

“Every Tone Was a Testimony”: Black Music, Literature, and Law

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Abstract

The music that chronicles the African American experience is marked in profound but subtle and contradictory ways by the law, perhaps the most pervasive presence in black life since enslaved Africans arrived in the New World. From the mournful but veiled complaints of the sorrow songs to Jay Z’s boastful narration of a pretextual traffic stop, at the heart of so much of the music of black culture lies a wary appraisal, and often an outright rejection, of the “justice” of American law. This Commentary reviews the fraught relationship between the law and the tradition of African American music.

Keywords

Law, music, African American literature, performance

As prelude to Denver’s 2008 State of the City address, Mayor John Hickenlooper invited local jazz singer Rene Marie to perform the national anthem. And on July 1, just a month before Barack Obama would be nominated as the Democratic candidate for president at the party’s August convention (also in Denver), Marie indeed kicked off the city council’s proceedings by singing the national anthem – the so-called “black national anthem.” Singing to the melody of the “Star-Spangled Banner,” Marie replaced Francis Scott Key’s lyrics with the words of James Weldon Johnson’s 1899 poem “Lift Ev’ry Voice and Sing.” The performance was captivating, and widely condemned. The mayor called it “an unfortunate distraction” from the event’s proceedings; Bill Ritter, the governor of Colorado, labeled it “inappropriate” and “disrespectful.”¹ Even Barack Obama, when asked to comment in the wake of the incident, replied a bit cryptically that “We only have one national anthem.”

1. “Ritter: Anthem Switch ‘Disrespectful,’” accessed February 7, 2013, http://www.denverpost.com/breakingnews/ci_9765306?source=pkg.

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Rene Marie, for her part, was both apologetic and contemplative in assessing the reaction to her revision of the national anthem. During the uproar that followed, Marie wrote on her website that

As a kid living in a segregated, southern town I grew up singing both songs. It seemed apparent to me early on that the sentiments expressed in each song are diametrically opposed to one another. The “Star Spangled Banner” spoke of “proudly hailing the flag” in “the land of the free and the home of the brave.” I could see how some folks could have pride for the flag and feel free and brave and at home. But that sentiment was not a reality for black folks living in a town with Jim Crow laws, where the flag often hung from buildings they could not enter. It was not a reality for black soldiers (among them my own father) returning home and being denied their civil rights after having fought for the nation the flag represented. On the other hand, nobody but black folks found comfort in “Lift Ev’ry Voice and Sing,” even though the lyrics focused on “ev’ry voice singing” the “harmony of liberty.”²

She had already composed two other pieces of what would become a three-part suite – retaining the lyrics but rewriting the melodies to “America the Beautiful” and “My Country Tis of Thee” – and the song she sang at the State of the City was the third part of that movement, what she would later describe as a kind of “love song to my country.”³ In her exploration of the fraught relationship between music, race, law and nation, Marie joined a long line of thinkers, writers and composers exploring the aesthetics and political efficacy of black performances of national and racial identity. And her public comments capture the ambivalence of many black Americans – and African American music, in particular – about racial justice and the law in the United States, and invoke complicated genealogies of black performativity and its relationship to the law. If it is indeed true that “legal interpretation is a kind of performance and ... law is a performing art,”⁴ then it is also true that the law often finds itself in tension with performances of black identity. Surveying representations of black musical performance in major literary texts, this Commentary suggests that competing performances of law and African American music often function in very different ways.

James Weldon Johnson first conceived “Lift Ev’ry Voice and Sing” as a poem in 1899 while he was the principal of the Stanton School, which was founded during Reconstruction in Jacksonville as the first school for black children in Florida. The verses capture the political posture of African Americans at both the depths of the nadir and the cusp of a new century: in its expansive conception of “every voice” raised, which pointedly imagines both a broad spectrum of participants in the struggle for racial equality as well as a nation in which more than African Americans find themselves in need of uplift; in the martial rhetoric that embraces the fight for black freedom (“[l]et us march on til victory is won ... treading our path through the blood of the slaughtered”); and in its

2. “A Statement from Rene Marie – 2008,” <http://renemarie.com/qa.htm>, accessed January 3, 2013.

