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## THE LAW AND BLACK FOLK

Katy L. Chiles

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*Disturbing the Peace: Black Culture and the Police Power after Slavery*  
by Bryan Wagner. Cambridge,  
MA: Harvard University Press,  
2009. Pp. 307. \$37.00 cloth.

Ever since W. E. B. Du Bois published *The Souls of Black Folk* in 1903, scholars have deliberated over what it means to have a soul, to be black, or to be part of the folk. In *Disturbing the Peace: Black Culture and the Police Power after Slavery*, Bryan Wagner gives us a new way to consider these issues that is provocative and, indeed, disturbing. Blackness, Wagner claims, is not something passed down through bloodlines or as a cultural inheritance; rather, it is a certain type of statelessness produced when one is allowed to exist—but only without standing—in the eyes of the state. Furthermore, it is this understanding of blackness (one of statelessness, not of soulfulness) that grounds what we commonly call the black vernacular tradition. Indeed, this version of the black tradition predicates its own emergence on its engagement with the law that would construct the existence of its practitioners only as one of criminality. For Wagner, if we miss understanding this aspect of blackness, we miss the violence recorded in these cultural expressions.

Wagner proposes this alternative history of the black vernacular tradition by debunking some of what he calls the central myths of its accepted history and by detailing the ethnographic procedure that made certain kinds of music into folk music (253). He begins by showing the way in which the laws arising out of a natural law tradition

produced a particular notion of blackness. For him, the term *police power* refers not just to the formalized institution of law enforcement (although it certainly includes that) but also more broadly to the power of the state to produce certain types of subjectivities through the writing and enforcing of law. Indeed, the state's sovereignty relates to its police power, and, in the particular case of blackness, the state's police power sees blackness only "for the presumed danger it poses to public welfare" (6–7). Furthermore, this power was not only consolidated in the state itself, as it was extended as a "racial privilege of all whites over all blacks, slave or free" (7). Because this police power conceptualized blackness only as a threat, it legitimated any effort to eliminate that potential threat preemptively before it could culminate in action. For Wagner, the black vernacular tradition arises out of its interaction with this kind of legal thinking, and we'd be better served by understanding how black culture responded to police power rather than by misunderstanding "the voice's insistence for a positive property such as soulfulness" (21). Indeed, as Wagner states,

[M]y aim is to specify the historical statement against which the black tradition has dramatized its own emergence. Whether it is abstracted in codes or embedded

in cases, the law leaves a paper trail that can be used to reconstruct the historical coordinates that are invoked in the tradition's representative structures of self-address. (21)

One of Wagner's most powerful examples is the history of Uncle Remus, the African American character created by Joel Chandler Harris in Atlanta at the close of the nineteenth century. Probably many Americans think of Uncle Remus either as the storyteller featured in Harris's *Uncle Remus, His Songs and His Sayings* (1880) or as the demeaning narrator featured in Disney's 1946 film, *Song of the South*. What Wagner reminds us of, however, is the seriousness with which folklorists took the Uncle Remus stories for their "scientific worth" (116). As Wagner details, Remus became structurally important both to the study of black folk culture and to the professionalization of that type of study. Remus, then, influenced folklorists' "theories of black tradition, in particular those theories that would describe the tradition as a cultural inheritance from Africa;" indeed, he "structured the archive through which the tradition has been imagined" (122). By reading through issues of the *Atlanta Constitution*, the newspaper that initially published Harris's Remus pieces, Wagner links the production of this character with the debate simultaneously

raging in the newspaper over the power of the police. For Atlanta to become the “beacon of southern enlightenment” (128) that it was destined to be and for the South to move from the ancient time of slavery into that of the modern world, the *Constitution* argued, its citizens must surrender their individual rights of violence (even former white slaveholders who felt they were obliged to administer justice on their own plantations) to the state. In other words, as Wagner explains, to move from living in a state of natural warfare (as the natural law tradition would have it) to living in a civilized community, white citizens had to abandon “the racial entitlement to personal violence” to the state and its organized police units. Abandoning their presumed rights to administer violence as they saw fit, white citizens’ relinquishing their right to violence to the state did not just bring Atlanta into civilization; it also provided a convenient and much-needed workforce to labor on community development projects through the brutal convict-leasing system. When some citizens were hesitant to relinquish their assumed prerogative to violence either because they did not trust the lower-class men who often served as the police or because they had grown accustomed to perpetrating racial violence themselves, the *Constitution* worked to convince readers that they needed the police because the

black migrants moving into Atlanta posed “a threat that only the police could handle” (138). Thus, as Wagner details, this newspaper’s discourse helped characterize vagrants as threatening criminals who the justice system would then convict and turn into free labor for the city, all the while modernizing Atlanta as the civilized center of the New South. Black newspapers such as the *Savannah Tribune* were quick, of course, to point out how the state was profiting materially from its judicial practices, and they characterized the transfer of power from the slaveholder to the nation-state *not* as a radical break into the modern (as the *Constitution* would have it) but rather as a continuation of the “state of war” of slavery that was supposed to end, according to natural law theory, when the nation-state was established. (This, of course, as the *Tribune* pointed out, did not in fact happen because the police continued to wage war on the black community.)

