statement. Nevertheless, the final chapter of this paper will briefly touch upon several core issues that are likely to bring up the question of whether the humorous nature of speech can be viewed as a protective merit or a redeeming value that would justify treating such offensive speech differently than non-humorous offensive speech. This succinct discussion will touch on the aesthetic value of offensive humor, the value of offensive humor as a way to vent aggressions, and the unique case of offensive satire.

## 2. Positive discussion

Much of the legal discussion on the subject of offensive humor has been conducted in the context of slander and libel.[[6]](#footnote-6) Thus, the most significant deliberation on this subject found in the American legal system is undoubtedly the one held during the adjudication of the Falwell affair.[[7]](#footnote-7) The case revolved around an offensive “parody” ad that had been published in Hustler Magazine, which featured the evangelical preacher Jerry Falwell.[[8]](#footnote-8) At the time, the Campari beverage company had released a series of ads featuring celebrities talking about their “first time”. Despite the deliberate sexual innuendo, it was soon made clear to readers of the ad that the celebrities were referring to the first time they had tasted Campari. The joke ad that appeared in Hustler parodied this campaign and displayed a picture of Falwell under a heading reading: “Jerry Falwell talks about his first time”. At the bottom of the ad, one can find a disclaimer stating: “AD PARODY – NO TO BE TAKEN SERIOUSLY”. In the main body of the text, Falwell tells readers about the first time he’d had sex with his mother, in a public restroom. In addition he admits to drinking Campari before every public appearance. Falwell sued the magazine on grounds of libel and emotional distress. In the lower court, the jury reached the verdict that the ad cannot be construed to describe factual details or real events from Falwell’s life, and much of the hearing in the court of appeals revolved around the issue of the damages to be awarded to Falwell on the grounds of emotional distress. According to Falwell, even if the ad could not be construed as describing factual details (thus making it non-libelous, according to US law), this in itself was not enough to invalidate his right to damages due to emotional distress.

The court of appeals rejected Falwell’s claim, delivering the following verdict. The Supreme Court had determined that public figures were only eligible for compensations in instances where they could prove the falsehood of the statement made against them, and thus the publisher’s guilt. The court alluded to political cartoonists and stressed that in light of the Webster’s Dictionary definition of caricature, it is part of the genre to distort a person’s characteristics for satirical effect. All the same, the court does not give a clear definition of “satire” at this point, and establishes that the humorous ad appearing in Hustler is a caricature. Falwell claimed that his representation in the ad was so scandalous as to overstep the limits of traditional political caricature. However, even though the court agreed that the caricature was indecent, it recognized that it neither could nor wanted to make the distinction between worthy and unworthy caricatures. To comment on the level of the caricature’s outrageousness would, in the court’s opinion, be letting a subjective element enter the discussion, one that would allow the jury to place obligations on publishers based on their personal views or taste. In summary, the court determined that public figures cannot be awarded damages for emotional distress without proving that the publication includes false and deliberately misleading statements, while showing malicious intent on behalf of the publisher.

According to Israel Bar, the most meaningful thing about the Falwell verdict was, first and foremost, that it explicitly mentioned the need to protect satirical speech. Thus, even though the court neglected to define satire or refer to it directly, the discussion of political caricatures and their importance attests to the protection granted by the court, under the umbrella of free speech, to offensive and scandalous statements made in a humorous way. Likewise, Bar expounds, the verdict confirms that as long as the statements made in a publication cannot reasonably be construed as facts by the reader – there is no claim for libel.[[9]](#footnote-9) In other words, the court provided a kind of “boundary outline” for future publishers – one could allege the verdict implies that satirical speech which cannot be construed to represent factual reality may include virtually any offensive statement without it being considered libel.

Bar points out, rather convincingly, that the court’s analysis of the Falwell case is actually protective of the most outrageous and extreme satire, because it was in fact the sheer outlandishness of the statements made about Falwell in the ad that made them highly unbelievable. Thus, Bar goes on to argue, the court’s verdict in this case offers satirists very narrow and limited protection – it gives them the freedom to create only the most wild and outrageous satire, otherwise, they still run the risk of being sued for libel.[[10]](#footnote-10) Moreover, it is unclear from the Falwell trial how one would go about recognizing satire and distinguishing it from other forms of speech, since the court does not provide tools for defining satire or criteria by which it might be identified.

A more in depth analysis, a rare occurrence when it comes to the issue of humor, was performed in the Isaacks case.[[11]](#footnote-11) This time the subject of discussion was a satirical drawing published in the New York Times newspaper, which represented a derisive image of law enforcement arresting a teen. The court considered the question of when exactly does humor exempt speech which, if it were not humorous, would surely be considered defamatory and within the boundaries of libel law. During the process of deliberation the court cites, and agrees with Robert Sack in emphasizing the importance of humorous expression which, in Sack’s eyes, is on equal footing with the political speech or the journalistic expose. In Sack’s words: “Humor is a protected form of free speech, just as much to be given full scope, under appropriate circumstances, as the political speech, the journalistic expose, or the religious tract.”[[12]](#footnote-12) However, similarly to the Falwell case, the court ruled that humor, by virtue of its very nature, does not allude to factual statements, and therefore has no significant influence on reputations in a way that would justify its recognition as libel. In the court’s own words:

Humor is usually understood to be humor and to conveys no serious, objective factual allegations about its target. Although perhaps annoying or embarrassing, humorous statements will have no substantial impact on reputation and therefore ought not to be held to be defamatory. Incidental jibes and barbs may be humorous forms of epithets or "mere name-calling" and are not actionable under settled law governing such communications. And it is on these bases that most humor cases are decided.[[13]](#footnote-13)

Following the Falwell and Isaacks verdicts, there were many cases where courts ruled that humor or satire do not constitute defamation because no reasonable person would interpret them as factual. Thus in the Hamilton case, the Indiana Court of Appeals heard the suit brought by a businessman, Paul Hamilton, against the owner of a humorous site residing in the same county.[[14]](#footnote-14) The defendant’s site featured a character named Paul Hamilt*e*n, a businessman whose line of business was identical to that of the accuser, and who was depicted as being manipulative, both in his private and professional life. Despite the high degree of similarity between the real person and the fictional character, as well as the geographic proximity between the two, which some would point to as proof that the choice of name was not coincidental, the court ruled that in light of the site’s contents (which included, among others, the testimony of a client who had purchased “Casanova Water” from Hamilton, a product that helped him meet his dream woman, as well as a claim that Hamilton’s products offer protection from alien invasions) no one was likely to suspect them of bearing resemblance to the truth.

In the Walko case, the suit adjudicated by a New Jersey court revolved around a student parody newspaper which had published the plaintiff’s likeness in a fake ad for an alternative student hotline named “Whoreline”, which specialized in providing sexual services.[[15]](#footnote-15) Here too, the court ruled, in a verdict delivered by Judge Wecker, that even though the joke was undoubtedly crude, no reasonable person could possible believe that a “Whoreline” service was actually operating on campus or that they could call the number in the ad expecting to order sex services. It is important to point out that the court did not address the gender-specific aspect of the ad in that it depicted a woman as a sex worker, nor the connotation in regards to the plaintiff’s sexual availability, nor the implied criticism of her sexuality.

In another case, wherein a winemaker brought suit against the cable television network HBO, the hearing focused on Robin Williams’s stand-up special produced and broadcast by the network.[[16]](#footnote-16) During the performance, Williams referred to the maker’s wine as “black wine” (“There are white wines. There are red wines. Why are there no black wines?”) and derided its taste. The cable network argued that a comedic performance cannot be reasonably construed as a statement of fact; that the assumption that linking a wine brand to consumers from the black community is defamatory should be rejected out of hand; that the joke expressed an opinion; and that the joke didn’t even refer to the winemaker’s product. The California Court of Appeals validated the first two claims and therefore found it unnecessary to discuss the other two. The court also established that ruling a joke slanderous would have a chilling effect on comedians and that in light of the circumstances under which the statements were made, no reasonable person could see them as factual. In the words of Judge Kline:

Williams, who was performing in a nightclub before an audience that knew him as a comedian, not a wine connoisseur, seems to have made it clear that the wine to which he referred did not exist, because his joke was constructed around the rhetorical question "why are there no black wines like . . . ." Suggestions that the hypothetical wine is a "motherfucker" black in color, tastes like urine, goes with anything "it" damn well pleases, or is "tough or endorsed by ruffians are obvious figments of a comic imagination impossible for any sensible  person to take seriously. For this reason, and in light of the occasion at which the joke was delivered and the attending circumstances, we conclude that, as a matter of law, it was not defamatory. To hold otherwise would run afoul of the First Amendment and chill the free speech rights of all comedy performers and humorists, to the genuine detriment of our society.[[17]](#footnote-17)

 The court went on to emphasize:

The proper focus of judicial inquiry in an action alleging defamation from a comedy routine is not whether the allegedly defamatory statement succeeds as comedy, nor whether its audience thought it to be humorous or believed it to be true; the threshold inquiry is simply whether the communication in question could reasonably be understood in a defamatory sense by those who received it.[[18]](#footnote-18)

It must be noted that in all these cases the court does not make the distinction between satire and humor or define the unique characteristics of satirical speech as opposed to humorous speech in general. Likewise, the court does not outline any criteria for identifying a humorous or satirical performance, nor does it discuss what differentiates this kind of speech from “serious” speech.

In fact, the only cases where the American courts ruled that offensive humor did indeed constitute defamation, are cases in which it was established that the instance of speech could not be considered humorous to begin with.

This was precisely what happened in the Robinson case, which involved a Texas airport security guard filing suit against a radio host. After a tense altercation between the two in the course of the security guard’s fulfillment of his professional duties, the radio host suggested that he would make reference to the guard during his radio show. And indeed, a few days later, the radio host related the story on the air, making mention of the guard’s name and disdainfully referring to him as “the gay security guard”. In this case the court opined that a listener endowed with “ordinary intelligence” would infer that the broadcaster was referring to a real person rather than a comic character, and that there was nothing about the segment that would point to its being satirical or parodic in nature (such as hyperbole). Therefore, the court rejected the host’s request to dismiss the guard’s suit and ruled that not every instance of slander can be protected from being judged under defamation law by alleging that it is satire.[[19]](#footnote-19)

On another occasion, the Illinois Supreme Court heard an appeal of a dismissed suit brought by a couple suffering from a disorder known as “Elephant Man syndrome”. The plaintiff had been invited to appear on a radio show, however, once on the air, the radio hosts began making fun of the disease, of the plaintiff’s efforts to raise money for the cause (among other things, they claimed that the festival he was organizing was a scam), and of his marriage to a woman suffering from the same syndrome (for instance, they claimed that the two had had a “shotgun wedding” and that they needed giant hats because of their enlarged heads). In this case, the court, represented by Judge Bilandic, ruled that the claims about the festival being a scam were meant to be perceived as “serious”, and that:

The fact that the Disas may have “meant” the comments as jokes, rather than as factual assertions,   is inapposite.  A defendant cannot escape liability for defamatory factual assertions simply by claiming that the statements were a form of ridicule, humor or sarcasm.[[20]](#footnote-20)

However, in neither case do the courts provide a methodical explanation of why they do not consider these instances of speech as comical or satirical, settling for brief and superficial justifications.

And yet, setting defamation cases apart, it seems that when it comes to other articles of the law, the American courts are more than willing to recognize the offensiveness of humor, especially when the humor in question has sexist or racist elements. There are plenty of cases relating to offensive humor that make only casual mention of the humorous speech that had been found offensive on grounds of sexism or racism. These cases don’t treat humorous speech as being unique in any way, and don’t even bother defining what it is that makes the speech in question humorous – or offensive for that matter.[[21]](#footnote-21) In one such case, the court found it sufficient to issue a general censure of racist and sexist humor based on nothing more than the common assumption that most people find this kind of humor offensive: “Ethnic or sexist humor has little to commend it. The majority acknowledges that it is frequently offensive. While I certainly do not advocate outlawing it, I do not believe we need be overly solicitous in preserving and protecting it.”[[22]](#footnote-22)

In another case, an appeal, the America court decided that there was room for a retrial if the appellant could prove that during the original trial the jury had told each other racist jokes regarding the ethnicity of the plaintiff or of the witnesses who testified.[[23]](#footnote-23) The court justified its verdict by saying that such behavior attests to the jury being prejudiced against the plaintiff or the witnesses, which makes it hard to view the proceedings as a fair trial.[[24]](#footnote-24)

Nevertheless, Judge Baker gave a dissenting opinion that there is no room for a retrial under such circumstances, claiming that:

Racial stereotypes and prejudice go back to slavery, and ethnic eccentricities have been attributed going back to prehistory. Males and females go back to the origin of the species. Who knows when humor evolved, but is a sure bet among the earliest forms of humor was one of those divisions of people using it at the expense of the other. This humor is often offensive to some, but to recognize social problems and to talk about them, for some of us to sometimes laugh about them, is better than to deny the problems or ignore them, or fight over them, which are the all-too-common alternatives today.**[[25]](#footnote-25)**

It is therefore clear that there is no systematic treatment of the issue of humor in the courts, and in fact the discussion is limited to the circumstances of the case at hand. Sometimes the court bothers to establish a distinction between the semantics and the meaning of the humorous speech, but this distinction is not made in a methodical and well-reasoned fashion. In addition, the legal discourse on the issue of humor does not make reference to the different categories of humor - such as irony, black humor, friendly teasing, and so on – or to the various aims that the humor is intended to achieve – e.g. derision, venting of aggression, displays of affection and so on. All in all, it seems that judges tend to rely mainly on an intuitive examination of the merits and circumstances of the case, and do not defer to any structured or systematic theory of the interpretation of humor. Nor do they make any reference to existing empirical findings regarding offensive humor and its social implications, yet another shortcoming of the current legal discourse.

## 3. Offensive humor and the effect that the presence of humor has on the degree of offensiveness

The following chapter will look into the question of whether humor neutralizes, minimizes or aggravates the degree of offensiveness in speech. First, let us define what offensive humor is. We shall proceed by insulating the offensive element and then investigating how this element is integrated into humorous speech. Only then can we go on to tackle the question at the center of this chapter.

#### 3.1. Defining offensive humor

This subchapter will be divided into two sections: in the first we will study the offensive element of speech on its own, independently from its interaction with the humorous element of speech. For the purposes of this paper, we will define the “offensive” element as one which constitutes a criminal or civil offense, or an infringement of regulatory restrictions under the law. In the second section we will discuss the balance between the humorous and the offensive elements required to produce speech that could be classified as offensive humor. In other words, we will look at how an offensive element is to be integrated in humorous speech in order to produce offensive humorous speech.

Here we must clarify that for humorous speech to be considered “offensive” it must uphold both criteria as cumulative, meaning that it must contain an offensive element, as will be defined it the first section of this subchapter, and it must also maintain the balance between the humorous and the offensive elements, as will be defined in section two of this subchapter. An instance of speech that does not uphold these two criteria will not be considered offensive humorous speech in the framework of this paper.

### *3.1.1 What is an “offensive element”?*

As specified in the introduction, the purpose of the present paper is to conduct a legal discussion in order to produce a comprehensive theory in regards to the treatment of offensive humor in the legal system. Therefore, it is only apt that this paper’s definition of the offensive element in humor should be derived, first and foremost, from the law. In the context of the present paper, I shall define offensiveness as a criminal or civil offense. This is because in order for humorous speech to be considered offensive, it must uphold a balance – to be elucidated in the second part of this definition – between the humorous element and the serious statement it contains (a declaration, an order, etc.) that constitutes a criminal or civil offense.[[26]](#footnote-26)

Thus, for instance, an offensive element can be present in a humorous performance that makes a proposition which, at face value, could be considered grounds for a defamation suit, such as the humorous ad featuring the Reverend Falwell.[[27]](#footnote-27) In this case there is reason to raise, among other things, the question of offensiveness in regards to at least one of the ad’s implications which is that Reverend Falwell is a hypocrite or a less than honest man. In order to examine the offensive element we must determine whether a serious statement such as “Falwell is a hypocrite” constitutes a criminal or civil offense, for example under libel laws.

