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Jon-Christian Suggs. *Whispered Consolations: Law and Narrative in African American Life.* Ann Arbor: University of Michigan Press, 2000. xiii + 401 pp. $67.50 (cloth), ISBN 978-0-472-10651-6.

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Race, Narrative, and the Cultural History of American Law

One of the most salient features of American legal history as a discipline over the past forty years has been the widening of its empirical field of vision. From the pioneering research of J. Willard Hurst in the 1950s, through the law and society movement of the 1970s, to the comfortably heterodox concerns of the current, rising generation of legal historians, the boundaries of legitimate writing within the discipline have steadily expanded. American legal history today is characterized by its growing intellectual inclusiveness. Gender studies, historical sociology, psychoanalysis, social and economic history, post-structuralist literary theory – all find their place within the profession, firmly alongside the more traditional concerns on which legal history was founded and will continue largely to be based.[1]

In its approach to issues of race and narrative, Jon-Christian Suggs's *Whispered Consolations* is a noteworthy product of this history of scholarly innovation. The book is the first wide-ranging interpretive overview of the intertextual relationships between African-American literature and the law, an ambitious and novel contribution to interdisciplinary legal history. Whereas previous scholars have considered, from a historical perspective, the way in which various features of American literature were made possible by developments within the law (examining, for instance, the relation between intellectual property regimes and conceptions of literary authorship), the nexus of race, literature, and jurisprudence has received far less sustained analysis than it deserves. Suggs fills this gap with a work of broad scope and synthetic energy, applying an interpretive method that draws the fields of law and literature together with special force and does so with a fundamental concern for change over time.

Whispered Consolations will find a natural audience in scholars of literature, especially those concerned with issues of race, but it would be a mistake to view it solely as a work of literary criticism. Despite its generally literary focus, the book warrants the attention of legal historians. The reason lies not only in SuggŝÒs specific argument about African-American literature and American legal life, discussed further below, but also in its conceptual and historiographic implications. SuggŝÒs use of literary methods to analyze and gain fresh access to legal history advances what one might call the "cultural history of American law," an increasingly self-conscious trend within the profession.[2]

Cultural historians of law study the interrelationship of law and culture, the place that legal ideas and institutions hold within the symbolic systems of meaning that constitute social life. Their research might be said to focus on both sides of a single historical coin. On one hand, they are interested in the cultural foundation of legal practices, the ways in which the particular values of a society underlie its law (say, how widely-shared values about race appear in legal doctrine). At the same time, they are concerned with the influence of law on cultural forms, how law as a mechanism of social regulation and an influential ideological force shapes apparently non-legal systems of meaning (for instance, how Jim Crow laws influenced African American social life). The questions involved in such research are largely familiar to historians in that they are centered around issues of causality: how does culture influence law, and how does law influence culture?

In pursuing these questions, some cultural historians of law also are led to focus their attention on the deep symbolic patterns that connect legal and non-legal phenomena.[3] In this effort, they tend to apply the methods of literary theory, often those of post-structuralism, to the materials of social and political history. Indeed, if the cultural history of law has a dominant method, it is the study of language and form – a method that Suggs pursues by focusing especially on issues of narrative structure. This attention to language, in part, is a matter of disciplinary specialization. Much of the impetus for law

as cultural history has come from departments of American Studies, English, and cultural studies, fields within the academy attentive to the play of words and their social significance (Suggs himself is a Professor of English at John Jay College, City University of New York).

More important, however, because law is an explicitly text-producing enterprise, the study of language most immediately enables historians to grasp what anthropologists would call the symbolic "integration" of law with other cultural forms. Legal and literary practices, in particular, are firmly rooted in a shared medium and draw on a common store of words and conventions.

Whispered Consolations brings together literary-critical analysis, historical investigation, and a concern with the mutually constitutive nature of law and literature to reinterpret both African American fiction and American legal history. Suggs argues that both legal texts and African American fiction have represented the relationship between blacks and whites through the narrative conventions of "romanticism." As a set of dominant cultural beliefs, romanticism prizes autonomous selfhood and property ownership, but historically has offered access to these values only to whites. For Suggs, by addressing the romantic issues of selfhood and property in dissimilar ways, law and literature together tell a story about African American life that can be understood through the critical terms of "innocence" and "irony."

