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1998

## The Joke in Critical Race Theory: De Gustibus Disputandum Est?

Dan Subotnik

*Touro Law Center*, [dans@tourolaw.edu](mailto:dans@tourolaw.edu)

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### Recommended Citation

15 Touro L. Rev. 105 1998-1999

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# THE JOKE IN CRITICAL RACE THEORY: DE GUSTIBUS DISPUTANDUM EST?

Dan Subotnik\*

*If we laugh at each other we won't kill each other.*

*Ralph Ellison<sup>1</sup>*

*Deep down in the jungle so they say*

*There's a signifying monkey down the way*

*There hadn't been no disturbin' in the jungle for quite a bit,*

*For up jumped the monkey in the tree one day and laughed,*

*"I guess I'll start some shit."*

*Old African American toast<sup>2</sup>*

The central tenet of critical race theory — that American institutions and cultural practices not only reflect, but also maintain and create, power differentials between white men on the one hand and the powerless on the other<sup>3</sup> — offers unexpected benefits. Here's one. Since ethnicity and gender issues lurk

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\* Dan Subotnik is a professor of law at Touro Law Center. The author wishes to specially thank Al Kleinhaus, Ken Rosenblum, Jerry Giannattasio, Rena Sepowitz, Hon. Richard A. Posner, Christine Lindwall, Deborah Hecht, Carol Howell, Daniel Farber, Ted Silver and Rose Subotnik. Thanks also go to Richard Klein, Amy Stein, Bill Carmel, Rochelle Silfen, Nancy Clifford, and Jeffrey Roth, Suzanna Sherry, Jill Selden and Jane Reinhardt.

<sup>1</sup> John F. Callahan, *Frequencies of Memory: A Eulogy for Ralph Waldo Ellison*, 18 CALLALOO at 298 (Spring 1995) (quoting Ellison).

<sup>2</sup> HENRY LOUIS GATES, JR., *THE SIGNIFYING MONKEY A THEORY OF AFRICAN-AMERICAN LITERARY CRITICISM* 55 (1988) (quoting ROGER D. ABRAHAMS, *DEEP DOWN IN THE JUNGLE: NEGRO NARRATIVE FOLKLORE FROM THE STREETS OF PHILADELPHIA* 113 (1970)). "There are many versions of the toasts of the Signifying Monkey, most of which commence with these formulaic lines." *Id.* The cultural importance of these toasts is suggested not only by the title of Gates' book, but also by the subtitle.

<sup>3</sup> See Dan Subotnik, *What's Wrong with Critical Race Theory?: Reopening the Case for Middle-Class Values*, CORNELL J.L. & PUB. POL'Y (forthcoming spring 1998).

everywhere for critical race theorists (CRATs),<sup>4</sup> American life in its infinite diversity is within their ken. This includes even humor,<sup>5</sup> which Richard Delgado and Jean Stefancic (D & S) hold out as an important and “powerful social tool.”<sup>6</sup> D & S’ work makes it possible for a law professor who wants to tell jokes and explore their political and sociological implications to write for law reviews without fear of rejection for lack of subject matter jurisdiction.

Or, it would seem, for bad form. “If engagement is the first step in healing, then the second is pure unadulterated struggle,” writes Harlon Dalton; “[w]e will never achieve racial healing if we do not confront one another, take risks . . . say the things that we are not supposed to say in mixed company.”<sup>7</sup> Jokes, however, seem to be an exception to the rule. “Satire, sarcasm, scorn and similar tools should only be deployed upwards,” announce D & S;<sup>8</sup> “it is never justifiable to use destructive humor at the expense of someone weaker, of a lower station than oneself.”<sup>9</sup>

D & S’ notion of the good story can be tested in the following manner. God was visiting Adam one day to bring him up to date. “I’ve got some good news and some bad news,” God announced. Adam looked at God and asked for the good news first. “I’ve got

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<sup>4</sup> See *id.*

<sup>5</sup> The “comic imagination [or] poetic humor,” wrote social critic Max Eastman, “stand[s] not only at the beginning but also close to the center of my brief history of American imaginative culture.” MAX EASTMAN, *THE ENJOYMENT OF LAUGHTER* 171 (1936).

<sup>6</sup> RICHARD DELGADO AND JEAN STEFANCIC, *FAILED REVOLUTIONS: SOCIAL REFORM AND THE LIMITS OF LEGAL IMAGINATION* 127 (1994). See also Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2413-15 (1988). “Stories. . . are powerful means for destroying mindset—the bundle of predispositions, received wisdoms and shared understandings. . . . They can show what we believe is ridiculous.” *Id.*

<sup>7</sup> HARLON DALTON, *RACIAL HEALING* 97, 4 (1995). Dalton, who is black, is a professor of law at Yale Law School.

<sup>8</sup> See DELGADO AND STEFANCIC, *supra* note 6, at 129.