In other words, the offensive element is implied proposition X which constitutes, at face value, a criminal or civil offense under existing law.

Once again, we must emphasize that this paper does not seek to discuss the question of the treatment that should be accorded to “serious” or non-humorous speech. That is to say, the paper will not examine where the line is to be drawn in terms of serious expressions that constitute criminal or civil offense as opposed to those that don’t. Thus, it is beyond the scope of this essay to propose an opinion on whether a given proposition – said in earnestness – *should* be considered defamation, incitation, cause for emotional distress, and so on. The existing equilibrium between free speech and other values in the law is thus taken for granted, as our sole purpose is to examine whether humorous speech containing an offensive element, as defined by positive law and custom, should be treated equally or differently than a similar instance of offensive speech that is not humorous.

In other words, the present paper *does not* seek to criticize existing law pertaining to non-humorous offensive speech. The treatment of non-humorous offensive speech in the law is taken *as a given*, even though the reader might feel that in some instances it deserves criticism. However, as stated previously, it is not the goal of this article to present such criticism since we wish only to answer the question of whether two identically offensive instances of speech – one humorous, the other serious – deserve equal legal treatment, or whether the prior deserves broader protection than the latter.

### *3.1.2 How must an offensive element be integrated in humorous speech in order to make it humorous offensive speech?*

Texts in general, including humorous texts, inherently raise the issue of individuation. In order for humor to be considered offensive, it must include an offensive element, as described above. The catch, however, lies in defining the limits of a unit of text in order to classify it as offensive humor. The simplest case for which we can say that the offensive element is part of humorous speech and integral to it is when the offensive proposition is what makes the joke funny or at least heighten the amusement. In such instances, it is impossible to separate the humorous element from the offensive stereotypes, and the humorous speech, in as much as it has value, must be judged as one unit combining its merits and value with the offensive propositions on which it is posited. A simple example of such speech would be the joke: “Why weren’t there any watermelons at the supermarket? Because the Chicago Bulls are in town.” In order to understand this joke, the listener must be familiar with the offensive racial stereotypes linking African-Americans with basketball and the consumption of watermelons.

Nevertheless, there are more problematic instances that raise the question of individuation in a more complex manner. Consider the following joke: “Dick Cheney and his wife go to Paris. While walking down the street, Cheney sees two children talking. Astounded, Cheney turns to his wife and exclaims: ‘By Golly! So young and already fluent in French!’” In this case one can, ostensibly, tell the joke without making the connection to Dick Cheney and it would still be funny because of the incongruity it contains (for instance, it could star a fictional fool, a kind of “wise man of Chelm”). As it is, we could say the joke is a kind of insult, in that it implies that Dick Cheney is a foolish man lacking a basic understanding of the world around him. Another example humor in this category, aimed this time at a group rather than an individual person, is the following joke about a “blond scientist”:

A blond scientist was studying flies. She picked a fly with six legs and said “jump”. The fly jumped. The scientist ripped one of its legs off. The fly had five legs left. She said “jump”. The fly jumped. The scientist ripped another one of its legs off. The fly had four legs left. She said “jump”. The fly jumped. The scientist ripped another one of its legs off. The fly had three legs left. She said “jump”. The fly jumped. The scientist ripped another one of its legs off. The fly had two legs left. She said “jump”. The fly jumped. The scientist ripped another one of its legs off. The fly had only one leg left. She said “jump”. The fly jumped. The scientist ripped the last of its legs off. The fly had no legs left. She said “jump”. The fly didn’t jump. The scientist recorded her conclusion: “A fly without legs cannot hear”.

In this instance, in order to understand the joke, the additional detail about the scientist being a blond woman is unnecessary. The very choice to add this part, which is not integral to the joke, implies an assignation of stupidity to blond women.

It is therefore possible to claim that in such a case, the offensive element is not part of the joke because it can be isolated and removed from the joke without it losing its humor. Therefore, the offensive element is equivalent to an independent “serious” statement which doesn’t enjoy the social advantages and the pragmatic qualities ascribed to a joke. In my opinion, however, it is possible to make a counterargument that the very use of the offensive element as part of the humorous narrative, even though it is not essential to the purpose of eliciting laughter, brings it into the “fold” of the joke, makes it “lighter”, and de facto makes it complicit in accomplishing the aims of humor, thus coming under the protection that the joke context provides, if indeed, as stated, it provides any such protection.[[28]](#footnote-28) Furthermore, in certain instances, an ancillary offensive narrative recounted in the context of a joke, even if it is not funny in itself, and not essential for the joke to elicit laughter, can be weaved into the joke and sometimes even amplify laughter due to the “light” tone with which it is presented and the audience’s expectation to laugh. In these cases, a perfectly innocent joke in and of itself can turn, following a remark made during its telling, into an offensive joke, and it is not entirely clear which parts of the joke are essential to the purpose of eliciting laughter. Thus, for example, it is possible that the popularity of the Dick Cheney jokes stems from the fact that they make fun of a controversial public figure.

In light of the above, my approach is to define the limits of humorous speech as derived from the limits of the humorous narrative. In other words, as long as the speech in question constitutes one narrative unit, which includes both the offensive and the humorous elements, I consider it to be one unit of offensive humorous speech, no matter how essential the offensive element may be to the purposes of humor.

#### 3.2. Does humor neutralize or minimize the offensiveness of speech?

In this subchapter we will examine the question of whether the presence of humor in speech neutralizes or minimizes its offensiveness. There is reason to wonder why someone might make such an assumption in the first place. The answer might lie, for example, in the nature of humor which ostensibly signifies that a humorous statement it is not to be taken seriously; or, in the case of offensive humor, the absence of the intention to offend or express an offensive position. Thus, those who maintain that offensive humor must be exempt from the purview of legal sanctions will argue that offensive humor, unlike a “serious” offensive statement, does not attest to the speaker’s adherence to the offensive position. Therefore, the purpose of this subchapter will be to conduct a thorough discussion of the validity of the claim that offensive humor is less offensive than the same offensive proposition uttered in all “seriousness”.[[29]](#footnote-29)

### *3.2.1 Offensive humor relies on offensive worldviews and is therefore equivalent to “serious” offensive speech*

In defending the claim that offensive humor is less offensive than “serious” offensive speech, it is possible to argue that, unlike “serious” offensive speech, offensive humor does not express an actual endorsement of offensive positions.

Nevertheless, there are those who object to this assertion. Thus for example, Ronald de Sousa maintains that a person who is amused by humor in which the incongruity is based on offensive presuppositions, must necessarily believe those same presuppositions, otherwise s/he would not find the joke funny.

To put it briefly, de Sousa’s approach, entitled “Attitudinal Endorsement”, is based on the following logical progression:[[30]](#footnote-30)

1. Understanding a joke requires being aware of what propositions it relies on.
2. Understanding (or "getting") a joke does not mean that you find it funny.
3. If you have negative attitudes toward the propositions that are required by a joke, it will fail - you won't find it funny.
4. You cannot hypothetically endorse propositions in such a way that will revivify a joke that is dead for you.
5. Hence, what makes the difference between merely getting a joke and finding it funny must be some positive attitude that you genuinely hold towards the propositions required to understand it.
6. Therefore, if you find a sexist joke funny, and sexist propositions are required for getting the joke, then by virtue of your attitudinal endorsement of these propositions you are a sexist.[[31]](#footnote-31)

De Sousa proposes the following as a clear example of a sexist joke: “Margaret Trudeau goes to visit the hockey team. When she emerges she complains she had been gang raped… Wishful thinking.” According to De Sousa, in order to find this joke funny, we must accept several sexist presuppositions. The first is that rape is only a variant or a kind of sexual intercourse; the second is that women’s sexual desires are indiscriminate; and the third is that there is something intrinsically objectionable or wrong with a woman being interested in or having lots of sex.[[32]](#footnote-32)

Particularly relevant to our discussion of offensive humor in general is De Sousa’s subsequent claim that the sexist nature of the joke is also evident from the fact that eliminating its gendered aspects, or replacing the woman with a man, would rid the joke of its humor. Thereby, he in fact suggests a kind of “test” through which we can determine whether a joke is sexist or not. In its simplified form, the test is based on a single central principle, which stipulates that in order to laugh at the joke we must accept one or more sexist propositions. Ergo, eliminating the sexist or gendered aspect of the joke, or replacing the women in the joke with men (which would cancel out the aspect of sexism towards women anyway), would also rid the joke of its humor.

As I see it, de Sousa’s argument implies that a joke relying on offensive propositions is equal to an utterance that raises these same propositions in a serious manner. Indeed, there is a separation to be made between the “positions” of the speaker or the person who finds the joke amusing, and the “positions” of the joke.[[33]](#footnote-33) However, if we accept that in order to find the joke amusing one has to accept the offensive positions, this suggests that when the speaker invites the addressee to enjoy offensive humorous speech, this invitation contains the offensive positions required to laugh at it. Therefore, it should be given the same treatment as regular speech containing serious offensive statements. In other words, the deployment of humorous speech contains the implied proposition: “I think this joke is funny; I think you will find this joke funny too”, and this statement is a kind of declaration on behalf of the speaker that s/he has accepted the positions necessary to enjoy the joke.

Nevertheless, de Sousa’s reasoning has its critics. Berys Gaut argues against de Sousa’s approach in claiming that there is no requirement to wholeheartedly adopt the offensive worldview in order to laugh at the offensive joke; rather one can simply “imagine” it, “suppose” it, or hold it temporarily for the sake of amusement alone.[[34]](#footnote-34) A similar counterargument is made by both Robert Provine,[[35]](#footnote-35) and David Benatar.[[36]](#footnote-36) Benatar opines that there is no need to accept the stereotype latent in the joke in order to laugh at it; it is enough to be familiar with it in order to understand the funny element of the joke.[[37]](#footnote-37) To prove his claim, he presents the following joke about a made-up ethnic group – the Arhusians:

Question: Why do Arhusians have so many scars round their mouths on Mondays?

Answer: Because they practice eating with a knife and fork on Sundays.

Here is a case in which we have no information at all about the (made-up) ethnic group, including any prejudice or stereotype, and yet we can still find the joke funny thanks to our understanding of the incongruity in the joke, which is what delivers its sting (it also makes it clear to us that the Arhusians “stereotypically” don’t know how to eat with a knife and fork). Therefore, it is unnecessary to hold any unacceptable positions against a specific ethnic group to enjoy this joke (or even tell it).

To substantiate his claim, Benatar looks at whether we laugh at jokes about our own ethnic group or gender. He maintains that most of us do laugh at jokes that are at least partially directed at our own affiliation group, and he sees this as proof of the fact that it is not necessary to hold a deplorable prejudice in order to enjoy a racist or sexist joke. However, I would argue that Benatar thereby presupposes that we cannot hold prejudices against our own affiliation group. This presupposition is refuted by the fact that not only are we not immune to prejudices against our own affiliation group, but that oftentimes members of disadvantaged groups are not just silently complicit in perpetuating prejudices against their own kind, but wholeheartedly embrace these prejudices and relish propagating them.[[38]](#footnote-38)

It seems then that both de Sousa and his critics leave room for more general criticism. Both sides of the aisle make factual claims that ought to be empirically tested, for these are hypotheses that can be confirmed or debunked empirically via the methods used in experimental psychology.[[39]](#footnote-39) Not only that, but there have in fact been studies conducted to test the above claims and therefore the lack of reference to those studies’ findings, or at the most dealing with them by pointing out their methodological shortcomings alone, is problematic. As we shall see later on in this article, de Sousa’s claim has been tested for certain types of offensive humor, sexist humor, for instance, and there was a certain (albeit not full) correlation found between the enjoyment of sexist jokes and agreement with sexist viewpoints.[[40]](#footnote-40)

Another strong argument in the discussion about finding offensive humor amusing is made by Aaron Smuts.[[41]](#footnote-41) According to Smuts, sometimes there is no need to even assume the offensive viewpoint to enjoy the joke, since most jokes contain several funny elements that can be interpreted in a variety of ways. Thus, it is possible to claim that amusement at an offensive joke, or the decision to tell it, isn’t necessarily motivated by the offensive aspect of the joke but by a non-offensive interpretation (which preserves the incongruity) of the joke, or conversely by a funny non-offensive element of the joke. For example, regarding the abovementioned joke about Margaret Trudeau, Smuts posits that it is possible for someone to laugh at the joke not because of the sexist presuppositions on which it is based, but simply because they don’t like Trudeau and therefore find any jibe made in her direction amusing.

Granted, this specific example may be problematic,[[42]](#footnote-42) however it is possible to think of examples of offensive humor that is based on several foundations, some offensive and some not. In those cases, it appears that de Sousa’s claim that offensive humor necessarily attests to offensive worldviews, does not hold up, thereby also refuting the argument that the invitation to laugh at humor is “equivalent” to serious offensive speech expressing the presuppositions that make some of the joke’s elements funny.

### *3.2.2 Offensive humor is equally reprehensible as “serious” offensive speech because it constitutes an objective expression of offensive positions*

As we concluded earlier, it seems that De Sousa’s arguments are not immune to criticism. Therefore there is room to doubt whether people who tell offensive jokes or laugh at them *necessarily* hold offensive views. However, in my opinion, the main flaw in de Sousa’s claim lies in the fact that it places too much weight on the actual intentions of the speaker/joke teller (which are inherently difficult to surmise, since, to the best of my knowledge, none of us can read minds) instead of paying attention to the objective offensive statement, which could provide a much more valid justification for sanctioning offensive humor. Just as the objective offensiveness of a “serious” statement serves as justification for its legal sanctioning, without any reference to the speaker’s intention, but based solely on the speech itself.

For the sake of illustration, let us assume that a certain person telling an offensive joke doesn’t personally hold offensive views. Even so, the joke itself is still an expression of the implied offensive views. Take for example the Dick Cheney joke mentioned earlier. The joke doesn’t constitute any factual claims about the verity of the recounted narrative. Nobody thinks that Cheney actually said those things to his wife on a trip to Paris. However, the reasonable interpretation of the joke raises the implied proposition that Cheney is stupid; otherwise there is no point in casting him as the protagonist of the joke. The argument that the joke teller doesn’t really believe that Cheney is stupid is equivalent to claiming that a town crier calling out “Dick Cheney is an imbecile”, doesn’t really mean it. Indeed, theoretically, that might be the case; however the statement must be examined according to its likely meaning in light of the circumstances under which it was expressed. Just as we don’t ponder the intentions of a “serious” speaker, so there is no reason to ponder the intentions of a “comic” speaker.

The same goes for the presuppositions necessary to understand a joke. Thus, for example, the reasonable interpretation of the watermelon joke mentioned above is that African-Americans like to play basketball and eat watermelons. Theoretically, it is possible that the joke teller makes use of this stereotype for the sake of the joke alone, without personally believing in its validity, just like the teller of the “Arhusians” joke presented by Benatar; however, here too, the statement can only be analyzed according to its likely meaning in light of the circumstances.

