



## Rape, Jokes, Consent

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### ABSTRACT

All jokes pose a problem of consent: what does it mean to hear them out; what does it mean to laugh? The problem is acute in the case of rape jokes. This paper discusses two concepts of consent raised by Vanessa Place's "If I Wanted Your Opinion, I'd Remove the Duct Tape," legal consent and aesthetic consent, and the relation between them.

I want to try to think about these jokes as a poem, which is hard to do, and which Vanessa Place does not explicitly ask us to do. But Place is a poet, and the jokes, in the order she tells them, make a text that she performs. ("If I Wanted Your Opinion, I'd Remove the Duct Tape" is its title.) What does it mean to think of them as poetry, or more generally as a work of art—as aesthetic experience, or an invitation to aesthetic experience? Does that make them easier to listen to, possible to listen to, worth listening to?

To begin with, it does not disqualify the jokes from being art that they are about rape. Many artifacts of Western culture, quite secure in the canon, are about rape. Let me transit through one, Shakespeare's "The Rape of Lucrece," on the way to the jokes themselves. That poem tells a story that Shakespeare gets from both Ovid and Livy, the story of how, circa 509 BC, the son of Tarquin, king of Rome—the son is Sextus Tarquinius but Shakespeare calls him Tarquin—conceived a violent passion for Lucretia, wife of another Roman aristocrat, Collatinus. In Shakespeare's version, Tarquin debates with himself for many stanzas; he surprises Lucrece and rapes her; and the rest of the poem is Lucrece's lament, leading to her decision to commit suicide in front of her husband. Here is the final stanza:

When they had sworn to this advised doom,  
They did conclude to bear dead Lucrece thence,  
To show her bleeding body thorough Rome,  
And so to publish Tarquin's foul offense;  
Which being done with speedy diligence,  
The Romans plausibly did give consent  
To Tarquin's everlasting banishment.<sup>1</sup>

Shakespeare is recording what his sources take to be a historical event. The public horror at the rape of Lucrece was so great that King Tarquin was overthrown, and in reaction—it happens outside the poem, but Shakespeare is well aware—a system of representational government takes his place. This moment is Rome's transition from a monarchy to a republic. I point to Shakespeare's use of the word "consent" and his elaboration of a story in which a violation of private consent gives rise to political change, to a new regime of public consent. That change is only implied, it should be said, in the last two lines, but it is the prospect with which the poem leaves us.

What is consent? Etymologically, *con-sentire*, to feel together; Shakespeare would have been sensitive to that sense, and I will come back to it. But for the moment, let me frame two uses of

the notion, legal and aesthetic. My account of both will be rudimentary, especially the legal. An old Black's *Law Dictionary* offers following definition: "A concurrence of wills. Express consent is that directly given, either viva voce or in writing. Implied consent is that manifested by signs, actions, or facts, or by inaction or silence, which raise a presumption that the consent has been given."<sup>2</sup> We are in deep water with the notion of implied consent. I want to keep it for the moment simpler than it is and say consent is saying *yes*: a concordance of wills made explicit in speech or writing.

What about aesthetic consent? The idea is less familiar, for aesthetic experience is often taken to be a field of disagreement. That, however, is not the way Kant sees it, and Kant has done more than anyone to shape the modern sense of what art is. Aesthetic experience, he says, is a free play of our imagination and our understanding, of our ability to represent the world, and our ability to fix concepts to it. It is a kind of tantalizing, sometimes overwhelming, failure of the ordinary tactics of cognition to sort and label and use experience. It is nonetheless a crucial feature of that experience, for Kant, that we think the judgment of beauty—the judgment, *this is beautiful*—should be universal.<sup>3</sup> If we see something beautiful, if we see something as beautiful, we believe that others should see it that way too. That is why, for Kant, beauty is a point of contact between sensory experience and the moral law. First, because that free play is like the freedom of moral action. Second, because it gives us a glimpse, even a taste, of the universal. It may not enforce consent, but it gives us a vision of it based on our shared faculties for recognizing beauty—they are the same in all of us—and provokes us toward the claim that we might and should feel the same thing, together.

