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Laughing at Censorship

Laura E. Little*

INTRODUCTION

Can a speech restriction ever be inherently good? Can we ever justify censorship as intrinsically beneficial, and not simply a justifiable means of protecting something more important than free expression?

For those steeped in American law and culture, these questions may seem almost heretical. But they deserve exploring, particularly given the prevalence and variety of censorship in the United States and elsewhere in the world.¹ Happily, a context exists for exploring the questions that is less threatening and more entertaining than totalitarian thought control. The context is humor: jokes, cartoons, vignettes, and other expressions that make us laugh.² Comedians know from experience, and research supports the proposition, that an audience will predictably laugh at a censored statement (specifically a “bleeped” or visually obscured statement) that the audience believes is censored. Does this “comedic truth” have deep significance for free speech theory and government censorship practices? U.S. social norms, folklore, and customs generally take the position that censorship is bad.³ In fact, some may reflexively—and others may thoughtfully—say that any censorship is inherently evil. “[T]o praise an

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1. I use the term censorship here to encompass all instances where the state uses legal or official means to restrict expression. As a general matter, I use the terms “censorship” and “speech restriction” interchangeably. This is broad enough to include “soft law” and indirect governmental control, but not informal regulation by social norms. *See infra* notes 6-15 and accompanying text for further discussion of the term censorship as used in this article.

2. Humor scholars occasionally venture a taxonomy of humor types for the purpose of study, but to do so here would unnecessarily complicate analysis. I use the terms *joke*, *humor*, and *comedy* as synonyms throughout this article.

3. Within the legal academy and intelligentsia, the matter is more nuanced. While the traditional analysis of censorship focused on repression and oppression by tyrannical government actors, more recent scholarship has focused more on private power and has been open to censorship of hate speech, pornography, and the speech of the wealthy (that has the effect of overshadowing the speech of the poor). *See* ROBERT C. POST, CENSORSHIP AND SILENCE 2, 4-5 (1998).

act of censorship is to verge on committing a linguistic mistake.”⁴ First Amendment doctrine is more moderated—but generally agrees. This Article will probe that position, exploring the proposition that individuals, law, and society all benefit from line drawing—even in the context of something as special as freedom of communication. The Article explores the notion that the laughter emerging from comedy featuring censorship might be a “tell” that exposes this truth.

A few caveats. First: I am an admirer of the First Amendment, not an admirer of censorship. I do not advocate more speech restrictions, but I do advocate a closer look at the effect of censorship on the human psyche. Understanding competing dynamics in responding to speech restrictions can help us ensure that we adopt socially (and individually) beneficial forms of censorship in those circumstances when censorship must exist. With that goal, I proceed, hoping not to empower unprincipled or overzealous censors with analytical justification. My second caveat: I appreciate that analyzing why anything is funny is risky. Humor analysis is riddled with problems of subjectivity. One person’s light-hearted joke is another person’s deep insult. Humor analysis can also be humor-destroying.⁵ I treasure comedy and the joy that a joke can bring. I nonetheless am willing to sacrifice a few specimens in service of the greater understanding of censorship’s effect on individuals and society.

My final caveat isn’t really a caveat, but a definition or, more precisely, a definitional limitation. Censorship is a broad concept and encompasses a wide range of human prohibitions, within law, social norms, and shared concepts of “good taste” and passing trends.⁶ Frederick Schauer suggests

4. Frederick Schauer, *The Ontology of Censorship*, in CENSORSHIP AND SILENCING 147 (Robert C. Post ed., 1998); see also, Derek Bambauer, *Orwell’s Armchair*, 79 U. CHI. L. REV. 863, 871 (2012) (“[T]he term ‘censorship’ carries a pejorative connotation. It is particularly loaded in American and scholarly discourse, where censorship is seen as anathema to deeply-held beliefs about the importance of unfettered discourse and free expression.”).

5. As generations of legal scholars have experienced, many areas of law carry with them a sentimental attachment to an obligatory citation—a citation often including some metaphor or simile. For example, I would guess that a full 2/3 of all Conflict of Laws scholarship in the last 60 years have cited the description of the discipline as a “dismal swamp.” William L. Prosser, *Interstate Publication*, 51 MICH. L. REV. 959, 971 (1953). Don’t fear . . . legal academics are not alone. Even those who pursue the very serious discipline of humor studies labor under a similar cultural tradition. The obligatory quote for humor scholars is from E.B. White: “Humor can be dissected, as a frog can, but the thing dies in the process and the innards are discouraging to any but the pure scientific mind.” E.B. White, *Preface to A SUBTREASURY OF AMERICAN HUMOR* xi, xvii (E.B. White & Katharine S. White eds., 1941). As with many classic sayings, a paraphrase now seems to have taken hold . . . in what I would describe as classic whisper-down-the-lane fashion: “Analyzing humor is like dissecting a frog. Few people are interested and the frog dies of it.” Robert Mankoff, *Foreword to JOHN MORREALL, COMIC RELIEF: A COMPREHENSIVE PHILOSOPHY OF HUMOR* ix (2009).

6. Censorship that takes the form of “soft law” does not result from formal legal processes. For the purposes of this paper, I use the following definition of “soft law”: “a rule issued by a lawmaking authority that does not comply with constitutional and other formalities or understandings that are necessary for the rule to be legally binding.” Jacob E. Gerson & Eric A. Posner, *Soft Law: Lessons from Congressional Practice*, 61 STAN. L. REV. 573, 579 (2008). Thus, a soft law contrasts with hard law, which takes the form of “a rule issued by a lawmaking authority that does comply with constitutional and other formalities or understandings that are necessary for the rule to be legally binding.” *Id.*

that censorship can even occur when one set of private discourses “marginalize others by displacing them.”⁷ Catharine MacKinnon provides a similarly broad approach: “The operative definition of censorship accordingly shifts from government silencing what powerless people say, to powerful people violating powerless people into silence”⁸ Censorship can even be self-imposed—by virtue of internalized social norms, taste, or spontaneous personal judgment.⁹ Such a broad concept of censorship is helpful and necessary for understanding the realities of free expression. Nonetheless, the censorship humor I analyze here almost always targets a state regulatory apparatus.¹⁰ While one can find an occasional censorship joke that attacks the tyranny of discourse battles taking place outside state regulation,¹¹ the censorship humor flourishing in the last several decades has not shown much interest in anything beyond state-sponsored censorship. For that reason—and, admittedly yes, to make this initial foray into new territory manageable—I restrict the term “censorship” for this article to instances where the state uses legal or official means to restrict expression.¹²

Even this confined universe of state-sponsored censorship is complex. First, state-sponsored censorship results from both “hard law,” created by formal legal processes, as well as “soft” law, created by an “authority that does not comply with constitutional and other formalities” technically required to produce a “legal binding rule of law.”¹³ While lacking the procedural legitimacy of hard law, soft law can possess sufficient

7. Frederick Schauer, *The Ontology of Censorship*, in CENSORSHIP AND SILENCING 147 (Robert C. Post ed., 1998).

8. CATHARINE A. MACKINNON, ONLY WORDS 10 (1993). For the purposes of accuracy, I note that MacKinnon suggests that the powerful who seek to censor the powerless “hide behind the state to do it.” *Id.*

9. For an example of apparent self-censorship, see, e.g., *Shut the Front Door* (Mark Ruffalo), YOUTUBE (Dec. 3, 2016, 3:09 PM), <https://www.youtube.com/watch?v=WoxrDgtAmqc> (using “shut the front door” for “shut the fuck up”).

10. As discussed below, I have coined the term censorship humor to include both comedy that ridicules censorship by mocking the acts of a censor and entertainment that imposes unnecessary censorship for comedic effect. See *infra* notes 29-62 and accompanying text for further discussion of this distinction.

11. For an example of censorship humor that reaches beyond state-sponsored restrictions, see the cartoon accompanying note 234 in the conclusion of the article. The title to the Charles Barsotti cartoon reproduced in the text to note 60 suggests that it too may be a response to non-state sponsored censorship—i.e., New Yorker editorial policy: *Screw This—I’m Going to work for the Tabloids*—*New Yorker Cartoon*, CONDÉ NAST COLLECTION (June 23, 2014), http://www.condenaststore.com/-sp/Screw-this-I-m-going-to-work-for-the-tabloids-New-Yorker-Cartoon-Prints_i9318015_.htm.

12. That is not to say that non-state censorship—which is the subject of pioneering work by Robert Post and which I might describe as both cultural censorship and censorship by localized social pressure—is not equally deserving of study in the future. In Post’s words, censorship may be “a technique by which discursive practices are maintained, and if social life largely consists of such practices, it follows that censorship is a norm rather than the exception. Censorship materializes everywhere Censorship establishes the practices that define us as social subjects. . . .” ROBERT C. POST, CENSORSHIP AND SILENCE 2 (1998); see also *Censorship and Silencing*, in CENSORSHIP AND SILENCING 1, 2 (Robert C. Post ed., 1998).

13. Jacob E. Gerson & Eric A. Posner, *Soft Law: Lessons from Congressional Practice*, 61 STAN. L. REV. 573, 579 (2008).

authority and sufficient respect as to provoke compliance.¹⁴ Censorship results from various forms of soft law, including an official's single order, an administrative opinion, an agency letter placed in an agency file, or similar casual, yet intimidating, acts. Perhaps for that reason, censorship humor tends to target both hard and soft law.

State-sponsored censorship also includes specific and obvious censorship, censorship that is flagged generally, and secret censorship. An example of specific and obvious censorship would be the blackening of individual words in a public text. Generally flagged censorship would occur where a news article possesses the byline "cleared by military censors," but does not specifically identify what has been omitted from the communication. Secret censorship would include instances where communication is suppressed without any notice of suppression: the audience not only knows nothing of what is omitted, but is also unaware that the communication has been censored.

Whatever its form, state-sponsored censorship can directly and indirectly affect how society and government operate. This Article focuses on direct censorship, where government power works on an extant expression—either by changing it, obscuring it, or hiding it. Indirect censorship occurs by chilling effect, where a speaker restrains herself to avoid punishment or state retribution of some kind. Indirect censorship is, of course, relevant here, since those inclined to express themselves might also self-muzzle in fear of a state-sponsored consequence. Moreover, recent scholarship has identified a "new school" censorship form in the digital world that is indirect and often works by stealth. This new school censorship works by digital prior restraint, public/private cooperation, and collateral control.¹⁵ While enormously important—and often easily traceable to some state apparatus—this new school censorship is not yet a big player in censorship humor.

The enterprise of this Article has twists, turns, and even some possible landmines. Knowledgeable of the various risks of writing about humor and censorship, I forge ahead. To provide a guidepost for this potentially fraught journey, I submit the following hypothesis: I suggest that the amusing quality of censorship humor often emerges from factors more complex than the inclination to ridicule the censor's role in society. The amusing quality may in fact arise from something inherently beneficial about censorship, including human benefit from boundaries and structure.

This Article begins by canvassing a cross-section of censorship humor, illustrating the diverse art forms through which censorship evokes laughter. I then look at these examples through the work of

14. THOMAS SCHULTZ, *TRANSNATIONAL LEGALITY: STATELESS LAW AND INTERNATIONAL ARBITRATION* 11-15 (2014) (outlining importance of using law to govern human relationships rather than social or moral norms).

15. See Jack Balkin, *Old School/New School Speech Regulation*, 127 HARV. L. REV. 1, 3 (2014); Derek Bambauer, *Orwell's Armchair*, 79 U. CHI. L. REV. 863, 871 (2012).

interdisciplinary humor scholars that sheds light on the source of this laughter at speech restrictions. Next I reckon with the law: are there soft spots in First Amendment doctrine that dovetail with my analysis and embrace censorship? The project then turns to exploring whether the comedic value of censorship might emerge in part from human desires for boundaries, our love of structure, as well as the comfort and benefits that rules provide for human society. Finally, I explore the suggestion that we may be living in a “golden age” of censorship humor, made possible by the internet, digital technology, and the relative freedom of communication available in democratic societies.

Raw Material: Examples of Laughter-Evoking Censorship

Alan Funt, the creator of the radio production *Candid Microphone*, as well as the television production *Candid Camera*, long observed that laughs are harder when an audience experiences a bleep out than when an unedited clip includes a “forbidden” word or phrase. So, when a victim of a *Candid Camera* prank was taped seemingly saying something taboo and a bleep concealed the taboo language, laughs magnified.¹⁶ In fact, the laugh differential between censored and uncensored tracks was so marked that Funt bleeped out language that was completely innocent . . . or relatively tame (such as “Oh God!”).¹⁷

This observation about the humor in omitted words is reflected in the following traditional (corny) joke:

There once was a man who DELETED
 whose DELETED was so DELETED it DELETED
 DELETED DELETED
 DELETED DELETED
 And now he’s DELETED DELETED.¹⁸

You may not find the joke hilarious, but if anything about it inspires a smile, it’s the censorship part. No?

Alan Funt was onto something. And whatever that “something” is has not been lost on contemporary mirth makers. Modern comedy readily employs an array of traditional censorship tools for comic effect. The tools are well known: a strategically placed censor’s black bar,¹⁹ a mosaic blur (also known as a pixelation) used to obscure such things as a person’s face, bare genitals, or crude gesture), a grawlix (defined as a typographical symbol string—@#\$\$%&!—used to represent profanities or other naughty

16. Peter Funt, *Too Funny for Words*, N.Y. TIMES, Oct. 1, 2010, http://www.nytimes.com/2010/10/02/opinion/02funt.html?_r=0.

17. *Id.*

18. Author unknown. I obtained this source from Professor Desmond MacHale, Department of Mathematics, University College Cork.

19. Consider the following from a collection of images that are censored for comic effect, from *Unnecessary Censorship*, KNOW YOUR MEME, <http://knowyourmeme.com/memes/unnecessary-censorship> (July 16, 2014).

statements),²⁰ asterisks replacing letters in a word (e.g., sh*t), acronyms (e.g., *WTF* to represent “What the Fuck”),²¹ the censor’s bleep,²² a euphemism (e.g., a trouser friendly kiss to represent . . .),²³ or simply an elegant, yet circumspect, choice of words. Creatively deploying these tools, comedians have filled contemporary culture with content that taps censorship’s comic potential.²⁴

While this comedic trope is particularly well-suited to internet entertainment, it has flourished in television as well. Why, there was even a TV comedy entitled “\$#! My Dad Says”!²⁵ And electronic platforms are not the only medium for censorship jokes. Print media, musical entertainment, and live entertainment also boast examples: one can find evidence of the comedic genre in *New Yorker* cartoons, novels, stand-up acts, songs, and theatrical productions.²⁶

What accounts for all this censorship humor? Of course, one cannot quantify or fully explain why WTF might be funnier than “What the Fuck” or “Why \$#!” might have more comedic spark than the apparently forbidden word it replaces. But one can reasonably deduce that the humor’s pervasiveness suggests it possesses broad-based popular appeal. Moreover, censored forms have not only become key parts of our language, but also appear to carry with them unique comic content. To get to the heart of that content—and the core question: why is censorship funny?²⁷ —I first explore the raw material in greater depth, distinguishing

20. The term “gawlix” is credited to cartoonist and *Beetle Bailey* creator, Mort Walker, who authored a dictionary of commonly used cartoon symbols. MORT WALKER, *THE LEXICON OF COMICANA* (1980). See Ben Zimmer, *How Did @#\$%&! Come to Represent Profanity?*, LEXICON VALLEY BLOG (June 20, 2014, 2:04 PM), http://www.slate.com/blogs/lexicon_valley/2013/10/09/the_gawlix_how_the_katzenjammer_kids_comic_strip_pioneered_the_use_of_typographical.html (last visited July 17, 2014).

21. “WTF” has even made its way into mainstream TV comedy. By one report, out-of-touch CBS executives viewed the acronym “WTF” as actually standing for “Wow that’s Funny.” Funt, *supra* note 16.

22. Evidence of the status of the censor’s bleep in the contemporary consciousness can be found in the iPhone application that mimics a censor’s bleep. Comments on the Apple iTunes website suggest that consumers use the application for fun and giggles, not serious-minded censorship. See *iTunes Preview – Bleep Button*, iTUNES, <https://itunes.apple.com/us/app/bleep-button/id359000235?mt=8> (June 23, 2014).

23. This example comes from the FCC song featured on Fox Broadcasting’s, *Family Guy*. See *Family Guy Wiki - The FCC Song*, WIKIA, http://familyguy.wikia.com/wiki/The_FCC_Song (June 23, 2014). See also *Frack: Battlestar Galactica*, YOUTUBE <https://www.youtube.com/watch?v=r7KcpgQKo2I> (July 17, 2014) (using “frack” for “fuck”); *What the Flip Are You Looking At: The IT CROWD*, YOUTUBE <https://www.youtube.com/watch?v=TwJheWwW7rw> (July 17, 2014) (using “what the flip are you looking at”).

24. See *infra* notes 30-62 and accompanying text for examples.

25. For a review, see Mike Hale, *A Script-Length Version Of a Twitter-Size Gimmick*, N.Y. TIMES, Sept. 22, 2010. Those in-the-know were aware that the “\$#!” part of the title derived from a Twitter feed—not censored—written by a man named Justin Halpern about his cursing-a-blue-streak father. See Brian Stelter, *First Came the Tweets, and Then the Sitcom*, N.Y. TIMES, May 18, 2010.

26. See *infra* notes 43, 54-55, and 60 and accompanying text for discussion of examples from print media and live examples.

27. While examples of censorship humor are not confined to the last quarter century, current cultural media provide a particularly interesting opportunity to study this question because of the variety in censorship norms that govern different media and different daily time slots. For example,

between two distinct types of censorship humor: one category using unnecessary or fabricated censorship and another that mocks existing censorship.²⁸

A. Fabricated or “Unnecessary” Censorship

Fabricated or “unnecessary” censorship alters images or text to create the illusion of forbidden matter, such as profanity or obscene images, which does not actually exist. Alan Funt’s extra bleeps during *Candid Camera* pranks provide prototypical examples. Other illustrations of unnecessary censorship appear on television and have become increasingly common on the internet.

Perhaps the most widely known contemporary example comes from ABC network’s late night show *Jimmy Kimmel Live!*, which runs a recurring feature called, “This Week in Unnecessary Censorship.”²⁹ In this weekly segment, short clips are taken from various television shows or news programs from the previous week containing benign material that originally aired without the need for censorship. The clips are carefully chosen so that censoring an image (through pixelation) or spoken text (by inserting a bleep and pixelating the speaker’s mouth) within the clip implies something obscene or risqué, thus causing the audience to erupt in laughter as they interpret the clip’s context and mentally project the words or images that would have required censorship.

Another TV show, *Arrested Development*, has enthusiastically exploited censorship to serve comedic ends. The series, which originally aired during prime-time on the Fox network, became notorious for using bleep censorship. As a nationally broadcasted show, *Arrested Development* was indeed subject to regulations that may have occasionally required a censor’s edit. Nonetheless, the show has reveled in creating situations where censorship must hide large chunks of dialogue in service of comedy.³⁰ In fact, censorship’s comedic effect was so essential to the series that DVD releases of the show retained the censors’ sound effects, even though censorship would not actually be required in the DVD format. Likewise, the show continued featuring extensive bleeped dialogue during its fourth season, which was released only on a non-censorship requiring

one can view a readily available “bleeped” version of comedy sketches and compare it to the version that originally appeared on cable in a “non-bleeped” version. See, e.g., *The Daily Show with Jon Stewart: Cracked* (Nov. 14, 2013), available at <http://www.thedailyshow.com/watch/thu-november-14-2013/cracked>; *The Daily Show with Jon Stewart: America Sits on Its Balls – Smokey the Bear* (Oct. 3, 2013), available at <http://www.thedailyshow.com/watch/thu-october-3-2013/shutstorm-2013-america-sits-on-its-balls-smokey-the-bear>.