<sup>9</sup> *Id.* at 116. To what extent, we might wonder, does reifying differences in social status in this manner operate to demoralize rather than strengthen those groups sought to be protected?

two new organs for you," God told him, "a brain and a penis." The first will help you create new things; the second will help you build intimacy and reproduce. Eve will be especially happy with this one." Adam became excited. "These are such wonderful gifts," he exclaimed, "what could the bad news be?" God looked upon Adam with great sorrow, saying, "The bad news is that when I created you I gave you only enough blood supply for one of these organs at a time."<sup>10</sup>

It is unlikely that anyone, let alone D & S, would resist the impulse to laugh at a misandrous story which implies, on no empirical grounds, that a male could not teach contracts while having sex.<sup>11</sup> But if we shift gears a little, the response may be dramatically different.<sup>12</sup> Here is a story perhaps first committed to print by leading critical race theorist and Columbia Law School professor Patricia Williams. Williams, in her recent book, *The Rooster's Egg*, puts the following question to the reader: "What is the recipe for Jewish American Princess Fried Chicken?" The answer she provides: "Send your chauffeur. . . for the chicken, watch your nails" [when you shake the chicken up], and "[h]ave cook prepare the rest of [your] meal while you touch up your make-up."<sup>13</sup>

Williams condemns the story, which she first heard on the Phil Donahue Show. Not for its clunkiness, however: "[T]here is a real risk of destructive impact in jokes that make fun of the supposed characteristics of historically oppressed or shunned

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<sup>10</sup> No doubt the joke could have been told better. But you don't have to be a great joke-teller to be an expert on jokes. Freud, according to biographer Ernest Jones, decided to undertake the study of jokes only after being rebuked for telling so many bad ones. See ERNEST JONES, *LIFE AND WORK OF SIGMUND FREUD* V.2, 335 (1955).

<sup>11</sup> Black women's literature is full of anti-male jests. See HONEY HUSH! AN ANTHOLOGY OF AFRICAN AMERICAN WOMEN'S HUMOR 325-63 (Daryl C. Dance ed. 1998).

<sup>12</sup> For a report of a double standard in joke-telling, see John Leo, *Mars to Venus: Back Off*, U.S. NEWS AND WORLD REPT., May 11, 1998 at 16.

<sup>13</sup> PATRICIA J. WILLIAMS, *THE ROOSTER'S EGG* 118 (1995). *Since the offensiveness of jokes is itself the subject of the rest of this article, the reader who is offended may wish to stop reading here.*

people.”<sup>14</sup> The Jew is not the only one who needs protection from brutish jokesters, according to Williams. So also does the redneck -- e.g., “drinks beer, drives a pick-up, low-class, talks bad”-- and, Williams suggests, even the blonde.<sup>15</sup>

Williams’ examples would no doubt repel D & S and, very likely, others as well. So perhaps we can no longer avoid a critical question: Does the discomfort brought on by ethnic jokes mean that they should be abandoned? Christie Davies, a leading scholar on ethnic humor, complains about scholars who view ethnic jokes “in terms of their supposed consequences.” The attempt to give great importance to jokes, she writes, “paradoxically results in the trivialization of humor, for in general jokes neither have consequences nor are intended to have consequences.”<sup>16</sup> Nor, Davies asserts, are ethnic jokes “a good indicator of the joke-tellers’ feelings towards the butt of their jokes, which may range from dislike and hostility to amity and affection.”<sup>17</sup> As for princess jokes, Davies adds, they are of “indisputably Jewish origin and . . . the non-Jews who enjoy them are far more likely to be philo-Semitic devotees of Jewish humor in general than anti-semites in disguise.”<sup>18</sup> “Those who seek to use ethnic jokes as a predictor of conflict,” Davies

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<sup>14</sup> *Id.* at 113.

<sup>15</sup> *Id.* at 114. Though skeptical of Western cultural values generally, Williams expresses a view that has roots deep within them. Where comedy is performed, wrote Plato, strict censorship should be used to guarantee that no citizen is held up to laughter. See JOHN MORREALL, *TAKING HUMOR SERIOUSLY* 5 (1983). Aristotle suggested that “a jest is a kind of mockery, and lawgivers forbid some kinds of mockery--perhaps they ought to have forbidden some kinds of jesting.” *Id.*

<sup>16</sup> CHRISTIE DAVIES, *ETHNIC HUMOR AROUND THE WORLD: A COMPARATIVE ANALYSIS* 9 (1990).

<sup>17</sup> *Id.* at 323.

<sup>18</sup> CHARLES R. GRUNER, *THE GAME OF HUMOR A COMPREHENSIVE THEORY OF WHY WE LAUGH* 103 (1997). Other folklorists have reported that groups being mocked by ethnic jokes are the narrators and audience for those jokes.” JOSEPH BOSKIN, *REBELLIOUS LAUGHTER* 129 (1997).

advises, should "study more immediate indices of political tension."<sup>19</sup>

They are surely right. Upon meeting Mrs. Levine on the street, an old acquaintance asks her about her health. Receiving a satisfactory reply, she asks Mrs. Levine about her daughter:

"God bless her, she's fine. What a wonderful husband she has! He doesn't let her put her hand in cold water all day long! She lies in bed until twelve and then her maid serves her breakfast in bed. At three she goes shopping in Saks Fifth Avenue and at five she has cocktails at the Ritz. And dresses like a movie star! What do you say to such *mazel* [good fortune]?"

"And how's your son,?" [Mrs. Levine]. I hear he's married."