Support for the claim that it is reasonable to interpret offensive humor as expressing offensive opinions can be found in the empirical research that points to a correlation (albeit a partial one) between adherence to offensive views on the one hand, and amusement at and employment of offensive humor, on the other. Since the volume of empirical research dealing with sexist humor is rather large, unlike other kinds of offensive humor (including racist humor) for which research is relatively scarce, let’s take it as an example. Studies in the field of experimental psychology corroborate the assumption of a high probability that a person who enjoys sexist humor, also subscribes to sexist opinions.[[43]](#footnote-43) Numerous studies found a high degree of correlation between levels of amusement at “disparagement humor” and levels of negative opinion about the segment of the population at which such humor is directed.[[44]](#footnote-44) In the specific context of sexist humor, Anthony Chapman and Nicholas Gadfield found that both men and women appreciated sexist humorous illustrations in inverse proportion to their level of support for the Women’s Liberation movement.[[45]](#footnote-45) Studies that focused more directly on attitudes towards women showed similar results, namely that, indiscriminate of their own gender, the more negative (sexist) the participants’ views about women, the more likely they were to enjoy sexist humor.[[46]](#footnote-46) Likewise, for men, enjoyment of sexist humor was positively correlated with acceptance of common myths about rape and other forms of sexual violence.[[47]](#footnote-47) Further studies confirm that people are more accepting of sexist humor when they themselves hold sexist positions.[[48]](#footnote-48) Likewise, Peter Glick’s and Susan Fiske’s theory of Ambivalent Sexism Inventory (ASI hereafter), [[49]](#footnote-49) has allowed for even more progress in the research examining the correlation between attitudes towards women and the appreciation of sexist humor. According to the ASI approach, it is possible to quantify to types of sexist attitudes: the first is hostile sexism, based on an antagonistic attitude towards women; the second is benevolent sexism, which, despite being posited on a positive attitude towards women, is nevertheless rooted in preconceptions of male dominance and conventional stereotypes.

Studies have shown that both men and women who have been found to rank high on the hostile sexism scale tended to appreciate sexist humor more than those ranking low on the scale.[[50]](#footnote-50) As for benevolent sexism, results varied by gender: whereas men ranking high on the benevolent sexism scale tended to enjoy sexist jokes more than men who ranked low on the scale (thus, the results for these men were no different than for those found to have a hostile sexist attitude)[[51]](#footnote-51), women ranking high on the benevolent sexism scale tended to enjoy sexist jokes less than those ranking low on the scale, and it was possible to observe them expressing non-verbal indications of disgust at sexist jokes.[[52]](#footnote-52) Moreover, the degree to which women who ranked high on the benevolent sexism scale enjoyed sexist jokes was almost the same as that observed in women who had a feminist worldview.[[53]](#footnote-53)

As we’ve said before, the correlation between enjoyment of sexist humor and the adherence to sexist beliefs may not be a full one. Nevertheless, based on the evidence, it is reasonable to assume that a person telling or enjoying a sexist joke is a sexist, since the existing body of research shows that a large percentage of those who enjoy sexist humor really do subscribe to sexist views. That is enough to shape our reasonable interpretation of sexist humorous speech – if most people who tell sexist jokes are sexists, it is reasonable to interpret these jokes as having sexist implications. The same goes for offensive humor in general.

### *3.2.3 Consequentialist arguments for comparing offensive humor with “serious” offensive speech*

Additional support in favor of the objective approach presented above can be found in the consequentialist analysis of offensive humorous speech. From the research dealing with the effects of offensive humor, we learn that offensive humor erodes its victims’ social status, endorses negative prejudices in their regard, encourages the social ostracism of its targets, promotes tolerance of harmful behavior towards them and causes them mental and emotional distress. Therefore, it is to be treated as equivalent to “serious” offensive speech.

###### 3.2.3.1 Offensive humor preserves social hierarchies

The research literature shows that some of the hidden aims of using humor include the desire to relieve aggression and express hostility, to preserve the existing social order and to evoke a feeling of superiority in the speaker.[[54]](#footnote-54) It is therefore not entirely surprising that many studies examining the consequences of using offensive humor of various kinds found that offensive humor often tends to negatively affect the social status of its victims. Thus, for example, in instances where offensive humor was directed at a work colleague, it was perceived as bullying;[[55]](#footnote-55) and in other instances, humor was used to preserve the existing hierarchies in the workplace.[[56]](#footnote-56)

The above is all the more valid when we deal with humor directed at certain groups in society, in particular disadvantaged minorities who already suffer from social discrimination. In these cases the evidence is even more striking and it appears that offensive humor effectively widens the social status gaps between the dominant group and the weaker group.[[57]](#footnote-57) The theoretical underpinning for this phenomenon can be found in Social Identity Theory as developed by Henry Tajfel and John Turner.[[58]](#footnote-58) According to this theory, the social sub-groups that make up our society do not compete for material resources, but for recognition. In order to get supremacy in this respect, groups employ different strategies, among them the use of humor that belittles other groups and bestows a feeling of superiority upon the tellers.[[59]](#footnote-59) This kind of humor is called “disparagement humor”.[[60]](#footnote-60) Most of the studies dealing with disparagement humor focus on certain types of disparagement humor (such as sexist humor or racist humor). Nevertheless, it appears that we can refer to these studies as a unified body of research, since the results seem to be applicable to all kinds of disparagement humor.[[61]](#footnote-61)

For example, in the case of disparagement humor directed at women (sexist humor), it is not surprising that men perceive sexist humor as funnier and less offensive than women.[[62]](#footnote-62) One study corroborated this assumption by showing that women tended to identify more with the “female victim” in sexist cartoons.[[63]](#footnote-63) Likewise, studies have found that women were more likely to perceive sexist jokes as laying the grounds for harassment.[[64]](#footnote-64) Another study found that women were more likely than men to consider sexist humor inappropriate in the workplace;[[65]](#footnote-65) and an additional survey revealed that 74 percent of women perceived jokes of a sexual nature as harassment, while only 47 of men thought likewise.[[66]](#footnote-66)

In addition, there exist more specific research positions emphasizing the power of disparagement humor directed at women to widen the gaps between men and women in the job market. These positions point to sexist humor as a wedge that disrupts concord and egalitarianism among work colleagues by bolstering the status differences between men and women. This is especially so since those who tell the sexist jokes are mostly men, while the targets of the jokes are mostly women. These dynamics widen the power gap between men and women in the job market in a way that makes it more difficult for women to gain the status of equal-rights employees and enjoy equal treatment in comparison to their male colleagues.[[67]](#footnote-67)

Disparagement humor also widens the gaps between men and women by excluding women from the group. Not unlike schoolyard humor, wherein making fun of differences marks individuals as outsiders to the group as a whole while reaffirming the norm boundaries within the group,[[68]](#footnote-68) sexist humor emphasizes the otherness of women and thereby pushes them to the margins of the group.[[69]](#footnote-69) Studies examining disparagement humor directed at minority groups (racist humor) reached similar results and conclusions.[[70]](#footnote-70)

Moreover, various studies have found that exposure to offensive humor promoted or preserved negative prejudices against individuals or groups who found themselves the targets of such humor. Thus, for instance, one study showed that under certain circumstances, the very act of reading out an offensive joke directed at a particular group (in the study’s experiment, that group was lawyers), might bolster negative attitudes towards that group.[[71]](#footnote-71) Other studies found that offensive humor directed at a specific group served as a means of circumventing the taboo of expressive negative attitudes about that group.[[72]](#footnote-72)

###### 3.2.3.2 Offensive humor promotes tolerance of harmful behavior towards its “targets”

A variety of studies on the subject of disparagement humor have found that it encourages discrimination and harmful behavior towards the victims of such humor. Julie Woodzicka and Thomas Ford describe in their article how, by moderating interpretation, disparagement humor directed at women trivializes discrimination by disguising it as harmless amusement.[[73]](#footnote-73) In doing so, sexist humor affects the way men think about women and perceive acts of discrimination against them.[[74]](#footnote-74) Sexist humor also contributes to men’s willingness to adopt “refined” sexist behavior,[[75]](#footnote-75) and to their tendency to engage in “victim blaming” when discussing rape cases.[[76]](#footnote-76)

As part of his psychological experimentation, Ford found that sexist jokes increased tolerance of sexist behavior in the workplace among subjects who ranked high on the hostile sexism scale.[[77]](#footnote-77) The experiment consisted of exposing participants (both men and women) from both poles of the hostile sexism scale to sexist jokes, non-humorous sexist statements and neutral jokes. Afterwards, participants read a short descriptive text in which a (male) superior treats a new (female) subordinate in a patronizing, inappropriate, and even potentially threatening manner in the workplace. Having read the document, the participants were asked to rank the degree to which they found the superior’s behavior offensive. The results showed that exposing the participants to sexist jokes led to higher levels of tolerance towards the superior’s sexist behavior, when compared to exposure to non-humorous sexist statements or neutral humor. However, this was only true for participants who had been ranked high on the hostile sexism scale.

Likewise, Kristine Weston and Cynthia Thomsen discovered in their study that both male and female participants’ assessments were more stereotypical after watching sexist comic skits, than after watching neutral comic skits.[[78]](#footnote-78) This study, however, elicited much criticism.[[79]](#footnote-79) Thus, for instance, one of the studies that dealt with the methodological failings of the Weston and Thomsen study found that even among men on the high end of the hostile sexism scale, sexist humor had no greater influence on attitudes towards stereotypes about women than non-humorous sexist statements or neutral humor.[[80]](#footnote-80)

Therefore, there is as of yet no decisive proof that exposure to sexist humor uniquely affects stereotypical perceptions of women. Nevertheless, it appears that even if exposure to disparagement humor doesn’t affect the subject’s worldview, it can still have negative effects on the members of the group which is targeted by such humor. That is because disparagement humor increases tolerance of harmful behavior aimed at this group, as shown above.

In addition, Thomas Ford’s and Mark Ferguson’s Prejudiced Norm Theory outlines a process of mediation through which disparagement humor directed at women “liberates” prejudice.[[81]](#footnote-81) According to this theory, the functioning of anti-women disparagement humor relies on three processes. The first, triggered by the use of humor, is a transition from serious discourse parameters to humorous discourse parameters.[[82]](#footnote-82) In the case of offensive and disparagement humor, this transition sends a signal that the proposition, despite being offensive and disparaging, is not threatening, and can be interpreted as nothing more than harmless amusement. The second is that by “making light” of the offensive statements, disparagement humor sends a “meta-message”[[83]](#footnote-83) intended to inhibit criticism.[[84]](#footnote-84) Humor attests to a common understanding of the meta-message, but only if the addressee “approves” the humor.[[85]](#footnote-85) If s/he does indeed “accept” the joke, s/he also accepts the understanding that it is ok to “make light” of discrimination towards the group that is targeted by the joke.[[86]](#footnote-86) The third is that the level of the individual’s prejudice affects their reaction to disparagement humor. Prejudiced people tend to take disparagement humor more “lightly” than those who aren’t.[[87]](#footnote-87) Furthermore, prejudiced people “restrain” their behavior so long as the norms dictate they must.[[88]](#footnote-88) However, when the norms allow it – for instance in a society replete with disparagement humor which communicates an implied “approval” of prejudices – they give themselves “permission” to reveal their prejudices.[[89]](#footnote-89) This is what Ford discovered in his research, by showing that sexist jokes increased tolerance of sexist events only for those participants of the study who had ranked high on the hostile sexism scale and who had adopted a non-critical mind frame by listening to sexist jokes. For participants ranked low on the hostile sexism scale, there was no difference in tolerance.[[90]](#footnote-90)

Another study found that in certain cases, listening to disparagement humor directed at women, homosexuals, Muslims and other groups “liberates” people who are secretly prejudiced against these groups of their inhibitions and makes it easier for them to discriminate against members of the groups targeted by the disparagement.[[91]](#footnote-91) Additional studies show that sexist incidents that were interpreted as being funny, were also seen as more acceptable and less discriminatory.[[92]](#footnote-92) Therefore, defining an event as humorous takes the sting out of it and dampens its perception as a sexist incident.

###### 3.2.3.3 Offensive humor as an instrument of ostracism and exclusion from the centers of power

In the case of disparagement humor aimed at disadvantaged groups, humor is often times used as a tool for ostracizing and excluding these groups from the social centers of power.[[93]](#footnote-93) Whenever an offensive joke is unleashed into the air, the victim is faced with two options – to laugh or not to laugh and thereby express their resentment. Both options are problematic. If the victim of the joke chooses to laugh, this constitutes cooperation with their persecutors or with the persecution of their affiliation group (thereby reaffirming the existing social order within which their affiliation group finds itself at the bottom of the hierarchy, as mentioned previously). On the other hand, if they choose not to laugh they would be “spoiling the fun” of the joke, and therefore presenting themselves as lacking a sense of humor, risking ostracism from the group (which is most often the dominant group in the given social situation).[[94]](#footnote-94) All this plays out in light of the fact that mutual laughter implies an agreement with the social norms posited by the comedic performance. Inside the laughing group, this laughter confirms the norms (which often stipulate that the disparaged group is inferior to the disparaging group), and strengthens the bonds within the group. On the other hand, whenever someone doesn’t laugh at the joke, it means that they do not agree with the social norms expressed in the performance, thereby marking themselves as different and an outsider to the group.

###### 3.2.3.4 Offensive humor as strategy for provoking unlaughter

The folklorist Moira Smith in her research raises another ostracizing aspect of humor. Although her analysis is limited to reactions to offensive humor on the basis of religious belief, I would suggest that its conclusions can be generalized for all types of offensive humor. Smith’s test case is the 2005 incident wherein the Danish newspaper *Jyllands-Posten* published a series of caricatures of the Prophet Muhammad. Among other things, one of the caricatures shows Muhammad announcing to suicide bombers newly arrived in heaven that he’d run out of virgins. The cartoon series stirred up fierce controversy and many Muslims protested against what they perceived as an offense to their religious feelings. Based on her analysis of the event, Smith proffers the explanation that humor, in this case, was a strategic tool meant to provoke “unlaughter” in the Muslim community, thus emphasizing social divisions and promoting the exclusion of Muslims.[[95]](#footnote-95)

Based on Michale Billig’s definition of “unlaughter”,[[96]](#footnote-96) Smith stresses that unlaughter is not just the absence of laugher, but “a display of not laughing when laughter might otherwise be expected, hoped or demanded.”[[97]](#footnote-97) Accordingly, unlaughter does not attest to a failure to understand the joke (due to a misunderstanding of the incongruity therein, or of the resolution, for example), but to a *disagreement* with the joke – i.e. those who choose to respond to a joke with unlaughter see it as unworthy, inappropriate or perhaps even immoral.

Unlike those who respond with unlaughter, those who find the joke funny, appropriate and moral view the reaction of unlaughter as ridiculous, and therefore consider those who choose to respond in this manner ridiculous as well. Smith adds that the ridiculousness of those who are not laughing is only amplified by the importance placed on having a sense of humor in Western society where humor is perceived, among other things, as an indication of or a “proxy” for the ability to fit in. By Western standards, Smith claims, those who have the ability to laugh at themselves are perceived as having a sense of proportion, the ability to adapt to the bureaucratic order and thereby be a model citizen of industrialized society.[[98]](#footnote-98) Conversely, those who have no sense of humor (i.e. those who react to a joke with unlaughter), show themselves lacking the desirable qualities listed above.

Furthermore, according to Smith, shared laughter promotes the feeling of solidarity. When someone doesn’t laugh, the solidarity created is “oppositional” – the laughing group feels solidarity in opposition to the person who’s chosen not to laugh. The otherness of the person not laughing also adds to the accumulated negative opinion against them. Moreover, shared laughter, when it is accompanied by unlaughter on the part of the outsiders, actually increases solidarity within the laughing group. Hence, sometimes members of the solidarity group won’t just wait for unlaughter to happen, but encourage it. According to Smith, in such instances, the initiators of the joke intend for part of its audience to react with unlaughter in order to emphasize the social differences and boundaries between themselves and those choosing not to laugh, which in turn strengthens the bonds within the laughing group.