3. Ibid.

4. Jack M. Balkin and Sanford Levinson, “Law as Performance,” in *Law and Literature*, ed. Michael Freeman and Andrew D.E. Lewis (New York: Oxford University Press, 1999), pp. 729–51.

embrace of the legacy – and redemptive possibility – of black suffering (the “weary years” and “silent tears”) alongside the celebration of the possibility of national union (“into the light ... true to our native land”). The occasion for the poem’s first performance similarly suggests the tension between an increasingly entrenched Jim Crow reality and the hopeful optimism of its author: Johnson’s 500 elementary school students recited “Lift Ev’ry Voice and Sing” as part of his introduction of Booker T. Washington, who was the featured guest at the school’s celebration of the birthday of Abraham Lincoln. Johnson’s competing paeans – to black America’s most prominent accommodationist and to the author of the Emancipation Proclamation – lay bare the stark reality of black performativity, what Fred Moten has called the “ongoing improvisation of a kind of lyricism of the surplus” of the black national subject.⁵ Johnson himself would explore the tension at length in *Autobiography of an Ex-colored Man*, in which the eponymous passing character explores the relationship between his racial identity and his gift for music (while navigating white and black anxiety about the color-line). This improvisation and lyricism and surplus is perhaps nowhere more evident than in black music’s ongoing dialectic with the law.

Johnson’s *Autobiography* is perhaps the paradigmatic literary exposition on the performative relationships between law and music and race. The story of a mixed-race musician who passes for white, it invokes the tropes and traps of performed identity at every turn. Though his famous white father loves him as much as “custom and the law would allow,” Johnson’s protagonist is raised by his black mother and suffers the indignities of life as a mixed race man in the post-Reconstruction South: dilapidated schools, Jim Crow laws, constrained employment opportunities, the ever-present threat of lynchings. And though he is a gifted ragtime composer and pianist, the ex-colored man’s “[s]hame at being identified with a people that could with impunity be treated worse than animals” finally finds him crossing the color-line, passing as white and performing Chopin for white audiences. Bruce Barnhart describes the protagonist’s facility with the syncopated rhythms of ragtime as polyphonic, resisting the “logicized, formal timelessness” of the patron who convinces him to turn his back on his racial identity.⁶ While the law performs in this turn-of-the-century moment a studied and disciplined ignorance of the perils of racial caste and the concomitant violence of its policing, Johnson’s ex-colored man navigates between “different forms of music [and] different rhythms of social existence.” Against the temporal, legal and racial realities of the color-line, the novel reveals the “way in which an African American performative tradition responds with a chronopolitics of its own.”⁷

From even the earliest moments of African Americans in the new world, resistance to the violence of racialized law often required the enslaved to inhabit competing and multiple identities: acquiescent, submissive, industrious, non-threatening, while at the same time both communicating and disguising subversive and resistant intentions and

5. Fred Moten, *In The Break: The Aesthetics Of The Black Radical Tradition*, 1st edn. (Minneapolis, MN: University of Minnesota Press, 2003), p. 26.

6. Bruce Barnhart, “Chronopolitics and Race, Rag-Time and Symphonic Time in ‘The Autobiography of an Ex-Colored Man’,” *African American Review* 40, no. 3 (2006), 552.

7. *Ibid.*

behaviors. These various modes of resisting injustice have been called the “performative essence of blackness.”⁸ Contemporary critical assessments of black performativity suggest that these African American responses to the material realities of slavery and Jim Crow (and their continuing legacies) have often been articulated through music. Much critical commentary has been written on the sorrow songs and the ways in which they elaborate counter-normative practices. But scholars of more contemporary black music find that it shares much of the same character.⁹ Reading the accomplishments of Billie Holiday against the delimited roles available to black women during Jim Crow, for example, Farah Jasmine Griffin rebuts singular appraisals of the iconic jazz singer’s genius as affective and sentimental, and instead reads her performances as political set pieces.¹⁰ Her renditions of “Strange Fruit,” and the innumerable covers that have followed, stand as a vocal counterpoint to the prolonged (performed) silence of legal commentators on the horrors of lynch law. Jay-Z’s “99 Problems” is the subject of a similar reading by Caleb Mason on the phenomenon of “driving while black.”¹¹ And it is precisely this aspect of black performance – particularly through music – that sets it apart from the performative utterances of law.¹² Legal performativity is surely best understood as authoritative speech, producing and reproducing normative claims and injunctions, working “to conceal, if not disavow, what remains opaque, conscious, unperformable.”¹³ Black performance, on the other hand, so often embodies what Saidiya Hartman calls the “denaturalizing displays” and “discursive reelaboration” of black resistance to the norms of law and custom.¹⁴