28. With appreciation, I acknowledge the help of Kathleen West, Temple Law School Class of 2015, in locating and describing many of the examples that follow.

29. See Search of “Censorship,” ABC, [http://search.abc.go.com/search?q=censorship_\(follow “Search” hyperlink; then search “censorship”\)](http://search.abc.go.com/search?q=censorship_(follow%20Search)).

30. See ‘*Arrested Development: F*** Yea!*, THE DAILY BEAST (May 24, 2013), <http://www.thedailybeast.com/videos/2013/05/24/arrested-development-f-yea.html>

platform, Netflix. In a study of recurring comedic devices, National Public Radio highlights *Arrested Development* for its use of censorship as a “running gag.”³¹

The censorship comedic trope is particularly popular across the internet. Indeed, one can even access internet tutorials instructing online users on how to create their own censorship jokes by photo-shopping their own personal images to add pixelation.³² Sites exhibit both personal and commercially produced videos or images that have been altered to create fake or “unnecessary” censorship.³³ Consider, as an internet example, the plethora of YouTube videos that begin with a sequence of actual edgy lines, followed by a fabricated version of the lines designed to suggest what a censored, scrubbed version would be like.³⁴ Another example draws on the public’s familiarity with voice-over censorship to clean up originally uncensored works for basic cable and network television. Websites have gathered actual examples of this type of censorship and placed side-by-side original pieces of dialogue with scrubbed versions, all in service of a joke.³⁵

Hilarious or not, these examples are important to this study because it is the censored line, not the original line, that makes the audience smile, and possibly laugh. As parodies, these spoofs are not only part of a venerable comedic tradition, but bring themselves close to a second strain of censorship humor, premised on mocking censors. To this strain, I now turn.

B. Mocking the Censor

Humor ridiculing censors is present throughout American culture, with joke targets ranging from U.S. government censors and foreign censors to mainstream social norms. An iconic example of this genre is George Carlin’s Seven Dirty Words monologue, which gave rise to the United

31. See *Previously on ‘Arrested Development’ – Bleeps*, NPR (June 23, 2014), <http://apps.npr.org/arrested-development/joke-98.html> (discussing “*Arrested Development*: NPR’s guide to the running gags of the show”). Saturday Night Live provides another TV medium for unnecessary censorship. See, e.g., *Princess and the Homeboy- G-Dog*, FUNNY OR DIE (July 14, 2008), <http://www.funnyordie.com/videos/040acb5ffa/princess-and-the-homeboy-gdog-from-yourmomsayshi> (excessive bleeping of expletives in “Princess and the Homeboy”).

32. See Jennifer Farley, *Censor Your Images with a Mosaic in Photoshop*, SITEPOINT (Jan. 26, 2010), <http://www.sitepoint.com/censor-your-images-with-a-mosaic-in-photoshop/>.

33. See *Unnecessary Censorship*, REDDIT (June 23, 2014), <http://www.reddit.com/r/unnecessarycensorship>; *All Time Funniest: Unnecessary Censorship Compilation*, YOUTUBE (Aug. 18, 2013), <http://www.youtube.com/watch?v=skur1J9lKt4&feature=kp>; *Unnecessary Censorship*, HUMOR-DESTINATION (June 23, 2014), <http://humor-destination.com/unnecessary-censorship>.

34. See *ridiculous edited for tv movie lines*, YOUTUBE (Oct. 23, 2010), <http://www.youtube.com/watch?v=4koLWPq2qDY>.

35. See Josh Winning, *50 Strangest Censored Movie Lines*, TOTAL FILM (May 21, 2013), <http://www.totalfilm.com/features/50-strangest-censored-movie-lines>; Arika Okrent, *21 Creative TV Edits of Naughty Movie Lines*, MENTAL FLOSS (Apr. 5, 2013, 2:00 PM), <http://mentalfloss.com/article/49927/21-creative-tv-edits-naughty-movie-lines>; Zach Tropf, *Eleven Great Edited for Television Movie Lines*, GUNAXIN (July 24, 2012), <http://media.gunaxin.com/eleven-great-edited-for-television-movie-lines/38193>.

States Supreme Court decision, *Federal Communications Commission v. Pacifica Foundation*,³⁶ clarifying the Federal Communication Commission's power to regulate indecent, not obscene, speech on the air waves.

Carlin's rhetorical approach has staying power today, having informed entertainment such as *Monty Python* comic Eric Idle's satirical "FCC Song,"³⁷ and a similar riff on FCC censorship on the Fox network's cartoon *Family Guy*.³⁸ In today's times of looser cable channel regulation, the jokester might need to turn the tables on the censor—or at least add an extra twist to the performance. Adding such a twist, Stephen Colbert featured a segment in which he and another famous guy—Hugh Laurie—read a list of expletives, uncensored and with a grandiose bearing befitting of *Masterpiece Theatre*.³⁹ While this Colbert/Laurie comedy worked in homage to Carlin, it also took the form of meta-humor, a popular strain of contemporary comedy that makes a joke about a joke.⁴⁰ Meta-humor's self-conscious allusion to the operation of the humor itself does not, however, detract from the prime object of the Colbert/Laurie humor: censorship. In this way the joke acknowledges (unwittingly or not) the continuing relevance of censors.⁴¹

Television features a healthy serving of these censor-as-fool jokes. At least two sketch comedy shows have prominently featured the genre in the past twenty years. First, in the HBO sketch comedy show, *Mr. Show*, from the 1990s, comedians parodied *Goodfellas*, a film known for strong language and graphic violence.⁴² In the sketch, a *Goodfellas*-esque "movie" called "Pallies" is labeled "Edited for Television" with jarringly

36. *Comm. Commission v. Pacifica Foundation*, 438 U.S. 726 (1978).

37. The song features repeated use of the word "Fuck," which Idle had been fined for using on the radio. For the lyrics of the song, see *Eric Idle: FCC Song Lyrics*, WIKIA (June 23, 2014), http://lyrics.wikia.com/Eric_Idle:FCC_Song.

38. In one particularly well-known *Family Guy* episode, PTV, the character Peter battles the FCC. The episode features *Family Guy*'s version of "The FCC song," which surveys various cartoon techniques for eluding FCC censorship. For lyrics of the song, see *Family Guy Wiki – PTV*, WIKIA (June 23, 2014), <http://familyguy.wikia.com/wiki/PTV>. For further parody of the song, see *Cartoon Cartoons FCC Song*, YOUTUBE (March 17, 2010), <http://www.youtube.com/watch?v=0nJ6vUrr-o>. For more FCC humor—including foul-mouthed FCC employees, see the following from a show on the cable network Adult Swim, *Sealab 2021*, available at <http://video.adultswim.com/sealab-2021/>.

39. See, e.g., *This Week in Unnecessary Censorship*, ABC (June 27, 2014), http://abc.go.com/shows/jimmy-kimmel-live/video/VDKA0_hxaqlwb1, in which Kimmel bleeps ordinary words in clips to make them seem obscene. See Bradford Evans, *Watch Stephen Colbert and Hugh Laurie Read a List of Every Term They're Allowed to Say on Cable TV*, SPLIT SIDER (Aug. 6, 2013), <http://splitsider.com/2013/08/watch-stephen-colbert-and-hugh-laurie-read-a-list-of-every-term-theyre-allowed-to-say-on-cable-tv/>.

40. *Metahumor*, URBAN DICTIONARY (June 23, 2014), <http://www.urbandictionary.com/define.php?term=metahumor>.

41. There is a contrary example to note. Jerry Seinfeld has identified a joke that he has performed and believes loses much of its force if he does not use an expletive. An anti-censorship example, one might say. See *Talking Funny*, YOUTUBE (Dec. 30, 2012), <http://www.youtube.com/watch?v=OKY6BGcx37k> (relevant portion begins at 35:24).

42. See *Mr. Show with Bob and David Pallies*, YOUTUBE (July 7, 2009), <http://www.youtube.com/watch?v=8CpAE9c1IN8>.

obvious voiceovers inserted to shield apparently inappropriate language. The “film” also features inexperienced editing, with random scene cuts made to eliminate apparently violent acts. The Fox show *MadTV* featured a similar parody, depicting an “edited” version of the HBO series *The Sopranos*, another mobster-based show known for strong language.⁴³ Like the *Mr. Show* sketch, the comedy in *MadTV* involved use of rapid cuts and edits to remove purportedly obscene language and acts of violence. In both shows, the humor arises from depicting the reduced quality of a censored product and highlighting ineffective, bumbling censorship techniques.

Other comedians also use humor to attack censors directly, pouring forth sometimes rant-like monologues. The rise of cable satirical news programs, such as on the basic cable and satellite channel Comedy Central, allows for particularly biting commentary on censorship. Several *Colbert Report* shows include segments about Google’s proposed censorship of YouTube comments (with Colbert suggesting that viewers go into the YouTube comments section to insert a “script” read on his show).⁴⁴ Another segment confronts proposed censorship of *Huckleberry Finn*, and features Colbert playfully inviting censors to speculate on what words might be labeled “offensive” in the future.⁴⁵

Contemporary television comedy also points to U.S. censors’ tendency to draw absurd fine-lines between forbidden and protected communication. Take for example a recent episode of the late night Comedy Central game show *@Midnight*, where comedian Chris Hardwick highlighted censors’ decisions to impose a pixelated blur on the anatomical drawing of a woman’s breast, while allowing an uncensored artistic rendition of a woman pregnant with a cat in her uterus (along with surrounding genitalia).⁴⁶

Comedy often tests censorship’s boundaries for the purpose of social commentary as well as for shock value. One example appeared in a June 2013 episode of the *Tonight Show with Jay Leno* (now the *Tonight Show with Jimmy Fallon*) in which comedienne Whitney Cummings repeated words she knew were prohibited from her prior experience with her own sitcom, and then recruited the usually tame Jay Leno to join in and prompt a censor’s edit himself.⁴⁷ In another example, comedian Conan O’Brien, as part of one of his “remote” segments, met with the person responsible for

43. See *Madtv Sopranos*, YOUTUBE (Mar. 1, 2006), <http://www.youtube.com/watch?v=FmX-SSJO-ug>.

44. See *The Colbert Report: Censorship for YouTube Comments* (Sept. 25, 2013), available at <http://thecolbertreport.cc.com/videos/8fmvel/censorship-for-youtube-comments>.

45. See *The Colbert Report: Censorship for YouTube Comments* (Jan. 5, 2011), available at <http://thecolbertreport.cc.com/videos/ttqn4k/huckleberry-finn-censorship>.

46. See Doug Barry, *Comedian Chris Hardwick Mocks TV Censorship with Pregnant Cat Lady Card*, JEZEBEL (Jan. 11, 2014, 12:30 PM), <http://jezebel.com/comedian-chris-hardwick-mocks-tv-censorship-with-pregna-1499248665>.

47. See *Whitney Cummings Tests NBC Censor – The Tonight Show with Jay Leno*, YOUTUBE (June 27, 2013), <https://www.youtube.com/watch?v=oEMbnRltGLQ>.

imposing censorship on his late night TBS show, *Conan*.⁴⁸ As in the Jay Leno example, O'Brien tested the censor's limits first by listing individual words, and then by reciting phrases describing sexual positions. Escalating the challenge, O'Brien raised questions about how long a man's exposed buttocks can be shown, if followed by humorous presentations of semi-nudity.

Not all mock-the-censor humor focuses on expletives, sex, excrement, and other taboo topics. Take for example the news satire organization, *The Onion*. In one piece, *The Onion* reported that the Central Intelligence Agency had just discovered that it was using "black highlighters," which had the entirely unintended effect of obliterating or blocking—rather than enhancing—the most crucial parts of politically sensitive documents.⁴⁹

While most of these examples provide relatively straightforward parody of a censor's work, even more sophisticated and complex examples of censorship humor parody exist. One recent theatrical example, *Arguendo*, presents a multi-leveled parody: a spoof on nude dancing, a spoof on the censorship of nude dancing, and a spoof on U.S. Supreme Court arguments about the constitutionality of the censorship. The production plays off of the nude dancers, the censorship law at issue in the case (*Barnes v. Glen Theatre, Inc.*⁵⁰), the justices' behavior during oral argument as well as the Court's ultimate reasoning about the censorship law and the underlying (censored) expressive conduct.⁵¹ Holding close to parody's technical requirement that a portion of the original be reflected in the parody, *Arguendo* used the actual transcript of the oral arguments.⁵² In this way, the play spoofed the Supreme Court decision-making, while also parodying censorship itself. A related version of *Arguendo*'s parody technique appears on several internet sites: the sites feature actual, unaltered examples of censorship, where the censors themselves butchered a communication with (apparently) unintended comic effect.⁵³

On a more edgy cultural front, consider also the *Boondocks* comic strip

48. See *Conan: Conan Meets His Censor* (Nov. 8, 2010), available at <http://www.teamcoco.com/video/conan-meets-his-censor>.

49. *CIA Realizes It's Been Using Black Highlighters All These Years*, THE ONION (Nov. 30, 2005), <http://www.theonion.com/articles/cia-realizes-its-been-using-black-highlighters-all,1848/>.

50. 501 U.S. 560 (1991).

51. The show ends with yet another layer of parody when members of the cast actually engage in the censored activity: performance in the nude. For an example of theatre where the performers play at the edges of censorship by apparently dancing nude behind small towels that the dancers dangle—sometimes precariously—in front of their genitals, see *2 Nude Guys Dancing With Towels*, YOUTUBE (Mar. 6, 2014), https://www.youtube.com/watch?v=w2ZbsI_SOAg.

52. For further description and a review of *Arguendo*, see Ben Brantley, *Full-Frontal Justice, a Matter of Redress*, N.Y. TIMES, Sept. 24, 2013, http://www.nytimes.com/2013/09/25/theater/reviews/arguendo-by-elevator-repair-service-at-the-public-theater.html?_r=0.

53. See Michael Greenbrier, *7 Hilarious Ways Badass Movie Lines Got Ruined by TV Censors*, CRACKED (Jan. 8, 2013), <http://www.cracked.com/quick-fixes/7-hilarious-ways-badass-movie-lines-got-ruined-by-tv-censors/>; Mike Floorwalker, *The 6 Most Hilarious Failures in Music Censorship History*, CRACKED (Jan. 20, 2013), http://www.cracked.com/article_20209_the-6-most-hilarious-failures-in-music-censorship-history.html.

and TV production. The show features lots of bleeped words—presumably often for comic effect. In one episode, the edgy bit arose (in significant part) from the producer’s decision not to bleep out full statements of the n-word.⁵⁴ Of course the n-word is not independently funny and, for most people, may never be capable of inspiring humor.⁵⁵ But the contrast between the censored and the non-censored in the *Boondocks* episodes injects comedy into the non-bleeped expletives. Some may believe that humor also results because bleeping some words enhances the highly politicized connotations of the non-bleeped n-word, and highlights the absurdity of a government that censors some words, but leaves intact other words with more lacerating potential.⁵⁶ Whatever the accurate interpretation of these *Boondocks* productions, it seems clear that mockery of a censor’s work (whether that censor is guided by governmental regulation, editorial aesthetic, or social norm) is a strong force in animating its commentary’s many layers.

While analysis benefits from distinguishing between “unnecessary” or fabricated censorship humor on one hand, and humor that mocks censorship on the other, one should not overstate the distinction. One need not search hard to find elements of both in censorship jokes. Indeed, humor that mocks censors is often fabricated and invokes the typical censorship tools also used in “unnecessary censorship” compositions. Sometimes one remains unsure about whether the joke mocks censorship

54. See *I Hate Text Messaging*, YOUTUBE (May 1, 2009), <http://www.youtube.com/watch?v=QCa9f8cPRbk>; *Teacher Calls Black Kid Nigga. Boondocks Version*, YOUTUBE (Apr. 11, 2011), <http://www.youtube.com/watch?v=RBUIJCCja4u4>; *Boondocks: Riley “Fu*k You” FULL HD*, YOUTUBE (June 15, 2010), http://www.youtube.com/watch?v=NcJBCu_NRY

55. *But cf. Chappelle Show: the Nigger Family*, FUNNY OR DIE (Dec. 3, 2016), <http://www.funnyordie.com/videos/f67ca41f6b/chappelle-show-the-nigger-family> (presenting a comedy sketch about a white family with the last name “Nigger”).

56. For commentary on the Boondocks decision to feature the n-word, see, e.g., Bryan Robinson, *‘The Boondocks’: Not the N&#@\$%a Show*, ABC NEWS (Nov. 3, 2005), <http://abcnews.go.com/Entertainment/story?id=1270410&singlePage=true> (providing a general overview of the show, but also including quotes from creator Aaron McGruder about race and use of the n-word); *Sharpton criticizes ‘Boondocks’ for showing King saying the n-word*, USA TODAY (Jan. 25, 2006), http://usatoday30.usatoday.com/life/television/news/2006-01-25-sharpton-boondocks_x.htm (critique by Al Sharpton of the decision); Bryan Robinson, *The N-Word: The Most Popular Ugly Word Ever*, ABC NEWS (Feb. 8, 2006), <http://abcnews.go.com/US/BlackHistory/story?id=1543526&page=1&singlePage=true> (discussing the n-word in pop culture in general, and specifically mentioning the Boondocks’s Martin Luther King episode); Greg Braxton, *‘The Boondocks’ goes uncut on iTunes*, L.A. TIMES BLOG (May 4, 2010, 12:25 PM), <http://latimesblogs.latimes.com/showtracker/2010/05/the-boondocks-unleashes-its-uncensored-side-on-itunes.html> (mentioning that the n-word is routinely not edited in the show, although other explicit language is).

A similar controversy about humor that toys with socially taboo depictions concerns *South Park*’s depiction of Mohammad. The show first used Mohammad’s image in an episode called “Super Best Friends” and discussed censorship issues extensively in *Cartoon Wars Pt I & Part II*. In response to outcries, the cable and satellite channel that carries the show—Comedy Central—forced it to censor an image of Mohammad’s image fully in episodes 200 and 201. Jonah Weiner, *The Genius of South Park’s Censored “Mohammed” Episodes*, SLATE (Apr. 29, 2010, 9:46 AM), http://www.slate.com/articles/arts/culturebox/2010/04/bleeps_be_upon_him.html.

or whether it is simply using censorship as its medium.⁵⁷

II. HUMOR THEORY

A. Introduction to Humor Theory and the Concept of Superiority Humor

Ah . . . you might say . . . the humor in all of these jokes is censorship itself. From this point of view (the argument goes) the jokester is making fun of the ridiculous wrongfulness of suppressing speech. One certainly sees this when one observes that the object of the humorist's efforts is the censor itself—as in George Carlin's riff, mockery of TV censorship, poking fun of Chinese censorship on the internet, and the like.

As a preliminary matter, one might argue that these examples are simply evidence of the age-old paradigm known as superiority humor. Superiority humor is well-studied and identified with ancient thinkers, such as Aristotle, Plato, Socrates, and Cicero, who associated comedy with aggression. From this perspective, one can use humor to disparage others while enhancing one's own sense of well-being.⁵⁸ The theory has some staying power today, with some humor theorists arguing that it has considerable (even exclusive) potential for explaining what makes something funny.⁵⁹ Applied to censorship humor, superiority theory provides that we laugh because the censor is a fool and we are not. It matters not whether the foolishness is hapless or evil: the point is that we, the audience, are superior to the censor.