The same applies to other instances of offensive humor. A speaker employing offensive humor (in the workplace, for instance) thereby implements a strategy to present him/herself (if the humor is directed at an individual) and his/her group (if the humor is aimed at the group the individual belongs to) in a flattering light in contrast to the offended individual or group of individuals who are likely not to laugh at the joke. In doing so, the speaker accomplishes a number of goals: first of all, s/he presents the unlaughing individual/s as ridiculous and as lacking the positive qualities attributed to people with a sense of humor in Western society. Secondly, by presenting the unlaughing group as lacking those qualities, s/he strengthens his/her own status and the status of his/her group – those who laugh thereby exhibit their superiority over those who’ve chosen not to laugh. Thirdly, the joke itself strengthens the bonds within the group of individuals who laugh at it – when the joke is made at the expense of an individual, the solidarity within the group is strengthened in opposition to the “outsider” status of the unalughing individual; when the joke is made at the expense of a group, the solidarity within the laughing group is also strengthened in opposition to the group being ridiculed.

These insights might also explains the propensity of some members of disadvantaged groups to elect to tell offensive jokes directed their own affiliation group as a social strategy. When such an individual tells a joke at the expense of their own affiliation group, it strengthens their solidarity with the “competing” group, which in most cases is the dominant group. At the same time, they present themselves as having the qualities considered desirable in Western society, especially in comparison to other members of their affiliation group who choose to respond to the joke with unlaughter.

And indeed, the study conducted by Janet Holmes, shows that both men and women use humor to enforce gender stereotypes, even though women sometimes challenge humor that presents women as less qualified in the professional sphere.[[99]](#footnote-99) In other words, when the joke has the potential to sabotage the overarching goals of women in the workplace (such as their chances of getting a promotion, etc.), it is more likely to be challenged. When the joke enforces misogynist stereotypes but does not go against the aforementioned goals, women tend to cooperate with it.

*3.2.3.5 Offensive humor causes malaise and emotional distress*

As mentioned previously, exposing employees to offensive humor that targeted them was perceived as bullying, the psychological consequences of which for the victim included anxiety, depression and a feeling of helplessness.[[100]](#footnote-100) The same effects have been recorded for disparagement humor. In a study conducted by Marianne LaFrance and Julie Woodzicka, women reported feeling more disgust, anger and surprise in response to sexist jokes than non-sexist jokes.[[101]](#footnote-101) In addition, their non-verbal responses (such as facial expressions, for example) indicated negative emotional reactions to sexist jokes. When compared to women who’d been made to listen to jokes about lawyers, for instance, women who listened to sexist jokes tended to roll their eyes more, to express contempt and to cover their mouths in a way that betrayed signs of embarrassment. In addition, the researchers found that the less sexist the women’s worldviews, or the more they identified with women, the more extreme their non-verbal reactions (i.e. they tended to express more frustration, etc.).

Other studies in the field of experimental psychology revealed that sexist humor might create a hostile and stressful work environment for women, and sometimes even impair their ability to function.[[102]](#footnote-102) An additional study showed that gender-based harassment, which included, among other things, jokes of a sexual nature, caused cumulative damage to women’s mental health. Even low levels of gender-based harassment in the workplace were correlated with a decreased sense of satisfaction with life and psychological security.[[103]](#footnote-103) A qualitative study conducted by Beth Quinn described how women who worked in environments replete with sexist humor burst into tears when discussing the matter, and yet, at the same time, tried to represent themselves as “not taking it personally”.[[104]](#footnote-104)

#### 3.3 Does humor aggravate the offensiveness of speech?

Thus far we’ve examined the arguments for considering the humorous aspect of speech as neutralizing or minimizing the offensiveness implied in speech. However, we may also take into account a series of claims for considering humor as aggravating the offensiveness of speech. The following subchapter is devoted to examining these claims.

### *3.3.1 Offensive humor “makes light” of the offensive positions it expresses, therefore it may be seen as even more reprehensible than a “serious” offensive statement*

Merrie Bergmann is one of the authors to express the view according to which offensive humor is flawed not just because it expresses offensive beliefs or attests to offensive viewpoints held by the speaker or an addressee that finds the humor amusing.[[105]](#footnote-105) According to her, offensive humor is inappropriate because it adds insult to the injury of expressing an offensive opinion. How so? Bergmann makes her case using the classic slapstick humor example of a person slipping on a banana peel. She claims that such an incident is only funny if the person who’s slipped didn’t really get hurt, or if enough time has elapsed for us to remember the event separately from its painful consequences, since an incongruity that causes pain isn’t funny (or at least it is inappropriate to laugh at). Let us assume, she argues, that we are the ones who’d placed the banana peel on the sidewalk, after which a passerby slipped on it and got gravely injured. Bergmann stresses that if we laugh at such a scenario it will be perceived as an insult to the injured passerby. Therefore we are unable to see the incident as isolated from the pain it has caused. In the case of an offensive joke, the banana is the offensive opinions that set up the joke, and the people who slip on it are the women who are the victims of these offensive opinions. Bergmann explains that when people laugh at offensive opinions, it is an insult to the people harmed by such opinions, whether the insult is intended or not. In other words, the problem that Bergmann points to is the idea that offensive opinions, which in and of themselves are damaging to certain people, are something so minor and “light” that one can laugh at them.

The argument Bergmann brings forward seems to be at least partially based on Superiority Theory, as presented in the writings of Hobbs,[[106]](#footnote-106) which relate laughter to mechanisms of humiliation and derision.[[107]](#footnote-107) Mainly, it would appear that Bergmann implements Elliot Oring’s claim that humor, by its very nature, inevitably makes any subject to which it is linked trivial and laughable.[[108]](#footnote-108)

Nevertheless, Bergmann’s argument is doubly flawed. First, there is the problem of her initial assumption that people don’t laugh at painful subjects, but only at things that they see as “lightweight”. This claim has been proven factually wrong. There are plenty of instances in which people laugh at subjects that are especially painful to them: death, loss, disease – these are only a few example of the subjects that figure in what we call “black humor”.[[109]](#footnote-109) Just because people laugh at these subjects, doesn’t mean they take them lightly. In fact, the opposite is true. They make jokes on these subjects because of the emotional difficulty inherent in dealing with them.

Another case in which humor that contains offensive elements is not necessarily insulting is the case of irony. In an ironic context, the speaker does not mean things literally; rather, most often, s/he means the exact opposite. Thus, for instance, when telling a sexist offensive joke told in an ironic tone, the speaker does not intend to make fun of women, but on the contrary to make fun of the sexist positions expressed in the joke. Sometimes, a joke may appear, on the surface to be offensive according to the standards defined earlier in this article. However, the external circumstances in which the joke is told, circumstances that can be analyzed using the tools of pragmatics (for instance tone of voice, specific context, etc.), will determine whether the joke is told ironically in order to make fun of the worldviews expressed therein.

We must therefore ask the question of where does the laughter in a particular display of offensive humor stem from: is it from derision, from pain or from irony? This question must be examined on a case by case basis and its various aspects will be analyzed in later subchapters while trying to distinguish between the differ sub-cases of offensive humor. In any case, it is impossible to make the general claim that under all circumstances, humor that contains offensive elements stems from the perception of offensive positions as trivial.

### *3.3.2 Offensive humor is worse than a “serious” offensive statement because it deploys a strategy of insult that does allow the insulted party to confront the insulter*

Anat Zajdman analyzes the use of humor as a pragmatic-strategic tool in the hands of a speaker interested in insulting his/her peer without having to suffer the “consequences” of issuing an insult. She argues that, similarly to hinting, metaphors, rhetorical questions and other linguistic obfuscations, humor too can serve as an “off the record” mechanism, i.e. as an utterance to which no one clear meaning can be assigned. It is this kind of strategy that leads to the plethora of instances when the listener feels offended by the words (presented as a joke) of the speaker, while the speaker insists that s/he was “only kidding”. In this case, the use of humor, rather than an outright declaration, gives the speaker strategic advantages, namely the “removal of responsibility” for any possible offense caused to the listener.[[110]](#footnote-110) Hence, the speaker will often preface his/her words with the question “Want to hear a joke?”, and if the listener happens to be insulted, plead “no offense”, thereby denying the listener the legitimate opportunity to express their outrage.[[111]](#footnote-111)

If so, according to this approach, it would seem that offensive humor is even graver than an offensive statement uttered in a serious way. In both cases, whether the statement is humorous or serious, the addressee feels insulted and humiliated. However, unlike the case of serious offensive speech – to which the addressee can react by confronting the offender, in the case of humorous offensive speech, the addressee does not even get to enjoy the relief that comes from confronting the person who offended him/her. The screen of fog put up around the humorous statement, which, ostensibly, can be interpreted in several different ways, leaves the offended party without real recourse to anger or opportunity to demand an apology.

Nevertheless, Zajdman’s position and its conclusions leave room for criticism. It is possible to argue that it is not such a bad thing to live in a world where the status of the things we say is not uniform. Certainly, there are things we wish to say confidently and seriously, in such a way as to make their implications irrevocable, or have very limited revocability. On the other hand, there are also things we wish to say hesitantly, tentatively or provisionally, while retaining the possibility to revoke the implications of our words by qualifying them with various stipulations and so on.

Personally, I do not accept this stance. In my view, from the moment we’ve assumed that offensive speech (as defined in this paper) is unacceptable, we cannot consent to a strategy that tests the limits of social tolerance accorded to offensive statements. It constitutes enabling an indirect mechanism for undermining the social taboos placed on offensive speech, perhaps even for the eventual dissolution of these taboos (which we assume are desirable, since if they were not, offensive speech would not constitute a criminal or civil offense even when serious, not to mention humorous). In any case, even if we did accept the argument in favor of such a boundary-testing mechanism, any benefit afforded by this mechanism in the context of offensive humor is canceled out by the possibility it grants the offender to escape responsibility for offending the listener. Thus, at most, the aforementioned justification for this strategy mitigates the aggravating aspect pointed out by Zajdman, but does not make humorous offensive speech less offensive.

#### 3.4 Instances in which offensive humor is less offensive than serious offensive speech

The three instances in which humorous offensive speech does no attest to offensive positions, and is therefore voided of its unacceptable, derisive element, are the cases of irony, black humor, and friendly teasing. It would appear that these categories don’t quite fit the definition of offensive humor anyway, or at the very least they can be very narrowly and precisely defined, and therefore our conclusions about them cannot be extrapolated to our general discussion of offensive humor. An offensive joke that fits any of these three categories is told not as an act of endorsement of the offensive positions, but as an act of opposition to them (in the case of irony), or as opposition combined with the attempt to deal with the pain they inflict (in the case of black humor), or as a way of expressing affection (in the case of friendly teasing). Therefore, it is possible to argue that in these three instances, the “sting” is taken out of the offensive implication contained in offensive humorous speech anyway, even though there is no research to show whether the joke is stripped of its other negative effects (such as the psychological and sociological ramifications mentioned in the consequentialist discussion above).[[112]](#footnote-112) In the following sub-chapter I will examine these three cases in detail and also delve into the discussion of self-deprecating humor.

### *3.4.1 Ironic humor containing offensive elements*

Ironic speech is often (if not always) recognizable by the fact that the speaker says something the verity of which one cannot possibly think s/he believes.[[113]](#footnote-113) Thus, for instance, let us posit that A has committed an unfriendly act, and B, in reference to it says: “What a great friend!” In this case it will be clear to all present that B does not mean what she says. B can provide other clues to that effect by accompanying her utterance with an emphatic intonation or with a special facial expression. These will further clarify to her listeners that she does not mean “what is said” and that they must look for “what is implied”, which in this case would be the opposite of what is said. In the case of humorous speech that seems offensive on the face of it, the use of clear irony will make it clear to us that the speaker doesn’t support the offensive message, but on the contrary opposes it or even makes fun of it. In other words, the speaker is trying to say the opposite of what the statement denotes outside of the ironic context. But how are we to identify irony?

Within the philosophy of language field, it is customary to make the distinction between three types of meanings contained within an utterance:

1. Sentence meaning: the context-independent literal meaning of a sentence, construed from the dictionary meaning of its lexical items and the canonical meaning of its grammatical forms
2. Utterance meaning: the conventional meaning of an utterance after adjusting the sentence meaning to the situation of utterance
3. The speaker's intended meaning: what the speaker intends to convey by uttering a given sentence in a given situation. This is what the listener must try to identify if they wish to complete the process of understanding.

The assumption is therefore that no sentence carries an entirely transparent meaning. Every sentence is somewhat “opaque” in terms of meaning and requires some kind of context-based interpretation.[[114]](#footnote-114) The context in which the sentence is uttered provides us with clues to aid us in its interpretation. Nevertheless, we can identify two basic ways in which a sentence might be opaque. The first is rooted in the difficulty of determining utterance meaning, and the second in the difficulty of determining the speaker’s intended meaning.[[115]](#footnote-115)

Let us imagine a context in which two children are playing with a ball next to a tree in the yard and the ball gets stuck in the tree’s branches. The children try to reach the ball, but fail due to the height of the branches. At some point one of the children says: “John should get here soon. He’s tall.” In this instance the speaker’s intended meaning might be: “John will be able to get the ball out of the tree.” Now let us imagine a different context: a woman is proposing to set her friend up with a man. The friend is a rather tall woman, and she is interested in meeting a man who is at least as tall as her. The woman responsible for the set-up says to her friend: “John should get here soon. He’s tall.” In this case the speaker’s intended meaning might be: “John is a good match for you.”[[116]](#footnote-116)

The model distinguishing between sentence meaning, utterance meaning and speaker’s intended meaning has been used in the literature to analyze a wide range of texts.[[117]](#footnote-117) This model indicates that the speaker’s intended meaning can be similar to utterance meaning, but it can also be different from it, even far removed. Utterances in which the speaker’s intended meaning is different and removed from utterance meaning are termed “indirect speech acts”. The phenomenon of indirectness in language is wide in scope and includes, among others, indirect speech acts, implications of various kinds, irony and figurative or metaphorical uses of language.[[118]](#footnote-118)

Marcelo Dascal and Elda Weizman suggest a description of how indirect utterances are deciphered using two kinds of contextual information: meta-linguistic knowledge (knowledge about the language) and extra-linguistic knowledge. They propose to see the act of interpretation as a two stage process, at each of which the addressee makes use of both kinds of contextual information.[[119]](#footnote-119) In the first stage, the addressee infers that the direct meaning of the utterance is not identical to the speaker’s intended meaning, hence s/he rejects the literal interpretation of the utterance based on “cues” provided by the contextual information. Let us take, for example, a situation in which two friends intend to go on a picnic expecting good weather. As they leave the house it begins to pour down rain. One of them says: “Marvelous day for a picnic”. It is reasonable to assume that the addressee will interpret the utterance as having an indirect meaning (an ironic meaning in this case). There are a few cues to guide her to reject the possibility of a direct interpretation: the weather both friends are experiencing at that moment is the extra-linguistic cue that will aid her interpretation; an additional meta-linguistic cue can be found in the use of the word “marvelous”, which is somewhat hyperbolic.

Once the direct meaning is rejected, the second stage of interpretation can begin: the addressee must determine the alternative meaning, which is the indirect meaning that fits the context. To accomplish this s/he will once again make use of contextual information. At this stage, the contextual information provides “clues” which will guide the addressee towards identifying the speaker’s intended meaning and interpreting the utterance fully. Thus for instance, if the previous evening the speaker had raised doubts about the weather, only to be reassured by the addressee that it will be a beautiful day, this conversation could provide a contextual clue to the fact that the speaker is not just complaining about the weather, but also accusing the addressee of bad planning.

According to Daskal, the deciphering of utterance meaning is an act that belongs in the field of semantics, rather than pragmatics; only the deciphering of the speaker’s intended meaning belongs in the field of pragmatics.[[120]](#footnote-120) In his view, utterance meaning is a question of semantics alone because the contextual knowledge upon which it relies is conventionally referenced in the sentence by using expressions that have a clear and regular meaning (for example pronouns). The speaker’s intended meaning, on the other hand, may rely on cues and clues to which there is no conventional reference.