The book begins with the observation that African American literature is pervaded by legal themes (an idea, Suggs notes, contrary to the thinking of Ralph Ellison, who once wondered why "American fiction had given so little attention to the law").[4] "[T]here may not be a single novel in classical African American literature," Suggs writes, "that does not contain a significant treatment of the question of the legal status of African Americans or have as its assumed and even unspoken ground the struggle over that status" (p. 9). This basic empirical observation leads Suggs to assert that black literature and American legal history are intricately interconnected. For Suggs, this relation is fundamental, even structural, in character. Most important, both law and African American literature represent the relationships among blacks, whites, and the nation in narrative form. Both literary and legal texts portray the status that blacks and whites hold within the American polity through implicit as well as explicit stories of race and citizenship. Although law and literature share a common basis in narrative, however, they represent the relationships of race and nation differently, based on the social positions of their authors. Law and literature are grounded in a shared reservoir of linguistic and formal conventions, but they diverge in how they portray their common subject. Literary and legal texts about race, that is, are bound together by their differences.

Drawing on the work of Henry Louis Gates, Jr., Suggs describes this "complex weave of interactions" between law and literature as a process of "signifying." In *The Signifying Monkey*, Gates examines African "metaphysical systems of order," especially as represented in the tales of the trickster figure Esu, developing the concept of "signifying" as a practice, in Suggs's terms, by which a person "comment[s] on and through another discourse with your own more empowered one".[5] Suggs assumes that "what Gates says is true of the relationships between law and African American literature," and asserts that through a process of mutual commentary on one another, black literature and American law produce a "third text" that enables its interpreters to know African American life in a new and vital way (p. 10).

According to Suggs, black literature and the law signify on each other within a dominant cultural context of romanticism. By romanticism, Suggs refers to "typologies of self, imagination, community, property, privacy, individualism, authenticity, innocence, and irony that emerge in American consciousness after Independence and that become the unspoken premises from which white Americans in general reasoned toward their understanding of the social body of the United States throughout the nineteenth century" (p. 12).[6] Particularly important within this broad set of principles is a high worth placed on autonomous selfhood and the "centrality of property," values traditionally associated with whiteness (p. 74). African American literature and the law, writes Suggs, are produced within this romantic zeitgeist, and the relationship of mutual commentary between the two occurs within its terms. One might quibble with the details of Suggs's definition of romanticism, and surely not all readers will find a move into zeitgeist to their liking. But the notion that literature and law draw on a common set of widely-shared assumptions and impulses when speaking to or "on" the other succeeds at the very least through its suggestiveness, and what it allows Suggs in practice to reveal in his readings.

Nor does Suggs deploy the concept unselfconsciously. In a methodological footnote that comments sympathetically on an observation by Ann Douglas that history does not always work through the medium of cause and effect, Suggs asserts "that some paradigms through which cultures arrange experience become em-

bedded in the design of everyday life, almost as matrices or templates through which the raw material of cultural production passes everywhere on its way to becoming law, novel, poem, advertisement, hymn, video game" (pp. 325-6).[7] "My questions," Suggs writes significantly, "are more argumentative and suggestive than they are amenable to documentation, having to do with the presence within the general culture of [a] discourse of attitudes and assumptions so sympathetic to the perceived realities of the historical moment that most of the participants in the life of that moment would not think to question or even remark on the centrality, even universality, of their content, whatever side any given participant might take on a specific issue. The presence of those assumptions must be teased out of the social texts of the period, if they are to be seen at all, by intertextual readings" (p. 326).