This impulse is strongest in the strand of censorship humor mocking the censor. Predating the television and internet examples of mockery outlined above is the now-classic censorship satire appearing in Joseph Heller's *Catch-22* through the character of Captain John Yossarian. Yossarian acts as the wartime censor of the personal letters of service personnel. To combat boredom and indulge a mischievous spirit, he sometimes chooses specific words (e.g., the article "the") to slash from one letter, then censors all but that same word in another letter (e.g., creating a narrative composed only of the word "the"). Yossarian tops off the foolishness by signing a name on each letter, picking amusing pseudonyms, such as "Washington Irving," "Irving Washington" or the name of his unit

57. This is less true in the cross-cultural context in those instances when censorship humor is used to mock the censor in societies that are less democratic and far more restrictive on speech than the United States. For discussion of censorship humor in China, Russia, Egypt, and Nazi German, see *infra* notes 211-239.

58. See, e.g., R.A. Martin, *Humor and laughter*, in 4 *ENCYCLOPEDIA OF PSYCHOLOGY* 203 (A.E. Kadzin ed., 2000).

59. See MATTHEW M. HURLEY, DANIEL C. DENNETT & REGINALD B. ADAMS, JR., *INSIDE JOKES: USING HUMOR TO REVERSE-ENGINEER THE MIND* 42 (2013) (observing that "[s]uperiority theory has had many proponents over the years, and is perhaps the second most popular explanation for humor"). *But cf.* PETER MCGRAW & JOEL WARNER, *THE HUMOR CODE* 123 (2014) (asserting that "only one big Superiority Theory holdout remains . . . Charles Gruner . . . a communications professor at University of Georgia who takes the position that 'humor is a game . . . a contest of some sort, and there is always a winner and a loser'").

chaplain.⁶⁰ The Yossarian trope works particularly well as superiority humor because Youssarian's tomfoolery itself ridicules the concept of censoring the serviceman's letters.

Much superiority humor ridicules an historically oppressed group of individuals, such as one might see in sexist, racist, or ethnic jokes. Nonetheless, scholars from diverse disciplines and backgrounds have also observed that superiority humor can provide a potent power for those who are oppressed. Humor can deflate the authority of an authority figure, diffuse the tension that contributes to power, and derail or diminish the process of subjugation. Psychological research suggests that "wisecracking humor may be the single most effective way to block indoctrination."⁶¹ One psychiatrist asserts that laughter of the subject during the brainwashing process "wreck[s the process,] which must be begun all over again."⁶² Philosopher and literary critic Mikhail Bakhtin observed that ridicule serves as expression of power by the powerless against individual leaders as well as authority in general.⁶³ Likewise, historian Joseph Boskin has shown how humor provides an important weapon for subordinate groups fighting oppression.⁶⁴ In the context of censorship humor, one can easily see that the humor often allows those who are censored to not only protest the censorship, but to mitigate future acts of censorship as well.

Superiority theory is one of many theories—past and present—proposed for what makes a particular communication funny. Although modern scholarship has produced other theories about humor, scholars have traditionally catalogued only three main ones when providing an overview of the theoretical literature.⁶⁵ The three traditional theories derive from notions of superiority, release, and incongruity, all of which I discuss here. Recently developed modern theories include those relating to biology, play, and surprise.⁶⁶ Other insightful theories are kicking around as well, although all are not directly relevant to this paper's main enterprise of

60. For more comedy about censorship in wartime, consider the following clips from Good Morning Vietnam regarding Adrian Cronauer dealing with censorship: *Good Morning, Vietnam – Censorship*, YOUTUBE (Oct. 18, 2009), <http://www.youtube.com/watch?v=8UY2uw3yoIA>; *Good Morning, Vietnam!: Adrian Cronauer on Censorship*, YOUTUBE (Mar. 25, 2009), <http://www.youtube.com/watch?v=xRjYX0j-kpA> (featuring Adrian Cronauer discussing censorship).

61. JOHN MORREALL, COMIC RELIEF: A COMPREHENSIVE PHILOSOPHY OF HUMOR 120 (2009).

62. WILLIAM SARGENT, in JOYCE O. HERTZLER, LAUGHTER: A SOCIO-SCIENTIFIC ANALYSIS 143 (1969).

63. MIKHAIL BAKHTIN, RABELAIS AND HIS WORLD 6–7, 10, 12, 92 (1984).

64. JOSEPH BOSKIN, REBELLIOUS LAUGHTER: PEOPLE'S HUMOR IN AMERICAN CULTURE 1–14 (1997) (explaining how humor is used as a weapon to turn the tables on power).

65. See HURLEY, *supra* note 59, at 37 (observing that "almost all overviews list three categories of humor theory (*superiority*, *release*, and *incongruity*)"); see, e.g., Laura E. Little, *Regulating Funny: Humor and the Law*, 94 CORNELL L. REV. 1235, 1244–51 (2009) (cataloguing the three main theories for the purpose of analyzing legal regulation of humor).

66. HURLEY, *supra* note 65, at 37. While I do not single out these theories as key sources for understanding censorship humor, they are certainly useful for general understanding. See, e.g., notes 88, 99, and 102, *infra* for a discussion of debates about the role of surprise in humor and its relevant to censorship jokes.

explaining how censorship could be funny. Three refinements on modern theory that significantly contribute to understanding censorship humor are the concepts focusing on “benign violations,” “audience as co-author,” and “unexpressed premises” in joke telling. After surveying the relevant concepts, this section ends by taking stock of how the concepts contribute to explaining why censorship can be funny.

B. Release Theory

Focusing on how humor can act as a release, one can imagine that an audience perceiving censorship laughs out of anxiety provoked by censorship’s threat to cherished freedoms. Pure pleasure and amusement may not inspire this laughter. Indeed, scholars repeatedly observe that laughter is often not linked to unqualified enjoyment of humor.⁶⁷ That said, history shows many instances when citizens in repressed societies seem to create pleasure from their anxiety, laughing at comedy that showcases government regulation or oppression. Jokes have flourished in repressed societies and eras throughout history, including four contexts explored in greater detail below:⁶⁸ Hitler’s Germany,⁶⁹ the Egyptian uprising of 2011,⁷⁰ Soviet Russia,⁷¹ and contemporary China.⁷² In these instances, humor has sometimes served as a social safety valve.⁷³ Outside of authoritarian societies and heightened political drama, release humor arises in other tense contexts, and frequently focuses on off-color subjects. Indeed, Freud expounded the theory that release humor provides a vehicle for relief from anxiety about taboo topics, such as sex, death, incest, and

67. See, e.g., ROBERT R. PROVINE, *LAUGHTER: A SCIENTIFIC INVESTIGATION* 3 (2000) (concluding that most laughter is produced by speakers, not listeners, and typically results from factors other than witticisms); JON E. ROECKELEIN, *THE PSYCHOLOGY OF HUMOR* 13 (2002) (citing R.A. Martin, *Humor and laughter*, in 4 *ENCYCLOPEDIA OF PSYCHOLOGY* 40–51 (A.E. Kazdin ed., 2000) (observing that laughter is often unrelated to amusement); Jonathan Tierney, *What’s so Funny? Well, Maybe Nothing*, N.Y. TIMES, Mar. 13, 2007, at 1 (describing recent studies linking laughter with functions unrelated to humor).

68. See *infra* notes 212–238 and accompanying text for further discussion of these four contexts.

69. See JOHN MORRELL, *COMIC RELIEF: A COMPREHENSIVE PHILOSOPHY OF HUMOR* 119–120 (2009) (describing how jokes served a “coping function” during the Holocaust). For a compilation of these jokes, see RUDOLPH HERZOG, *DEAD FUNNY: TELLING JOKES IN HITLER’S GERMANY* (2012).

70. See, e.g., Satenik Harutyunyan, *Humor: Egypt’s Revolutionary Ally*, CARTOON MOVEMENT (July 31, 2012), <http://blog.cartoonmovement.com/2012/07/humor-egypts-revolutionary-ally.html>; Anna Louie Sussman, *Laugh, O Revolution: Humor in the Egyptian Uprising*, THE ATLANTIC, February 23, 2011, <http://www.theatlantic.com/international/archive/2011/02/laugh-o-revolution-humor-in-the-egyptian-uprising/71530/>.

71. For a description of the jokes, see, e.g., Vadim V. Dementyev, *Russian Anekdoty of 1970s: On the Material of the Soviet Humorous Journal “Krokodil”*, 2 *RUSS. J.COMMC’NS* 185 (2009) (describing amusing anecdotes published in the 1970s that reflected a “creative combination of a folk, ‘soviet anekdot culture’ and an official political satire”); William Henry Chamberlin, “*The Anecdote: Unrationed Soviet Humor*,” 16 *RUSS. REV.* 27 (1957) (cataloguing the types of “illicit” jokes existing around the 1950s).

72. See *infra* notes 229–238 for further discussion of Chinese censorship humor.

73. Ozan O. Varol, *Revolutionary Humor*, 23 *S. CAL. INTERDISC. L.J.* 555, 575 (2014) (explaining that “[h]umor can provide joy in an otherwise joyless landscape, serve as an omen of better days, dissolve widespread feelings of solitude, and mollify those afraid to speak up for fear of persecution”).

excretion.⁷⁴

Censorship humor that most easily fits into the “release humor” category often flips the power dynamic against the censor. Where the humorist fabricates an instance of fictional censorship, the censor is the putative victim and the censorship becomes a platform for protest. So, for example, in the Colbert/Laurie vignette, a litany of non-censored expletives is the tool for making fun of the process of censorship. Where the comedy involves an actual uncut instance of censorship or a mash-up⁷⁵ using real censorship, the result can be particularly empowering for both joke-teller and audience, since not only do they release anxiety about the existence of censorship in their lives, but they turn censorship against itself: using a censorship device to ridicule censorship—and perhaps even amplify its absurdity.⁷⁶ In effect, the joke-teller turns the censor’s muzzle into a microphone.

While Freud’s perspective on release humor might identify the psychological impulse behind such comedy, it does not necessarily explain why human beings might laugh at a communication about a matter causing anxiety or frustration. Within the context of censorship humor, one possible explanation emerges from the classic work of Henri Bergson.⁷⁷ Bergson observed that “society will be suspicious of an inelasticity of character,” and that humor acts as a “social corrective.”⁷⁸ In other words, if an individual approaches an issue rigidly, the laughter of others can pressure that individual to adapt to a more flexible approach. Embossing this notion on censorship humor, one can see that—in addition to ridiculing the censor—this humor might also serve as a playful social

74. See SIGMUND FREUD, *JOKES AND THEIR RELATION TO THE UNCONSCIOUS* (1905). Although the concept of release humor is associated most often with Freud, some ascribe credit to others as well. See, e.g., MICHAEL BILLIG, *LAUGHTER AND RIDICULE: TOWARDS A SOCIAL CRITIQUE OF HUMOR* 86 (2005) (tracing history of the theory to Bain and Spencer); MURRAY DAVIS, *WHAT’S SO FUNNY?* 7 (1993) (naming Freud and Spencer as the progenitors of release theory).

75. A mash-up is defined as:

[S]omething created by combining elements from two or more sources: as

a : a piece of music created by digitally overlaying an instrumental track with a vocal track from a different recording

b : a movie or video having characters or situations from other sources

c : a Web service or application that integrates data and functionalities from various online sources

Mash-up Definition, MERRIAM-WEBSTER.COM (July 16, 2014), <http://www.merriam-webster.com/dictionary/mash-up>; see also *Technology: Time For Your Mashup?*, NEWSWEEK (last updated Mar. 13, 2010), <http://www.newsweek.com/technology-time-your-mashup-106345> (describing audio and video mashups as well as web apps available to facilitate creating mashups).

76. See Ozan O. Varol, *Revolutionary Humor*, 23 S. CAL. INTERDISC. L.J. 555, 564 (2014) (analyzing Turkish examples where protesters deployed humor in order to criticize the government’s censorship efforts); see also Peter Grabosky, *Regulation by Ridicule: Humorous Denigration as a Regulatory Instrument*, LAW, CULTURE & HUMAN., <http://lch.sagepub.com/> (2013) (analyzing ridicule’s the regulatory effect).

77. HENRI BERGSON, *LAUGHTER: AN ESSAY ON THE MEANING OF THE COMIC* (1911). For a critique of this thinking, see HURLEY, *supra* note 59, at 55 (explaining that if we laugh whenever someone appears overly rigid, “there would be nothing more funny than a corpse.”).

78. HENRI BERGSON, *LAUGHTER: AN ESSAY ON THE MEANING OF THE COMIC* 31 (1911).

mechanism for encouraging less restriction on communications.

C. Benign Violations, Co-Authorship, and the Incongruity Theory

1. Benign Violations

Both of these theories—superiority and release—touch another insight about humor: violation often induces humor, that is, violation in the form of norm breaches, taboo topics, or perceived threat.⁷⁹ Of course violation alone does not generate humor; other conditions must be present. In particular, the audience needs to perceive an apparently contradictory sentiment at play: the context must appear safe, playful, or, at least, non-serious.⁸⁰ The fact that censorship humor often frolics in the realm of the “naughty” certainly accounts for part of its allure.⁸¹

The confluence of both safety and breach beckons a vein of humor theory that is relevant to censorship humor: the concept of a benign violation. As explained in one psychological study, humor may arise if an individual simultaneously perceives that a situation is non-threatening, yet violates some norm.⁸² Applied to censorship humor, the argument would go something like this: human experience shows that comedy often operates in the realm of controlled danger. Once a joke spills over into real danger or a serious violation of a code, the joke is no longer funny.⁸³ A censored joke might be able to keep an otherwise unfunny joke in the

79. See A. Peter McGraw & Caleb Warren, *Benign Violations: Making Immoral Behavior Funny*, 21 PSYCHOL. SCI. 1141, 1142 (2010) (observing that humor results from norm and taboo violations as well as apparent threat); RICHARD R. PROVINE, *LAUGHTER: A SCIENTIFIC INVESTIGATION* (2000); T.C. Veach, *A Theory of Humor*, 11 HUMOR: INT’L J. HUMOR RESEARCH 161, 173 (1998).

80. See PETER MCGRAW & JOEL WARNER, *THE HUMOR CODE* 9–14 (2014) (describing the development of the benign violation theory and critiques of the theory).

81. Steven Pinker provides a persuasive account of the linguistic and psychological reasons behind the pleasure humans derive from swearing. He explains that “taboo words, though evocative of the nastier aspects of their referents, don’t get their punch from those connotations alone. Taboo status *itself* gives a word an emotional zing, regardless of its actual referent.” STEVEN PINKER, *THE STUFF OF THOUGHT* 357 (2007);

see also Steven Pinker, *What the F***?* THE NEW REPUBLIC (Oct. 8, 2007), available at [http://pinker.wjh.harvard.edu/books/stuff/media_articles/TNR%20Online%20%20What%20the%20F%20\(1%20of%203\)%20\(print\).htm](http://pinker.wjh.harvard.edu/books/stuff/media_articles/TNR%20Online%20%20What%20the%20F%20(1%20of%203)%20(print).htm) (observing that swearing “recruits our expressive faculties to the fullest: the combinatorial power of syntax; the evocativeness of metaphor, the pleasure of alliteration, meter, and rhyme; and the emotional charge of our attitudes . . .).

82. McGraw, *supra* note 79, at 1142.

83. See, e.g., Sarah Blau & Mike Routledge, “*You Must be Joking!*”, INDEX ON CENSORSHIP 57–61 (2005), available at <http://ioc.sagepub.com/content/34/2/57> (describing Holocaust jokes as generally off-limits for Israeli comedians and quoting an Israeli comedian as explaining that “[the] more threatening something is, the feebler the jokes you make about it.”).

A frequently cited example of a joke that navigates the line between the moral and immoral is the classic “Aristocrats” joke, which is an improvised joke used by stand-up comedians that sometimes defies so many taboos that it transcends the category of meta-humor (humor about humor) and penetrates the realm of anti-humor. For a graphic clip of Gilbert Gottfried delivering the joke, see *Gilbert Gottfried: The Aristocrats*, YOUTUBE (Oct. 24, 2008), <http://www.youtube.com/watch?v=aGA0dIz9-Wk>. A 2005 film documentary called *The Aristocrats*, produced by Penn Jillette, Matthew Maguire, and Paul Provenza, features several comedians performing the joke.

realm of the funny. The censored joke obliquely reflects a real violation and thus acts as a recognition of danger, but the danger is controlled by the censorship. The censorship obscures, hides, or perhaps diminishes the actual violation, and in the process creates a medium ripe for humor. By reason of the censorship, the violation becomes benign to the listener—the danger having been “bleeped out” (metaphorically or literally) by the censor.

To the extent that enjoying a benign violation is at work in audience laughter about censorship, the comedy process might start because the censorship highlights a particular norm. Next the context and circumstances must make the audience feel safe in the norm’s transgression. How does it do this? Often the prompt for the audience to shed their worry is a context or content cue that the transgression is artful or playful. Sometimes the cue may be as simple as the joke-teller’s smile. Other times the audience orientation toward playfulness comes from the surprise accompanying the apparent violation, which is certainly part of the humor at work in the *Candid Camera* pranks.⁸⁴ One might also say that the audience itself needs a playful attitude to *enjoy* the benign violation. Why? The audience needs to recognize the violation, but also needs to at least temporarily suspend its jealous embrace of norms and values threatened because no harm will occur.

That’s not to say that the audience may not have mixed feelings about the violation. Research confirms that many humorous experiences include opposed emotions such as amusement and disgust.⁸⁵ Moreover, the process of welcoming or rejecting a benign violation is consistent with the philosophical observation that moral flaws in a joke “can decrease amusement.” True moral flaws, “not just everyday outrageousness” can inspire “[m]oral disgust,” which in turn “can trump amusement.”⁸⁶

2. Audience as Co-Author

A related condition that helps to inspire humor from a norm violation is co-authorship of the joke. Censorship humor plays right into this dynamic. Where a joke transgresses a norm, the participants in the joke-telling process are emboldened by the perception that they are permitted to breach the norm. The audience itself provides a perfect source for that

84. Scholars often point to surprise as an element of humor. Surprise can occur because of an unexpected resolution to a joke—such as when the joke establishes a pattern and then deviates. In this instance, the audience processes the sudden change of perception required as pleasurable surprise. See Norman R.F. Maier, *A Gestalt Theory of Humor*, 23 BRIT. J. PSYCHOL. 69, 69–74 (1932) (describing the process of surprise).

Yet surprise is not always an element, as demonstrated by one’s ability to enjoy the same joke again and again. See SCOTT WEEMS, HA! 47 (2014) (describing research establishing that shock or surprise are not essential components of humor).

85. S.H. Hemenover & U. Schimmack, *That’s Disgusting! . . . But Very Amusing: Mixed Feelings of Amusement and Disgust*, 21 COGNITION & EMOTION 1102, 1110–11 (2007).

86. Aaron Smuts, *Do Moral Flaws Enhance Amusement?*, 46 AM. PHIL. Q. 151, 151 (2009).

“permission,” if in fact they successfully receive the cue that a joke is underway. Building on this cue, censorship often enlists the audience to become the joke’s co-author because the audience needs to fill in the omitted content marked by the bleep, black bar, pixelation, or other device. In writing their own version of the joke script, the audience receives reward from their own insight in identifying what was “really said.” Of course, this solipsistic reward system does not operate where censorship works by stealth. Where the censorship is obvious, however, the joke is co-constructed, and there can be happiness on both sides: the audience enjoys the process of creatively participating in writing the joke script and the joke-teller enjoys the audience serving as co-conspirator.⁸⁷ How fun is that? (The fun is magnified by the human tendency to assume that it was a “negative”—in this instance, some sort of legal norm violation—that prompted the censor’s editing knife.⁸⁸)

3. *Incongruity*

The benign violation and audience as co-author reflect perhaps the most pervasive concept in humor scholarship: incongruity. With a benign violation, an incongruity arises because a norm breach has occurred, but the breach is not harmful. The social contract may view the norm as essential to the smooth running of society; thus one would expect some harm to the individual or the group where the norm is not followed. When the harm does not occur, the audience is pleasantly surprised and perceives a joke.