Therefore, we can see that the speaker’s meaning can depend on several variables, some of which may be known to the entire audience, and some of which may be known only to a select few who have a deep familiarity with the speaker or with previous events. Thus, for example, if we were to walk down the street and see a man trying to open his car door when, suddenly, the door handle breaks off in his hand, and he remarks: “Wonderful” in a cold and apathetic tone, we will all probably be able to infer that the speaker’s meaning in this case is ironic. On the other hand, in another situation, were we to behold a man step out of his house, look up at the clear skies and the chirping birds and exclaim: “How wonderful!” it is doubtful any of us would suspect the utterance of being ironic. And yet there is a chance that the utterance might be ironic – the speaker might be a big lover of rain and storms. Imagine that he had been promised a nice gray and rainy day by the weatherman the previous night, and now that he’s stepped out into the street his hopes of an enjoyably dreary day have been dashed. Therefore, he exclaims “How wonderful!” in a tone that he perceives as perfectly ironic, even though the wider public would interpret his exclamation as an expression of pure joy.

Let us return to the issue of offensive humor. It seems uncontroversial that in a situation where it is clear to all that a certain offensive joke has been said in an obviously ironic tone, it would be unreasonable to define the ironic utterance as problematic.[[121]](#footnote-121) Thus, for example, in the case of sexist humor, Susan Speer suggests a few objective signs we might look for to determine if a sexist utterance has been said ironically. For example, when the sexist observations are not expressed as an organized theory, but as a serious of stereotypical statements accompanied by growing laughter, it is clear that the utterance is to be interpreted as ironic.[[122]](#footnote-122)

The problem arises when the speaker, in wishing to convey irony, relies on cues and clues that are only available to a select few who have known the speaker for a long time or who have spent a long time with him/her before the utterance was made. In these instances, there is a good chance that a large portion of the offensive joke’s addressees will not interpret it as an ironic utterance, which will make its offensiveness identical to that of an offensive joke uttered un-ironically. Nevertheless, based on the objective approach suggested earlier, the implications of the utterance are to be examined according to the circumstances in which it is uttered, and therefore they depend, among other things, on the addressees and the knowledge one can expect them to possess. Therefore, it would seem that the objective approach provides a solution to these kinds of cases as well.

### *3.4.2 Black humor containing offensive elements*

Black humor is the type of humor people employ intentionally in order to deal with especially difficult situations. Its subject matter consists of things that evoke fear in all of us, in particular disasters and catastrophes such as the Holocaust, earthquakes, tsunami or death in general. This kind of humor goes by many other names, such as “gallows humor”, “horror humor”, or “grim humor”, all of which go to show that it touches on subjects whose common denominators are fear and the desire to overcome the hardships they entail.[[123]](#footnote-123) Often times we encounter black humor in situations that we would find hard to handle if we didn’t try to relieve the anxiety and stress they involve in some way. Therefore, some view black humor as a way of reducing the anxiety brought about by our awareness of death;[[124]](#footnote-124) others see black humor as an almost supernatural or exalted means of overcoming personal difficulties in a way that projects strength and courage to the group with which the person is affiliated.[[125]](#footnote-125) Hence, black humor is used to assuage the basic dread that comes with being human and to deal with the emotional side of catastrophe.[[126]](#footnote-126)

This therefore implies that in instances when offensive humor fulfills the function of black humor, it inherently doesn’t express an accord with the offensive positions it contains. Thus, for example, if a woman tells a rape joke – as awful and sexist as it might be – to a friend who has been raped, it is clear that the friend who tells the joke is not making light of her friend’s traumatic experience. In this instance, the joke teller is obviously only trying to help her friend deal with the terrible ordeal she has gone through. This claim is backed up by research-based evidence. For example, a qualitative study conducted among families of disabled people found that the use of (black) humor on the subject of disabilities within the family or in the company of loved ones gives the family members a way to communicate their feelings about disability and in this manner deal with the difficulties they experience because of it.[[127]](#footnote-127) In addition, humor serves as a kind of “protest” that the family members engage in against the common perceptions of disability held by the general public.[[128]](#footnote-128) The families even reported using humor in order to change perceptions and stereotypes, and to make fun of other people’s views of disabled people.[[129]](#footnote-129) This internal humor was also described as a way to raise self-esteem, improve morale and turn tragedy into comedy.[[130]](#footnote-130) Another finding of the same study was that with regard to humor, the family members stressed the importance of whether the joker is an “outsider” or an “insider” to the disability experience. Accordingly, an insider joker has a privileged position and the right to tell jokes that, were they to be told by an outsider joker, would be considered offensive and illegitimate.[[131]](#footnote-131)

It appears then that the dynamics of black humor can also be explained via Thomas Brommage’s concept of “entitlement conditions”. According to Brommage, a joke that is, on the face of it, “offensive” can be told successfully if the speaker is perceived as being “entitled” to tell it.[[132]](#footnote-132) To demonstrate, he takes the example of a joke told by Sarah Silverman: “I was raped by a doctor. Which is so bittersweet for a Jewish girl.”[[133]](#footnote-133) In Brommage’s view, the joke is perceived as appropriate and funny even though it is, on the surface, offensive, for a few reasons: first of all, Sarah Silverman is making fun of herself. If she were to make the joke about the rape of another woman, this may have been perceived as rude and offensive, but since she is the subject of the joke, it is perceived as “charming”. Moreover, Brommage argues, when a person tells a joke about their own origins, it is clear to one and all that its contents are meant in jest because there is a discrepancy between the speaker’s affiliation to the group at whose expense the joke is made and its derisive content.[[134]](#footnote-134)

Thus, according to Brommage, offensive jokes have more “entitlement conditions” attached to them than non-offensive jokes, and not everyone has the right to repeat them.[[135]](#footnote-135) Among the various possible entitlement conditions, Brommage provides the examples of ethnic and gender affiliation (such as the Sarah Silverman joke) and age (for example we will be more lenient with our grandmother when she tells a racist joke out of the understanding that she had grown up during a period of time when racism was a perfectly acceptable norm; whereas if a colleague were to tell the same joke, we would not have the same reaction). Furthermore, Brommage claims that the entitlement conditions for jokes at the expense of dominant groups are different than those for jokes about disadvantaged groups.[[136]](#footnote-136) Therefore it is possible to claim that black humor may appear offensive on the surface of things, but when the teller of the joke meets certain “entitlement conditions”, the joke becomes legitimate.

Having said that, black humor suffers from the same problems mentioned above in relation to ironic speech. Like irony, on many occasions it is impossible to draw a clear line between an offensive joke and black humor. Certainly, there are instances when, taking context into account, it will be clear to all that the offensive humor is fulfilling the function of black humor. Thus, for example, in circumstances where members of an oppressed group tell jokes about their own group, amongst themselves, it is more reasonable to assume that this is a case of black humor meant to alleviate the anxiety and stress of suffering oppression. Nevertheless, we can imagine many instances in which, despite the speaker’s intention, it will not be obvious to the audience that the offensive joke they’ve told is meant to fulfill the role of black humor. In such instances, similarly to instances of unclear irony, the joke will retain its offensive nature.

### *3.4.3 Friendly teasing containing offensive elements*

Unlike offensive humor which, as we’ve stated, is meant to ostracize an individual who “doesn’t belong” in the group, to reaffirm power structures or to release aggressions in a non-threatening way, friendly teasing constitutes a bonding mechanism between people involved in an intimate relationship or close friendship. Different rules of polite conduct apply within intimate contexts, and friendly teasing, as part of that conduct, is an acceptable form of communication that promotes closeness and bonding. Under these circumstances, the teasing is inclusive and often based on shared experiences.[[137]](#footnote-137) Ergo, contrary to offensive humor, teasing is an act of politeness rather than rudeness, even though it might appear, at first glance, as impolite. Within the bounds of the abovementioned types of relationship, teasing does not constitute a disruption of the conversation and the exchange of “jibes” that takes place between the individuals is desirable in and of itself, in that it strengthens the solidarity among them.[[138]](#footnote-138)

Offensive “disparagement” humor, on the other hand, is fundamentally different from friendly teasing. While the former is harmful and problematic, the latter encourages closeness and does not seek to hurt its addressee. Nevertheless, it appears that in certain cases it can be difficult to tell one from the other. In fact, sometimes the only way to tell if the utterance is disparagement or friendly teasing is by conducting a detailed analysis of the relationships between the people involved, since what separates offensive disparagement humor from friendly teasing is the speaker’s meaning and the listener’s inference. As far as legal-academic analysis is concerned, this can be problematic since this analysis is context-dependent, and the analyst must keep in mind that the listener can fake amusement or misunderstand the speaker’s intention.[[139]](#footnote-139)

Nevertheless, in my opinion, it is possible to point out a few basic ground rules that could help us identify friendly teasing. First of all, as stated earlier, friendly teasing takes place only in the confines of a friendly/intimate relationship. It is impossible to claim that addressing a distant work colleague or a stranger on the street constitutes friendly teasing since this brand of humor carries the preliminary condition of a close and well-established relationship. Secondly, it would appear that friendly teasing requires that the offensive proposition that is ostensibly implied by the joke be aimed at the individual as opposed to a group, since the moment the humor exceeds the boundaries of the person’s individual characteristics or flaws, it is no longer eligible for the protection of “intimacy” afforded by friendly teasing. Since a person cannot be in an intimate relationship with the entirety of the Indian community, even if their close friend is Indian, any joke directed at that friend’s ethnicity will necessarily retain its offensive aspect. In my personal view, friendly teasing is based on an affectionate outlook at the individual friend’s flaws, all within the confines of a personal relationship. Thus, teasing in effect constitutes a kind of implied statement that intends to convey: “I may be making fun of your flaws, but I find them charming because of our close bond.”

It goes without saying that even within the context of a close relationship between two people it is impossible to apply that kind of implication on the affiliation group of the individual targeted by the offensive humor. That is simply because the intimacy between the speaker and the addressee cannot be extended to all the members of the group with which the addressee is affiliated. Moreover, the very notion that the speaker sees the addressee’s affiliation with that group as a “flaw” (even if it is a “charming flaw” in his/her eyes) is an insult. Therefore, we can conclude from the above discussion that friendly teasing may indeed negate the offensiveness of humorous speech, but it is a narrowly defined category whose required conditions are relatively easy to identify.

#### 3.5 An interjection on the subject of contextual analysis

For all intents and purposes, in light of what has been said in this chapter, one may argue that it is problematic to give different treatment to identical utterances made in different circumstances or before different audiences. However, I would maintain that it is not problematic at all, because speech is always analyzed according to its implications and implications are never derived from the semantics of the utterance alone, but from its pragmatic aspects as well, which include the different circumstances of the utterance. I should clarify that the analysis proposed in this article *does not* require clarification on behalf of the speaker. Should a speaker claim, after the fact, that they intended to employ black humor or irony, their declaration would have no interpretative value. This is because we must only examine speech in the context in which it is uttered, without requiring any elucidations from the utterer and according to the conventional public rules of public language. In the words of Colin Lyas: “since the public rules of public language and not the individual and private acts of intention determine the meaning of words, it follows that if we want to know what a text means, we should see what the rules of the language allow it to mean.”[[140]](#footnote-140) As we mentioned earlier, these language rules include semantic rules, but also pragmatic rules which take into account implications and external circumstances.

To remove any remaining doubt, let us mention that looking at intention does not help in instances of multiple meanings either. That is because, according to Monroe Beardsley, clarifying intentions does not make the original utterance any less ambiguous.[[141]](#footnote-141) To elucidate, let’s assume that a person says something ambiguous, such as: “I like my secretary better than my wife”. We might struggle to decide between the following two interpretations of this utterance: “I prefer my secretary to my wife” or “I like my secretary better than my wife does". Beardsley would argue that even if we asked the speaker which one of these utterances he meant, his answer would not make the original utterance any less ambiguous, instead it would be replaced with a new utterance whose meaning is clear. According to the rules of our language, the first utterance is ambiguous and no intentions in the world can rid it of this quality. In other words, the ambiguousness of the first utterance is determined by the set of public rules we rely on to give language meaning, and no public declaration of intentions can render it unambiguous. Such a declaration has only the power to replace the first utterance with another which, according to the public rules of language, is unambiguous.[[142]](#footnote-142)

#### 3.6 An additional interjection on the subject of contextual analysis – the case of self-deprecating offensive humor

Thus far we have only casually referred to cases in which people tell offensive jokes whose arrows of insult are aimed at themselves. Ostensibly, it would seem that a person telling an offensive joke at their own expense, making fun of themselves and their characteristics, would not pose any problem for two reasons. First, it is safe to assume that the person is not going to sue him/herself. And secondly, we can say that self-deprecating humor (which in practice is offensive humor aimed at one’s own personal characteristics) is inherently inoffensive and is usually used as a mechanism to disguise one’s weaknesses.[[143]](#footnote-143)

Having said that, the problem arises when an individual tells an offensive joke about their own affiliation group, for example, a woman telling a sexist joke or a member of a certain ethnicity telling a racist joke at the expense of the ethnic group to which they belong. On the surface of things, since the individual is not the only victim of the joke he/she tells (it is offensive to the entire group), he/she is equally liable for the offense as an external individual if they were to tell the same joke. However, an in depth examination of the issue brings up two possible explanations for the phenomenon of self-deprecating humor, from which we can glean the appropriate way of treating it.

### *3.6.1 Many people hold offensive views of their own affiliation group or use laughter as a strategic tool*

As indicated by the literature, the phenomenon of “self-hatred” among different groups, especially among minorities, is not uncommon. Thus, for example, Ariel Levy studied the phenomenon of chauvinist women who hold sexist views about women in her book *Female Chauvenist Pigs: Women and the Rise of Raunch Culture*.[[144]](#footnote-144) Much has also been written about the phenomenon of “self-hatred” among the Jewish community.[[145]](#footnote-145) It is therefore possible to argue that offensive humor directed at one’s own affiliation group stems from “self-hatred”. However, there are times when the abovementioned humor serves a strategic purpose. Gordon Allport maintains that ethnic minorities, such as Jews and African-Americans, often use self-deprecating humor in order to belittle themselves and their group members in the attempt to appease the dominant majority.[[146]](#footnote-146)

It would seem that in both these cases, the use of offensive humor directed at one’s own group is problematic, and contains all the faults of offensive humor we’ve mentioned above. However, there is another, alternative explanation for the use of offensive humor directed at one’s own group, which implies that this humor serves the function of black humor. In that case, the level of gravity entailed the use of such humor is decreased.

### *3.6.2 Offensive humor directed at one’s own group which functions as black humor*

As we saw in previous sections, black humor is the kind of humor that deals with fears and catastrophes, and its goals are to decrease anxiety or relieve the pain it causes. It is possible to understand some of the instances in which a person tells an offensive joke at the expense of their own affiliation group as black humor, which doesn’t constitute an agreement with the offensive propositions arising from the humorous performance, but a way of dealing with the fact that these offensive propositions exist in the world we live in. Evidence to that effect can be found in the study that showed that women find rape jokes funny when they are told by a woman, but not when they are told by a man. The explanation for this finding offered by the study’s author is that when a woman tells another woman a rape joke, it helps relieve the anxiety and the fear of becoming a rape victim.[[147]](#footnote-147) In other words, rape humor serves as a kind of black humor which, as we’ve stated previously, is one of the kinds of humor whose offensiveness is diminished or even possibly neutralized.[[148]](#footnote-148)

All of the above implies that the self-deprecating characteristic of offensive humor cannot by itself constitute a defense against claims of offensiveness. Nevertheless, in certain cases, self-deprecation can serve as an indication that the particular humorous performance belongs to one of the exceptional categories wherein offensive humor is deemed less offensive than a serious offensive statement (such as black humor, for example) and therefore it must be treated accordingly.