"Yes, he's married. Poor boy—he has no *mazel*. He's married to one of those fancy-schmancy girls. What do you think she does all day long? She doesn't do a thing. That good for nothing. She sleeps until noon. Then she has her breakfast brought to her in bed. And do you think she takes care of her home? No! She has to shop all afternoon and waste her husband's hard-earned money on dresses like and movie star."

A TREASURY OF JEWISH FOLKLORE 425 (Nathan Ausubel Ed. 1948).

Writes Sigmund Freud: "I do not know whether there are many other instances of a people making fun of its own character." Quoted in MEL WATKINS, ON THE REAL SIDE: LAUGHING, LYING, AND SIGNIFYING--THE UNDERGROUND TRADITION OF AFRICAN-AMERICAN HUMOR THAT TRANSFORMED AMERICAN CULTURE FROM SLAVERY TO RICHARD PRYOR 30 (1994). Self-denigration, however, would seem to play a comparable role in African American humor. See HONEY HUSH!, *supra* note 11, at 428-56. See also LAWRENCE W. LEVINE, BLACK CULTURE AND BLACK CONSCIOUSNESS, 320-336 (1977). Levine explains that the self-critical side of the black and Jewish joke is ambiguous, not a masochistic perversion. "Consciously or unconsciously, blacks [and Jews] used the majority's stereotypes in their humor in order to rob them of their power to hurt and humiliate. . . . Marginal groups often embraced the stereotype of themselves in a manner designed not to assimilate it but to smother it." *Id.* at 336-37. See finally, *infra* note 24 and accompanying text.

<sup>19</sup> See Davies, *supra* note 16, at 323. Davies' view, while hardly dispositive, suggests that even if certain aspects of ethnic jokes are harmful, we may be guilty of overreacting. Consider Davies' analysis of certain images which have drawn such sharp criticism over the years that they operate as taboos. See, e.g., Richard Delgado and Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systematic Social Ills?* 77 CORNELL L. REV. 1258, 1259 (1992). What am I referring to? "We are now," writes Davies, "in a position to understand the implicit (and, indeed, sometimes explicit) messages that lurk in English jokes about the

There is an important positive argument for preserving the "social" joke. Sad to say, the world seems to offer no better therapy for the existential anxieties that haunt us than our humor. "I laugh so I will not cry," wrote Beaumarchais,<sup>20</sup> which Langston Hughes recast as, we have "to laugh to keep from crying"<sup>21</sup>-- and which CRATs, by choosing to look at the world only through dark-colored glasses,<sup>22</sup> in effect invert into: "I cry so that I will not laugh."<sup>23</sup>

In sum, the joke provides a needed triumph over the dreary circumstances of life. And what group has experienced so much rejection and humiliation that laughter has become the principal form of relief?<sup>24</sup> "The Negro," writes Zora Neale Huston, "is

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Welsh eating cheese, the Scots eating porridge, or the Irish eating potatoes. . . blacks eating watermelon, or Mexicans eating beans, Canadian jokes about Newfies eating Cod, Australian jokes about Italians eating spaghetti. . . . "The function of these jokes," Davies concludes; "is to allow joke-tellers to mockingly announce: 'We are meat-eaters. You are not. We are wealthier and stronger than you.'" See Davies, *supra* note 16, at 285. How much serious disrespect, let alone antagonism, can be embodied in this culinary expression of power difference? On another level, if mere reference to white male power advantage actually perpetuated that condition, CRATs would have put themselves out of business long ago.

<sup>20</sup> PIERRE-AUGUSTIN CARON DE BEAUMARCHAIS, *THE BARBER OF SEVILLE*, Act 1, sc. ii. Ultimately, humor arises, as Stephen Leacock puts it, from the "incongruous contrast between the eager fret of our lives and its final nothingness." STEPHEN LEACOCK, *HUMOUR AND HUMANITY* 219-20 (1938).

<sup>21</sup> See Joan Wallace-Benjamin, *The Editors Should Apologize*, *THE BOSTON GLOBE*, April 10, 1998 at A23 (written in response to the title of a piece published in Boston magazine; see *infra* note 42 and accompanying text.)

<sup>22</sup> See Subotnik, *supra* note 3.

<sup>23</sup> Even the most tasteless jokes have been conceded a place, provided they are told in the right spirit. "Human beings," says anthropologist Ashley Montagu, "are healthier for taking the view that nothing human is alien to them." See Edwin McDowell, *Ethnic Jokebooks Flourish Despite Criticism*, *N. Y. TIMES*, July 30, 1983 at 1, 9.

<sup>24</sup> That humor allowed the safest mode for achieving needed black victory is clear. "Given the persistence of racial violence and the unavailability of legal protection," Ralph Ellison asks, "what else *was* there to sustain our will to persevere but laughter?" Quoted in JOHN LOWE, *JUMP AT THE SUN: ZORA NEALE HURSTON'S COSMIC COMEDY* 40 (1997). For a delightful exposition of the role and importance of humor in black culture, see Levine, *supra* note 18, at 298-366. See also Watkins, *supra* note 18, at 46 (quoting W. D.

determined to laugh even if he has to laugh at his own expense. By the same token he spares nobody else . . . . His 'bossman,' his woman, his preacher, his jailer, his God and himself, all must be baptized in the stream of laughter."<sup>25</sup>