Suggs argues that romanticism left its mark on African American literature and law by lacing them with themes of "innocence" and "irony" – two terms, he asserts in the first line of his study, that fall "like feather and shot" throughout American legal and literary history, "recurring entries in the log-book of the American experiment" (pp. 1, 15). Unfortunately, given their centrality, these concepts remain somewhat undefined in SuggŝÒs study; but their meaning is clear enough even in the absence of extensive analysis. In both statutes and court cases, laws concerning race have rested upon an assumption of black innocence, the ascription to blacks of a childlike quality whose central feature is an "absence of knowledge" of the self (p. 101). This ascription of innocence was an essential component of blacks' status as property and their longstanding exclusion from the circle of national belonging. It also was structurally bound to cultural assumptions concerning the permissible relation of African Americans to irony, "the reflexive capacity for unmediated knowledge of the self within the structure of the external (to the self) world" (p. 94). According to Suggs, assumptions of innocence required the denial of access of blacks to ironic perceptions of their identity. "Property," he writes "cannot know its own properties" (p. 101).

Whispered Consolations is divided into eight primary chapters, "thematically oriented, but historically situated" (p. 4), and its main focus lies between the years 1820 and 1954. The book begins with a theoretical introduction,ˆÓSignifying, Epistemology, and Ontology in Law and African American Narrative; or, A House of Laws on Fire," which develops the basic themes and assumptions of the study. These include the relation of African American literature and the law as one of signifying, the common romantic culture on which both drew during the nineteenth century, and the themes of innocence and irony as they played out in law and black literature. Suggs also introduces a variety of other concepts that are woven throughout his analysis, particularly the "romantic pursuit of autonomous identity, able of necessity, in the last instant, to stand apart from and to withstand ... community's jurisdiction over private property" (p. 13). The chapter is a dense one, and invites multiple readings, but serves Suggs well through theremainder of his study.

The first four substantive chapters of *Whispered Consolations* examine literature and law from the eighteenth to the beginnings of the twentieth century, focusing on the nineteenth century. Bearing the titles "In Search of Justice and Jurisprudence," "Romance and Resistance," "The Romance of Desire and Identity," and "Privacy, Property, and Self," the chapters center on the "suppression of African American desire" in a variety of legal and literary works –a suppression based on the assertion of an autonomous white self within romantic property regimes (p. 16). Among the many texts discussed in these wide-ranging chapters are *Justice and Jurisprudence: An Inquiry Concerning the Constitutional Limitations of the Thirteenth, Fourteenth, and Fifteenth Amendments* (1889), by the Brotherhood of Liberty; Frank Webb's *The Garies and Their Friends* (1857); Martin Delaney's *Blake; or the Huts of America* (1859-61); Sutton Grigg's *Imperium in Imperio* (1899); slave testimony in a series of court cases, including the trial of the New York conspiracy of 1741; and Charles Chestnut's *The Marrow of Tradition* (1901). The remarkable scope of issues that Suggs considers includes slave literacy, the representation of the marriage contract, questions of associational freedom, the status of the imagination, depictions of black character, stylistic gentility, and legal standing.

Suggs's argument in these chapters is too wide-ranging to summarize here, but an extended excerpt provides a flavor of the insights that his study yields, and the way in which Suggs tacks between literary and legal texts to produce the "third text" that is his larger object of study. "I would also argue," writes Suggs, in one notable passage among many, "that the inability of nineteenth-century white Americans to imagine the African American at the center of narratives of romantic development, because of his/her predetermined role as the 'other' against which the self-realization of the romantic hero must work, parallels and reinforces the unwillingness of white Americans to accept the African American at the center of legal, political, and economic texts, that is, citizenship. If the African American could

never be situated as the self-realizing subject, how could he or she ever truly be 'American'? That was the terrible implication of the Fugitive Slave Act of 1850, that there were no rights that could not be denied, even to a man or woman exhibiting the same desire for freedom that legend has ascribed to the revolutionary colonists. It is the power of that threat, added to the near-total control slavery claimed over the lives of enslaved blacks and free persons of color as well, that is at the center of the struggles of Martin Delany's hero, Henry Blake" (pp. 57-8).