The foundational texts of the African American literary tradition often enact a kind of double performance, representing black performativity through narrative and poetic and

8. Moten, *In The Break*, p. 16.

9. See, e.g., Farah Jasmine Griffin, *If You Can't Be Free, Be a Mystery: In Search of Billie Holiday* (New York: Simon and Schuster, 2001); Moten, *In The Break*; Imani Perry, *Prophets of the Hood: Politics and Poetics in Hip Hop* (Durham, NC: Duke University Press, 2004); Alexander G. Weheliye, *Phonographies: Grooves in Sonic Afro-Modernity* (Durham, NC: Duke University Press, 2005); Michael Borshuk, *Swinging the Vernacular: Jazz and African American Modernist Literature* (New York: Routledge, 2009); Meta DuEwa Jones, *The Muse is Music: Jazz Poetry from the Harlem Renaissance to Spoken Word* (Champaign, IL: University of Illinois Press, 2011); Daphne Brooks, *Subterranean Blues: Black Women Sound Modernity* (Boston, MA: Harvard University Press, forthcoming);

10. Griffin, *If You Can't Be Free, Be a Mystery*.

11. Caleb Mason, “Jay-Z’s ‘99 Problems,’ Verse 2: A Close Reading With Fourth Amendment Guidance for Cops and Perps,” *Saint Louis University Law Journal* 56, no. 2 (2011), 567–85.

12. John L. Austin, “Performative Utterances,” in *Perspectives in the Philosophy of Language: A Concise Anthology*, ed. Robert Stainton (Peterborough, ON: Broadview Press, 2000), p. 239.

13. Judith Butler, *Bodies That Matter: On the Discursive Limits of “Sex”* (New York: Routledge, 2011), p. 234.

14. Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery and Self-Making in Nineteenth Century America* (New York: Oxford University Press, 1997), p. 217 n.20.

dramatic forms.¹⁵ Frederick Douglass, one of the first “critics” of African American musical performance, characterized the singing of his fellow slaves in explicitly legal terms. In his first autobiography, the 1845 *Narrative of Frederick Douglass, An American Slave, Written by Himself*, Douglass describes his earliest memories of the “sorrow songs,” the chanting and moaning of the enslaved during their labor, as a kind of witnessing: “They told a tale of woe which was then altogether beyond my feeble comprehension; they were tones loud, long, and deep; they breathed the prayer and complaint of souls boiling over with the bitterest anguish. Every tone was a testimony against slavery, and a prayer to God for deliverance from chains.” The resistance was masked, of course, disguised from the overseer and undermining the performative customs of slave law. The law’s insistent devotion to formal logic and precedent naturalized its production and restraint of a hypervisible black body, suggesting that the analogy between law and music is generative in a much different way when we consider cultural productions that narrate an African American experience of the law.