Having laid out these definitions, what about the jokes, the rape jokes, the rape joke poem? Jokes of any kind pose challenging questions about consent. Here is one of Place's: "Who wants to play a rape game. No? That's the spirit." The consent problem resides up front in the double structure of so many jokes, setup and punch line. The setup lets you know that a punch line is to follow. Do you agree to hear it, do you consent—as you do, more or less explicitly, when you answer "Who's there?" to a knock-knock joke? Do you pause and wait expectantly, even obediently? Is that consent? Or do you, or should you, try to stop the joke before the punch line lands, telling the teller *no*, or blocking your ears? If you don't do that—and we rarely do; we usually don't know what's coming—have you consented to the joke, whatever the punch line?

And there is another problem of consent, the laugh. Let's say you do laugh. What does that mean? Is that consent, post hoc? Or say you succeed in stifling a laugh by an act of will—but you would have laughed if you'd been alone. Do you at that moment identify yourself, audibly or tacitly, as a member of the community that can share the joke? Have you endorsed the telling of it? Part of the trouble of the rape jokes, the trouble that Place orchestrates, is the fear of laughing and the fear of what that laugh means. It is as though a laugh were a kind of applause, and you might be caught in it, publicly. Were you in some sense—a painful question—asking for the joke, even if you find, once it is told, you didn't like what you asked for? Or didn't like that you liked it? Is that what a laugh means, that you liked it?

That view, however, treats the joke as something like a proposition to which laughter is agreement. Let me come back to that legal definition, a concurrence of wills—a running together—and to that etymology, *con-sentire*, feeling together. On this understanding, what is important about consent is that it is shared between the two parties, the teller of the joke and the hearer of the joke. And indeed, I might tell you a joke not because I want your assent to it but because I want to share it. The difference is important. A joke depends upon surprise, and there is a sense in which it only really works once. But telling it can be a way of experiencing that original pleasure again by experiencing it

<sup>2</sup>Black (1910), p. 249.

<sup>3</sup>Kant (2000) writes, "For since it [the judgment of beauty] is not grounded in any inclination of the subject (nor in any other underlying interest), but rather the person making the judgment feels himself completely free with regard to the satisfaction that he devotes to the object, he cannot discover as grounds of the satisfaction any private conditions, pertaining to his subject alone, and must therefore regard it as grounded in those that he can also presuppose in everyone else; consequently he must believe himself to have grounds for expecting a similar pleasure of everyone" (pp. 96–97).

with someone. If the first pleasure is a kind of sudden desublimation, as Freud would have it, then the second pleasure is almost imitative, getting to participate in the surprise of another person. The pleasure of telling a joke is feeling with, feeling the same thing, a happy vicariousness.

But I can also tell a joke to inflict it, mirthlessly. Then I want to make someone laugh even as I reserve myself to another emotion: anger, perhaps, or desire. My relation to the hearer's surprise is not a vicarious reenactment of my own original innocence. Instead, I aim to extort the laughter or to force someone not to laugh. That is not consent in the sense of feeling-with. It is a situation marked and defined by the difference in feeling between the two parties.

The aesthetic analogy offers a distinctive definition of what would count as consent, feeling the same thing. The joke is an instrument of attunement. Such a definition could not easily feed back into the law, and it is hardly enforceable as a principle of contract. But it suggests how one might make a more useful distinction between kinds of jokes, and avoid the position that all jokes seek consent, and that a laugh—even the stifled laugh—affords it. Some jokes are consensual and seek an accord between teller and hearer. Other jokes seek and make a painful difference. A rape joke, true, can be told among like-minded friends, but exclusion is still part of its structure. (Another of Place's jokes: "Gang rape: because the needs of the many outweigh the needs of the few.") Which is to say that some jokes by their structure violate that fundamental Kantian criterion for aesthetic experience, the hope and the glimpse it gives of universality. Place's jokes, on that account, can't be art, and they can't be poems. Again, she never calls them that—but the work of "If I Wanted Your Opinion" is still to raise the question, and perhaps the best reason to raise the question is so that we can answer, *no*. Which is something like the move that Shakespeare makes, at least at his poem's end, taking the violation of private consent as an occasion for rediscovering the urgency of a consent that is public and inclusive.

## Notes on contributor

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