## 4. In place of a conclusion – a few comments about redeeming values and the specific case of satire

As stipulated in the introduction to this article, in order to answer the question “How must the court deal with offensive humor?” we must in fact find responses to two questions. The first, which is the subject matter of the present paper, is whether the humor with which offensive speech is delivered neutralizes, aggravates or has no effect on the degree of its offensiveness. The answer that arises from the above discussion is that in most cases, apart from a few well defined exceptions (which are: irony, black humor and friendly teasing), when it comes to offensive speech, humor does not decrease the degree of offensiveness. Although the discussion of the second question we need to answer in order to define the way the courts are to treat offensive humorous speech – namely whether the humorous nature of offensive speech affords it some kind of protection or a redeeming value that would justify treating it differently from offensive speech that is not humorous – is reserved for future research, I would like to present readers of the present article with a few of the main points around which this discussion is likely to revolve.

On the surface of things, it would seem that most of the redeeming values of offensive humor (such as for example the value of humor as a virtue, its function as a mechanism for catharsis or for improving intellectual capacities, the physiological benefits of humor, etc.) stem from the humorous element alone rather from its combination with the offensive element in offensive humor. Therefore, they cannot be held sufficient to redeem offensive humor, since the same values are provided by the use of inoffensive humor.

Nevertheless, it is possible to argue that offensive humor does carry two central, unique values – the first intrinsic and the second instrumental – which are linked to its offensiveness. Thus, one might claim that offensive humor has intrinsic aesthetic value that arises from the interaction between humor and offensiveness, and that this value “redeems” it and makes it legitimate despite its offensiveness. That being said, the degree to which humor in general and offensive humor in particular can be deemed aesthetic is a matter of controversy. Therefore, the validity of this claim depends on the answers to the following two questions: first, does humor in general have any aesthetic value? And secondly, does the offensive element in offensive humor add to, detract from or have no effect on its aesthetic value?

It would appear that, even though most thinkers are on the same page in thinking that humor has aesthetic value, the issue of how the offensive element affects this value remains debatable – the answer depending on whether one adopts a moralist or anti-moralist philosophical approach. While moralist thinking subjugates the esthetic value of art to the degree of its morality, the anti-moralist approaches claim to the contrary that there is no link between ethics and aesthetics, and that at times the amoral elements in a piece of art actually increase its aesthetic value.

The above philosophical discussion is complex and, as previously stated, exceeds the narrow scope of this article. However, I believe a central argument in favor of adopting a moralist approach can be found in the general claim that the aesthetics of humorous speech are already derived from a variety of factors, such as the kind of amusement it provokes (for example, the laughter elicited by witticism is aesthetically preferable to the laughter elicited by physical humor), its level of sophistication (thus, jokes that contain sophisticated references are more aesthetic because they amplify the listener’s enjoyment by allowing him to feel a small “victory” for “getting” the joke, and because they promote the love of multidisciplinary knowledge), and so on. Hence, we can conclude that the aesthetics of humorous speech do not take into account its amusement factor alone, but a variety of the other aesthetic criteria it contains. Therefore, and in light of the fact that aesthetics are not based purely on formal elements but also on depth of insight, complexity, innovation, etc., it is clear that among the multitude of variables taken into account in measuring the aesthetic value of art – including humorous speech – one also has to consider its moral flaws to a certain extent.[[149]](#footnote-149)

Another possible argument is that offensive humor has instrumental value because it serves as a way to vent aggressions that would otherwise be expressed in other, less socially desirable ways. In Freud’s view, for example, aggressive humor is a translation of what started out as physical aggression.[[150]](#footnote-150) Since society is critical of physical aggression, people have come up with an alternative route through which to channel their aggression, and that route is humor.[[151]](#footnote-151) This translation is the result of, among other things, education, cultural development and the social taboos imposed on the individual by society. Thus, it would appear that aggressive humor (of which offensive humor is one expression) has a positive value since it is meant to provide a mitigated mechanism for venting aggression, as a substitute for physical violence – a way of letting off steam that reduces the risk of physical aggression. In this sense, I would argue, humor can be seen as a component of the "hydraulic model," a model according to which accumulated aggressive energy must find an outlet, similar to water held back by a dam.[[152]](#footnote-152) If we were to implement this theory on offensive humor, it would be possible to claim that expressing aggression through this type of humor diminishes the aggressive feelings towards the victim of the joke, feelings that would otherwise find an outlet in physical violence.

That being said, we currently have at our disposal a multitude of studies in the discipline of experimental psychology that debunk the hydraulic model. For instance, if, according to the hydraulic model, watching erotic materials relieves sexual urges, then we would expect places where pornographic magazines are found in abundance to have low rates of sexual violence and rape. That is because watching erotic materials is supposed to reduce pent up sexual desires, as well as the propensity to treat women as sexual objects. However, studies show that the opposite is true.[[153]](#footnote-153) In fact, there is nowadays almost complete consensus among social psychologists that, contrary to Freud’s assumptions, watching or participating in acts of violence does not generate catharsis.[[154]](#footnote-154)

A specific case that raises real questions about the redeeming value of offensive humor is the case of offensive satire. Satirical speech is a unique case of humorous speech since, unlike “regular” humor whose explicit purpose is, first and foremost, to amuse, the aim of satirical speech is to make social commentary. From this we infer that, ostensibly, satirical speech is of a higher aesthetic value than “regular” humorous speech. Other redeeming values associated with satire include its unique persuasive value (which stems from its humorous and its narrative elements), and its value as a means to circumvent censorship.

Nevertheless, we must ask ourselves if these values are enough to redeem offensive satire as well (i.e. satire that contains an offensive element as defined in chapter 3.1.1 of this paper). We might argue that by virtue of the satire’s definition as offensive, we can infer that its values are aimed at serving principles that we would not wish to promote. At the same rate, we could claim that satire, by its very nature, includes elements that are offensive to some, since at its core it is based on derision. Thus it is possible, in some cases, for us to opine that its offensiveness is justified (for example when the satire is aimed at criticizing politicians). In that case, the satirical nature of the performance would allow for broadening the protection over this particular instance of offensive speech, and perhaps even for a certain degree of overstepping the bounds of derision that would be justifiable for serious speech, or the strict rules that apply to serious journalistic speech.