Likewise, the presence of an incongruity in a communication invites the listener to act as a co-author of the communication. How does this occur? Under standard linguistic rules, adult communication is generally meant to convey meaning. If the communication lacks meaning—it makes no sense—then the audience is confused. The active listener will cogitate on the puzzle, seeking to resolve the difficulties in the communication. If the confusion results from incongruity, the audience will naturally seek to

87. For contrasting illustrations of this, compare *Forget You—Cee Lo Green*, YOUTUBE (July 7, 2014), <https://www.youtube.com/watch?v=bKxodgpyGec>, with *Fuck you—Cee Lo Green*, YOUTUBE (July 7, 2014), <https://www.youtube.com/watch?v=pc0mxOXbWIU&feature=kp>. The pleasure for the audience here resembles the “joy of problem solving.” See HURLEY, *supra* note 59, at 27 (observing that “[w]hen we ‘get’ a joke we feel a sense of discovery rather like the sense of triumph when we solve a problem”). There is, however, a qualification to this pleasure: the audience must have psychological distance from the violation in order to perceive it as benign. Sometimes that distance may require the passage of time from a negative event; other sources of distance are lack of intimacy with the subject matter, spatial separation from the subject matter, or reduced probability that the event described in the joke will actually occur. Mel Brooks expresses this in concrete form: “Tragedy is when I cut my finger. Comedy is when you walk into an open sewer and die.”

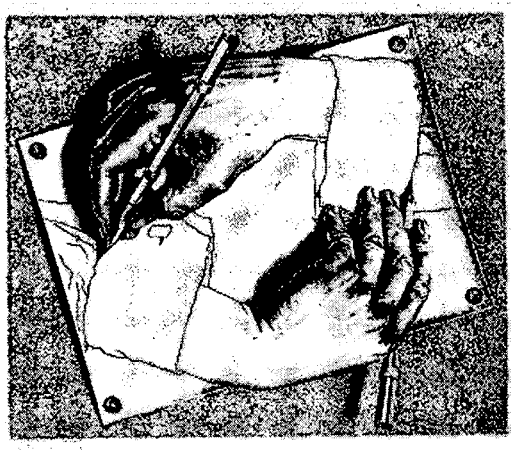
Mel Brooks, WIKIQUOTE (Mar. 23, 2014), http://en.wikiquote.org/wiki/Talk:Mel_Brooks.

88. The tendency to assume that the “negative” involves some kind of swearing may be well-founded where the context suggests catharsis, pain, anger, or frustration—emotions that often inspire swearing. Marta Dynel, *Swearing Methodologically: The (Im)Politeness of Expletives in Anonymous Commentaries on YouTube*, 10 J. ENG. STUD. 29, 36 (2012) (explaining that swearing performs the function of venting anger, processing pain, and releasing tension).

resolve that incongruity. Incongruity resolution, humor theorists suggest, is a pleasurable enterprise thus giving rise to some of humor's fun.⁸⁹

While incongruity resolution can help to explain the humor in benign violations and the pleasure one gets from a joke, the concept's pedigree goes much deeper. Indeed, the list of thinkers who have identified humor's connection with incongruity starts—yet again—with the ancients (Plato, Aristotle, Cicero), extends into the modern era (Immanuel Kant, Arthur Schopenhauer, Henri Bergson⁹⁰), and continues to the present day. Today, robust debate surrounds incongruity's role in humor production, although most contemporary humor scholars accept that incongruity is a necessary, but not sufficient, condition for communication to have a comedic quality.⁹¹ According to the general incongruity theory, humor results from the juxtaposition of two incongruous or inconsistent phenomena.⁹² This juxtaposition, the argument goes, creates surprise, an unlikely turn of mind, or even a new concept altogether. Viewed in this light, joke production can have the same air of accomplishment as artistic creativity and scientific discovery.⁹³

89. This fun is akin to that experienced with art forms that engage the audience and inspire intellectually rewarding challenges to perception, such as one experiences when observing and thinking about the following famous image. Like incongruity resolution, appreciation of this image arises from embrace of the paradox it reflects and understanding of the human potential for different levels of understanding.



M.C. Escher, *Drawing Hands* © 2014 The M.C. Escher Company - the Netherlands. All rights reserved. Used by permission www.mcescher.com. DOUGLAS R. HOFSTADTER, GÖDEL, ESCHER, BACH: AN ETERNAL GOLDEN BRAID 689–90, 701–702 (1999) (discussing these images and the mental processes to which they pay homage).

90. Giovannantonio Forabosco, *Is the Concept of Incongruity Still a Useful Construct for the Advancement of Humor Research?*, 4.1 LODZ PAPERS IN PRAGMATICS 45, 46 (2008).

91. Laura E. Little, *Just a Joke: Defamatory Humor and Incongruity's Promise*, 21 S. CAL. INTERDISC. L.J. 95, 104–107, 15–160 (2009) (discussing debates about the role of incongruity in humor).

92. Laura E. Little, *Regulating Funny: Humor and the Law*, 94 CORNELL L. REV. 1235, 1245 (2009) (summarizing incongruity theory).

93. See, e.g., R.A. Martin, *Humor and Laughter*, in 4 ENCYCLOPEDIA OF PSYCHOLOGY 203 (A.E.

Humorous incongruity can manifest in myriad, seemingly unrelated ways. For example, incongruity might result because a joke suddenly alters its course or point of view. Literary theorist Henri Bergson characterizes this type of incongruity as a form of inversion, such as when a comic depicts characters in one situation, and then reverses the characters' roles.⁹⁴ Or, as Freud observed, comic incongruity can come from the "coupling of dissimilar things, contrasting ideas, 'sense in nonsense', [and] the succession of bewilderment and enlightenment."⁹⁵

As noted above, contemporary humor theorists focus considerable attention on incongruity theory, squabbling over its role in humor. First, theorists have proffered varying theories about how incongruity makes something fun, with explanations ranging from pleasure in incongruity's intellectual provocation, the mental exercise needed to perceive and resolve it, colorful or ear-catching contexts that create the incongruity, the emotional roller coaster it can create, to the stinging social critique it can highlight.⁹⁶ All seem to agree that incongruity alone is not sufficient to produce humor.⁹⁷ As linguist Tony Veale explains: incongruity is an "ingredient of such unfunny phenomena as poetic metaphors, magic tricks and . . . whodunit thrillers."⁹⁸ Yet scholars disagree about whether the "heuristic" value of the concept has already been "fully exploited" in scholarly studies that seek to nail down the source of humor,⁹⁹ or whether incongruity continues to provide an enormously useful focus for further

Kadzin ed., 2000).

94. HENRI BERGSON, LAUGHTER: AN ESSAY ON THE MEANING OF THE COMIC 88 (1911) (imploping the reader to "[p]icture to yourself certain characters in a certain situation: if you reverse the situation and the roles").

95. SIGMUND FREUD, JOKES AND THEIR RELATION TO THE UNCONSCIOUS 14 (James Strachey trans., 1960).

96. See, e.g., Laura E. Little, *Regulating Funny: Humor and the Law*, 94 CORNELL L. REV. 1235, 1248 (2009) (listing possible explanations for incongruity's capacity to generate humor); Tony Veale, *Incongruity in Humor: Root cause or epiphenomenon?*, 17-4 HUMOR: INT'L J. HUMOR RESEARCH 410, 424 (2004) (describing the mentally stimulating process of doubling back on the set up for a joke after hearing the punchline in an attempt to resolve incongruity); Patricia Ewick & Susan S. Silbey, *No Laughing Matter: Humor and Contradictions in Stories of Law*, 50 DEPAUL L. REV. 559, 561 (2000) (observing that because humor often places two or more disparate elements in competition, humor enjoys a "quality of suspense" and can "up-end" perceptions of reality, thereby creating a hearty challenge to hierarchy, and communicating a form of "justice"); Victor Raskin & Salvatore Attardo, *Non-literarism and non-bona fide in language: An approach to formal and computational treatments of humor*, 2(1) PRAGMATICS AND COGNITION 31, 35, 37 (1994) (discussing "recoil effect" of a joke on a listener who experiences surprise, unexpected insight, and sometimes even an emotional roller coaster when processing a joke).

97. See, e.g., MICHAEL BILLING, LAUGHTER AND RIDICULE: TOWARDS A SOCIAL CRITIQUE OF HUMOUR 76 (2005) (noting that usual presence of incongruity in comedy does not "explain why the perception of incongruity should be followed by a sense of pleasure and laughter"); Michael K. Kundall, Jr., *Humor and the limits of Incongruity*, 19 CREATIVITY RES. J. 203, 204 (2007) (stating that there "is more to the perception of humor than a simple recognition of an incongruity"); Tony Veale, *Incongruity in Humor: Root cause or epiphenomenon?*, 17-4 HUMOR: INT'L J. HUMOR RESEARCH 410, 424 (2004) (describing incongruous situations that are not funny).

98. Veale, *supra* note 98, at 424.

99. Giovannantonio Forabosco, *Is the Concept of Incongruity Still a Useful Construct for the Advancement of Humor Research?*, 4.1 LODZ PAPERS IN PRAGMATICS 45, 46 (2008).

theoretical and experimental work.¹⁰⁰

Censorship humor varies widely and thus lacks a common thread linking it with one form of incongruity. Nonetheless, one sees ample evidence of at least some type of incongruity arising from the jokes' focus on censorship. As such, incongruity proves a useful ingredient for a wide variety of censorship jokes.

For example, many of the bleeped *Candid Camera* vignettes feature apparent untoward comments from the mouths of otherwise wholesome, one-would-never-expect-them-to swear folks. (Indeed, the fact that one would not expect such individuals to swear is confirmed by the fact that they actually don't swear in those circumstances where the bleeps are not necessary, but simply added for comedic effect). Also trading on an unlikely juxtaposition of human qualities is *The Onion* feature about the CIA discovering it was using black highlighters that had the effect of obliterating rather than highlighting key portions of sensitive texts: one certainly would not expect the members of an *INTELLIGENCE* agency to make a stupid mistake.¹⁰¹ As further evidence, one observes incongruity humor at work in many unnecessary censorship features in cable TV presentations, in which bleeping occurs even where the audience likely appreciates that the FCC would not actually require censorship.¹⁰² A similar trope is at work when *Catch-22*'s Youssarian censors only the word "the" in some war-time letters or the *Boondocks* episode that bleeps some material, but not the "n-word."¹⁰³ Finally, unnecessary censorship of something like a Disney movie creates humor through the unlikely juxtaposition of censored words and children's entertainment.¹⁰⁴

D. The Unexpressed Premise in Jokes

Humor theorists of all stripes have observed that jokes depend on context. Sometimes that context is "inside information" or special shared knowledge among a discrete group of individuals, which gives rise to an inside joke.¹⁰⁵ Sometimes that context is the chemistry of a particular

100. See, e.g., JOHN MORREALL, *COMIC RELIEF: A COMPREHENSIVE PHILOSOPHY OF HUMOR* 14-15 (2009) (arguing that incongruity theory continues to be useful, but scholars need to explore further how it is that human beings can enjoy incongruity).

101. See *supra* note 52 and accompanying text for discussion of this satire.

102. See *supra* notes 30-32, and 45, and accompanying text for a description of these unnecessary censorship examples.

103. See *supra* notes 65 and accompanying text for discussion of Youssarian's censorship antics, and notes 57-59 and accompanying texts for discussion of the *Boondocks* episodes.

104. See *FROZEN (CENSORED!)*, YOUTUBE (Jan. 15, 2014), <http://www.youtube.com/watch?v=q0v7rFSUrGE> (parody of the Disney film, *Frozen*, using unnecessary censorship technique).

105. Humans of all types enjoy in-group humor, since it tends to promote a sense of belonging that is key to our social nature. Some scholars have studied whether some groups invoke this type of humor more than others. See, e.g., PATRICK STEWART, *DEBATABLE HUMOR: LAUGHING MATTERS ON THE 2008 PRESIDENTIAL PRIMARY CAMPAIGN* (2012). Stewart argues that Democrats during the 2008 campaign favored all-inclusive, "big-tent" humor (eschewing humor designed to highlight in-group status), while Republicans tended toward humor that reinforced unique group affiliation.

moment, giving rise to “you-had-to-be-there” humor. Other times (actually many other times) the context is cultural. Different cultures possess shared information that provides the grist for comedy appreciated by those who understand and appreciate this information. Societies and nations vary according to different levels of preexisting shared context for humor. One study of humor in different nations observes, for example, that the cultural diversity in the United States means jokes here tend to lack a common context shared by all Americans, giving rise to a humor culture where different cultural groups have “different kinds of jokes” as well as a flourishing genre of comedy that focuses on “divergent viewpoints and culture backgrounds and political opinions” among U.S. citizens.¹⁰⁶ The study contrasts this with a “high-context . . . homogenous society such as in Japan,” which “is so unified in its history and culture, that most zingers don’t need [joke] set-ups at all.”¹⁰⁷

Several humor theorists have observed that shared understanding (shared either by small group members or among members of an entire culture or society) is not only key to humor’s beneficial social qualities,¹⁰⁸ but is also a necessary ingredient for joke production. For example, neuroscientist Scott Weems observes that “[c]utting edge humor never involves just a single message. There’s what the humorist is saying, and all the rest left unspoken.”¹⁰⁹ Others have observed that humor is not only contingent on background knowledge shared between humorist and audience, but also depends on how the humorist exploits that shared knowledge.¹¹⁰ Along a similar vein, philosopher and cognitive scientist Daniel Dennett notes that many jokes are *enthymematic*, meaning that they leave the joke’s premise unstated.¹¹¹ According to Dennett’s theory,

106. PETER MCGRAW & JOEL WARNER, *THE HUMOR CODE 103* (2014) (discussing the difference between U.S and Japanese culture as it relates to humor production); *see also* SCOTT WEEMS, *HA! 32* (2014) (stating that the “folk notion that humor is ‘universal’ is actually an artifact of a misunderstanding of statistical samples”); *UNDERSTANDING HUMOR IN JAPAN* (Jessica Milner Davis ed., 2006).

107. PETER MCGRAW & JOEL WARNER, *THE HUMOR CODE 103* (2014).

108. *See generally* Laura E. Little, *Regulating Funny: Humor and the Law*, 94 *CORNELL L. REV.* 1235, 1253–1254 (2009) (surveying literature documenting shared intimacy and social cohesion deriving from humor).

109. *See* SCOTT WEEMS, *HA! 33* (2014).

110. MATTHEW M. HURLEY, DANIEL C. DENNETT & REGINALD B. ADAMS, JR., *INSIDE JOKES: USING HUMOR TO REVERSE-ENGINEER THE MIND 32* (2013). These scholars add that humor’s critical dependence on background knowledge provides “the reason why explaining a joke drains it of its humor.” *Id.*

111. DANIEL C. DENNETT, *THE INTENTIONAL STANCE 76* (1987). As an example, Dennett provides the following joke as an example:

A man went to visit his friend from the Newfie and found him with both ears bandaged. “What happened? Asked the man, and the Newfie replied, “I was ironing my shirt when the telephone rang.”

“That explains one ear, but what about the other?”

“Well, I had to call a doctor.”

Id. In order to “get” this joke, one needs to know that “Newfies” are a group of people sometimes reputed to be unsophisticated or mentally challenged, that telephones once had the “shape, or heft of an iron,” that answering a phone at one time involved “lifting a telephone receiver . . . and bringing into contact with one’s ear.” *Id.* at 76-77.

successful telling of such jokes allows the unexpressed premise to “provoke the audience to ‘fill in’ an implication or assumption, or even a series of assumptions, without which no humor can be detected.”¹¹² These observations are important to censorship humor, which by definition works on omitted, unspoken information. If indeed shared assumptions and understandings are crucial to joke development, then the bleeped or visually obscured components of censorship humor may be serving the humor process by giving the audience a sense of (potentially true or false) shared understanding and membership in a common culture.

E. Explanatory Potential for Censorship Humor

Superiority theory, release theory, benign violations, incongruity, and unexpressed premises demonstrate why censorship can be humorous: censorship has properties that tend to overlap with generic conditions of humor. In other words, the comical qualities of censorship humor may emerge from the fortuity that censorship humor’s component parts happen to overlap with useful building blocks of any joke.

Take first the notion of the unexpressed premise: by design, censorship hides a portion of a communication’s context. As such, censorship offers a handy conduit for making a joke: a built-in hidden premise providing a ready vehicle for mirth making. The same might be said of the benign violation idea according to which censorship is simply mitigating harm so as to ensure that humor can work. Likewise, the audience as co-author phenomenon works conveniently with censorship humor because the omitted portion of the communication enlists the audience in writing the joke script. Accordingly, laughter from censorship may not always arise because of emotional or political content. The censorship joke may simply dovetail with so many of the generic conditions of humor. From this point of view, censorship jokes are not funny because they satirize attempts to muzzle freedom of expression or provide a vehicle for expressing anxiety about that. Rather, censorship is serving only as handy raw material in humor’s creation.¹¹³

Nonetheless, the various humor theories leave important questions unanswered, questions that bear directly on censorship, society, and the law. As I mentioned in the introduction, censorship humor tends to focus on apparent state-sponsored censorship, rather than censorship through informal social or moral norms. Censorship humor also tends to have a hard edge, lacking sweetness or subtlety, and it does not tend to be weird or whimsical. Nor does it tend to exhibit what *New Yorker* Cartoon Editor

112. See MATTHEW M. HURLEY, DANIEL C. DENNETT & REGINALD B. ADAMS, JR., *INSIDE JOKES: USING HUMOR TO REVERSE-ENGINEER THE MIND* 42 (2013).

113. *Cf. id.* at 127–128 (suggesting that humor can be anticlimactic, since “after we dig down into the core of the humor machine . . . [we find simply] that it happens to exploit reward systems that have been opportunistically tweaked”).

Bob Mankoff describes as absurd-venturing-into-nonsense, “Mad Libs humor.”¹¹⁴ Finally, while incongruity is present, censorship humor is low on the scale of playful incongruity that one sees in wacky or absurd comedy.¹¹⁵ These attributes suggest that censorship humor undertakes more solemn and serious business. Given the topic—government restraint on communication—one can readily surmise that this serious business includes processing fear, anxiety and anger about the restraints. But the nature of censorship humor also suggests that the jokes serve as a vehicle for assessing the propriety of the restraints.

Isn't it interesting, then, that the result is *laughter*?

We have seen that censorship produces a particularly well-suited medium for jokes: the audience's enjoyment of co-constructing a benign violation assists mightily in creating the humor. But one wonders whether something else is going on. Does the success and pervasiveness of censorship jokes in comedic fora suggest that there's something we *like* about the topic? Given that humans generally resist being muzzled and that so many of us hold censorship out as a generic evil, is it not truly odd *we can get any pleasure from censorship*?¹¹⁶ The answer to this question, I posit, comes from censorship's role in establishing boundaries—not only legal boundaries but also moral, aesthetic, editorial, and social boundaries. The next section explores these judgments—which one can see reflected in various aspects of human society, including informal norms governing civil behavior and as well as law, reflected in First Amendment opinions from the United States Supreme Court.

III. THE POWER OF BOUNDARIES

How exactly can the boundaries imposed by censorship contribute to the alchemy that creates a funny communication? By demarcating an area of impropriety, censorship establishes a border that jokes can probe and tweak. In this way, censorship humor arguably celebrates censorship for delineating “right” and “wrong” . . . or at least for its contribution to charting that line.¹¹⁷ We might laugh out of a feeling of superiority over

114. BOB MANKOFF, HOW ABOUT NEVER IS NEVER GOOD FOR YOU? 162 (2014) (asserting that humor that is “far along in the incongruity dimension” can be accessible if “its style [is] . . . Mad Libs humor,” since “most people have played Mad Libs”).