W.E.B. Du Bois famously elaborated on Douglass’ appreciation of the sorrow songs – and their seeming incommensurability with, and representation of, a kind of national gestalt – in *The Souls of Black Folk*. In contradistinction to the “vulgar music” of America’s racial apartheid, Du Bois calls the music of the enslaved the “spirit” that should animate an American cultural identity: “there is no true American music but the wild sweet melodies of the Negro slave.”¹⁶ And yet connecting his readers with the spirit of the music is seemingly both aspiration and impossibility. Formally, Du Bois begins each of the eleven chapters of *Souls* with epigraphs drawn from spirituals, silent bars of music that critic Cheryl Wall has described as “voices that . . . readers in 1903 could not hear . . . as hieroglyphs that stand in for gaps in the text.”¹⁷ Eric Sundquist, in his landmark study *To Wake the Nations: Race in the Making of American Literature*, describes the music on which Du Bois is drawing as untranslatable, “an unknown language beyond words, a cry out of the territory.”¹⁸

In “Of the Coming of John,” the penultimate chapter of *Souls* and its only prose fiction, Du Bois explicitly elaborates the exclusionary effects of the laws and customs of Jim Crow by reversing that trope, representing white power through the performance of a canonical European musical text and its seeming inaccessibility to blacks at the turn of the century. “Of the Coming of John” tells the story of a young black man’s doomed striving: John Jones leaves the small town of Altamaha, Georgia as the first of his people

15. It is important to note here that music as imagined within black literature often departs from the historical realities of an African American musical tradition. The very real constraints on black performative political interventions meant that writers were free to depict musical performativity in a way that did not always manifest itself in song, on stage, or in the lives of black musicians. How music is constructed *within* the African American literary tradition often differs in profound ways from its actual performance, a dichotomy that perhaps reveals much about the romantic potential of music to contest legal and political narratives of racial identity.

16. W. E. B. Du Bois, *The Souls of Black Folk* (New York: Penguin, 1989).

17. Cheryl Wall, “Resounding Souls: Du Bois and the African American Literary Tradition,” *Public Culture* 17, no. 2 (2005), 218.

18. Eric J. Sundquist, *To Wake the Nations* (Boston, MA: Harvard University Press, 1993), pp. 529–30.

to attend college, only to return home to find his education blamed by whites for his perceived impudence, and by blacks for his alienation from his roots. Du Bois twice offers the operas of Wagner as signs of the unassimilability of an educated black modern subject. Taking in his first show in a theater in New York, John is “transported by a world so different from his, so strangely more beautiful than anything he had known”; the effect is both moving and ultimately disabling, as he is ejected from the performance after brushing the arm of the white woman seated next to him. He eventually returns home to start a school for the town’s black children, but his white benefactor – notably a judge – soon shuts its doors on account of John’s alleged insolence, prelude to John’s eventual lynching. As his attackers arrive, John “leaned back and smiled toward the sea, whence rose the strange melody, away from the dark shadows where lay the noise of horses galloping, galloping on. With an effort he roused himself, bent forward, and looked steadily down the pathway, softly humming the ‘Song of the Bride.’” John’s affective experience of Wagner’s *Lohengrin* is once again undone by white racism and what Daphne Brooks has termed “Afro-alienation,” the possibility of black legal equality as much doomed to failure as Elsa and Lohengrin’s marriage.¹⁹

Ralph Ellison, for his part, was famously talented as a musician; steeped in the blues and jazz rhythms of the Midwest, he attended Tuskegee on a music scholarship. And that sensibility informs his literary interrogations of the promise and peril of law for African Americans. The prologue of *Invisible Man* draws from the lyrics of a Louis Armstrong composition, and the protagonist frames his predicament throughout the novel in terms of (musical and legal) time: how to situate himself amidst – or apart from – the segregated time and space of late-Jim Crow America. “What did I do / to be so black and blue?” asks Armstrong’s – and the invisible man’s – refrain through the text; the absurdity of his travails from college through his descent underground is framed at every moment by the very illogic of racism, and the seeming impossibility – or desirability – of being assimilated into a white legal order. Alexander Weheliye suggests that Ellison situates the narrative trajectory amidst a “sonic ecology” of black response to segregation: “the ‘sound’ of life under Jim Crow is at once both recordable and inadequate to the representation of that experience, but also singularly apart from the ‘epochal totality’ of the competing hegemonic histories (i.e., law).”²⁰

Escape from that “epochal totality” of law comes with difficulty in Ellison’s texts. The protagonist of *Invisible Man* finds himself – like his one-time colleague in the Brotherhood, Tod Clifton – falling “out of time” and out of history by the end of the novel, choosing to live underground with only his Louis Armstrong records rather than perform the assimilative functions its Epilogue lauds. Another Ellison work, the short story “In a Strange Country,” similarly suggests that music offers a possible response to what Salamishah Tillet has called the “civic estrangement” of African Americans by the racialized character of American law.²¹ Set in Wales during the Second World War, “In a

19. Daphne A. Brooks, *Bodies in Dissent: Spectacular Performances of Race and Freedom, 1850–1910* (Durham, NC: Duke University Press, 2006).