Telling jokes may have its origin in *signifying*, which for Henry Louis Gates, Jr. is at or near the heart of the African American literary tradition.<sup>26</sup> What is signifying (or *sigging*)? It is "language behavior that makes direct or indirect implications of baiting or boasting, the essence of which is making fun of another's appearance, relatives or situation."<sup>27</sup> It is the "trickster's ability to talk with great innuendo, to carp, cajole, needle and lie."<sup>28</sup> One trains for this art of one-upmanship through "improvisation," "ad-lib quickness, the coaxing of chance" by holding always before the student the practical purpose: "to win, to persuade . . . scoring."<sup>29</sup> The impulse to shake things up and come out on top is precisely what the monkey seems to be after when, without any direct provocation, he sets out to "start some shit."<sup>30</sup>

In any event, the following classic joke might also be considered an example of signifying. A slave is caught by his master appropriating a piece of turkey. "You scoundrel, you ate my turkey," the master admonishes. Fearing the worst, the slave searches for the silver lining. "Yes, suh, Massa, you got less turkey," he acknowledges, "but you sho' nuff got mo' N \_ \_ \_ \_

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Weatherford and Charles Johnson). "No master could be thoroughly comfortable around a sullen slave; and, conversely, a master, unless he was utterly humorless, could not overwork or brutally treat a jolly fellow, one who could make him laugh." *Id.*

<sup>25</sup> See Lowe, *supra* note 24, at 156.

<sup>26</sup> See Gates, *supra* note 2, preface and 64.

<sup>27</sup> See *id.* at 68 (quoting HERMESE ROBERTS, *THE THIRD EAR, A BLACK GLOSSARY*).

<sup>28</sup> *Id.* at 54 (quoting ROGER ABRAHAMS, *DEEP DOWN IN THE JUNGLE: NEGRO NARRATIVE FOLKLORE FROM THE STREETS OF PHILADELPHIA* 51-52, 66-67, 264 (1970)).

<sup>29</sup> *Id.* at 76 (quoting RICHARD LANHAM, *THE MOTIVES OF ELOQUENCE: LITERARY RHETORIC IN THE RENAISSANCE* 2-3 (1976)).

<sup>30</sup> See Epigraph and Gates, *supra* note 2 and accompanying text.



—.”<sup>31</sup> Like this one, every joke, according to the fashionable *superiority theory of humor*, has a winner and a loser.<sup>32</sup> But, as the foregoing stories make clear, victory and defeat are not enough to bring the greatest satisfaction to life and jokes. Two other elements are required: 1) A story line involving a conflict that keeps tension high and 2) a dramatic conclusion.<sup>33</sup> The best joke meets all these conditions.<sup>34</sup>

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<sup>31</sup> See *Watkins*, *supra* note 18, at 32. Dick Gregory expresses the same triumph when he told his listeners that upon leaving “St. Louis I was making five dollars a night. Now I get five thousand dollars a week for saying the same things out loud I used to say under my breath.” See *Levine*, *supra* note 18, at 361. Or consider a joke popular in the wake of *Brown v. Board of Education*. Two wealthy South Carolina blacks were in the Willard Hotel in Washington D.C. They ordered several bottles of whiskey and asked the bell captain to send up some women. When two white women appear at the door one of the Negroes cries out, “We sure are in trouble now.” “Oh, shut your mouth, man” responds his friend, “we ain’t trying to go to school with them.” See *Levine*, *supra* note 18, at 318.

<sup>32</sup> See *Gruner*, *supra* note 18, at 1, 9. The philosopher Thomas Hobbes is perhaps the best-known proponent of this theory. “[T]he passion of laughter,” he wrote, “is nothing else but *sudden glory* arising from the sudden conception of some *eminence in ourselves* by comparison with the infirmity of others, or with our own formerly; for men laugh at the *follies* of themselves past when they come suddenly into remembrance.” See *id.* at 13. Mel Brooks nicely illustrates the first definition with a definition of his own. Comedy for the spectator, he says, “is if you walk into an open sewer and die.” Herbert Gold, *Funny is Money*, N. Y. TIMES, March 30, 1975, (Magazine), at 28.

<sup>33</sup> *Id.* at 6.

<sup>34</sup> Brent Staples has described what is surely the most cited and the most satisfying African American jest in modern times. He tells how he liked to take walks at night near the lakefront on the south side of Chicago where he was a graduate student. He quickly came to realize on these strolls that his presence was terrifying to the whites he would encounter. To build trust he first tried to be “innocuous” in his gait. Then he began whistling Vivaldi. All this, however, came at a price.

Then I changed. . . . The man and the woman walking toward me were laughing and talking but clammed up when they saw me. . . . I veered toward them and aimed myself so that they’d have to part to avoid walking into me. The man stiffened, threw back his head and assumed the stare: eyes ahead, mouth open. I suppressed the urge to scream into his face. Instead, I glided between them, my shoulder nearly brushing his. A few steps beyond them I stopped

How could we resolve the tension between the CRATs who want to abolish the ethnic joke, and the more liberal joke experts? Sensitive academics may well believe that, even in matters of humor, supporting those of "weaker, of lower station"<sup>35</sup> is morally required. Consider the view implicit in Williams' analysis,<sup>36</sup> and in those of CRATs more generally, that one hundred and fifty million U.S. women and minority group members currently stand on the shaky edge of disintegration.<sup>37</sup> If this assessment is correct, then surely the world needs to take their fragility into account.