115. See BOB MANKOFF, HOW ABOUT NEVER IS NEVER GOOD FOR YOU? 162 (2014) (describing a scale of “playful incongruity” that ranges from humor that is so incongruous that there is “no common point of understanding” and ranging in reduced incongruity from “nonsense” and “absurdity” to humor that is well “within the realm of reality” and statements that are so “close to normal” that they are “less likely to be perceived as humor”).

116. For an engaging attempt to tackle the mind's ability to process this type of paradox, see DOUGLAS R. HOFSTADTER, GÖDEL, ESCHER, BACH: AN ETERNAL GOLDEN BRAID 24 (1999) (describing the flexibility in human intelligence and its ability to appreciate rules on different levels: “just plain” rules, “metarules,” and “metametarules”).

117. Humor theorists Michael Pickering and Sharon Lockyer argue that regulation (presumably by law, social norms, or both) provides a necessary condition for humor to exist: Paradoxically, making offensive jokes about others with total impunity would mean that there are no

the comedian who has chosen to breach a norm, believing that—at least for now—we are on the norm-abiding side of the line. Likewise, we might laugh from the emotional charge prompted by experiencing a violation¹¹⁸ or at understanding that the offensiveness of a joke is precisely what makes it funny.¹¹⁹ We might also be happy because we believe that the censor is revealing to us a truth about the scope of legality.¹²⁰ And finally, our laughter might simply show how tickled we are to have some kind of line that guides our way between permitted and forbidden behavior. Whatever the cause—it is the line between permitted and forbidden that gives this humor its sizzle. We find evidence of the importance of this line throughout human society, in which it serves a range of functions. One can discern these functions through general observations about social order as well as in specific texts such as the First Amendment opinions of the United States Supreme Court.

A. *Human Attraction to Censorship?*

Censorship possesses attractive qualities even for citizens and decision-makers in a country that cherishes freedom of communication. For individuals, boundaries grant comfort because they impose structure, ensure predictability, and reduce the choices needed to navigate life's challenges. For groups, boundaries establish identity, promote efficiency, reinforce order, and serve safety.¹²¹ Censorship boundaries in particular

boundaries to push at any more. This would lead to the defeat of humor. . . . Humor is only possible because certain boundaries, rules and taboos exist in the first place. Their existence, along with the satisfaction and sense of agency gained in overcoming them, are equally vital to why we laugh.

Michael Pickering & Sharon Lockyer, *Introduction: The Ethics and Aesthetics of Humour and Comedy*, in *BEYOND A JOKE: THE LIMITS OF HUMOUR* 14–15 (Sharon Lockyer & Michael Pickering eds., 2005).

118. Cf. STEVEN PINKER, *THE STUFF OF THOUGHT* 357 (2007) (observing that “[t]aboo status itself gives a word an emotional zing”); Ad J.J.M. Vingerhoets, *et al.*, *Swearing: A Biopsychosocial Perspective*, 22 *PSYCHOL. TOPICS* 287, 300 (2013) (concluding that swearing has diverse emotional power: eliciting humor, creating an informal atmosphere, group binding, lessening social support, and relieving stress).

119. Daniel Jacobson, *Ethical Criticism and the Vice of Moderation*, in *CONTEMPORARY DEBATE IN AESTHETICS AND THE PHILOSOPHY OF ART* 342, 350 (Mathew Kieran ed., 2006) (observing that “sometimes it is exactly what is offensive about a joke that makes it funny”).

120. Many students of humor have observed that humans have a particularly keen appreciation for jokes they perceive as a revealing a truth. Seeking to explain why truth can be funny, Max Eastman starts with the following observations from practitioners of humor:

Charlie Chaplin in modern times described his art of making people laugh as ‘telling them the plain truth of things.’ Will Rogers, commenting on his own ‘rustic’ humor, said: . . . I don’t make jokes, I just watch government and report the truth.’ And E.B. White . . . said: ‘Humor at its best is a kind of heightened truth – a super-truth.’

MAX EASTMAN, *ENJOYMENT OF LAUGHTER* 270 (1936). Eastman then adds his own observations on the notion of truth as humor:

[A]lmost any perfectly candid speech about anything contains an element of release. Everything that we deeply know and are has the need of the play-license to get out and get a breath of air. . . . It is not truth as such, of course, that is a joke. The joke is to have some other trend of expectation . . . go playfully to smash, and in the wreckage find this deeper satisfaction to our sense of what is real. The face of truth is a strange face, [but] when it obtrudes suddenly we cannot help but make it smile.

Id. at 272–73.

121. See MARY DOUGLAS, *PURITY & DANGER* 4 (1966) (exploring how the boundaries between

can reinforce the merits of silence and the value of leaving words unspoken. Silence possesses worth to the extent that it reinforces the poetry of minimalism, fosters peace and calm,¹²² establishes understanding between people,¹²³ deepens knowledge,¹²⁴ and acknowledges respect for sensitive topics.¹²⁵ Some scholarship even identifies instances where the First Amendment protects and values silence by recognizing a right to editorial discretion that includes the right not to publish or otherwise to disclose information.¹²⁶

Evidence of the social utility of exploring boundaries might be gleaned from censorship humor's appearance in children's entertainment. Consider first an episode of the Nickelodeon children's show *SpongeBob SquarePants* entitled, "Sailor Mouth."¹²⁷ In "Sailor Mouth," the two main animated characters discover an unidentified curse word, which they refer to as a "sentence enhancer," and repeat the word throughout the show to the horror of the subsidiary characters who rebuke them for use of the word. In place of the word, the viewer hears dolphin "chirps" in the place of the harsher "bleep" used in adult television. The episode also features other, apparently random, sound effects to signify other curse words (one character claims that there are thirteen total "bad" words).¹²⁸

Censorship humor also appeared in the animated show *Dexter's Laboratory* in a controversial episode entitled, "Rude Removal."¹²⁹ In the episode, the two main characters, who are meant to be children on the show, inadvertently create "rude" versions of themselves through a machine, and the "rude" versions of themselves run amok and repeatedly say words that have to be censored.¹³⁰ Cartoon Network, where the show originally aired, refused to air the episode initially, although "Adult

socially constructed conceptions of purity and pollution perform the "main function [of imposing] system on [the] inherently untidy experience" of human social life).

122. W.B. YEATS, *THE CELTIC TWILIGHT* 136 (A. H. Bullen ed., 1902) ("We can make our minds so like still water that beings gather about us that they may see, it may be, their own images, and so live for a moment with a clearer, perhaps even with a fiercer life because of our quiet.").

123. NICHOLAS SPARKS, *THE NOTEBOOK* 170 (1996) (stating that "[s]ilence is pure and holy. It draws people together because only those who are comfortable with each other can sit without speaking").

124. CHAIM POTOK, *THE CHOSEN* 267 (1967) ("I've begun to realize that you can listen to silence and learn from it. It has a quality and a dimension all its own."); RUMI, *THE ESSENTIAL RUMI* (Coleman Barks trans., 2010) ("Let silence take you to the core of life.").

125. A few hurtful words uttered between two people on a sensitive topic can permanently undermine a personal relationship.

126. See, e.g., Robert A. Sedler, *Self-Censorship and the First Amendment*, 25 *NOTRE DAME L.J. ETHICS & PUB. POL'Y* 13, 25, 33 (2011) (citing the refusal to disclose the rape victim identity and the refusal to disclose harmful national security information as examples of "self-censorship good").

127. *Sailor Mouth*, WIKIPEDIA (July 17, 2014), http://en.wikipedia.org/wiki/Sailor_Mouth.

128. See *SpongeBob SquarePants: Sailor Mouth*, NICK.COM, available at <http://spongebob.nick.com/videos/clip/sailor-mouth-clip.html>. There's also a poorly filmed of the TV version of the full episode on YouTube here: *SpongeBob square pants sailor mouth*, YOUTUBE (Apr. 5, 2013), <http://www.youtube.com/watch?v=A5Dir4SZCqk>.

129. *Rude Removal*, WIKIPEDIA (July 17, 2014), http://en.wikipedia.org/wiki/Rude_Removal.

130. *Dexter's Lab- Dexter's Rude Removal*, DAILYMOTION (Feb. 13, 2013), http://www.dailymotion.com/video/xwyklw_dexter-s-lab-dexter-s-rude-removal_shortfilms.

Swim,” the late-night block of shows on the Cartoon Network that is geared towards mature audiences,¹³¹ attempted to revive the episode due to its apparent notoriety and cult status as a taboo piece of children’s television.¹³² Because children’s television is often pedagogical, the *Dexter’s Laboratory* and *SpongeBob* examples may reflect an attempt to use censorship humor to instruct children about the virtues and challenges of speech boundaries in polite society.

In addition to flagging general principles of propriety, boundaries also serve an important social function of delineating groups, establishing group membership, and defining group identity. Establishing group identity entails making judgments about appropriate subjects and modes of communication among group members.¹³³ Group identity can also be enhanced by censorship of communication with rival groups or outsiders. A vivid satire regarding how one group might self-censor in its interactions with a rival group appears in an episode of Larry David’s *Curb your Enthusiasm*, which explores communal divisions between Jews and Muslims when David dates a Palestinian woman. The censorship jokes in this episode take two contrasting forms: one gag takes the form of obscuring identity in the company of the rival group (e.g., removing a yarmulke before entering a Palestinian restaurant) and the other gag takes the form of uncensored, insulting banter (e.g., shouting “I’m going to fuck the Jew out of you” during intercourse).¹³⁴ Group identity is also cultivated by conceptual boundaries tied to the rule of law. Several scholars have noted that Americans take particular pride—and therefore particular benefit for establishing national identity—in their commitment to the rule of law and its efficacy in undermining tyrannical assertions of power.¹³⁵

Even leaving aside our strife for identity (national or otherwise) and our desire to avoid tyranny, formal and informal norms (and the boundaries they mark) serve many other important functions, including problem-solving and planning. In analyzing formal legal norms, Scott Shapiro explains that “[t]he law is morally valuable . . . because we face numerous

131. See *Adult Swim*, WIKIPEDIA (July 17, 2014), http://en.wikipedia.org/wiki/Adult_Swim.

132. See *Rude Removal*, WIKIPEDIA (July 17, 2014), http://en.wikipedia.org/wiki/Rude_Removal.

133. See, e.g., Marta Dynel, *Swearing Methodologically: The (Im)Politeness of Expletives in Anonymous Commentaries on YouTube*, 10 J. ENG. STUD. 25, 27 (2012) (explaining that cursing can promote group membership); Ad J.J.M. Vingerhoets et al., *Swearing: A Biopsychosocial Perspective*, 22 PSYCHOL. TOPICS 287, 300 (2013) (observing the connection between swearing and group cohesiveness).

134. This appears in the episode “Palestinian Chicken,” available at <https://www.youtube.com/watch?v=ZALzUNfAujc>.

135. See, e.g., RONALD CASS, *THE RULE OF LAW IN AMERICA* xii (2001) (observing that commitment to rule of law is core to American “national self-definition. . . . For most of the world . . . the nation most immediately associated with the rule of law—is the United States.”); Austin Sarat, *At the Boundaries of Law: Executive Clemency, Sovereign Prerogative, and the Dilemma of American Legality*, 57 AM. Q. 611, 611-12 (2005) (arguing that for Americans, “no set of conceptual boundaries is more important . . . than those associated with the idea of the rule of law”).

and serious moral problems whose solutions are complex, contentious, and arbitrary. . . Morally and prudentially speaking, we desperately need norms to guide, coordinate, and monitor our actions.”¹³⁶

And what do these uncontroversial observations about law have to do with censorship? The process of distinguishing between the legal and illegal clarifies the definition of law and thus makes government by law more effective. Censorship of illegal communication instructs the governed on the law’s content, demonstrating clearly the distinction between protected and unprotected communication.

Whether by law or by informal norms, censorship educates through both explicit and silent means. The censor can make her regulation obvious either by using a visible or audible censor’s tool (such as a black bar or bleep) or by otherwise signaling when a communication is censored. In this instance, the censor signals a violation has occurred and the audience can often infer the breach’s content. But less obvious, or even completely hidden, censorship can also convey an educational message. Whether aware or not, members of a social group define themselves not only by what they *are*, but also by what they are *not*. Similarly, citizens learn their society’s internal traditions and communication norms by what is *not* said as well as by what *is* said. Although the learning process may be subliminal, citizens can identify and internalize disfavored ideas and modes of expression that the censor has scrubbed from public communication. For some, the censor’s scrub simply erases selected expressive forms and ideas from the scope of their consciousness. More alert or sophisticated citizens may consciously identify what is missing from communications. These citizens may choose to discuss or, indeed, to joke about the missing expressive forms or content. Or these citizens may silently ignore or internalize the censor’s judgment that this form or content is improper.

The censor’s influence differs depending on whether she operates in a democracy or in a more restricted society.¹³⁷ These differences can impact

136. SCOTT J. SHAPIRO, *LEGALITY* 396 (2011).

137. In a democratic context such as in the United States, state-sponsored censorship is to some degree self-censorship. If voters disapprove governmental decisions about what to censor, voters have at least some power through the electoral process to avoid these decisions in the future. When they chose not to veto censorship policies, voters are essentially endorsing them. Of course, the voters’ endorsement is far from direct and several forces circumscribe their power to eradicate objectionable censorship. Ignorance of censorship’s scope and obstacles to democratic mobilization provide two important limitations on voters’ power to veto official censorship policy. Likewise, voters enjoy reduced power to combat censorship when it is deployed to bolster political entrenchment, such as when politicians impose substantive policies to stifle or silence the message of political opponents. *Cf.* Daryl Levinson & Benjamin I. Sachs, *Political Entrenchment and Public Law*, 125 *Yale L.J.* 326 (2015) (explaining that politicians “entrench themselves and their policies . . . [b]y enacting substantive policies that strengthen political allies or weaken political opponents, by shifting the composition of the political community, or by altering the structure of political decision making . . .”) This use of censorship to entrench one position and frustrate another knows no ideological boundaries. It also takes diverse forms, ranging from campus boycotts of controversial speakers and threats to defund certain health care providers to redaction of certain scientific theories in educational materials. These limitations on democratic voters are significant. The power of these voters to influence

the censor's role as a teacher of informal and formal norms. Perhaps even more fundamentally, the differences also impact citizens' reactions and resulting comedic forms. These are matters I take up below in discussing censorship humor in non-democratic settings where freedom of communication does not provide the governing ideal.¹³⁸ First, however, I look at how members of the United States Supreme Court use their position to express values relating to "leaving things unsaid."

B. First Amendment Opinions

Starting around the early 1930s, the United States Supreme Court began to trumpet freedom of communication as a fundamental right, clearly expressing its suspicion of any content-based restriction on speech and finding existing restrictions inconsistent with the First Amendment.¹³⁹ While the justices have wavered at times, the Court has largely worked to implement these principles faithfully for nearly one hundred years. Unfettered communication—free from government censorship—is an icon that appears to be here to stay for a while. Indeed, the symbolic importance of freedom of communication principles permeates the United States Supreme Court's constitutional jurisprudence. It is particularly notable then that occasional Supreme Court opinions appear to celebrate precisely the opposite: the value of censorship in serving important social values such as civility, morality, freedom from thought control, and loyalty to national ideals.

Suggestive of how deeply entrenched the free speech value is in American society, Congress occasionally joins the fray, even seeking to assert First Amendment principles to the rest of the world.¹⁴⁰ Along with

censorship is nonetheless far more robust than enjoyed by citizens of more repressed government regimes.

138. See *infra* notes 210-240 for discussion of censorship humor in restricted societies.

139. See, e.g., *Stromberg v. California*, 283 U.S. 359, 369-70 (1931) (display of a red flag in protest of the government was protected speech); *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937) (a self-described Communist could not be prosecuted for speaking peacefully with a lawful message); *Herndon v. Lowry*, 301 U.S. 242, 259 (1937) (mere speculation that speech may incite violence was insufficient justification to suppress it); see generally Stewart Jay, *The Creation of the First Amendment Right to Free Expression: From the Eighteenth Century to the Mid-Twentieth Century*, 34 WM. MITCHELL L. REV. 773, 774-775 (2008) (outlining history of U.S. Supreme Court attitudes toward freedom of expression).

Justice Oliver Wendell Holmes is often credited with helping to spur the Court's enthusiasm for a fundamental free speech right with his iconic dissent in *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). In rejecting the Court's decision to uphold the convictions of five defendants accused of printing materials that were critical of the U.S. during war, Holmes took the opportunity to celebrate the notion that open discourse—not oppressive legislation—was the key to bearing truth in a free society. *Id.* at 630 (Holmes, J., dissenting). Of course this position was not a novel one in American politics. In his first Inaugural Address, Thomas Jefferson stated that any dissenters should be allowed to "stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 n.8 (1974).

140. See, e.g., The SPEECH Act of 2010, 28 U.S.C. § 4101 (2012) (setting forth a prohibition against enforcement of foreign libel judgments that do not conform with U.S. First Amendment principles or the freedom of expression principles of the state where recognition or enforcement is

congressional shows of political theatre,¹⁴¹ the Court routinely delivers a soap box speech about freedom of speech principles serving as a beacon of freedom and a handmaiden of democracy.¹⁴²

Of course, the justices have not uniformly struck down all speech regulation. The United States Supreme Court repeatedly finds ways to uphold regulations on speech. When it chooses to uphold these restrictions, the Court has commonly deployed some kind of functional balancing, weighing the damage to freedom of communication against governmental interests that infringe the communication. The Court's inclination to balance countervailing interests shows that it will countenance some intrusion on free speech. That willingness to value something "greater" than freedom of communication sheds some light on how it is that we can laugh at censorship.

But the Court's inclination to balance interests against the free speech value is not the most revealing analytical prism for understanding censorship humor. More interesting—and perhaps more insightful—are those instances where the justices appear to embrace speech restrictions as inherently beneficial. If the justices are occasionally inclined to celebrate speech restrictions, then one need not make a huge leap of logic to understand how citizens of our constitutional democracy can actually find that those speech restrictions inspire comedy.

I hasten to note that the circumstances when the justices celebrate inherent benefits of speech regulation are not widespread and often emerge in highly individualistic concurring or dissenting opinions. Yet the opinions reflect such force of conviction (and sometimes passion) that they possibly window "what is really going on" in the minds of the seasoned justices, whom Americans trust with solving our profound national issues. As a foil for understanding those contexts when justices seem to appreciate speech restrictions for their own worth, I start with the received wisdom about balancing.

1. Balancing

sought). Of course, contrary evidence of Congress's inclination toward freedom of expression also exist. Two prominent recent examples include legislation prohibiting flag burning and campaign finance legislation.

141. Consider the following rhetorical flourishes in the SPEECH Act's preliminary findings: the freedom of speech and the press is enshrined in the first amendment to the Constitution, and is necessary to promote the vigorous dialogue necessary to shape public policy in a representative democracy;

Some persons are obstructing the free expression of United States authors and publishers, and in turn chilling the first amendment to the Constitution of the United States interest of the citizenry in receiving information on matters of importance, by seeking out foreign jurisdictions that do not provide the full extent of free-speech protections to authors and publishers that are available in the United States, and suing a United States author or publisher in that foreign jurisdiction. H.R. 2765, 111th Cong. (2010).

142. *See, e. g., Snyder v. Phelps*, 131 S. Ct. 1207, 1215 (2011) (stating that speech on public issues is "at the heart of First Amendment protection," is the "essence of self-government" and is at "the highest rung of the hierarchy of First Amendment values").