20. Alexander Weheliye, “The Grooves of Temporality,” *Public Culture* 17, no. 2 (2005), 324.

21. Salamishah Tillet, *Sites of Slavery: Citizenship and Racial Democracy in the Post-Civil Rights Imagination* (Durham, NC: Duke University Press, 2012), p. 3.

Strange Country” charts a single night of shore leave for a black seaman in the Merchant Marine, during which the protagonist – Mr. Parker²² – is beaten by a group of white American soldiers and rescued by a group of Welshmen from a nearby pub, with whom he spends the rest of the evening immersed in drink and song. Parker’s skepticism regarding his rescuers – they are, after all, as white as his attackers – is softened by their national and proletarian melodies, which only amplify his own uncertain relationship with the country under whose flag he serves. “When we sing, we are Welshmen,” one of the men tells him, and Parker is saddened that black Americans have no songs telling “of love of the soil or of country.”²³ Listening as the men sing their own national anthem, Parker is bowed by “a surge of deep longing to know the anguish and exultation of such love.”

When the conductor and band strike up the chords of “The Star-Spangled Banner,” Parker feels “as though he had been pushed into the horrible foreboding country of dreams and they were enticing him into some unwilling and degrading act, from which only his failure to remember the words would save him.” The ambivalence of Rene Marie’s performance of the national anthem is plain: Parker hears the music “charged with some vast new meaning which that part of him that wanted to sing could not fit with the old familiar words.” And alongside the music all he could hear was the voices of the American soldiers who attacked him. As in *Invisible Man*, Ellison concludes the narrative with an unexpected embrace of the American creed: Parker finally sings along and for the first time in his life “the words are not ironic.” “In a Strange Country” and *Invisible Man* each romanticize a “pluralistic jazzlike Americanism,”²⁴ and in both texts Ellison finally performs fidelity to the nation notwithstanding the minor chords sounded in their narratives.

Critiques of law through the figurative and aesthetic modes of black music are ubiquitous in the years since Ellison, from the “jangling dischord” of Martin Luther King, Jr.’s “I Have a Dream” speech to Nina Simone’s “I Wish I Knew How It Would Feel To Be Free,” from Amiri Baraka’s seminal *Black Music* to Toni Morrison’s *Song of Solomon* and *Jazz*. Surprisingly, one of the most pointed literary explorations of the competing performative dimensions of law, music and race is a contemporary novel by a white writer. Richard Powers’ 2003 *The Time of Our Singing* returns to Johnson’s *Autobiography of an Ex-Colored Man*, narrating the experience of a musically-gifted mixed-race family that assumes the seemingly impossible task of *refusing* to inhabit a racial identity. The experiment leaves the family fractured: a daughter committed to black nationalism; two sons struggling to discover how to understand the music they love, and to what race the music belongs; their black mother, the family’s compass, dead, possibly murdered; and

22. Bill Maxwell notes the pointed reference here to Charlie “Bird” Parker, a contemporary of Ellison, and goes on to chart the musicality of Ellison’s own career, noting that he is celebrated for being among the first to suggest – notwithstanding his ambivalence regarding the promise of American law – that “African American jazz is the rightful soundtrack to U.S. democratic principles.” William J. Maxwell, “‘Creative and Cultural Lag’: The Radical Education of Ralph Ellison,” in *A Historical Guide to Ralph Ellison*, ed. Steven C. Tracy (New York: Oxford University Press, 2004), p. 61.