But who says CRATs are right? There is certainly no consensus in the black community on the subject. Take the case of *Amos 'n' Andy*,<sup>38</sup> which, under protest from civil rights organizations, was driven off the air in the 1950s.<sup>39</sup> Two decades later Redd Foxx and even Jesse Jackson were lamenting its disappearance. Not only was the show funny, they argued, but it caused no harm.<sup>40</sup> Flip Wilson's remarks on the subject are noteworthy. "Black self-consciousness has diminished enough," he suggests, "so black people are able to laugh at themselves and not be offended. I liked *Amos 'n' Andy*. If blacks can see the beauty in it," he continues, "then they should be able to see the shows."<sup>41</sup> Henry Louis Gates, surely the best educated of the

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and howled with laughter. I came to call this game "Scatter the Pigeons."

Brent Staples, *Into the White Ivory Tower*, N.Y. TIMES February 6, 1994, (Magazine), at 36, 44.

<sup>35</sup> See *supra* note 9 and accompanying text.

<sup>36</sup> See *supra* notes 13-15 and accompanying text.

<sup>37</sup> See ALAN RYAN, *LIBERAL ANXIETIES AND LIBERAL EDUCATION* 159 (1998). "[The critical race theory] argument is simple. Some people--racial and sexual minorities especially-- live in constant fear of humiliation. So great is this fear that the sufferer will hardly be able to work at all unless everyone else exercises the utmost sensitivity to his anxieties." *Id.*

<sup>38</sup> *Amos 'n' Andy* was an enormously successful radio and then television show that ran from 1928 to 1953. The creators and actors of the radio show were white; on TV the actors were black. See Watkins, *supra* note 18, at 275-85 and 306-22.

<sup>39</sup> *Id.* at 322.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 480.

group, only supports this reading when he acknowledges that he is a big fan of the show.<sup>42</sup>

Sambo himself has come in for reconsideration. A 1986 study by (white) humorologist Joseph Boskin concludes that at least up to two generations ago Sambo had a profoundly negative effect not only on the image of blacks in the eyes of whites, but, more importantly, on the self-estimate of blacks themselves.<sup>43</sup> In their classical text, "Black Rage," however, Drs. William Grier and Price Cobb suggest that Sambo may have been the first black revolutionary.<sup>44</sup> That the negative impact of Sambo has been greatly overblown is also the opinion of Mel Watkins, author of the most comprehensive text on African-American humor.<sup>45</sup>

If women and minorities are made of sturdier stuff than CRATs suggest, and the rest of us capitulate willy-nilly nonetheless to CRAT importunings and theories of *fragilism* (my term), we could be making an unfortunate--and common--academic mistake. Who can say with any confidence that harping on a group's psychological vulnerability does not have the effect of increasing that vulnerability?<sup>46</sup> Such an outcome would provide a perfect, if sad, example of what Lloyd Cohen considers academic business as usual. Since transaction costs "are generally not explicitly modeled," he writes, discussion of various types of reform "is often carried on with the implicit assumption that costs are negligible and may be ignored."<sup>47</sup> Where a critical race theory reform of humor is concerned, the costs are surprisingly high.

Do we end up laughing at our fate or crying over it? Posed in such a form, this question may embody a white man's

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<sup>42</sup> See Cheryl Bentsen, *Head Negro in Charge*, BOSTON MAGAZINE, April 1998 at 104.

<sup>43</sup> See Watkins, *supra* note 18, at 31.

<sup>44</sup> See *id.* at 33.

<sup>45</sup> See *id.* at 572 n.27.

<sup>46</sup> See DARYL MICHAEL SCOTT, CONTEMPT & PITY SOCIAL POLICY AND THE IMAGE OF THE DAMAGED BLACK PSYCHE, 1880-1996, 202 (1997) (condemning racial harm caused by liberals, conservatives, and others: "In social policymaking, damage imagery has ever served the cause of hegemonic political ideology.").

<sup>47</sup> Lloyd Cohen, *Sexual Harassment and the Law*, SOCIETY, May/June 1991 at 11.

epistemology which, according to Patricia Williams, exhibits the flaw of “hyposta[sizing] of exclusive categories and definitional polarities, the drawing of bright lines and clear taxonomies that purport to make life simpler in the face of [its] complication.”<sup>48</sup> But let us ignore the paradox that it is Williams herself who apparently wants to answer the question categorically, i.e., no jokes allowed, and recognize that laughter and tears do not exclude each other. The question then arises, if some blend of laughing and crying is required for a full life, which is surely the case, of how we go about locating such a middle ground.

Any inquiry into these matters will not be altogether pleasant. But, as Williams herself has courageously put it, “One of the subtlest challenges we face. . . is how to relegitimate the national discussion of racial, ethnic and gender tensions, so that we can get past the Catch-22 in which merely talking about it is considered an act of war, in which not talking about it is complete capitulation to the status quo. . . .”<sup>49</sup> Williams is right; there is no alternative to putting something substantial on the table and seeing what happens.

So, back to the Garden of Eden. Adam is lonely, bored, and restless. He complains pitifully to God about his lack of companionship. After considering the matter, God tells Adam that he can have a suitable companion, only it will be expensive. Asked what He has in mind, God responds that it will cost Adam an eye, an arm *and* a leg. Shocked by the disclosure, Adam struggles to regain his balance. “What,” he whimpers, “can I get for a rib?”