When upholding speech regulation, the United States Supreme Court often does so in the name of some countervailing interest.¹⁴³ Typical counter-interests are avoiding threats to public safety,¹⁴⁴ protecting national security,¹⁴⁵ preserving fair trial rights,¹⁴⁶ and ensuring the right to vote.¹⁴⁷ While the current Court has attempted to deny any official embrace of balancing,¹⁴⁸ much First Amendment case law shows the Court entertaining countervailing interest analysis characterized by the functional form and language of balancing. To be sure, the Court nearly always inserts admonitions about its strict scrutiny of governmental purposes and the need for the government to narrowly tailor speech restrictions to their purposes.¹⁴⁹ Yet the strict scrutiny approach itself embodies a form of balancing, with the need for a speech restriction weighed against the restriction's harm to free speech values.¹⁵⁰

For this project, a particularly apt balancing example emerges from the Supreme Court's decision in *F.C.C. v. Pacifica Foundation*.¹⁵¹ In *Pacifica*,

143. See, e.g., Christina Wells, *Regulating Offensiveness: Snyder v. Phelps, Emotion, and the First Amendment*, 1 CAL. L. REV. CIRCUIT 71, 72 (2010) (stating that the Supreme Court's "free speech jurisprudence . . . allows regulation of speech solely because others find the message offensive").

144. See, e.g., *Feiner v. New York*, 340 U.S. 315, 320-21 (1951) (upholding arrest of college student who had refused to stop a speech that was apparently enflaming the crowd).

145. See, e.g., *Near v. Minnesota*, 283 U.S. 697, 716 (1931) (acknowledging exceptional cases where prior restraint is constitutional including where "a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops" and where necessary to avoid "incitements of acts of violence and the overthrow of force of orderly government").

146. E.g., *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075 (1991) (establishing that silence orders on pretrial publicity may be upheld upon showing of substantial likelihood of material prejudice).

147. See, e.g., *Burson v. Freeman*, 504 U.S. 191, 211 (1992) (plurality opinion) (upholding content-based restriction on political speech that was narrowly tailored to prevent voter intimidation and election fraud).

148. See *United States v. Stevens*, 559 U.S. 460, 470 (2010) (describing the Government's proposed balancing approach to the case as "startling and dangerous" and denouncing "ad hoc balancing of social costs and benefits"). Cases after *Stevens* have cited it with approval. See *United States v. Alvarez*, 132 S. Ct. 2537, 2548 (2011).

149. As with so many other portions of First Amendment analysis, the justices disagree about the order and form of the two-step "strict scrutiny/narrowly tailored" analysis. See, e.g., *McCullen v. Coakley*, 134 S. Ct. 2518 (2014) (Roberts, J.) (evaluating whether speech restriction is narrowly tailored even though the restriction passed strict scrutiny as content neutral); but see *id.* at 2526 (Scalia, J., concurring) (asserting that proper legal analysis should have prevented the majority from evaluating content neutrality).

150. Steven H. Shiffrin, *The Dark Side of the First Amendment*, 61 UCLA L. REV. 1480, 1491 (2014) (stating that "strict scrutiny is itself a balancing test").

Whether it takes the form of strict scrutiny or not, the First Amendment balancing approach has a strong consequentialist flavor. "Consequentialists maintain that choices are not morally 'good' or 'bad' in themselves, but should instead be assessed solely by virtue of the outcomes they bring about, that is, by their consequences." Gabriella Blum, *The Law of War and the "Lesser Evil"*, 35 YALE J. INT'L L. 1, 38 n.166 (2010). Consequentialism is often contrasted with deontology, a philosophy aligned with the intrinsic value approach discussed below. Peter Brandon Bayer, *Sacrifice and Sacred Honor: Why the Constitution is a "Suicide Pact"*, 20 WM. & MARY BILL RTS. J. 287, 392 n.574 (2011) (noting that the "metaphor of balancing is inapt" in the realm of "moral precepts" and deontological thinking). My argument in this section is that members of the Court sometimes deviate from standard consequentialist analysis and embrace a deontological view of censorship in special circumstances.

151. 438 U.S. 740 (1978).

a radio station featured an early afternoon, twelve minute broadcast of a George Carlin monologue entitled “Filthy Words,” which repeatedly referred to excretion and sexual activity. The Federal Communications Commission responded by putting a complaint letter in the radio station’s file, noting that it might decide to impose sanctions should it learn of another violation of the restrictions in additional broadcasts. When the matter came to the Supreme Court, five justices ruled that the FCC’s action was constitutional, but failed to produce a majority opinion agreeing on the constitutional basis for the holding. All five justices did, however, acknowledge strong interests weighing in favor of the speech restriction, pointing to the pervasive presence of broadcast in American lives (with its concomitant ability to invade the privacy of a listener’s home) and broadcast’s accessibility to children who are too young to read. In various ways, all five justices relied on the rhetoric of weighing interests.

Pacifica’s countervailing interest approach to constitutional adjudication prevails across a wide swath of constitutional protections, but has a particularly strong pull on the justices as they navigate the challenges of speech restriction. Even in cases in which the speech being restricted is morally reprehensible—such as child pornography—the Court does not necessarily invoke *a priori* moral reasoning for suppressing the speech, but rather takes a consequentialist approach, listing a host of specific government interests in avoiding harm flowing from the speech.

Take for example *New York v. Ferber*,¹⁵² in which the Court held that a law prohibiting the distribution of child pornography was constitutional and did not violate the First Amendment. At the forefront of the Court’s reasoning was the state’s interest in protecting the physical and psychological well-being of minors.¹⁵³ Further, the Court reasoned, unfettered distribution channels for child pornography provided an economic incentive to produce it, an incentive undermined by the nationwide prohibitions against distribution.¹⁵⁴ Although the Court did appear to harbor disgust for child pornography distributors, its stated reasons for upholding the law were antiseptic-sounding, harm-avoiding government interests rather than moral repulsion.

A similar distinction also appears in *Ashcroft v. Free Speech Coalition*, where the Court found unconstitutional a law banning virtual depictions of child pornography.¹⁵⁵ While sexually explicit portrayals of minors might easily be characterized as morally repugnant, the Court determined that the law was not supported by sufficient countervailing interests to merit

152. 458 U.S. 747 (1982).

153. *Id.* at 756-57.

154. *Id.* at 759-60.

155. 535 U.S. 234 (2002).

the restriction.¹⁵⁶ In the Court's view, the law violated the First Amendment to the extent that it prohibited speech that was not actually obscene and to the extent that it prohibited virtual child pornography that was not produced through exploitation of real children.

While part of the dominant rhetoric, balancing does not always accompany the Court's decision to uphold speech regulations. One can observe the justices in First Amendment free speech cases displaying particularly adroit, and sometimes elusive, analytics in order to classify challenged provisions as reasonable time, place, or manner restrictions,¹⁵⁷ to identify restricted speech as unprotected,¹⁵⁸ or to interpret restrictions as targeting secondary effects of speech.¹⁵⁹ Whether or not one might cast any of these as artifices designed to shield the justices' underlying motivations, the various doctrinal constructs are sufficiently opaque as to counsel against any definitive characterization. What we can say is that these modes of First Amendment analysis are not clearly aligned with balancing and that we cannot know for sure whether the opinions employing them reflect concealed judgments about the value of speech involved or the value of censorship itself.

2. *Intrinsic Value of Censorship*

Now we come to the most enlightening strain of First Amendment analysis for present purposes. While clearly discernible, the strain does not take the form of any official doctrine or "test." Nonetheless one can recognize language in various First Amendment contexts suggesting that a justice or group of justices perceive that a speech restriction is valid—and indeed to be celebrated—because of the restriction's alignment with a worthwhile value. The mainstream balancing rhetoric flowing through much First Amendment jurisprudence starts with the premise that speech restrictions are detrimental to society,¹⁶⁰ but can nonetheless be justified if they result in sufficient instrumental benefit. But bubbling beneath the

156. The Court found the law in question—the Child Pornography Prevention Act of 1996—to be less damaging because it targeted virtual child pornography, but it also considered the law overbroad. *Id.* at 246-49.

157. *United States v. O'Brien*, 391 U.S. 367, 376-80 (1968) (explaining that the Court will uphold time, place, or manner restrictions if they are content neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication).

158. *E.g.*, *Paris Adult Theater I v. Slaton*, 413 U.S. 49, 57 (1973) (upholding prohibition on public display of obscene exhibitions limited to consenting adults).

159. *See, e.g.*, *City of Renton v. Playtime Theatres*, 475 U.S. 41, 46-48 (1986) (treating ordinance directed at theatres that specialize in adult films as a regulation of the "secondary effects" of the theatres on the surrounding community, not the adult films themselves).

160. Often invoked in this regard are the words of Justice Brandeis from his *Whitney v. California* concurrence:

Those who won our independence . . . value liberty both as an end and as a means. . . . They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that [with] free speech . . . discussion affords ordinarily adequate protection against dissemination of noxious doctrine.

274 U.S. 357, 375 (1927).

surface of other freedom of communication opinions is a suggestion that the confluence of a speech restriction and a social benefit can imbue the speech restriction with intrinsic value,¹⁶¹ rather than value derived from the restriction's potential to serve another government interest.¹⁶²

Several of the opinions suggesting a speech restriction's intrinsic worth concern matters associated with morality. This is not surprising given that judgments about moral virtue and vice are often linked with the concept of intrinsic value. After all, isn't virtue "good" and vice "bad"?¹⁶³ Other opinions in this group touch on related topics: educating the young, loyalty to national ideals, and independence from government thought-control. I discuss an example of each below.

a. Morality

*Barnes v. Glen Theatre, Inc.*¹⁶⁴ provides an example of morality-laden reasoning.¹⁶⁵ The case presented a constitutional challenge to Indiana's public nudity statute that extended to female dancers, forbidding them from displaying full nudity in their performances. The statute was cast as a public decency provision and prohibited consenting adults from viewing nude dancers in public (even where the dancing occurred away from any non-consenting adults or children).

A splintered Supreme Court upheld the statute against First Amendment challenge. The *Barnes* plurality concluded that the restriction on speech was justified by the state's interest in protecting morality.¹⁶⁶ Although this reasoning evokes balancing analysis (a government interest in morality

161. See Michael J. Zimmerman, *Intrinsic v. Extrinsic Value*, STAN. ENCYCL. PHIL. (last updated Dec. 17, 2010), available at <http://plato.stanford.edu/entries/value-intrinsic-extrinsic/>.

162. A close, and often moralistic, cousin of the 'restriction-has-intrinsic-value' approach is the argument that the First Amendment should not provide a license or opportunistic protection for those who seek to abuse others. An example of an opinion condemning those who use the First Amendment as cover for hate and abuse appears in Justice Alito's dissent in *Snyder v. Phelps*, 131 S. Ct. 1207, 1223 (2011) (Alito, J., dissenting) (noting that speakers did not contest that they sought to inflict deep wounds, but rather tried to use the First Amendment as "a license" to engage in conduct that was "outrageous," "atrocious," and "beyond the range of decency" (internal quotations omitted)).

163. See Michael J. Zimmerman, *Intrinsic v. Extrinsic Value*, STAN. ENCYCL. PHIL. (last updated Dec. 17, 2010), available at <http://plato.stanford.edu/entries/value-intrinsic-extrinsic/>. In this way, the intrinsic value approach aligns itself with deontology, the philosophy that moral principles should be obeyed regardless of their outcome. ALLEN W. WOOD, *KANTIAN ETHICS* 259–61 (2008). According to the "deontological perspective, certain choices are inherently evil and can never be justified, even if they would bring about a good outcome." Gabriella Blum, *The Law of War and the "Lesser Evil"*, 35 *YALE J. INT'L L.* 1, 38 n.165 (2010).

164. 501 U.S. 560, 569 (1991).

165. *The Supreme Court, 1990 Term—Leading Cases*, 105 *HARV. L. REV.* 177, 292–93 (1991) ("With little discussion but with far-reaching implications, the three-member *Barnes* plurality transformed the protection of morality into an 'important or substantial' state interest. . . . Protecting morality had never before been considered a sufficient justification for restricting otherwise admittedly protected speech.").

166. *Id.* at 569–70. In support of using morality as a substantial government interest, the plurality cited the now overruled and widely criticized *Bowers v. Hardwick*, 478 U.S. 186, 196 (1986). Perhaps this shows that morality as a substantial government interest is flimsy at best. The plurality's appeal to a countervailing interest seems to be mere rhetoric—the plurality is essentially upholding the restriction because it believes the restriction inherently promotes good.

outweighing speech restrictions), the reasoning differs from many other balancing cases in the First Amendment context. In the common First Amendment balancing case, the Court gives weight to a government interest in protecting someone or something from harm that could flow from speech. In *Barnes*, however, the plurality celebrated the “substantial government interest in protecting order and morality,” which the plurality concluded was independently valuable and “unrelated to the suppression of free expression.”¹⁶⁷

In this way, the *Barnes* plurality seemed to fuse two concepts in upholding a restriction: it combined the notion of a countervailing government interest (morality outweighs speech infringement) with the idea that the interest itself (protecting morals) is precious. On one hand, the plurality acknowledged that respect for morality and the constraint on nude dancing were intertwined—thus acknowledging that the restriction on speech was justified because of weightier moral values. On the other hand, the plurality elevated the restriction’s status to an independent benefit to be protected. By accepting the government’s argument that it was not motivated by a desire to constrain expression, the plurality embraced the government’s intent on promoting moral values and endorsed the wisdom of that intent. One can also find the seeds of this moralistic approach in the earlier decision *Paris Adult Theatre I v. Slaton*,¹⁶⁸ in which Chief Justice Burger, writing for the majority, stated:

“The sum of experience, including that of the past two decades, affords an ample basis for legislatures to conclude that a sensitive, key relationship of human existence, central to family life, community welfare, and the development of human personality, can be debased and distorted by crass commercial exploitation of sex.”¹⁶⁹

Justice Scalia’s concurrence in *Barnes* was even more forceful in promoting morality as a singular justification for the law. Although he stated that the law prohibiting public nudity was undeserving of First Amendment scrutiny because it regulated conduct, not expression, his opinion paid tribute to moral regulation. He wrote, “[o]ur society prohibits, and all human societies have prohibited, certain activities not because they harm others, but because they are considered, in the traditional phrase . . . immoral.”¹⁷⁰ To illustrate this point, Justice Scalia reasoned that the statute would be violated and still constitutional if “60,000 fully consenting adults crowded into the Hoosier Dome to display

167. 501 U.S. 560, 569 (1991). This portion of the Court’s reasoning evokes the secondary effects reasoning of cases like *City of Renton v. Playtime Theatres*, 475 U.S. 41 (1986), where the court treated an ordinance directed at adult film theatres as a regulation of the “secondary effects” of the theatres on the surrounding community, not the adult films themselves).

168. 413 U.S. 49 (1973).

169. *Id.* at 63.

170. *Barnes*, 501 U.S. at 575 (Scalia, J., concurring).

their genitals to one another, even if there was not an offended innocent in the crowd.”¹⁷¹ Perhaps asserting the obvious, but in an apparent effort to underscore his point, Justice Scalia observed that “absent specific constitutional protection for the conduct involved, the Constitution does not prohibit [laws] simply because they regulate ‘morality.’”¹⁷²

Justice Souter’s concurrence in the case provides a useful contrast, exposing how the other justices’ appeal to moral authority in *Barnes* differed from typical First Amendment balancing. Justice Souter voted to uphold the Indiana law because its prohibition on nude dancing could reasonably be seen as furthering the government’s “interest in preventing prostitution, sexual assault, and associated crimes.”¹⁷³ In other words, Justice Souter sought to find a concrete competing government interest related to avoiding harm, while the plurality and Justice Scalia viewed the statute as worthy of moral respect without identifying a harm-avoiding interest.¹⁷⁴

b. Civility

Just as the *Barnes* plurality and Justice Scalia deferred to the government interest in morality, the majority in *Bethel School District v. Fraser*,¹⁷⁵ expressed respect for the government interest in teaching civility to public school students. Finding that this government interest in civility justified the speech regulation in the case, the *Fraser* Court ruled that a school district acted appropriately in imposing sanctions upon a student for his “offensively lewd and indecent speech.” As in other school speech cases, the majority’s opinion used balancing language. Yet—unlike in the earlier school speech cases¹⁷⁶—the *Fraser* balancing analysis did not mention a school’s interest in avoiding disruptions to school discipline.¹⁷⁷ Rather, the Court’s holding targeted the values of civility and self-restraint: “[T]he undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society’s countervailing interest in teaching students the boundaries of socially appropriate behavior.”¹⁷⁸

The *Fraser* Court’s praise for civility was earnest and clear. In fact, the

171. *Id.*

172. *Id.*

173. *Id.* at 584 (Souter, J., concurring).

174. See Amy Adler, *Girls! Girls! Girls! The Supreme Court Confronts the G-String*, 80 N.Y.U. L. REV. 1108, 1119 (2005) (contrasting Justice Souter’s concurrence with “the *Barnes* plurality’s dubious reliance on morality”).

175. 478 U.S. 675 (1986).

176. See, e.g., *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 509 (1969).

177. It bears noting that the *Fraser* Court did mention avoiding harm at one point in the opinion when it noted that the student’s speech that was sanctioned “could well be seriously damaging to its less mature audience.” 478 U.S. at 683.

178. *Id.* at 681.

Court began its opinion with a citation to a classic history of the United States: “Public education must prepare students for citizenship. . . . It must inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation.”¹⁷⁹ In upholding the officials’ speech restrictions, the Court emphasized the importance of protecting innocent younger students, particularly young females, from lewd speech.

Beyond recognition that students should be taught respect for the “sensibilities of others,”¹⁸⁰ the Court observed that sanctioning a student’s inappropriate speech had the pedagogical value of conveying the virtue of self-control: “The schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct.”¹⁸¹ As in other school speech cases dealing with minors, the Court granted school officials broader license to censor than would have been permitted for adults. Nonetheless, *Fraser*’s emphasis on self-control represents moral reasoning with potentially universal application: official censorship can instruct on the importance of self-censorship in civilized society.

c. Loyalty to National Ideals

The Supreme Court’s 1989 flag-burning case, *Texas v. Johnson*,¹⁸² provided an opportunity for the justices to conjoin censorship with yet another value: loyalty to national ideals.¹⁸³ *Texas v. Johnson* concerned a demonstrator who burned a flag in protest outside the 1984 Republican National Convention and later was convicted under a statute prohibiting desecration of a venerated object.¹⁸⁴ The majority in *Texas v. Johnson* struck down the law, taking a well-travelled route to its conclusion: “The way to preserve the flag’s special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong.”¹⁸⁵ Relevant here are the two dissents, written by Justice Stevens

179. *Id.* at 681 (citing C. BEARD & C. BEARD, *NEW BASIC HISTORY OF THE UNITED STATES* 228 (1968)). Justice Thomas pursued a similar route in his concurrence in *Morse v. Frederick*, citing the history of schooling in the United States in justifying a student speech-restricting position. In particular, he cited the public schools’ mission of “instill[ing] ‘a common core of values’ in students and [teaching] them self control.” *Id.*

180. 478 U.S. at 681.

181. 478 U.S. at 683. For a case highlighting and then distinguishing this portion of *Fraser*, see *B.H. v. Easton Area School District*, 725 F.3d 293, 305-06 (3d Cir. 2013) (holding that First Amendment prevented school district from banning students from wearing “I <Heart> Boobies” bracelets).

182. 491 U.S. 397 (1989).

183. Loyalty to national ideals can include patriotism, but is a broader concept. As Justice Stevens explains in his *Texas v. Johnson* dissent, those who are not citizens and do not possess a patriotic affinity with the United States may nonetheless embrace the core ideas that animate the U.S. system of government. See *supra* notes 171-72 and accompanying text, immediately below.

184. *Id.* at 399-400.

185. *Id.* at 419.

and Chief Justice Rehnquist, declaring the symbolic value of the flag to be so extraordinary as to disqualify the case from usual First Amendment analysis.