When Harris then began publishing Uncle Remus pieces in the *Constitution*, Remus was initially not a folk storyteller but rather a resident expert on race issues who voiced the newspaper’s opinion on the need for police power. Thus, as Wagner states, “Uncle Remus was not merely contiguous to the newspaper’s campaign for the police—he was part of it” (154). Remus spoke out against black migrants and for the police; only

later did he morph into a plantation storyteller. Wagner, then, reads the Remus stories, such as those of Brer Rabbit and Brer Fox, in the context not only of slave life but also of the urban battles occurring between the Atlanta police and its perceived-as-threatening black vagrants. When Remus concurs with the police about the necessity of criminalizing vagrants who lived without working in formal employment situations, these subsistence practices were not only “criminalized by the government, and pathologized in the *Constitution*,” but also “projected into the vernacular tradition” (165). Thus, within the pages of the *Constitution*, Remus’s tales stood both for Africa and (with their emphasis on wily animals ostensibly needing discipline administered from an outside authority) for a world that Atlanta, with its new police force working to control black vagrancy, was quickly moving beyond. The newspaper, then, “could offer a hypothesis about the modern state, and it could make the black tradition into folklore” (168). This is problematic enough, of course, but for Wagner, even if we can now dismiss Uncle Remus as a caricature created by a white folklorist, we still have not yet come to terms with how Remus (so central to the professionalization of folklore and to the establishment of blackness as a cultural inheritance) structured

the way that many ethnographers have practiced the “collecting” of “authentic” black vernacular culture ever since.

In this riveting chapter, as throughout the rest of the book, Wagner combines close reading, archival research, legal analysis, and theorization in a richly interdisciplinary project. He is a patient writer, revealing aspects of his argument as they arise, which thus rewards patient reading. In his other chapters, he analyzes other myths about the black vernacular tradition, such as songwriter W. C. Handy’s account of overhearing a black vagrant singing while waiting for a train. Here, Wagner explains how Handy established the measure of vernacular authenticity as a measure of how much the singer can embody what he sings. Once slavery is abolished, the most “authentic” singer of folksongs becomes the vagrant who, criminalized by the law, quickly becomes the prisoner. This allowed future collectors to mistake what Wagner characterizes as “the mnemonics that enabled informants to sing themselves from incapacity into hypothetical existence,” a particular kind of stylized artifice, for a celebrated “authentic self-expression” that has continued to “orient . . . collectors to their informants” (57). In the case of Bras-Coupé, a legendary fugitive slave who was said to live in the swamps

outside of New Orleans, Wagner shows how George Washington Cable's removing of Bras-Coupé's arrest from Place d'Armes to Congo Square in *The Grandissimes* (1879–80) not only represses the role the police played in Bras-Coupé's legend (and how the image of Bras-Coupé was used by the city government to legitimate its use of police power) but also contributes to the mischaracterization of Congo Square in the historiography of jazz as the birthplace of the jazz tradition. Wagner also restores the role that police terror played in the production of what was taken as cultural practice in his examination of how John and Alan Lomax loaded a phonograph into their vehicle and took it into penitentiaries throughout the South in order to record the music produced by black prisoners. For Wagner, "[b]y proposing that prisoners were the last folk singers and prisons were the only remaining repositories for black authenticity, Lomax transformed the legal imperatives that defined black tradition into cultural properties" (217). By bringing the police power back into view, Wagner helps us to understand how the "ethnographic framework" has "too often limited the meaning of the black tradition" (237).

Wagner is in conversation with important scholars likewise interested in blackness, aesthetics, the role of terror, and the history of

music, such as Fred Moten, Kevin Bell, Saidiya Hartman, and Alex Weheliye. Wearing his knowledge lightly, he also brilliantly draws upon and builds on the insights of theorists such as Michel Foucault, Louis Althusser, Walter Benjamin, and Gayatri Spivak. It is clear, for instance, how Giorgio Agamben's thinking on sovereignty and on the figure of *homo sacer* has influenced Wagner's compelling work. Indeed, in part because of the various conversations that Wagner is in and because of the implications of his arguments for a number of different fields, readers might want to hear more about the theoretical implications of Wagner's trenchant argument, particularly for some of the axiomatic texts of literary criticism. Granted, Wagner states early on that his examples are not meant to stand in for the entirety of the black tradition (22), and he does briefly address how Du Bois was impacted by and then turned away from Joel Chandler Harris's folkloric work. Nevertheless, we are still led to ask what Wagner's work might mean for our reading of texts like Henry Louis Gates's *The Signifying Monkey* (1988) and the rhetorical mode of signifyin(g). African American literary studies has broadened in so many ways from that moment, but, because *The Signifying Monkey* was so foundational, Wagner's analysis begs the question of how we might need to

rethink some of the assumptions of this important text. I offer this less as a critique than as an example of how the implications of Wagner's work might be extended even further. Overall, this book's interdisciplinary nature and the implications of its far-reaching argument for a

number of disciplines make necessary reading for scholars of history, law, music, ethnography, literary criticism, and African American studies most broadly.

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