The second four chapters of *Whispered Consolations* focus largely on the twentieth century, and bear the evocative titles "Law and the Urbanization of Narrative in 'Postproperty' African American Life," "Lynchings and Passing," "Resistance in Renascence," and "At the End of Histories." In a new, urbanizing world, writes Suggs, one in which African Americans were "no longer property de jure, they were often property de facto, and certainly they were nowhere near being 'propertied"' (pp. 16-17). The ironies inherent in this new state of affairs, he continues, were "explicit and unavoidable," and the character of African American literary narrative naturally began to change (pp. 17). Questions dominant in the nineteenth century, issues of "personhood, citizenship and authenticity," were "replaced with existential problems of 'post-authentic' life – passing, purpose and free will" (p. 17). Again, Suggs discusses a wide range of topics, from issues of criminality to questions of racial identity and passing, and examines an array of works, including W.E.B. Du Bois's *Dark Princess, A Romance* (1928); Walter White's *Fire in the Flint* (1924); George Schuyler's *Black No More: Being an Account of the Strange and Wonderful Workings of Science in the Land of the Free, A.D. 1933-1940* (1931); Jessie Fauset's *The Chinaberry Tree* (1931); Rudolph Fisher's *The Conjure-Man Dies* (1932); Chester Himes's *If He Hollers Let Him Go* (1947), and the work of Zora Neil Hurston, Richard Wright, and Ralph Ellison.

Suggs concludes with an epilogue, in which he considers the shape of "postclassical" African American narrative. The chapter examines legal and fictional texts after Ralph Ellison's *Invisible Man* and the Supreme Court's decision in *Brown v. Board of Education* (1954) – that is, after the social confrontation with what Suggs describes as the "inescapability of irony" raised by the status of blacks under American law (p. 17). In examining the post-war era, Suggs pays special attention to the work of black women writers, particularly Toni Morrison, and their engagement with issues of desire. He also ranges widely over African American literary texts, from those of Derrick Bell to gangsta rap. The intellectual grounding of the epilogue, as in Suggs's book as a whole, is change over time in the context of thematic continuity. Asking whether there is a "master narrative" to the story of African American literature and the law, Suggs writes that this narrative can be found largely in the consistent ability of black Americans to write themselves into legal life "with authenticity, irony, imagination, and care, with a fine ear and eye for the absurdity of the law as an epistemological tool, and with a love of and devotion to the rule of law…." (p. 323). In this respect, he writes, the literary act of signifying on the law emerges "as our true national history" – as well as a "whispered consolation" to African Americans in the face of oppression (p. 324).

The successes of *Whispered Consolations* as a work of legal history, in addition to its merits as a work of literary criticism, are noteworthy. For one, the book is the first study to take a comprehensive, rigorous approach in conceptually linking African American literature and the law. It thereby supplements a variety of studies on race and legal history (liberally cited throughout the work itself) with a literary focus. Suggs also makes a series of suggestive comments about legal texts that are sure to be of interest to historians. His reading of *Plessy v. Ferguson* (1896) as an "Edenic" text of American life, embodying a "textualization of the desire to regain paradise," is particularly provocative (pp. 15, 46). Not all of Suggs's readings of traditional legal materials will be convincing, at least not at first blush. But it is helpful to view his work as an exercise in interpretation, and when reading the study, to be open to the insights offered by legal readings guided by literary analysis. Finally, *Whispered Consolations* is a valuable addition to the developing cultural history of law, and with its focus on African American history, a worthy one as well. Given that the question of African American destiny may perhaps be the central story of American history, the one on which the moral meaning of the nation rises and falls, legal history is well served by a study that reveals how interdisciplinary methods can illuminate topics of overarching national and scholarly importance.

Although its arguments could have been presented in a more forceful style, the ideas animating *Whispered Consolations* are invariably interesting, and effectively point the way toward future research. Indeed, perhaps the best testament to the merits of Suggs's book is its ability to raise methodological and conceptual questions that suggest further work in the field. The questions are numerous, and I pose only some of them here. What, for instance, is the intellectual genealogy from which Suggs's work arises, and how appropriate is it to place it within the cultural history of law? To what extent