To Justice Stevens, the flag holds a level of importance so significant that a law forbidding its desecration is worthwhile *prima facie*. Justice Stevens explained that even if burning the flag were to fall within the usual rules that the Court developed for traditional speech, the flag presents “an intangible dimension that makes those rules inapplicable.”¹⁸⁶ For Justice Stevens, that dimension includes more than “nationhood and national unity,” but also encompasses the ideals “of freedom, of equal opportunity, of religious tolerance, and of good will for other peoples who share our aspirations.”¹⁸⁷ Chief Justice Rehnquist echoed these sentiments,¹⁸⁸ explaining that the flag did not represent any particular point of view. Rather it possessed greater meaning, and for that reason, “[m]illions and millions of Americans regard it with an almost mystical reverence regardless of what sort of social, political, or philosophical beliefs they may have.”¹⁸⁹

With soaring rhetoric and flag-glorifying language, Justices Stevens and Rehnquist endorse censorship to protect against flag desecration. Their dissents regarded the flag as so venerable that no censor need appeal to countervailing government interest—such as keeping the peace or maintaining national unity—to justify any restriction on expression. For this reason, the dissents also had no need to identify specific harm flowing from the prohibited expression.¹⁹⁰ In this way, the dissents’ approach resembled that in the *Fraser* and *Barnes* opinions discussed above. But the *Texas v. Johnson* dissents went further, suggesting that the very existence of the prohibition reinforced the flag’s importance. That positive value flows from censorship’s protection is arguably implicit in the dissents’ celebratory words about the flag. Driving home the matter, Justice Stevens made the point explicit: “[S]anctioning the public desecration of the flag will tarnish its value—both for those who cherish the ideas for which it waves and for those who desire to don the robes of martyrdom by burning it.”¹⁹¹

d. Independence from Government Thought Control

As a final example of censorship’s inherent value, consider *Federal*

186. *Id.* at 436 (Stevens, J., dissenting).

187. *Id.* at 436.

188. *Id.* at 422 (Rehnquist, C. J., dissenting).

189. *Id.* at 422.

190. It is true that Justice Stevens spoke of “tarnish” to the flag’s value that would follow if its public destruction were “sanction[ed].” *Id.* at 437. He did not, however, articulate this as any component of a government interest needed to justify the prohibition.

191. 491 U.S. at 437 (Stevens, J., dissenting)

Communications Commission v. League of Women Voters,¹⁹² concerning a section of the Public Broadcasting Act that forbade non-profit educational broadcasting stations receiving Corporation for Public Broadcasting grants from editorializing or endorsing candidates for public office. Noting that the provision was not narrowly tailored, the majority struck it down using standard First Amendment fare. Rather, it is (again) Justice Stevens's dissent finding the prohibition valid that bears attention here.

Justice Stevens cast the Public Broadcast Act's speech restraint on government sponsored speech as a wise attempt to control "the insidious evils of government propaganda favoring particular points of view."¹⁹³ For Justice Stevens, the government was not prohibiting speech in order to accomplish a mischief usually associated with censorship: citizen thought control. Rather, the government was trying to protect citizens from the government's *own* thought-control mechanisms made possible by its ability to dispense money. Justice Stevens proceeds on the assumption—*ipse dixit*—that this attempt to protect against government thought control is indeed a very good thing.¹⁹⁴ This is quite a remarkable irony: the glories of the censor using the tools of censorship against itself.

Further evidence of his belief that the censorship regulation in *League of Women Voters* served a beneficial end-in-itself emerges from the vigor of Justice Stevens' language. Notably, in the opening paragraph of his dissent, he delights in the wisdom of using censorship to protect against the censor's potential message and influence:

The court jester who mocks the King must choose his words with great care. An artist is likely to paint a flattering portrait of his patron. The child who wants a new toy does not preface his request with a comment on how fat his mother is. Newspaper publishers have been known to listen to their advertising managers. Elected officials may remember how their elections were financed. By enacting the statutory provision that the Court invalidates today, a sophisticated group of legislators expressed a concern about the potential impact of Government funds on pervasive and powerful organs of mass communication. One need not have heard the raucous voice of Adolf Hitler over Radio Berlin to appreciate the importance of that concern.¹⁹⁵

This passage seems to memorialize Justice Stevens's belief that control of government speech ensures the citizenry can enjoy independence of thought. In some ways, this reasoning is instrumental, since he sees

192. 468 U.S. 364 (1984).

193. 468 U.S. at 409.

194. Justice Stevens presents a similar, more expansive, version of this argument in his discussion of "distorting influences" in his dissent in *Citizens United v. Federal Election Commission*, 558 U.S. 310, 379–85 (2010) (Stevens, J., dissenting).

195. 468 U.S. at 409–10.

ensorship as serving a detached end: independent social thought. And, indeed, he peppered his opinion with references to balancing. Yet his language is also consistent with the proposition that the censorship of government ensures a certain peace of mind for citizens because the government enjoys one fewer special avenue for influencing their political beliefs. Ironically, then, his pro-censorship position celebrates the inherent benefits of restricting government expression in the same way as the earlier examples celebrated the inherent benefits of government restricting its citizens' expression.

e. Shared Insights

What can we conclude from these four examples of justices' embrace of censorship's intrinsic value? Do the examples provide any shared insights into the question "why is censorship funny?" or at least the question why censorship might benefit individuals or social groups? As observed, the examples provide no coherent doctrine or test. They do not even necessarily represent a trend. Many of the examples are concurrences and dissents, a context in which justices are freer to roam into their own moral vision. Nonetheless, the opinions are the product of wise individuals, whose minds are toned by consistent work with difficult legal questions, disciplined by structured constitutional analysis, and informed by regular exposure to society's struggles with freedom of expression principles. From that perspective, the opinions show that—despite repeated, unqualified statements about the dangers of censorship—the justices' views on censorship are more complex and include an understanding of the value of censorship.

The occasional passion emanating from the opinions belies the authors' wholesale embrace of the proposition that all censorship is presumptively bad and must not be tolerated unless outweighed by some profound government counter-purpose. Beyond this observation, I avoid sweeping conclusions about these constitutional law opinions, observing cautiously that they appear to leave room for recognizing that censorship can possess inherent social and individual benefits. I note further that to the extent that these opinions tie censorship's benefits to a more capable citizenry, one can arguably square the opinions with theories of First Amendment jurisprudence based on community participation and democratic self-governance.¹⁹⁶ Individuals learn to be more capable members of society

196. See, e.g., ALEXANDER MEIKLEJOHN, *POLITICAL FREEDOM: THE CONSTITUTIONAL POWERS OF THE PEOPLE* 27 (1965) (connecting First Amendment expression values to self-government); Frederick Schauer, *The Political Risks (If Any) of Breaking the Law*, 4 J. LEGAL ANALYSIS 83, 97 (2012) (evaluating the political value of free speech for citizens and their representatives that formulate policy); Stanley Ingber, *Rediscovering the Communal Worth of Individual Rights: The First Amendment in Institutional Contexts*, 69 TEX. L. REV. 1, 43-46 (1990) (connecting First Amendment values with character development and the government's responsibility to cultivate qualities in citizens that benefit society).

and democracy when they are subject to restrictions motivated by morality, self-control, patriotic values, and independence of thought. These qualities, the argument would go, foster better functioning communities and government.

C. Qualifying Concerns: A Puzzle and a Wrinkle

In evaluating these lessons of censorship humor and the benefits of censorship's boundaries, we must be mindful of both a puzzle and a problematic wrinkle remaining. First the puzzle: one must not forget that humor is mysterious. The fine minds that have tackled the challenge of explaining humor have contributed deeply to understanding the necessary conditions for comedy to occur. Many have also ably documented the social, cultural, and biological effects of humor. None, however, has truly explained the spark that actually makes a communication funny.

To be sure, humor is not alone as an aspect of life that holds mysterious qualities. Scholarly study of any aspect of humanity must forthrightly acknowledge the limitations on academic technique in explaining the essence of human tendencies. My concern springs instead from a more pragmatic—perhaps even sentimental—concern for humor itself. As observed by many humor scholars, humor is uniquely susceptible to injury or destruction at the hands of academic study.¹⁹⁷ In order to preserve humor's joyous promise for positive good, we must be humble and constrained in drawing definitive conclusions about the sources of any comedy, including censorship humor.

The problematic wrinkle pertains to morality and related matters. Censorship is often associated with moral judgments. As shown above, it is no surprise that the Supreme Court opinions suggesting inherent benefits of censorship concerned controversy about immoral behavior. And of course morality is also particularly fertile ground for raucous, often joyous, laughs. Morality overlaps with legally forbidden concepts and activities. The forbidden in turn adds zing to communication, which sometimes translates into comedy. But the problem is that law and morality are not precisely coextensive.¹⁹⁸ One may find censorship in areas where morality is offended, but legal norms are not. The moral boundaries that delight some do not delight all. Unlike legal boundaries, moral boundaries are not always appropriately policed with the strong arm of government.¹⁹⁹

197. For further discussion of humor scholars' concern with the destructive power of humor, see *supra* note 5.

198. See, e.g., Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4, 4 (1982) ("The rules and principles of justice, the formal institutions of the law, and the conventions of a social order are . . . but a small part of the normative universe that ought to claim our attention.")

199. As philosopher Ted Cohen explains: "some jokes on some occasions and maybe some jokes on all occasions are . . . 'in bad taste' and should be thought of as morally objectionable. . . . [But n]ot everything you dislike is illegal, or should be." TED COHEN, *JOKES* 83 (1999).

When we regulate morality without reference to legal norms, we start regulating taste. Matters of good taste reflect moral and cultural judgments that work outside law's narrow ambit. The law may wisely choose to tolerate—and not regulate—matters that offend some moral or cultural taboo, but that nonetheless provide an able vehicle for challenging beliefs, fostering introspection, nurturing independent thought, and encouraging debate.²⁰⁰ In the context of morality and taste regulation, the force of law forgoes the protection and constraints of legal procedure and the democratic process. When we evaluate censorship humor, we must understand that the boundaries that please some in the audience are not always the boundaries appropriate for the censor's work.²⁰¹ Partially because of this important complication, I have largely confined this study to state-sponsored censorship backed up by either “hard” or “soft” law.²⁰²

V. A GOLDEN AGE OF CENSORSHIP OF HUMOR?

A. *The Surge in the United States*

If human nature favors the boundaries exposed and celebrated by censorship humor, why has censorship humor just now experienced such a remarkable surge in the United States? Shouldn't we have observed a strong presence of this comedic genre throughout history? Two conditions in the contemporary era explain this phenomenon. First is the boost to censorship humor from digital technology and internet communication capacity. Second is the possibility that censorship humor is a luxury stimulated by the free flow of information generally occurring in democratic societies such as the United States, but unlikely to flourish where government tightly controls expression. If the current surge of

200. Taboo expressions allow for speakers and their audiences to explore emotions and perceptions that may not be fully disclosed by more conventional communication. *See, e.g.*, Christopher Hun, *A Puzzle about Pejoratives*, 159 *PHIL. STUD.* 383, 383–84 (2012) (exploring the functions of pejoratives); *see also* Daniel Jacobson, *Ethical Criticism and the Vice of Moderation*, in *CONTEMPORARY DEBATE IN AESTHETICS AND THE PHILOSOPHY OF ART* 342, 347–349 (Mathew Kieran ed., 2006) (critiquing the connection between moral criticism and aesthetic criticism of art).

201. *See supra* notes 6-15 and accompanying text for discussion of how—for the purpose of this Article—I confine censorship to instances where the *state* uses legal or official means to restrict expression.

Steven Pinker explains the distinction as follows in connection with the question whether to regulate swearing:

[I]t is not among the legitimate functions of government to punish people who use certain words or allow others to use them. On the other hand, private media have the prerogative of enforcing a house style, driven by standards of taste and the demands of the market that excludes words their audience doesn't enjoy hearing. In other words, if an entertainer says *fucking brilliant*, it's none of the government's business, but if some people would rather not explain to their young children what a blow job is, there should be television channels that don't force them to.

STEVEN PINKER, *THE STUFF OF THOUGHT* 358 (2007).

202. *See supra* notes 12-15 and accompanying text for further discussion of the article's focus on state-sponsored censorship as well as discussion of hard and soft law.

ensorship humor is tied to any of these conditions, any claims about the universal, timeless appeal of censorship humor may falter. Such a causal connection would also influence the lessons emerging about the optimum form and scope of speech constraints that censorship humor may offer us.

Censorship humor is filled with mash-ups, pixelation, bleeping, and non-human means to accomplish mimicry and obfuscation, thus suggesting that technology—particularly digital technology—inspires (or at least stimulates) its creation. Supporting this conclusion are the works of multifarious professionals documenting how digital technology makes possible innovation and creativity.²⁰³ The internet also promotes the creative work of comedians in wide-ranging ways: facilitating access to censorship humor’s raw material, making available applications and tutorials that assist in creating comedic content, expanding the audience for censorship jokes, and allowing independently created comedy to be aggregated and featured on central platforms.²⁰⁴ It seems clear, then, that both the internet and digital technology have indeed fueled interest in censorship humor.

Yet jokes about speech regulation and repression have occurred over many decades in live theatre, hard copy novels and magazines, stand-up comedy, editorial cartoons,²⁰⁵ and bar stool conversations.²⁰⁶ They continue, in real time and in real space, today. Over-reliance on a causal relationship between censorship humor (on one hand) and technology/the internet (on the other hand) also invites potentially inaccurate conclusions that those who lack access to digital technology or the internet fail to enjoy or create censorship jokes. I am reluctant to conclude that we would lack robust censorship humor today if the internet and digital technology did not exist.

203. See, e.g., Wayne Hodgins, *The Snowflake Effect: The Future of Mashups and Learning*, BECTA (Nov. 2008), available at <http://www.libsearch.com/visit/1310592> (explaining how the ability create mashups of content and data enables education to create a personalized system of education for individual students); David Nagel, *Teachers: Technology Encourages Student Creativity, Makes Teaching Writing Easier*, THE JOURNAL (July 16, 2013), <http://thejournal.com/articles/2013/07/16/teachers-technology-encourages-student-creativity-makes-teaching-writing-easier.aspx> (reporting that most teachers consider technology beneficial to creativity and personal expression); Natalie Bonnardel & Franck Zenasni, *The Impact of Technology on Creativity in Design: An Enhancement*, 19 CREATIVITY & INNOVATION MGMT. 180, 182–83 (2010) (discussing technical design that contributes to divergent and convergent thinking). *But cf.* Joyce J. Elam & Melissa Mead, *Can Software Influence Creativity?*, 1 INFO. SYS. RESEARCH 1, 2, 18 (Mar. 1990) (observing that while software has sometimes been shown to enhance creativity, it has also been shown to undermine creativity).

204. Axel Bruns, *Distributed Creativity: Filesharing and Prodosage*, MASHUP CULTURES 24, 24 (S. Sonvilla-Weiss, ed., 2010), available at <http://emerymartin.net/FE503/Week6/Bruns-Distributed%20Creativity%20-%20Filesharing%20and%20Prodosage.pdf> (explaining how the internet has insured that mash up activities are no longer created, disseminated, and stored in “isolation”).

205. A simple Google search for the words “political cartoon censorship” reveals a mother lode of print newspaper and magazine cartoons dealing with the subject of censorship.

206. See, e.g., *supra* notes 43, 54-55, 60, and 234 and accompanying text for examples of this non-internet, non-high-tech censorship humor.

B. Censorship Humor in Restricted Societies

I also resist suggesting that vigorous censorship humor flourishes most in “free societies.” After all, one needs censorship to have censorship humor—or at least to have censorship humor that is meaningfully funny to the audience.²⁰⁷ One has to assume that societies subject to repressive policies on expression have plenty of raw material for that type of joke. In fact, they may very well produce more raw material for censorship humor than less restricted societies. Humor can also enable under-the-radar communication that would otherwise encounter the censor’s knife—and thus serving a particularly crucial social function for those living under an authoritarian regime. As noted above,²⁰⁸ humor often alleviates anxieties and political pressures—relief needed more in controlled societies than in those that enjoy expressive freedoms. Repression may also cultivate provocative, edgy humor, a quality thought to boost comic enjoyment. For these reasons, one might expect there is as much—if not more—censorship humor bubbling beneath the surface in authoritarian societies as in less controlled ones.

This intuition is supported by anecdotal evidence of flourishing political humor in a wide cross-section of societies known for official crackdowns on free expression, including contemporary Egypt,²⁰⁹ Russia (as well as the former Soviet Union),²¹⁰ Belarus,²¹¹ China,²¹² Turkey,²¹³ and Germany

207. Consider the confession of Yakov Smirnoff that he moved his comedic home base—which thrived on ridicule of the extreme oppression of Soviet authorities—to Branson, Missouri, where not everyone had yet realized that the Soviet Union had fallen. *Covering Nigeria, Russian Censorship, and More*, ON THE MEDIA (May 28, 2014), <http://www.onthemedial.org/story/on-the-media-2014-05-16> (interview with Smirnoff).

208. See *supra* notes 72-82 and accompanying text for discussion of the release function of humor.

209. For analysis of the role of political humor in contemporary Egyptian society, see Asmaa al-Ghoul, *Gazans Use Satire to Bypass Political Censorship*, AL-MONITOR: THE PULSE OF THE MIDDLE EAST, Aug. 7, 2013, <http://www.al-monitor.com/pulse/originals/2013/08/gaza-political-satire-palestinians-hamas.html>; Satenik Harutyunyan, *Humor: Egypt’s Revolutionary Ally*, PROSPECT: JOURNAL OF INTERNATIONAL AFFAIRS AT UCSD, July 30, 2012, <http://prospectjournal.org/2012/07/30/humor-egypts-revolutionary-ally-2/>; Anna Louie Sussman, *Laugh, O Revolution: Humor in Egyptian Uprising*, THE ATLANTIC, Feb. 23, 2011, http://www.theatlantic.com/international/archive/2011/02/laugh-o-revolution-humor-in-the-egyptian-uprising/71530/?single_page=true; Hussein Amin, *Freedom as a Value in Arab Media: Perceptions and Attitudes Among Journalists*, 19 POL. COMM’N. 125 (2010).

210. For analysis of the role of censorship and political humor in the Soviet Union and Russia, see *Covering Nigeria, Russian Censorship, and More*, ON THE MEDIA (May 28, 2014), <http://www.onthemedial.org/story/on-the-media-2014-05-16/>; Victor Davidoff, *Russian Censors are Dim-Witted and Dull*, MOSCOW TIMES, Nov. 26, 2012, <http://www.themoscowtimes.com/opinion/article/russian-censors-are-dim-witted-and-dull/471903.html>; David M. Herszenhorn, *Bill to Give Russia’s Government Broad Power to Restrict Web Content Is Criticized: [Foreign Desk]*, N.Y. TIMES, July 11, 2012, http://www.nytimes.com/2012/07/11/world/europe/wikipedia-shuts-site-to-protest-bill-for-firewall-in-russia.html?_r=0; Martin Dewhirst, *Censorship in Russia, 1991 and 2001*, 18 J. COMMUNIST STUD. & TRANSITION POL. 21 (2010); Vadim V. Dementyev, *Russian Anekdoty of 1970s: On the Material of the Soviet Humorous Journal “Krokodil”*, 2 RUSS. J. COMM’N 185 (2009); Amei Wallach, *Censorship in the Soviet Bloc*, 50 ART J. 75 (1991); William Henry Chamberlin, *The “Anecdote”:* *Unrationed Soviet Humor*, 16 RUSS. REV. 27 (1957), available at <http://www.jstor.org/stable/125941>.

211. Censorship humor in Belarus is documented on the following website:

during the Third Reich.²¹⁴ Some analysts have even observed that Egyptian political humor has reached beyond the borders of North Africa, providing not only the “foundational building block upon which humourists in Europe and the United States have been able to construct their own jokes concerning the Arab Spring,”²¹⁵ but an accessible medium for understanding the social implications of Egypt’s revolutionary activity.