23. Ralph Ellison, “In a Strange Country,” in *Flying Home: And Other Stories* (New York: Random House, 1996), p. 142.

24. William J. Maxwell, “‘Creative and Cultural Lag’: The Radical Education of Ralph Ellison,” 61.

their widowed Jewish father insisting to his children, to the end, that “[I] did not marry a black woman. I married your mother.”

Indeed, Powers’ novel stands out alongside recent texts by black authors – such as Edward Jones’ *The Known World* and M. NourbeSe Philip’s *Zong!* – for what we might call its single-minded engagement with the potential of music to undo the debilitating racism of the law. Powers positions David and Delia Strom, a mixed race couple who marry in the racial turmoil of 1940s America, as naïve romantics hoping to escape the “reified binary categories” – and indeed the very historicity – of black and white.²⁵ David Strom, the patriarch of the doomed family, insists throughout the novel that “[t]here is no such thing as race” and raises his children accordingly (94). And in a nod to Johnson’s *Autobiography*, the novel uses the family’s facility for, and performance of, different kinds of music to interrogate America’s inability to escape from the realities of centuries of racial division and the implications of that failure for the dream of a colorblind America. The novel charts the trajectory of each member of the family by mapping it upon many of the significant moments of the civil rights movement. In the novel’s opening moments, David and Delia meet at the Easter 1939 performance of Marian Anderson on the steps of the Lincoln Memorial, where Anderson sang after being denied permission by the Daughters of the American Revolution to perform in Constitution Hall because she was black. Later, while their sons Jonah and Joseph study within the walls of an elite music academy in New England, Emmett Till is tortured and killed in the heart of Mississippi, and the great urban centers of the 1960s burn as the two brothers begin their careers singing lieder for white audiences far from the riots. Finally, Joseph, mistaken for white, is beaten to death outside a recording studio during the violence that followed the acquittal of the police officers who beat Rodney King.

Jonah and Joseph are musical prodigies, and their introduction to the competing hermeneutics of the performance of baroque music is juxtaposed with their education in the customs of racial identity (which their mother and father withheld from them during their childhood). A fellow student, steeped in the historical context of music by her father, an accomplished European conductor, is unbeatable at the school’s version of “name that tune,” shaming the boys in their ignorance of the markers of time and place that characterized every piece. Even when she hadn’t heard a piece before, “she could almost always zone in on its origin and figure out its maker . . . [a] piece was what it was only because of all the pieces written before and after it” (57–58). The Strom children, however, were raised without respect to race, and they are ignorant of the interrelationship between race and the history of musical forms. Their own performances are seemingly unmediated by the rich clues hidden within the form that would reveal a performance’s subtleties to an educated spectator; to them, “the thousand years of Western music might as well have been written that morning” (58). The historicity of music mirrored that of race, and it is these histories that the family resists; their performances lack, in many ways, the subtleties and ironies that mark so much of black performativity, and this lack will ultimately account for the family’s disintegration.

Jonah, whose talent – and efforts to escape race – is most pronounced in the novel, faithfully clings to his parents’ lesson. The trajectory of his musical career eventually

25. Randall Fuller, “An Interview with Richard Powers,” *The Missouri Review*, v. 26 (2003), 97, 111.

finds him as the world's leading performer of "early music," which his ensemble interprets without respect to how contemporary musical scholarship believes they *should* be performed (66). His first and best teacher, "[l]ike most champions of Western culture[,] pretended race didn't really exist" (114). Jonah simply refuses to allow the historicity of music, least of all any racial component, to inform his interpretation of it. Here Jonah (and Powers) nods to the appeal of colorblind performances of law. Classical music was (and in many respects still is) a domain of the privileged, with the attendant luxury of ignoring its own complicated racial histories. For a black man to escape that history, to reject it, and to stake a claim to this music as his own – not just his to perform but his to *read* – is of course its own kind of performance. But as Powers explains, and as Jonah's ultimate self-destruction demonstrates, the "attempt to withdraw completely from the condition of earthly politics is a Faustian one. It will doom itself. It will create the seeds of its own impotence and irrelevance."²⁶