could one situate the book within the development of legal historiography after Hurst? What are the benefits and drawbacks of an approach to legal history drawing on notions of zeitgeist or cultural pattern, and in what way does Suggs's work suggest a more sophisticated approach to the former concept than is often applied? Is it helpful to understand Suggs's work as a study in the ideology of law, within the tradition of western Marxism? In addition to the concept of "signifying," through what other lenses might one look to analyze the relation between law and literature, and law and other cultural forms, with greater rigor than the term "intertextuality" suggests? What future studies of the relation of race, literature and law remain to build our picture of this aspect of the life of our legal order? What is the historical specificity of Suggs's use of romanticism as a legal concept, and how does his use of it differ from critiques of the Enlightenment influenced by Theodor Adorno and Max Horkheimer? From critiques of modernism? How might we develop the notion, as Suggs's work suggests, that blacks have been more closely tied to the law than other racial and ethnic groups? How might we expand the concept that African Americans as a people bear a unique relationship to law? Perhaps this review might be allowed to close with an invitation to the author of *Whispered Consolations*, as well as other readers of H-Law, to comment on these and related questions.

Notes

[1]. On the origins of this expansion, see Robert W. Gordon, "Introduction: J. Willard Hurst and the Common Law Tradition in American Legal Historiography," *Law & Society Review* 10 (Fall, 1975), 9-55.

[2]. In its growing self-consciousness, the cultural history of law is tied to the development of the "constitutive theory of law," *see, e.g.*, Alan Hunt, *Explorations in Law and Society: Toward a Constitutive Theory of Law* (New York: Routledge, 1993), and with the institutionalization of the cultural studies of law, associated in part with the organizational and academic work of Austin Sarat, see, e.g., Austin Sarat, "Traditions and Trajectories in Law and Humanities Scholarship," *Yale Journal of Law & the Humanities* 10(2) (Summer 1998), 401-7 and "Redirecting Legal Scholarship in Law Schools," *Yale Journal of Law & the Humanities* 12(1) (Winter 2000), 129-50 (reviewing Paul Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship* [Chicago: University of Chicago Press, 1999]). On cultural criticism and the law, see also Guyora Binder and Robert Weisberg, "Cultural Criticism of Law," *Stanford Law Review* 49 (5) (May 1997), 1149-221.

[3]. The trend thus encompasses a broad array of research. Recent work that falls under its rubric includes studies as various as Jane M. Gaines, *Contested Culture: The Image, the Voice and the Law* (Chapel Hill: University of North Carolina Press, 1991); the essays in Robert Post, ed., *Law and the Order of Culture* (Berkeley: University of California Press, 1991); the law and literature studies assembled by Peter Brooks and Paul Gewirtz, eds., *LaŵÒs Stories: Narrative and Rhetoric in the Law* (New Haven: Yale University Press, 1996), with Robert A. Ferguson̂Òs "Untold Stories in the Law," 84-98, standing out as an especially significant example; the psychoanalytic analyses of Peter Goodrich, e.g., *Oedipus Lex: Psychoanalysis, History, Law* (Berkeley: University of California Press, 1995); the historical work of Foucaultian legal scholar Jonathan Simon, e.g., "Ghosts in the Disciplinary Machine: Lee Harvey Oswald, Life-History, and the Truth of Crime," *Yale Journal of Law & the Humanities* 10(1) (Winter 1998), 75-114; and the writings of Robert Cover, especially "Nomos and Narrative," in *Narrative, Violence, and the Law: The Essays of Robert Cover*, ed. Martha Minow et al. (Ann Arbor: University of Michigan Press, 1993), 95-172.

[4]. Ralph Ellison, "Perspective of Literature," in *Going to the Territory* (New York: Random House, 1986), 321-338, 325, cited in Suggs, 2.

[5]. Henry Louis Gates, Jr., *The Signifying Monkey: A Theory of Afro-American Literary Criticism* (New York: Oxford University Press, 1988).

[6]. On the Romantic impulses of the south, Suggs draws on Michael O'Brien, "The Lineaments of Southern Anti-bellum Romanticism," in *Rethinking the South: Essays in Intellectual History* (Baltimore: Johns Hopkins University Press, 1988), 38-56.

[7]. Ann Douglas, *Terrible Honesty: Mongrel Manhattan in the 1920s* (New York: Farrar Straus and Giroux, 1995), 201.

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