Striking evidence emerges from modern Russia documenting political humor specifically focused on censorship. A popular trope for this censorship humor concerns “mat,” or Russian obscenity. Sometimes referred to as an underground language or the “language of the street,”²¹⁶ mat is entirely “rooted in sexuality.”²¹⁷ Associated for many decades with lower classes as well as males, mat is now a powerful force in communication for both genders in all walks of life. Given the flexibility of the Russian language, including its highly synthetic grammar (which is produced largely by inflection), mat serves as a rich and adaptable vehicle for communication, taking on the cultural role of “linguistic theatre, verbal performance art.”²¹⁸ Not surprisingly, given its potency and association with sexuality, mat has often served as a point of contention for Russian

<http://club.belaruspartisan.org/forum/besedka/141140/>

Here are two examples of censorship jokes from Belarus, both of which ridicule the censor:

(1) Перед выборами президента Беларуси Александр Лукашенко обещал отменить цензуру в прессе. После своего переизбрания он первым же указом отменил цензуру. Вторым - прессу.

Translation: Before the presidential election Alexander Lukashenko promised to abolish censorship in the press. After he was re-elected his very first decree was to abolish censorship. The second decree was to abolish the press.

(2) Белоруссии открылась новая газета “Свобода Слова”. Главный редактор: Лукашенко А. Г.

Translation: A new newspaper called “The Freedom of Speech” was established in Belarus. Editor-in-chief: Lukashenko A. G., the President of Belarus.

212. See *infra* for discussion of censorship humor in China.

213. For a study of humor among Turkish protestors, see Ozan O. Varol, *Revolutionary Humor*, 23 S. CAL. INTERDISC. L.J. 555, 564 (2014) (analyzing Turkish examples where protestors deployed humor in order to criticize the government’s censorship efforts).

214. See *infra* note 226 for a list of sources on censorship and humor in Nazi Germany.

215. Satenik Harutyunyan, *Humor: Egypt’s Revolutionary Ally*, PROSPECT: JOURNAL OF INTERNATIONAL AFFAIRS AT UCSD (July 30, 2012), <http://prospectjournal.org/2012/07/30/humor-egypts-revolutionary-ally-2/>. As Anna Sussman put it:

Another journalist observed that during the 2011 uprising:

As Egyptians took to social media to spread news from the demonstrations and encourage others to join them, the humor rampant in the street made it into those social media dispatches as well. Many tweeted in English, and thanks to translation software and human translators, the who world could get in on the joke.

Anna Louie Sussman, *Laugh, O Revolution: Humor in Egyptian Uprising*, THE ATLANTIC, Feb. 23, 2011, http://www.theatlantic.com/international/archive/2011/02/laugh-o-revolution-humor-in-the-egyptian-uprising/71530/?single_page=true.

216. Victor Erofejev, *The Unique Power of Russia’s Underground Language*, KENAI PENINSULA (Oct. 12, 2003), available at http://www.ruski-mat.net/e/mat_VEvrofejev.htm.

217. Victor Erofejev, *Letter from Moscow: Dirty Words, The Unique Power of Russia’s Underground Language*, THE NEW YORKER, Sept. 15, 2003, at 42.

218. Erofejev, *supra* note 217.

authorities.²¹⁹ In fact, Vladimir Putin recently signed legislation outlawing swearing in movies, theatre productions, and concert performances.²²⁰

This history of official attempts to suppress mat has produced at least three variations of censorship humor. Most importantly, the attempted suppression has made the use of mat *itself* a joke: the outlawing of mat together with its linguistic flexibility has made it an even more entertaining and flourishing component of oral conversation.²²¹ The flexibility of mat and the Russian language also allows speakers to ‘push the censorship envelope’ through the use of puns that play on the similarity between mat and non-obscene words. For example, “watch the eggs!” apparently also means “watch the testicles.”²²² Similarly, the expression “I don’t believe it!” can be used as a near pun for “Fuck off!”²²³

The third and final type of censorship humor uses straightforward references in jokes or quips to mat censorship and the effects of mat censorship. Not all references are contemporary. In fact, alluding to “sanctimonious censorship” of references to sexuality, Pushkin poetically described a “culture of women” missing their lady parts (or at least missing explicit reference to their lady parts in daily discourse). Bemoaning this absence, Pushkin writes: “The Tsar dispatches his heralds in search of them and after arduous ordeals they are recovered.”²²⁴ A more contemporary reference that plays on the connection between mat and the working class appears in the following joke highlighting the dramatic practical effect of censoring mat:

Everything is in order at the factory and the Party inspection commission is pleased. The inspectors have just one comment: too much mat is being used on the factory floor. The management takes note, and mat is banned in the factory. By the next inspection, the factory is falling far short of its quotas. Why? Because the workers had used obscene terms for all the mechanical equipment, and without mat they are no longer able to

219. *Id.* (describing history of attempts to censor mat).

220. See, e.g., David Remnick, *Putin’s Four Dirty Words*, THE NEW YORKER, May 5, 2014, <http://www.newyorker.com/online/blogs/newsdesk/2014/05/vladimir-putins-four-dirty-words.html> (discussing prohibition and fines).

221. See *Covering Nigeria, Russian Censorship, and More*, ON THE MEDIA (May 28, 2014), <http://www.onthemedial.org/story/on-the-media-2014-05-16> (discussing popularity of mat in social conversation in light of prohibitions).

222. See *Russian Jokes #Taboo Vocabulary*, WIKIPEDIA (July 17, 2014), http://en.wikipedia.org/wiki/Russian_jokes#Taboo_vocabulary (reporting egg/testicle joke).

223. Victor Erofeev, *Letter from Moscow: Dirty Words, The Unique Power of Russia’s Underground Language*, THE NEW YORKER, Sept. 15, 2003, at 42 (describing how intonation can be used to make small changes in meaning using mat).

224. See, e.g., David Remnick, *Putin’s Four Dirty Words*, THE NEW YORKER, May 5, 2014, <http://www.newyorker.com/online/blogs/newsdesk/2014/05/vladimir-putins-four-dirty-words.html> (referencing Pushkin’s “Tsar Nikita and His Forty Daughters” and Victor Erofeev’s “Letter from Moscow: Dirty Words, The Unique Power of Russia’s Underground Language”).

*communicate.*²²⁵

As with censorship humor in Russia, humor about Chinese censorship tends to focus on the apparently ridiculous choices made by Chinese censors in the interest of social control.²²⁶ Even more significantly, however, Chinese comedians mirror Russian comedians by employing a linguistic device that allows them to elude the censor's knife. In the case of China, this device is not precisely a form of slang as it is in Russia, but rather it takes the form of puns. Moreover, just as Putin attempted to outlaw the use of mat, the People's Republic of China recently issued an edit forbidding punning. Through its media watchdog ministry, China demanded that radio and television authorities crack down "on the irregular and inaccurate use of the Chinese language, especially the misuse of idioms."²²⁷ Citing the importance of language purity in preserving cultural heritage, the edict mandates communication only through standard Chinese and recommends harsh treatment for violators.

Why are puns such a lightning rod in China? As a tonal language, Chinese provides limitless opportunities for jokes based on homophones. Chinese citizens sometimes use these homophones to make off-color references and political commentary that might otherwise be forbidden or captured through Internet censorship. The edict seeks to stifle this end run around speech restrictions and government criticism. Or so the theory goes.

Like Russian comedians, Chinese comedians not only use a specialized linguistic device to criticize the government, but they also use the device to make jokes about the attempt to censor the device itself. Here are a few puns that help illustrate how Chinese comedians use puns to ridicule censorship of puns:

Grass-mud Horse: A slang term symbolizing defiance of Internet censorship. Also a pun and a profane term about 'your mother.'

225. Victor Erofeev, *Letter from Moscow: Dirty Words, The Unique Power of Russia's Underground Language*, THE NEW YORKER, Sept. 15, 2003, at 43.

Although the humor in the following commentary may have been lost in the translation, the following ditty appears to satirize censorship as well:

Two friends speak to each other.

'What's the news about the new satirical novel you sent to the magazine?'

'Just imagine it! The editors have cruelly abridged it and included it in the 'Just an anecdote' column.

Vadim V. Demytyev, *Russian Anekdoty of 1970s: On the Material of the Soviet Humorous Journal "Krokodil"*, 2 RUSS. J. COMMUN. 185 (2009).

226. Consider the following description of studies of Chinese government censors:

Recently, a group of graduate students at Carnegie Mellon University conducted a long-term project on what words are flagged by internet censors in China. . . . Most surprisingly iodized salt is flagged. Why salt? After the Fukushima earthquake, rumors spread around China that iodized salt could protect someone from radiation poisoning. In order to quell that rumor, the Chinese government has been directly censoring it.

Why is the word "salt" flagged by China's internet censors?, DICTIONARY.COM BLOG (June 23, 2014), <http://hotword.dictionary.com/censorship/>.

227. See, e.g., Alexandra Petri, *Chinese Media Banning Puns? End Pun Control!*, THE WASH. POST (Dec. 5, 2014).

Smog the People: A pun on Mao Zedong's slogan "serve the people"

River Crab: A homonym for the word "harmony." Officials use "harmony" euphemistically to describe censorship—as in completely eradicating or "harmonizing" non-compliant Internet posts from the reach of human knowledge.²²⁸

As for Hitler's Germany, a fairly well developed literature documents jokes during the Nazi era that mocked tyranny and repressive policies.²²⁹ While the literature does not reflect use of particular linguistic devices as one can observe in China and Russia, many jokes do specifically target censorship. Consider the following example from the era:²³⁰

Whaddaya got for new jokes?

Three months in Dachau

As evidenced in these examples from Russia, China, and Nazi Germany, humor takes on certain unique qualities when conceived within social and cultural contexts that suppress free expression. The first (most obvious) reason for this is pure survival. Take, for example, jests about censorship during the Third Reich, which had to be discreet, whispered, and/or oblique in order to avoid the strong arm of the regime. Consider the experience of comedian Werner Fink who became "a master of ambiguity . . . and was forced to adopt a number of tricks in order to conceal political messages in harmless packaging."²³¹ Fink even founded an association with a name appealing to Nazi brass, "Fighting Association for Harmless Humor," which he used for cover of Nazi slogan parodies.²³² Apparently the German audiences became "highly sensitized" to coded jokes and could find amusement in observing "invisible boundaries being crossed."²³³ Similarly, comedians in the Soviet Union had to mask their censorship critiques, as they were required to submit their performances to an official "department of jokes" for preclearance.²³⁴ In Germany, the

228. Various political puns are collected in "The Grass-Mud Horse Lexicon," which compiles "resistance discourse of Chinese netizens" and posts them to chinesedigitaltimes.net.

229. See, e.g., RUDOLPH HERZOG, *DEAD FUNNY: TELLING JOKES IN HITLER'S GERMANY* (2012) (providing a detailed overview of humor during the Third Reich); JOHN MORREALL, *COMIC RELIEF: A COMPREHENSIVE PHILOSOPHY OF HUMOR* 119–20 (2009) (describing how jokes served a "coping function" during the Holocaust); Adam Phillips, *The Joy of Sex and Laughter*, 6 *INDEX ON CENSORSHIP* 14, 19 (2000) (discussing humor in Nazi concentration camps). For contrasting discussions of censorship and humor in other periods of German history, see, e.g., GREGORY H. WILLIAMS, *PERMISSION TO LAUGH: HUMOR AND POLITICS IN CONTEMPORARY GERMAN ART* (2012) (discussing trends in humor reflected in German art from the 1970s to the current time); KATHY HEADY, *LITERATURE & CENSORSHIP IN RESTORATION GERMANY: REPRESSION & RHETORIC* (2009) (discussing censorship and opposition in 19th century Germany); Jefferson S. Chase, *Inciting Laughter: The Development of "Jewish Humor" in 19th Century German Culture*, in 12 *EUROPEAN CULTURES: STUDIES IN LITERATURE AND THE ARTS* (2000) (providing history of Jewish humor (Judenwitz) in 19th century Germany).

230. RUDOLPH HERZOG, *DEAD FUNNY: TELLING JOKES IN HITLER'S GERMANY* 99 (2012).

231. *Id.* at 60.

232. *Id.*

233. *Id.* at 61.

234. *Covering Nigeria, Russian Censorship, and More*, *ON THE MEDIA* (May 28, 2014), <http://www.onthemedial.org/story/on-the-media-2014-05-16> (description of joke review and censorship

Soviet Union, and Russia, as well as Egypt and China, political humor often occurred orally in informal settings so as to avoid government detection.²³⁵ Chinese comedians similarly report that restrictions are more strictly enforced when audiences are large such as at major theaters and on television, than they are in bars.²³⁶

A more complex reason why the form of censorship humor must change according to social and political context concerns the general mechanics of comedy. Comedy works best when it engages with the realities in the audience's life. As with many creative endeavors, comedy thrives on specific facts or ideas. The requisite specificity tends to flow most naturally where it draws from proximate surroundings—surroundings to which the audience relates. Accordingly, a society's sensitivities will influence the vibrancy and tone of its jokes about censorship.²³⁷ Likewise, a specific type of censorship will likely yield a specific type of humor, as evidenced by the use of *mat* in oral Russian communication to satirize the censorship of *mat* in writings and public cultural productions and the use of puns to ridicule Internet censorship in China.

Other differences between censorship humor in repressed and free societies arise from differences in how much citizens know about the precise details of what is censored. In wholly repressed societies, citizens might know generally that censorship occurs, but, if the strict censorship machine is really working, citizens will not know many specifics. By contrast, in democratic societies, citizens often know the character (and sometimes the identity) of suppressed information and may debate and joke about the propriety of its suppression. This is a luxury that may not be enjoyed under an authoritarian regime. In addition, the hidden character of totalitarian censorship may eliminate the opportunity for jokes to enlist the audience as co-author in joke-telling. In societies where censorship

in the Soviet Union).

235. See, e.g., Satenik Harutyunyan, *Humor: Egypt's Revolutionary Ally*, PROSPECT: JOURNAL OF INTERNATIONAL AFFAIRS AT UCSD, July 30, 2012, <http://prospectjournal.org/2012/07/30/humor-egypts-revolutionary-ally-2/> (observing that Egyptian political humor thrives as “social humor”—often in the form of a “*nukta*” or “verbal cartoon” that is “often told during informal setting through word of mouth,” thus eluding government attention); Amei Wallach, *Censorship in the Soviet Bloc*, 50 ART J. 75, 80 (1991) (noting that humor “which had gone underground during the [Stalinist] purges, resurfaced in the early 1960s” in various art forms).

236. Christopher Beam, *Can China Take a Joke?* N.Y. TIMES MAGAZINE, May 21, 2015.

237. Consider, by analogy, the topic of the Holocaust or “the Shoah” among Israeli stand-up comedians: most avoid the topic altogether. See Sarah Blau & Mike Routledge, *You Must be Joking!* INDEX ON CENSORSHIP 57–61 (2005), available at <http://ioc.sagepub.com/content/34/2/57>. As described by one Israeli comedic, Uzi Weil: “When anyone mentions the Shoah, everyone is struck dumb. . . . The worst kind of pain is the kind that is incurable. You can laugh about something that causes you pain if you know, fundamentally, there is a cure. But the pain of the Shoah is incurable.” *Id.* at 59. As to the light touch comedians take in presenting Shoah jokes, Weil explains: “The more threatening something is, the feebler the jokes you make about it.” *Id.* at 61.

For another analogy illustrating the connection between humor and social/cultural context, consider the reasoning of humor theorist Christie Davies, who concluded that lawyer jokes are a “uniquely American phenomenon because no other country is so rooted in the sanctity of law—and in no other country are those who practice it so reviled.” PETER MCGRAW & JOEL WARNER, *THE HUMOR CODE* 97 (2014) (citing CHRISTIE DAVIES, *JOKES AND TARGETS* 41, 82–93, 198–201 (2011)).

works by stealth, the opportunities to co-construct a censorship joke—and the joys associated with that creative endeavor—are likely reduced because the audience has no clue about precisely what censorship has eliminated from the marketplace of discourse.

As the experience in Russia, Nazi Germany, China and Egypt attest, however, the human spirit is not so easily crushed, and other outlets are exploited for creating and communicating censorship humor. Indeed, censorship humor arguably plays a more crucial role in validating the human spirit and promoting change in repressed societies than in others.

Despite these differences, the censorship humor in both free and repressed societies shares many attributes. In both contexts, jokes often ridicule censorship itself—with special emphasis on the work of official censors. An even more interesting overlap appears when one remembers that censorship establishes a boundary of propriety around which humorists work their craft. Whether demarcated in a free or a repressed society, this boundary launches a feedback loop: the boundary provides raw material for the humor and—in return—the humor draws attention to, and sometimes even reinforces, the boundary.

CONCLUSION

Let's not hope for more censorship. Vigorous censorship, together with the tyranny of good taste, does not promote a successful, happy, and productive society. We must be vigilant to avoid the culture-destroying, debate-suppressing, and soul-killing effects of censorship—whether it occur in the name of the government or not.

That said, we are also well-advised to understand the competing dynamics at play in the individual and social responses to speech regulation. This Article has attempted to show that—at least in the narrow context of state-sponsored censorship—humor is an important vehicle to work toward that understanding. As a significant meme for comedy in the United States, state-sponsored censorship contributes to the mysterious enjoyment that humor produces. While that enjoyment alone does not justify censorship, the complex relationship between humor and censorship should inform decision-making as society evaluates the form and wisdom of state-sponsored censorship policies.

As citizens in a democracy, voters in the United States enjoy some power to veto censorship policies. As a source of pleasure, censorship humor therefore provides a potent vehicle for education and debate about these official policies. But—in future study—we need also to consider further the effects of non-state-sponsored censorship imposed by cultural standards or more localized social pressures. Censorship humor has an important role to play in that context as well.

This article has suggested that laughter at censorship humor might be a “tell” that exposes our appreciation for the benefits of boundaries in

guiding personal and collective lives. If, in fact, we benefit from censorship's role in highlighting those boundaries, that benefit should also guide the form and scope of censorship. Concealed censorship can educate the public about what communication is "off-limits" and inconsistent with membership in the society. In many cases, however, the message is subliminal. Censorship's educative function is greatest when the censor's work is easily apparent. The predominance of obvious censor tools (black bars, bleeps, pixelation, and the like) in censorship humor reinforces the virtues of transparent and openly described censorship.²³⁸

These are lessons relevant to state-sponsored censorship, cultural censorship, and censorship resulting from localized, unofficial social pressures. Analysis suggests, however, that different types of censorship have different effects, varying both in degree and quality.²³⁹ If, in fact, censorship must exist, society benefits from understanding these differences. And if, in fact, censorship must exist, we can be grateful to the comedians for helping us understand and control it.

238. Derek Bambauer, *Orwell's Armchair*, 79 U. CHI. L. REV. 863, 897-99 (2012) (arguing that direct, explicit censorship is more legitimate than indirect or informal censorship because it is "openly described, transparent about what it restricts, narrow in the material to which it applies, and accountable to the people it seeks to protect").

239. As Robert Post explains: "[W]e require criteria by which to discriminate among restrictions on speech: to accept some and to reject others. Because we have learned that such judgments cannot rest merely on the fact that expression is constrained, we must reformulate them to depend instead upon purposive considerations, upon ideals of juridical enforcement or of institutional competence or of freedom or of equality." ROBERT C. POST, *CENSORSHIP AND SILENCE* 9 (1998); see also Jack Balkin, *Old School/New School Speech Regulation*, 127 HARV. L. REV. 1, 2-5 (2014) (describing a variety of speech regulations that have emerged in the digital era with different qualities that call for different responses).