Now a story from the modern age. The captain of a jet gets on the loudspeaker to announce that the oil tank has sprung a leak and that all the cargo and luggage will have to be jettisoned. A little later the captain solemnly announces that some passengers will also have to go. There being no perfect way of making the difficult decision, he tells the terrified passengers that alphabetical order will be used to decide who will go first. “African Americans,” he announces. No one takes the cue. “O.K.,

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<sup>48</sup> PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 8 (1991).

<sup>49</sup> See Williams, *supra* note 48, at 40.

then," he continues, "blacks." Again, no takers. "Colored people." At this point an eleven year-old black boy tugs at his father's sleeve and asks, "Aren't we colored?" "No, son" says his father, "we're Negro."

What shall we make of stories such as these? The first story, no doubt about it, shows women in less than the best possible light as men's companions. And it hardly stands alone in this regard; indeed, it has an old pedigree. Here is Freud's version: "A wife is like an umbrella--sooner or later one takes a cab."<sup>50</sup> The second story neatly captures the difficulty that African Americans have had over the last twenty-five years in naming themselves as well as the frustration that that difficulty has created for whites.<sup>51</sup>

Although the second joke needs no elaboration, Freud himself felt the need to explicate the first: "One does not venture to declare aloud and openly that marriage is not an arrangement calculated to satisfy a man's sexuality unless one is driven to do so perhaps by a love of truth . . . ."<sup>52</sup> That satisfaction, for Freud, can only come "from a woman who is accessible in return for money."<sup>53</sup> The strength of the joke," Freud explains, "lies in the fact that nevertheless--in all kinds of roundabout ways--it *has* declared it."<sup>54</sup>

There are, of course, many sentiments we would love to express but which, for a variety of reasons, we do not. Does the "love of truth" give the Freud joke a truth-value that justifies any loss of self-esteem in its target group, wives? I cannot say for sure. What I can say, without putting too fine a point on a delicate matter, is that Freud's pithy hundred-year-old joke about the other woman may--albeit indirectly--explain more about the kinds of things that were and that were not going on in different

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<sup>50</sup> Quoted in J.N. ISBISTER, FREUD 141(1985). The joke is explicated, in Freud's own words, *infra*.

<sup>51</sup> Of course, fundamental to the structure of the joke is the blatant racism of the pilot, who cannot in this context be conceived of as anything but white.

<sup>52</sup> See Isbister, *supra* note 50, at 142.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

parts of the White House last year than all the columns in all the respectable newspapers this season.

Perhaps this is the larger question: Do minorities and women, specifically wives, define themselves so immediately through their names and partnering abilities that the ordinary rule of open-ended discourse needs to be curtailed?<sup>55</sup> If so, there is a problem. CRATs and other advocacy scholars insist that gender- and color-blindness are not yet appropriate for our country--that Americans must take account of both gender and ethnicity in order to get beyond them.<sup>56</sup> But what are the transactions costs if we must suppress mention of our important, and in some cases critical, findings on the way to that desired state?<sup>57</sup> For one thing, how can one group ever hope to find comfort *with* another or respect

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<sup>55</sup> Shelby Steele offers a useful insight here. He tells us that what passes for discourse is but a dance of dissimulation. Instead of giving rein to our full range of thoughts and feelings, both whites and blacks scale back discourse to avoid feelings of vulnerability on the other side. For whites, the vulnerability is that they are racist; for blacks, that they are inferior. See Shelby Steele, *The Race Not Run*, NEW REPUBLIC, Oct. 7, 1996, at 26. It is hard to see how the foregoing race joke violates the letter or the spirit of the deal at least in its portrayal of the black man. Quite the contrary, he is the only one shown to advantage.

As for the gender joke, one would think that feminists would reject the notion that women's function is to partner men. A recent story is helpful here. A current Barnard College admissions brochure apparently announces that graduates of women colleges are more likely to marry than women graduates of coed colleges. When this claim came to the attention of students and others, so much opposition developed that the college administration promised to excise the offensive passage in subsequent editions. See Karen Arenson, *Barnard is Persuaded to Drop Brochure's Line on Marriage*, N.Y. TIMES, December 8, 1998 at B3.

<sup>56</sup> Hence, of course, the push for affirmative action and similar remedies.

<sup>57</sup> The transformation this century in what one can publicly say about group behavior, evident in the changing definition of the proscribed act of "stereotyping," is nothing less than astounding. Sixty years ago a stereotype meant a generalization about a group based on second-hand knowledge. By the 1950s it had evolved into any "exaggerated belief associated with a category." Scott, *supra* note 46, at 180. Now, I suggest, it means *any* generalization about a group. So here we are at a time when it seems that every group is proclaiming difference, yet woe unto anyone who dares to identify it.

for another if it is always forced, in mixed company, to operate with one rhetorical hand tied behind its back?