1. For more on the range of functions humor fulfills in human lives, see: אריה סובר **הומור: בדרכו של האדם הצוחק** 51–88 (2009). [↑](#footnote-ref-1)
2. It goes without saying that the confines of this work do not allow for a thorough theoretical discussion of the precise meaning and scope of the term "offense". For further theoretical reading of the subject, see Thomas Conley: Toward a Rhetoric of Insult. University of Chicago Press, 2010. [↑](#footnote-ref-2)
3. For example, the restrictions enforced by the Advertising Self-Regulatory Council. [↑](#footnote-ref-3)
4. For more on the differences between deontological and consequentialist approaches, see: Alexander, Larry and Moore, Michael, "Deontological Ethics", *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/win2016/entries/ethics-deontological/>, in particular sub-section 1 and the references within. [↑](#footnote-ref-4)
5. For more on threshold deontology, see: Alexander, Larry and Moore, Michael, "Deontological Ethics", *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/win2016/entries/ethics-deontological/>, in particular sub-section 4 and the references within. [↑](#footnote-ref-5)
6. In certain cases, the US courts have discussed the legal repercussions that arise from classifying something as humor. Thus, for example, in: Leonard v. Pepsico, Inc., 88 F. Supp. 2d 116 (S.D.N.Y. 1999), the court discussed the questions of whether it is possible to interpret a humorous commercial as a contractual proposal. Nevertheless, even in such cases, the discussion of what constitutes and characterizes humor has been rudimentary and based on common sense. Furthermore, as stated previously, this article is only interested in the interfacing between humor and offensiveness. [↑](#footnote-ref-6)
7. Hustler Magazine, Inc. v. Falwell, [485](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases%2C_volume_485) [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) 46 (1988). [↑](#footnote-ref-7)
8. A copy of the ad can be seen at: en.wikipedia.org/wiki/Hustler\_Magazine\_v.\_Falwell#/media/File:Falwellhustler.jpg [↑](#footnote-ref-8)
9. ישראל (רולי) בר **עושים (צ)חוק - שלושה פרדוקסים משפטיים של סאטירה וזכויות יוצרים** 44 (עבודת גמר לתואר "מוסמך במשפטים", אוניברסיטת תל אביב – הפקולטה למשפטים, 2012). [↑](#footnote-ref-9)
10. שם, בעמ' 47. [↑](#footnote-ref-10)
11. New Times, Inc. v.Isaacks, 146 S.W.3d 144, 155 (Tex. 2004). [↑](#footnote-ref-11)
12. Ibid. See also Sack’s book: Sack, R. D., & Sack, R. D. (1999). *Sack on defamation: Libel, slander, and related problems*. New York City: Practising Law Institute. [↑](#footnote-ref-12)
13. Ibid. For more examples of a similar attitude see: [Mink v. Knox, 613 F.3d 995, 2010 U.S. App. LEXIS 14684, 38 Media L. Rep. 1961](https://advance.lexis.com/api/document/collection/cases/id/8001-W1J1-2RHT-100S-00000-00?cite=613%20F.3d%20995&context=1000516); [Super Future Equities, Inc. v. Wells Fargo Bank Minn., N.A., 553 F. Supp. 2d 680, 2008 U.S. Dist. LEXIS 21501](https://advance.lexis.com/api/document/collection/cases/id/4S39-G150-TXFR-Y2XH-00000-00?cite=553%20F.%20Supp.%202d%20680&context=1000516); [Miss America Pageant, Inc. v. Penthouse International, Ltd., 524 F. Supp. 1280, 1981 U.S. Dist. LEXIS 15537, 7 Media L. Rep. 2177](https://advance.lexis.com/api/document/collection/cases/id/3S4N-KMM0-0039-S392-00000-00?cite=524%20F.%20Supp.%201280&context=1000516); [Pring v. Penthouse International, Ltd., 695 F.2d 438, 1982 U.S. App. LEXIS 24283, 8 Media L. Rep. 2409](https://advance.lexis.com/api/document/collection/cases/id/3S4X-1HX0-003B-G1S6-00000-00?cite=695%20F.2d%20438&context=1000516). For an additional overviewsee: Kreutzer, Jan Kipp. "Defamation: Problems with Applying Traditional Standards to Non-Traditional Cases-Satire, Fiction and Fictionalization." N. Ky. L. Rev. 11 (1984): 131, 143-149 [↑](#footnote-ref-13)
14. Hamilton v. Prewett, 860 N.E.2d 1234, 2007 Ind. App. LEXIS 228 [↑](#footnote-ref-14)
15. Walko v. Kean College of New Jersey, 235 N.J. Super. 139, 561 A.2d 680, 1988 N.J. Super. LEXIS 512 [↑](#footnote-ref-15)
16. [Polygram Records, Inc. v. Superior Court, 170 Cal. App. 3d 543, 547, 216 Cal. Rptr. 252, 254, 1985 Cal. App. LEXIS 2260, \*5-6, 11 Media L. Rep. 2363](https://advance.lexis.com/api/document/collection/cases/id/3RV6-C1J0-003D-J0RK-00000-00?page=547&reporter=3056&cite=170%20Cal.%20App.%203d%20543&context=1000516) [↑](#footnote-ref-16)
17. [Polygram Records, Inc. v. Superior Court, 170 Cal. App. 3d 543, 556-557, 216 Cal. Rptr. 252, 260-261, 1985 Cal. App. LEXIS 2260, \*28-27, 11 Media L. Rep. 2363](https://advance.lexis.com/api/document/collection/cases/id/3RV6-C1J0-003D-J0RK-00000-00?page=556&reporter=3056&cite=170%20Cal.%20App.%203d%20543&context=1000516) [↑](#footnote-ref-17)
18. [Polygram Records, Inc. v. Superior Court, 170 Cal. App. 3d 543, 545, 216 Cal. Rptr. 252, 253, 1985 Cal. App. LEXIS 2260, \*1, 11 Media L. Rep. 2363](https://advance.lexis.com/api/document/collection/cases/id/3RV6-C1J0-003D-J0RK-00000-00?page=1&reporter=7051&cite=170%20Cal.%20App.%203d%20543&context=1000516) [↑](#footnote-ref-18)
19. [Robinson v. Radio One, Inc., 695 F. Supp. 2d 425, 430, 2010 U.S. Dist. LEXIS 14552, \*14](https://advance.lexis.com/api/document/collection/cases/id/7XVM-YTY0-YB0P-70KV-00000-00?page=430&reporter=1109&cite=695%20F.%20Supp.%202d%20425&context=1000516) [↑](#footnote-ref-19)
20. [Kolegas v. Heftel Broadcasting Corp., 154 Ill. 2d 1, 16, 607 N.E.2d 201, 209, 1992 Ill. LEXIS 202, \*18-19, 180 Ill. Dec. 307, 315, 20 Media L. Rep. 2105](https://advance.lexis.com/api/document/collection/cases/id/3RX4-1TR0-003D-H306-00000-00?page=16&reporter=3131&cite=154%20Ill.%202d%201&context=1000516) [↑](#footnote-ref-20)
21. See for example: West Chester Area School Bd. v. West Chester Area Educ. Ass'n, 1991 Pa. Dist. & Cnty. Dec. LEXIS 349, 9 Pa. D. & C.4th 125; Jackson v. Del. River & Bay Auth., 2001 U.S. Dist. LEXIS 26843; Dates v. Frank Norton, LLC, 190 F. Supp. 3d 1037, 2016 U.S. Dist. LEXIS 71706. As well as: In re Advisory Letter No. 3-11, 215 N.J. 495, 513, 73 A.3d 1244, 1255, 2013 N.J. LEXIS 852, \*38, 2013 WL 5269755. In the latter, it was determined that a sitting judge cannot pursue a career as a comedian due to the concern that those who have heard him use disparaging humor directed at ethnic or religious groups would not be able to view him as impartial: “We cannot ignore the distinct possibility that a person, who has heard a routine founded on humor disparaging certain ethnic groups and religions, will not be able to readily accept that the judge before whom he or she appears can maintain the objectivity and impartiality that must govern all municipal court proceedings.” [↑](#footnote-ref-21)
22. Heitzman v. Monmouth County, 321 N.J. Super. 133, 153, 728 A.2d 297, 307, 1999 N.J. Super. LEXIS. [↑](#footnote-ref-22)
23. Powell v. Allstate Ins. Corp., 1993 Fla. App. LEXIS 11240, 18 Fla. L. Weekly D 2398. [↑](#footnote-ref-23)
24. The court determined that: “jokes and slurs made by jurors while conducting    their official duties prevents impartial decision-making from taking place. To allow such behavior in the jury room would erode public confidence in the equity of our system of justice.” [↑](#footnote-ref-24)
25. Ibid. [↑](#footnote-ref-25)
26. It is clear that even within the range of cases in which a particular statement constitutes a criminal or civil offense, there are more and less serious instances. Thus, for example, it is reasonable to assume that a judge will tend to take an instance of defamation perpetrated against a person with a physical disability as more severe than defamation perpetrated against a strong, healthy and wealthy person. Similarly, incitement against a vulnerable minority will be perceived as more serious than incitement against a well-established and powerful segment of the population. That being said, this discussion is not relevant to this part of the paper. As stated, our purpose here is not to discuss offensive humorous speech in its own right, but only in relation to the same offensive statements made in a non-humorous way. In other words, the work does not compare between offensive humorous speech made against a disabled person and non-humorous speech that is offensive to a strong and healthy person. The purpose of the paper is to compare the appropriate legal treatment of offensive humorous speech made against a person with disabilities, as opposed to a non-humorous expression that is offensive to the person with disabilities, and similarly between two equally offensive statements, one humorous and the other serious, made against a healthy person. The relevance of this discussion, within the scope of this paper, is limited to dealing with the effect of the moral flaw of offensive humor on its aesthetics – thus we will come back to it in chapter 4 to analyze the circumstances that affect the moral ramifications of offensive humorous speech and consequently its aesthetic value in a way that increases or decreases the degree of protection it should ideally be accorded under the law. [↑](#footnote-ref-26)
27. Hustler Magazine, Inc. v. Falwell, 47. [↑](#footnote-ref-27)
28. These aims will be discussed in more detail further on. [↑](#footnote-ref-28)
29. To be clear, there is no intention here of delving into the discussion of whether “mere thoughts” can be considered incriminating. As stated, our point of departure is that the offensive speech in question is prohibited by law. The argument made by those who object to humorous offensive speech being punishable by law is that, unlike “serious” offensive statements, the offensive joke does not attest to offensive view on the part of its teller. Therefore, there is no question here of punishing thoughts; it is but an analysis of the abovementioned argument. [↑](#footnote-ref-29)
30. De Sousa here focuses on only one of the possible categories of offensive humor – namely sexist humor. However, the logic of his argument is not limited to sexist humor, and if it is sound, it should apply equally to any other brand of offensive humor. [↑](#footnote-ref-30)
31. Ronald De Sousa, *The Rationality of Emotions*. The above precepts were summarized by Aaron Smuts in "The Ethics of Humor: Can your sense of humor be wrong?" *Ethical theory and moral practice* 13.3 (2010): 333-347, 336. [↑](#footnote-ref-31)
32. De Sousa, *The Rationality of Emotions,* p. ? [↑](#footnote-ref-32)
33. Oliver Conolly & Bashshar Haydar, *The Good, the Bad and the Funny*, 88 The Monist 121, 126 (2005) [↑](#footnote-ref-33)
34. Beryl Gaut, *Just Joking*, 4. [full reference?] [↑](#footnote-ref-34)
35. Robert R. Provine, *Laughter: A Scientific Investigation* (1987). [full reference?] [↑](#footnote-ref-35)
36. David Benatar, “Prejudice in Jest: When Racial and Gender Humor Harms”, *Public Affairs Quarterly* 13:2 (1999), 191. [↑](#footnote-ref-36)
37. A similar argument is also made by Aaron Smuts in “The Ethics of Humor”, p. 333. [↑](#footnote-ref-37)
38. Thus for example, in the specific case of Jews, research abounds with the term “Self-hating Jew”, coined by Kurt Lewin in *“*Self-hatred among Jews”, *Contemporary Jewish Record* IV (1941), 219. As for women, journalist for the *New Yorker*, Ariel Levy, has pointed out the phenomenon of sexism perpetuated by women against themselves and their female friends in the popular non-fiction book: *Female Chauvinist Pigs: Women and the Rise of Raunch Culture* (2006) [full reference?] [↑](#footnote-ref-38)
39. Thus, for example, it is possible to conduct a survey-based study that first establishes the participants’ racist inclinations and then proceeds to the observation-based testing of the respondents’ reactions to various jokes, some of them containing racist elements. Such a study would be able to confirm or refute several theoretical approaches to offensive humor. For example, when a respondent who doesn’t appear to hold racist views laughs at a racist joke, it would be possible to break the joke up into parts and examine exactly which parts the respondent finds amusing. [↑](#footnote-ref-39)
40. Antony J. Chapman & Nicholas J. Gadfield, “Is Sexual Humor Sexist?”, JOURNAL OF COMMUNICATION26 (1976) 141; Butland &. Ivy, The Effects of Biological Sex, לעיל ה"ש 6; Henkin & Fish, Gender and Personality Differences, לעיל ה"ש 6; Moore, Griffiths & Payne, Gender, Attitudes towards Women, לעיל ה"ש 6. [↑](#footnote-ref-40)
41. Smuts, “The Ethics of Humor”, 176. [↑](#footnote-ref-41)
42. It is problematic because not every insult is amusing. When we do find an insult amusing it is likely to stem from an incongruity contained therein, and in this case the incongruity relies on sexist principles – that a sexually promiscuous woman is someone to be censured. [↑](#footnote-ref-42)
43. Chapman & Gadfield, *Is Sexual Humor Sexist?* , לעיל ה"ש 179; Butland &. Ivy, *The Effects of Biological Sex*, לעיל ה"ש 6; Henkin & Fish, *Gender and Personality Differences*, לעיל ה"ש 6; Moore, Griffiths & Payne, *Gender, Attitudes towards* Women, לעיל ה"ש 6. [↑](#footnote-ref-43)
44. Joanne R. Cantor & Dolf Zillman, *Resentment Toward Victimized Protagonists and Severity of Misfortunes They Suffer as Factors in Humor Appreciation*, 6 Journal of Experimental Research in Personality 321 (1973); Lawrence La Fave, Kevin McCarthy & Jay Haddad, *Humor Judgments as a Function of Identification Classes: Canadian vs. American*, 85 Journal of Psychology 53 (1973); Paul E. McGhee & Nelda S. Duffey, *The Role of Identity of the Victim in the Development of Disparagement Humor*, 108 Journal of General Psychology 257 (1983); Frank W. Wicker, William L. Barron & Amy C. Willis, *Disparagement Humor: Dispositions and Resolutions*, 39 Journal of Personality and Social Psychology 701(1980). [↑](#footnote-ref-44)
45. Chapman & Gadfield, *Is Sexual Humor Sexist?* , לעיל ה"ש 179. [↑](#footnote-ref-45)
46. Ibid.; Butland &. Ivy, *The Effects of Biological Sex*, לעיל ה"ש 6; Henkin & Fish, *Gender and Personality Differences*, לעיל ה"ש 6; Moore, Griffiths & Payne, *Gender, Attitudes towards* Women, לעיל ה"ש 6. [↑](#footnote-ref-46)
47. Kathryn Ryan & Jeanne Kanjorski, *The Enjoyment of Sexist humor, Rape Attitudes, and Relationship Aggression in College Students*, 38 Sex Roles 743 (1998). [↑](#footnote-ref-47)
48. Butland &. Ivy, *The Effects of Biological Sex*, לעיל ה"ש 6;Dara Greenwood & Linda M. Isbell, *Ambivalent Sexism and the Dumb Blonde: Men’s and Women’s Reactions to Sexist Jokes*, 26 Psychology of Women Quarterly 341 (2002) (Hereafter:Greenwood & Isbell, *Ambivalent Sexism and the Dumb Blonde*); Marianne LaFrance & Julie A. Woodzicka, *No Laughing Matter: Women’s Verbal and Nonverbal Reactions to Sexist Humor*, in Prejudice: The target’s perspective 61 (Janet K. Swim & Charles Stangor eds., 1998) (המאמר להלן:( LaFrance &. Woodzicka, *No Laughing Matter)*. [↑](#footnote-ref-48)
49. Peter Glick & Susan T. Fiske, *The Ambivalent sexism Inventory: Differentiating Hostile and Benevolent Sexism*, 70 Journal of Personality and Social Psychology 491 (1996) [↑](#footnote-ref-49)
50. Friederike Eyssel & Gerd Bohner, *The Rating of Sexist Humor under Time Pressure as an Indicator of Spontaneous Sexist Attitudes*, 57 Sex Roles 651 (2007) (Hereafter:Eyssel & Bohner, *The Rating of Sexist Humor*); Thomas E. Ford, *Effects of Sexist Humor on Tolerance of Sexist Events*, 26 Personality and Social Psychology Bulletin 1094 (2000); Greenwood & Isbell, *Ambivalent Sexism and the Dumb Blonde*, לעיל ה"ש 187; Caroline A. Thomas & Victoria M. Esses, *Individual Differences in Reactions to Sexist Humor*, 7 Group Processes & Intergroup Relations 89 (2004). [↑](#footnote-ref-50)
51. Eyssel & Bohner, *The Rating of Sexist Humor*, לעיל ה"ש 189; Greenwood & Isbell, *Ambivalent Sexism and the Dumb Blonde*, לעיל ה"ש 187. [↑](#footnote-ref-51)
52. LaFrance &. Woodzicka, *No Laughing Matter*, לעיל ה"ש 187. [↑](#footnote-ref-52)
53. Greenwood & Isbell, *Ambivalent Sexism and the Dumb Blonde*, לעיל ה"ש 187. [↑](#footnote-ref-53)
54. הפניה כללית – תכליות ההומור [↑](#footnote-ref-54)
55. We should add that when the offensive humor was directed at work colleagues whose social status was equivalent to that of the speaker, it was mostly perceived as friendly teasing (see subsection 3.4.3: “Friendly teasing containing offensive elements”). On the other hand, when the target of the humor was an “outsider” or of a lower professional rank than the speaker, it was perceived as bullying. Stig Berge Matthiesen & Ståle Einarsen, *Bullying in the workplace: Definition, prevalence, antecedents and consequences*, 13 International Journal of Organization Theory & Behavior 202 (2010) (Hereafter: Matthiesen & Einarsen, *Bullying in the workplace).* [↑](#footnote-ref-55)
56. Coser, *Laughter Among Colleagues*, לעיל ה"ש 151. [↑](#footnote-ref-56)
57. Julie A. Woodzicka & Thomas E. Ford, [*A Framework for Thinking about the (not-so-funny) Effects of Sexist Humor*](http://ejop.psychopen.eu/article/view/217), 6 Europe’s Journal of Psychology 174 (2010) ( Hereafter:Woodzicka & Ford, *A Framework for Thinking*). In this article, Woodzicka and Ford apply Social Identity Theory to sexist humor, but this application seems to fit all types of humor that target groups in society, disadvantaged groups in particular. [↑](#footnote-ref-57)
58. Henri Tajfel & John C. Turner*, The Social Identity Theory of Intergroup Behavior*, in Psychology of Intergroup Relations 7 (William G. Austin & Stephen Worchel eds., 1986). [↑](#footnote-ref-58)
59. Richard Y. Bourhis, Howard Giles, Henri Tajfel et al., *Context and Ethnic Humour in Intergroup Relations*, It's a Funny Thing, Humour: Proceedings of The International Conference on Humour and Laughter 261 (Antony J. Chapman & Hugh C. Foot eds., 1976) (hereafter: It's a Funny Thing, Humour.) [↑](#footnote-ref-59)
60. Thomas E. Ford & Mark A. Ferguson, *Social Consequences of Disparagement Humor: A Prejudiced Norm Theory*, 8 Personality and Social Psychology Review 79 (2004( (Hereafter: Ford & Ferguson, *Social Consequences of Disparagement Humor*). [↑](#footnote-ref-60)