Much later in the story, years after their mother has died, Ruth gives Jonah a picture-book history of the blues as a Christmas present (289), leading to a bitter fight over ownership of cultural forms: Ruth, already having sworn allegiance to her race by joining the Black Panthers, is pained that her mother (also a trained classical vocalist) chose "[m]usic that didn't belong to her"; Jonah, furious that his sister puts race ahead of family, refuses to concede that "[a] thousand years of music is off limits" by dint of the racialized history of its production (302). He wants "to live now, in the present" (302). It is what Jonah believes will save him from being nothing more than "one of the finest Negro recitalists this country has ever produced" (313). Ignoring his sister's critique that he has abandoned black culture, Jonah surrenders himself to the demands of his professional milieu, and insists that high art is "only death, beauty and artistic pretense" (382): universal themes without cultural inflection and free from historical context. He performs "whatever the audience wants," ignoring the critics' barbs that he is "playing the white culture game" (380–81). The very act of writing such a book as *The Time of Our Singing* implicates Powers in this debate over cultural ownership and authority, of how particular identities are created and occupied and performed. As Powers puts it:

So the question what right does Powers have to speak through the mouth of a mixed-race person? is in a sense a direct reflection of the question that Joey and Jonah face in the book. What right do people not from that culture have to appropriate and own Western concert music? There's a double act of ventriloquism going on.²⁷

Walter Benn Michaels argues that because it can neither be understood as a biological fact nor a social construction, "[r]ace no more follows music than music follows race."²⁸ Michaels employs this formalism to dispel the notion that there can even exist such a thing as black "culture"; if this is so, of course, the very premise of race consciousness fails on its own terms. Powers punishes David and Jonah Strom for similar hubris: their

26. *The Paris Review*, 119.

27. *The Paris Review*, 123–4.

28. Walter Benn Michaels, "Autobiography of an Ex-White Man," *Transition* no. 73 (January 1, 1997), 134.

insistence on their individuality, their unwillingness to be a part of the history handed down to them.

By the novel's conclusion, Joseph has renounced his ties to classical music. He lives with Ruth, whose black nationalist husband was shot and killed by the police during a traffic stop. In an inversion of the trajectory of Johnson's ex-colored man, he makes his living performing ragtime versions of classical pieces, and embracing the necessity of racial performativity as a strategy for navigating the inequities of American justice. In the juxtaposition of Joseph's musical and racial educations, Powers draws upon what Danielle Allen calls the "record of experience and narrative" that justifies strategic racial thinking.²⁹ With respect to the meaning of law, in particular, Powers insists that mechanisms of interpretation – who's doing the interpreting, to whom the law is being applied – mean everything. When Joseph and Ruth meet briefly during her time "underground," he asks whether she is in any kind of trouble. "Criminal?" replies Ruth. "Question doesn't mean anything. You see, the law has been aimed against us for so long. When the law is corrupt, you no longer need to treat it like the law." When Joseph protests that the law means what it says, regardless of to whom it is applied, Ruth replies that "[t]he people" get to decide what it means (374).

Powers' revision of Johnson's *Autobiography* captures the essential tension between performances of law and narratives of African American music. While the performative function of law legitimates and normativizes, "black performance culture and its social and political forms" – African American music chief among them – "is a profane practice."³⁰ The analogic relationship between performance and law and performance and music derives much of its force from questions of hermeneutics and interpretation. Performances of legal texts, of course, "have the force of law,"³¹ and as Ruth's perspective shows us, they sometimes invite resistance through counterperformances. This Commentary suggests, then, that perhaps one of the most profitable readings of the relationship between (black) music and the law is as performative adversaries, enacting and reenacting our national ambivalence about racial identity.

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29. Danielle Allen, *Talking to Strangers: Anxieties of Citizenship Since Brown v. Board of Education* (Chicago, IL: University of Chicago Press, 2004), p. xiii.

30. Paul Gilroy, "... To Be Real": The Dissident Forms of Black Expressive Culture," in *Let's Get It On: The Politics of Black Performance*, ed. Catharine Ugwu (London: Institute of Contemporary Arts, 1995), p. 15.

31. Jack M. Balkin and Sanford Levinson, "Law as Performance."