Related possibilities are also worth considering. Might not hearing stories about ourselves, or groups we identify with, help us all find errors in our ways? To be sure, such stories may be appropriate only in some settings, tones and times and by some narrators, but not in and by others.<sup>58</sup> But why not courageously apply our intelligence, as we do in so many other areas of our lives, to working out the problems of this particular slippery slope?<sup>59</sup> Perhaps most important, to identify a group is to differentiate it. Consciousness of difference will, by definition, always create tension between groups. Gender tensions will be especially acute. Men and women can try to feel each other's pain, to be caring, but our destiny is, ultimately, war.<sup>60</sup> Not only

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To be sure, our current rules of etiquette do not usually proscribe ascriptions of positive attributes to groups in any explicit way. The problem is that ascribing a positive attribute to a group implies a lack of distinction, if not an outright deficiency, in another area, as in blacks have terrific basketball skills. Perhaps more important, discourse limited to advancing self-esteem in other groups is of little value to anyone. How credible are compliments offered by one group if it is precluded from offering criticisms?

<sup>58</sup> That a member of a group has a license to make fun of the group that an outsider does not would seem to be the prevailing view. But why? If white people are permitted to complain directly that they do not know how to refer to African Americans, why can't the same idea be expressed in a joke? Moreover, who is to say that White and Black reactions to "race" jokes differ depending on who tells them? There is very little research in this area. One old study based on reactions to a written questionnaire did conclude that while "Negroes did react more favorably than whites to anti-white jokes . . . they found anti-Negro jokes just as funny as the whites." Russell Middleton, *Negro and White Reactions to Racial Humor*, SOCIOMETRY, v. 22 at 181 (1959). The same study concluded that "[t]here was little or no evidence to support the hypothesis that persons who accept the validity of the Negro stereotype react more favorably to anti-Negro jokes based upon that stereotype than do persons who do not accept the stereotype." *Id.* at 182.

<sup>59</sup> Patricia Williams, we might recall, suggests that minorities are especially adept in dealing with life in all its ambiguity. See Williams, *supra* note 48 and accompanying text. Surely the majority should be encouraged to acquire this skill.

<sup>60</sup> "If love is judged by most of its effects," concluded the French epigrammatist La Rochefoucauld, "it resembles hate more than friendship."

in this world, but in the next as well; for even Scripture offers no vision of a golden age in relations between the sexes.<sup>61</sup>

Facing an eternity of preenings, posturings and propitiations, usually all for naught, we in the present world would seem to need some help. But what consolation, for example, can men find for the ravages of male-female disjointedness except through expression of the sweet bond they share with the vast majority of men who have ever lived -- Christian, Carthaginian, Black, tall, Jew, fat, Hispanic, architect, jock, Muslim, pantheist, conservative, Taoist, orchestra conductor, stamp collector? We are all members of many groups. Perhaps the consolation that comes from acknowledging and sharing these various and sometimes shifting bonds makes it easier, rather than harder, for us to coexist with one another. "If you can laugh at me, you don't have to kill me," says Dick Gregory. "If I can laugh at you, I don't have to kill you."<sup>62</sup>

Such consolation, to be sure, will often exact a price. How, for example, will women respond to the Garden of Eden story? Will they implode? Will they rage? Will they find consolation in their own stories? I don't know. What I do know is that a female colleague and her husband strongly object to the rib story, whose impact, they claim, can only be destructive.<sup>63</sup> Two colleagues at other schools refuse to take my calls about their reactions. On the other hand, a considerable number of colleagues -- male and female -- have been highly enthusiastic about both articles.

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(quoted in ARNOLD LUDWIG, *THE IMPORTANCE OF LYING* 99 (1965)). World historian Will Durant offered a particularly cogent image. "Love, which has always been a combat and a chase," he suggested, "becomes a war in which a night's embrace is but a passing armistice." *Id.*

<sup>61</sup> The wolf and the lamb, by contrast, clearly have a peaceful future together. See *Isaiah* 11:6.

<sup>62</sup> Quoted in ARMOND FIELDS AND L. MARC FIELDS, *FROM THE BOWERY TO BROADWAY* 50 (1993).

<sup>63</sup> Hitler, she asserts, also started by caricaturing people. But Hitler, we might recall, also started "joke courts" to discipline those mocking the *fuhrer* by naming their horses and dogs "Adolph." See Morreall, *supra* note 15, at 102. Hitler, moreover, attained the Chancellorship of Germany by being elected. Is that a basis for banning elections?



All of which brings us back again to our central question: Must we yield to expressions of pain in response to jokes by repressing relevant dialogue,<sup>64</sup> and forgoing, as Freud put it, the "high degree of pleasure obtained from hearing a joke" stemming from "the momentary suspension of the expenditure of energy upon maintaining repression"?<sup>65</sup>

The question, again, has no easy answer. Two matters, however, should be evident and acknowledging them may well help defuse the issue. First, the categories of race and gender have been so loaded down by CRATs that they work against fair resolution of the joke issue.<sup>66</sup> Second, the very jokes presented in this discussion are in effect group jokes; as such, they too elicit us-vs.-them responses, and therefore expressions of group loyalty. This effect further complicates the fair analysis of the role and value of jokes.