61. This is the case in Ibid. It is important to note that studies conducted on the subject of racist humor, found that it was perceived as slightly less offensive than “serious” racist statements; however it was perceived as more offensive than both serious sexist statements and sexist humor (which was perceived as the least offensive). See: Julie A. Woodzicka, Robyn K. Mallett, Shelbi Hendricks et al., *It’s just a (sexist) joke: Comparing reactions to sexist versus racist communications*, 28 Humor 289 (2015). [↑](#footnote-ref-61)
62. Chapman & Gadfield, *Is Sexual Humor Sexist?* , לעיל ה"ש 191‏; Hassett & Houlihan, *Different Jokes*, לעיל ה"ש 116; Jean Losco & Seymour Epstein, *Humor Preference as a Subtle Measure of Attitudes toward the same and the Opposite Sex*, 43 Journal of Personality 321 (1975) ‏; Ann Marie Love & Lambert H. Deckers, *Humor Appreciation as a Function of Sexual, Aggressive, and Sexist Content*, 20.Sex Roles 649 (1989) (Hereafter:Love & Deckers, *Humor Appreciation* )‏; Norbert Mundorf, Azra Bhatia, Dolf Zillmann et al., *Gender Differences in Humor Appreciation*, 1 Humor: International Journal of Humor Research 231 (1988); James W. Neuliep, *Gender Differences in the Perception of Sexual and Nonsexual Humor*, 2 Journal of Social Behavior & Personality 345 (1987) ‏; Robert F. Priest & Paul G. Wilhelm, *Sex, Marital Status, and Self/Actualization as Factors in the Appreciation of Sexist Jokes*, 92 The Journal of Social Psychology 245 (1974). [↑](#footnote-ref-62)
63. Love & Deckers, *Humor Appreciation* לעיל ה"ש 200. [↑](#footnote-ref-63)
64. Myrtle P. Bell, Mary E. McLaughlin & Jennifer M. Sequeira, *Discrimination, Harassment, and the Glass Ceiling: Women Executives as Change Agents,* 37 Journal of Business Ethics 65 (2002); Patricia A. Frazier , Caroline C. Cochran & Andrea M. Olson, *Social Science Research on Lay Definitions of Sexual Harassment*, 51 Journal of Social Issues 21 (1995) (Hereafter:Frazier , Cochran & Olson, *Social Science Research*); M. Hemmasi & L. Graf, *Sexual and Sexist Humor in the Work Place: Just ―Good Fun‖ or Sexual Harassment?*, Proceedings of Decision Sciences Institute 455 (1998) (Hereafter:Hemmasi & Graf, *Sexual and Sexist Humor in the Work Place*); Larry R. Smeltzer & Terry L. Leap, *An Analysis of Individual Reactions to Potentially Offensive Jokes in Work Settings*, 41 Human Relations 295 (1988). [↑](#footnote-ref-64)
65. Ibid. [↑](#footnote-ref-65)
66. Frazier, Cochran & Olson, *Social Science Research* , לעיל ה"ש 202. [↑](#footnote-ref-66)
67. Woodzicka & Ford, *A Framework for Thinking* , לעיל ה"ש 195 ,בעמ' 182. [↑](#footnote-ref-67)
68. סובר **הומור: בדרכו של האדם הצוחק**, לעיל ה"ש 1, בעמ' 63. וראו גם: Joyce Oramel Hertzler, Laughter: A Socio-Scientific Analysis (1970). [↑](#footnote-ref-68)
69. Jacqueline Watts, *IV. Can't Take a Joke? Humour as Resistance, Refuge and Exclusion in a Highly Gendered Workplace*, 17 Feminism & Psychology 259 (2007). [↑](#footnote-ref-69)
70. Ford & Ferguson, *Social Consequences of Disparagement Humor*, לעיל ה"ש 198. [↑](#footnote-ref-70)
71. Karen L. Hobden & James M. Olson, *From Jest to Antipathy: Disparagement Humor as a Source of Dissonance-Motivated Attitude Change*, 15 Basic and Applied Social Psychology 239 (1994). Although, I must mention that I personally find the abovementioned study methodologically flawed in that the experimenters didn’t measure the subjects’ opinions before they read out the jokes. [↑](#footnote-ref-71)
72. Raúl Pérez, *Racism without Hatred? Racist Humor and the Myth of “Colorblindness*", 60 Sociological Perspectives 956 (2017). [↑](#footnote-ref-72)
73. Woodzicka & Ford, *A Framework for Thinking* , לעיל ה"ש 195 ; וגם: Bill & Naus, *The Role of Humor*, לעיל ה"ש 6; Johnson, *The “Only Joking” Defense*, לעיל ה"ש 6. [↑](#footnote-ref-73)
74. Ford, *Effects of Sexist Humor on Tolerance of Sexist Events*, לעיל ה"ש 189; Ford, Wentzel & Lorion, *Effects of Exposure*, לעיל ה"ש 6. [↑](#footnote-ref-74)
75. Ford, Boxer, Armstrong & Edel, *More than "Just a Joke"*, לעיל ה"ש 6. [↑](#footnote-ref-75)
76. Manuela Thomae & Afroditi Pina, *Sexist Humor and Social Identity: The Role of Sexist Humor in Men’s In-Group Cohesion, Sexual Harassment, Rape Proclivity, and Victim Blame*, 28 Humor 187 (2015) [↑](#footnote-ref-76)
77. Ford, *Effects of Sexist Humor on Tolerance of Sexist Events*, לעיל ה"ש 189. [↑](#footnote-ref-77)
78. Christine M. Weston & Cynthia J. Thomsen, No joking matter: Sex-typed comedy perpetuates traditional views of women (Paper presented at the American Psychological Association Conference, Toronto, Canada, August, 1993, כפי שהוצג אצל: Ford & Ferguson, *Social Consequences of Disparagement Humor*, לעיל ה"ש 198. [↑](#footnote-ref-78)
79. Ford and Fergusson note in their article that Weston and Thomsen’s study was lacking a control group that was exposed to non-humorous skits, and therefore the conclusions that can be drawn from this study are limited. See Ford & Ferguson, *Social Consequences of Disparagement Humor*, לעיל ה"ש 198. [↑](#footnote-ref-79)
80. Ford, Wentzel & Lorion, *Effects of Exposure*, לעיל ה"ש 6. [↑](#footnote-ref-80)
81. Ford & Ferguson, *Social Consequences of Disparagement Humor*, לעיל ה"ש 198. [↑](#footnote-ref-81)
82. Daniel E. Berlyne, *Humor and Its Kin*, in The psychology of humor, לעיל ה"ש 62, 43. [↑](#footnote-ref-82)
83. Salvatore Attardo, *Violation of Conversational Maxims and Cooperation: The Case of Jokes*, 19 Journal of Pragmatics 537 (1993). [↑](#footnote-ref-83)
84. C. Husband, *The Mass Media and the Functions of Ethnic Humor in a Racist Society*, in It's a Funny Thing, Humor, לעיל הע"ש 197, 267. [↑](#footnote-ref-84)
85. Fine, *Sociological approaches to the study of humor*, לעיל ה"ש 64; Thomas R. Kane, Jerry Suls & James T. Tedeschi, *Humour as a Tool of Social Interaction*, in It's a Funny Thing, Humor 13, לעיל ה"ש 197, 13. [↑](#footnote-ref-85)
86. Woodzicka & Ford, *A Framework for Thinking*, לעיל ה"ש 195. [↑](#footnote-ref-86)
87. Patricia G. Devine, Margo J. Monteith, Julia R. Zuwerink et al., *Prejudice with and without Compunction*, 60 Journal of Personality and Social Psychology 817 (1991); Patricia G. Devine, E. Ashby Plant, David M. Amodio et al., *The Regulation of Explicit and Implicit race Bias: The Role of Motivations to Respond without Prejudice*, 82 Journal of Personality and Social Psychology 835 (2002); D. Zillmann & J.R. Cantor, *A Disposition Theory of Humor and Mirth*, *in* Humor and Laughter: Theory, Research and Applications, לעיל ה"ש 62, 93. [↑](#footnote-ref-87)
88. Margo J. Monteith, Nicole E. Deenen & Gregory D. Tooman, *The Effect of Social Norm Activation on the Expression of Opinions Concerning Gay Men and Blacks*, 18 Basic and Applied Social Psychology 267 (1996); Bernd Wittenbrink & Julia R. Henly, *Creating Social Reality: Informational Social Influence and Content of Stereotypic Beliefs*, 22 Personality and Social Psychology Bulletin 598 (1996) [↑](#footnote-ref-88)
89. Woodzicka & Ford, *A Framework for Thinking*, לעיל ה"ש 195 . [↑](#footnote-ref-89)
90. Ford, Effects of Sexist Humor on Tolerance of Sexist Events, לעיל ה"ש 207. [↑](#footnote-ref-90)
91. As mentioned in Gil Greengross, *Does Racist Humor Promote Racism*, Psychology Today 18.06.2011. [↑](#footnote-ref-91)
92. Bill & Naus, The Role of Humor, לעיל ה"ש 6. [↑](#footnote-ref-92)
93. Reference. [↑](#footnote-ref-93)
94. Michelle L. Bemiller & Rachel Zimmer Schneider, *It's Not Just a Joke*, 30.4 Sociological Spectrum 459 (2010). For further reading on the subject of humor as a tool for ostracizing the other in the heterosexual hierarchy, for example, see: Mary Jane Kehily & Anoop Nayak, *'Lads and Laughter': Humour and the Production of Heterosexual Hierarchies*, 9 Gender and education 69 (1997). [↑](#footnote-ref-94)
95. Moira Smith, *Humor, Unlaughter, and Boundary Maintenance*, 122 Journal of American Folklore 148 (2009). [↑](#footnote-ref-95)
96. Michael Billig, Laughter and Ridicule: Towards a Social Critique of Humour (2005). [↑](#footnote-ref-96)
97. Ibid, p. 192. [↑](#footnote-ref-97)
98. In her analysis, Smith relies on the theories developed by Daniel Wickberg in The Senses of Humor: Self and Laughter in Modern America (1998) [↑](#footnote-ref-98)
99. Janet Holmes, *Sharing a Laugh: Pragmatic Aspects of Humor and Gender in the Workplace*, 38 Journal of Pragmatics 26 (2006) [↑](#footnote-ref-99)
100. MaMatthiesen & Ståle Einarsen, *Bullying in the workplace*, לעיל ה"ש 193. [↑](#footnote-ref-100)
101. LaFrance &. Woodzicka, *No Laughing Matter*, לעיל ה"ש 187. [↑](#footnote-ref-101)
102. Christie F. Boxer & Thomas E. Ford, *Sexist Humor in the Workplace: A Case of Subtle Harassment*, in Insidious Workplace Behavior 175 (Jerald Greenberg ed., 2010); W. Jack Duncan, Larry R. Smeltzer & Terry L. Leap, *Humor and Work: Applications of Joking Behavior to Management*, 16 Journal of Management 255 (1990) (Hereafter:Duncan, Smeltzer & Leap, *Humor and Work*); Hemmasi & Graf, *Sexual and Sexist Humor in the Work Place*, לעיל ה"ש 202. [↑](#footnote-ref-102)
103. Kimberly T. Schneider, Suzanne Swan & Louise F. Fitzgerald, *Job-Related and Psychological Effects of Sexual Harassment in the Workplace: Empirical Evidence from Two Organizations*, 82 Journal of Applied Psychology 401 (1997). [↑](#footnote-ref-103)
104. Quinn, *The Paradox of Complaining*, לעיל ה"ש 7. ‏ [↑](#footnote-ref-104)
105. The above claim is a variation of the argument presented by Bergmann on the particular case of sexist humor (Merrie Bergmann, *How Many Feminists* , לעיל ה"ש 5). However, the argument also stands up when applied in the general context of offensive humor. [↑](#footnote-ref-105)
106. Hobbes, Thomas (1840). *Human Nature*, in *The English Works of Thomas Hobbes of Malmesbury, Volume IV,*ed. William Molesworth, London: Bohn. [↑](#footnote-ref-106)
107. For more on the subject of superiority and inferiority theory, see: סובר **הומור: בדרכו של האדם הצוחק**, לעיל ה"ש 1. [↑](#footnote-ref-107)
108. Elliot Oring, *Arbiters of Taste: An Afterword*, 32 Journal of Folklore Research 165 (1995); for more on the subject of humor as related to derision, see: סובר **הומור: בדרכו של האדם הצוחק**, לעיל ה"ש 1.. [↑](#footnote-ref-108)
109. More on this subject in subchapter3.4.2: “Black humor containing offensive elements” [↑](#footnote-ref-109)
110. Zajdman, *Humorous Face-Threatening Acts*, לעיל ה"ש 18. [↑](#footnote-ref-110)
111. This is how, research shows, racist humor has allowed white stand-up comedians to express with explicitly racist statements, while denying their racism. See: Raúl Pérez, *Learning to make racism funny in the ‘color-blind’era: Stand-up comedy students, performance strategies, and the (re) production of racist jokes in public*, 24 Discourse & Society 478 (2013) [↑](#footnote-ref-111)
112. Nevertheless, it is reasonable to assume that in distinct cases of irony and black humor, wherein the audience has no doubt about the speaker’s ridicule being aimed at the prejudiced positions expressed in the joke, the other negative effects of offensive humor are also reduced. However, as stated, there is currently no empirical confirmation of this assumption and therefore the current chapter only seeks to argue that such humorous offensive statements are less offensive than serious offensive speech, and not that they are completely devoid of offense. [↑](#footnote-ref-112)
113. זהר לבנת **יסודות תורת המשמעות: סמנטיקה ופרגמטיקה** כרך ב 245 (2014) (הספר להלן: לבנת **יסודות תורת המשמעות**). [↑](#footnote-ref-113)
114. Marcelo Dascal, Pragmatics and the Philosophy of Mind Vol. 1 (1983); מרסלו דסקל ואלדעה ויצמן "לשאלת משמעות הדובר בספרות היפה" **בלשנות עברית** 28–30 9 (1990). [↑](#footnote-ref-114)
115. לבנת **יסודות תורת המשמעות**, לעיל ה"ש 227, בעמ' 251. [↑](#footnote-ref-115)
116. All of the examples in this sub-section are taken from ibid. [↑](#footnote-ref-116)
117. Marcelo Dascal & Elda Weizman, *Contextual exploitation of interpretation clues in text understanding: An integrated model*, in The Pragmatic Perspective: Selected Papers from the 1985 International Pragmatics Conference 31 (Jef Verschueren & Marcella Bertucelli-Papi eds., Amsterdam/Philadelphia, John Benjamins, 1987; Elda Weizman & Marcelo Dascal, *On Clues and Cues: Strategies of Text-Understanding*, 20 Journal of Literary Semantics 18 (1991 ((Hereafter:Weizman & Dascal, *On Clues and Cues).* [↑](#footnote-ref-117)
118. לבנת **יסודות תורת המשמעות**, לעיל ה"ש 251, בעמ' 247. [↑](#footnote-ref-118)
119. Weizman & Dascal, *On Clues and Cues*, לעיל ה"ש 255. [↑](#footnote-ref-119)
120. Dascal, Pragmatics and the Philosophy of Mind, לעיל ה"ש 252, בעמ' 34–37. [↑](#footnote-ref-120)
121. In any case, it is undoubtedly less offensive than an offensive utterance said in all seriousness; in fact it seems mostly equivalent to a non-offensive utterance. As mentioned earlier, unfortunately there are no studies presenting the differences between the psychological effects of offensive humor performed ironically and those of offensive humor performed un-ironically, but it is reasonable to assume that ironic offensive humor does not promote offensive worldviews. [↑](#footnote-ref-121)
122. Susan A. Speer, *Sexist Talk: Gender Categories, Participants’ Orientations and Irony*, 6 Journal of Sociolinguistics 347, 368 (2002) [↑](#footnote-ref-122)
123. זיו **הומור ואישיות**, לעיל ה"ש 76. [↑](#footnote-ref-123)
124. Lynne Ann DeSpelder & Albert Lee Strickland, The Last Dance: Encountering Death and Dying(1996) [↑](#footnote-ref-124)
125. פרויד **הבדיחה ויחסה ללא־מודע**, לעיל ה"ש 103; Vaillant, *Ego Mechanisms of Defense and Personality Psychopathology*, לעיל ה"ש 127 [↑](#footnote-ref-125)
126. אדיר כהן **חיים בצחוק: הומור־תראפיה הלכה למעשה** 207 (1994) (הספר להלן: כהן, **חיים בצחוק**). [↑](#footnote-ref-126)
127. Alicja Rieger, *"It Was a Joke For Him and a Life For Me": A Discourse on Disability Related Humor among Families of Children with Disabilities*, 25 Disability Studies Quarterly 4 (2015) page? [↑](#footnote-ref-127)
128. Ibid. [↑](#footnote-ref-128)
129. Ibid. [↑](#footnote-ref-129)
130. Ibid. [↑](#footnote-ref-130)
131. Ibid. [↑](#footnote-ref-131)
132. Brommage*, Just Kidding, Folks!*, לעיל ה"ש 108, בעמ' 71–75. [↑](#footnote-ref-132)
133. Ibid, p. 71. [↑](#footnote-ref-133)
134. In this instance, I find that Brommage’s overarching statement required qualification. See more on the subject in subsection 3.6: “An additional interjection on the subject of circumstantial analysis – the case of self-deprecating humor”. [↑](#footnote-ref-134)
135. In fact, Brommage claims that all jokes have entitlement conditions, however, in the case most jokes, those conditions are extremely minimal. Not all jokes require the teller to have a particular status, but all of them require certain conditions to allow for a comic context – thus, for example, by and large, we won’t tell a joke, even a most innocent one, at a funeral. Ibid, pp. 72–73. [↑](#footnote-ref-135)
136. Ibid, p. 74. [↑](#footnote-ref-136)
137. Marta Dynel, *No Aggression, Only Teasing: The Pragmatics of Teasing and Banter*, 4 Lodz Papers in Pragmatics 241 (2008) [↑](#footnote-ref-137)
138. Ibid, p. 253. [↑](#footnote-ref-138)
139. Ibid, pp. 248-251. [↑](#footnote-ref-139)
140. Colin Lyas, “Criticism and Interpretation”, in *Philosophical Aesthetics: An Introduction*, ed. by Oswald Hanfling (Hoboken NJ: Wiley Blackwell, 1992), p. 397. [↑](#footnote-ref-140)
141. Monroe C. Beardsley, The Possibility of Criticism 34 (1970). [↑](#footnote-ref-141)
142. Example taken from Colin Lyas, “Criticism and Interpretation”, p. 397. [↑](#footnote-ref-142)
143. להעתיק הפניה מהפרק הרלוונטי – מטרות ההומור. [↑](#footnote-ref-143)
144. Levy, Female Chauvinist pigs, לעיל ה"ש 177. [↑](#footnote-ref-144)
145. Take for example Kurt Lewin’s article: Lewin*, Self-hatred among Jews*, לעיל ה"ש 177; as well as: Sander L. Gilman, Jewish Self-hatred: Anti-semitism and the Hidden Language of the Jews (1986); Lawrence Baron, *Theodor Lessing: Between Jewish Self‐Hatred and Zionism*, 26 Leo Baeck Institute Yearbook 323 (1981). [↑](#footnote-ref-145)
146. Gordon W. Allport, Nature of Prejudice (1958). ‏ [↑](#footnote-ref-146)
147. Carol A. Mitchell, *The Sexual Perspective in the Appreciation and Interpretation of Jokes*, 36 Western Folklore 303 (1977) [↑](#footnote-ref-147)
148. Of course, this explanation cannot be generalized to say that every similar case constitutes black humor. Every case must be examined individually, according to its circumstances, in order to establish if indeed the humor fulfills the function of black humor. [↑](#footnote-ref-148)
149. טיעון זה מופיע ב..... [↑](#footnote-ref-149)
150. פרויד **הבדיחה ויחסה ללא־מודע**, לעיל ה"ש 103. [↑](#footnote-ref-150)
151. In an aside, it is worthwhile mentioning that there is room to doubt how right society is in treating physical assault as far more grave than emotional assault. One might even, ostensibly, claim that in some senses emotional harm is worse than physical harm. For once, while physical injuries are overcome in the process of healing, to the point where it is even difficult to restitute them in one’s memory, the pain of emotional injury can be relived in one’s mind time after time, years after the original event. My sincere thanks to Prof. Menhaem Mautner for this elucidation. [↑](#footnote-ref-151)
152. For more on the hydraulic model see: דיוויד ג' מאיירס, **פסיכולוגיה חברתית** כרך ב 471-469 (2012), and the references therein. [↑](#footnote-ref-152)
153. Kathryn Kelley, Lori Dawson & Donna M. Musialowski, *Three Faces of Sexual Explicitness: The Good, the Bad, and the Useful*, *in* Pornography: Research Advances and Policy Considerations 57 ( Dolf Zillmann & Jennings Bryant 1989) ‏; Doug McKenzie-Mohr & Mark P. Zanna, *Treating Women as Sexual Objects Look to the (Gender Schematic) Male Who has Viewed Pornography,* 16 Personality and Social Psychology Bulletin 296 (1990) [↑](#footnote-ref-153)
154. Russell G. Geen & Michael B. Quanty, *The Catharsis of Aggression: An Evaluation of a Hypothesis*, 10 Advances in experimental social psychology 1 (1977) [↑](#footnote-ref-154)