Happily, if by pushing ideological buttons jokes got us into this analytical mess, they can, in a similar manner, get us out. For a more complete evaluation of the joke reveals that gender and race are not the only axes on which the world turns: indeed, they are not even the primary ones. The crucial ingredient is, as we shall shortly see, the triumph. And group superiority, finally, is just an expanded version of a more basic strategy of self-superiority. Consider the vacationer who, digging a hole on the beach, spots a lamp. Rubbing it produces a genie who offers to grant any single wish the vacationer might have. As he is about to respond, the genie interjects the catch: anything he asks for himself will be given doubly to his business partner. The vacationer is suddenly paralyzed. After some reflection he asks the genie, "Does it hurt to have one testicle removed?" It is not only our romantic helpmates with whom we are in mortal and immortal conflict.

This joke, like jokes more generally, undermines the foundation of the CRATs' position on jokes--the primacy of the

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<sup>64</sup> In a previous article I have argued that the expression of pain is often used as a rhetorical device to shape the dialogue. *See generally* Subotnik, *supra* note 3.

<sup>65</sup> Quoted in ISBISTER, *supra* note 50, at 141.

<sup>66</sup> *See generally* Subotnik, *supra* note 3.

biological group. For it captures our gloriously and ingloriously self-preserving *selves*, which allow us to bear, if not prevail over, life's most brutal blows. It helps to remember that notwithstanding all CRAT posturings, *In The Beginning*, in the very beginning, is an *individual*. For many this diminishes the importance of everything else, including the group. A final story drives the stark message home. A patient goes to his doctor, an old friend, complaining about various and increasing pains over a six-week period. The doctor reminds him of their longstanding relationship and assures him that nothing is wrong. He tells the patient to take a battery of tests just in case and to come back in three weeks time. Upon his return, the patient sees the doctor in the hall: "Any news to tell me?" "Well, I have some good news and some bad news," says the doctor. "Which would you like to hear first?"

"Tell me the bad news," says the patient to his friend. "O.K.," responds the doctor. "You have a galloping cancer and not more than four weeks to live. Moreover, it's going to be painful and there is nothing I can do for you. I am so terribly sorry." Crestfallen, the patient exclaims, "What possible good news can you have to tell me?" "You see that beautiful new nurse standing in the corridor?" asks the doctor, pointing. The patient nods. "I'm balling her."<sup>67</sup>

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<sup>67</sup> Shall we think of this primarily as a misogynist joke because the doctor is commodifying the nurse? Or is this joke better understood as illustrating a world in which everyone and everything is an object for everyone else, a state of affairs where "psychological egocentrism" predominates? See CAMBRIDGE DICTIONARY OF PHILOSOPHY 218 (Robert Audi ed., 1995). An old Jewish folktale is helpful here. Hershel the beggar/trickster is desperate for a meal. He asks his friends about a rich man in town who, he hears, always has some needy person at his table on the Sabbath. He is informed that the man is not a philanthropist but rather a miser who delights in keeping his guests talking during the meal while he gobbles up all the food. The trickster assures his friends he can take care of himself.

As the meal is being served to the host, he asks Hershel where he is from. When Hershel says Vishnitz, a town the host knows well, the latter asks about his good friend Shaiyah the miller. Hershel tells him that he is dead. Stunned, the host puts the plate down at which point Hershel leans over and spears a piece of fish. The host then asks about Velvel who owes him 500 rubles. He

However pathetic, puerile, and even repellent, this felt need for dramatic triumph over death, joylessness, aloneness, failure, rejection, and humiliation,<sup>68</sup> and, in the case of the Signifying Monkey, just plain ennui, forcing ourselves to look beyond our hearts to our minds for purposes of processing jokes--as we have done here--has its uses. Indeed, such a discipline can significantly brighten our lives. The world, renowned eighteenth-century man of letters Horace Walpole instructs us, is "a comedy to those who think [but] a tragedy to those who feel."<sup>69</sup>

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also is dead, reports Hershel, as is his business partner. The host is in a panic now while Hershel continues eating. Hershel is then asked about Avrum, Shaiah's brother-in-law, and Hershel reports that he too is dead. At which point the host is stupefied. "How can you toy with me by telling me such things? Surely you cannot mean to tell me that everybody in Vishnitz is dead." "My dear friend," responds Hershel, claiming another piece of fish, "when I eat everybody is as good as dead for me!" The joke's answer to our question is clear: altruism is self-delusion; when our minds are occupied with our own needs, nothing else matters. Adapted from A Treasury of Jewish Folklore, *supra* note 18, at 314-15. Those needing a higher authority than Hershel for this principle should consult W. H. Auden, *Musée des Beaux Arts*.

<sup>68</sup> See Williams, *supra* note 48 and accompanying text. Patricia Williams knows how to appeal to these baser instincts. When encouraging like-minded scholars to write, she does not emphasize the practical benefits such efforts would yield, but rather the sense of personal psychological liberation they would generate. Critical race theory, she writes, is

boundary crossing, from safe circle into wilderness . . . . It is the willingness to spoil a good party. . . . The transgression is dizzyingly intense, a reminder of what it is to be alive. It is a sinful pleasure. . . which takes one into a new awareness, a secret, lonely, and tabooed world--to survive the transgression is terrifying and addictive.

See *id.* at 129.

<sup>69</sup> See BARTLETT'S FAMILIAR QUOTATIONS 324 (16th ed. 1992) (quoting HORACE WALPOLE, LETTERS TO THE COUNTESS OF UPPER OSSORY (August 16, 1776) (1882)).