

2019

## Questions of Trust, Betrayal, and Authorial Control in the Avant-Garde: the Case of Julius Eastman and John Cage

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### Repository Citation

Toni Lester, *Questions of Trust, Betrayal, and Authorial Control in the Avant-Garde: the Case of Julius Eastman and John Cage*, 23 Marq. Intellectual Property L. Rev. 175 (2019).

Available at: <https://scholarship.law.marquette.edu/iplr/vol23/iss2/7>

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# QUESTIONS OF TRUST, BETRAYAL, AND AUTHORIAL CONTROL IN THE AVANT- GARDE: THE CASE OF JULIUS EASTMAN AND JOHN CAGE

TONI LESTER\*

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“Permission Granted. But not to do whatever you want.”<sup>1</sup>

-John Cage-

“[I]t [seems] a common human failing to prefer the schematic authority of a text to the disorientations of direct encounters with the human.”<sup>2</sup>

-Edward Said in *Orientalism*-

“Control/It’s what I got/because I took a chance/I don’t wanna rule the world, just wanna run my life.”<sup>3</sup>

-Janet Jackson-

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1. KYLE GANN, MUSIC DOWNTOWN: WRITINGS FROM THE VILLAGE VOICE 183 (2006) (citing JOHN CAGE, A YEAR FROM MONDAY: NEW LECTURES AND WRITINGS 28 (1967)) (internal quotation marks omitted).

2. Alex Temple, *Composers, Performers, and Consent*, NEW MUSIC BOX (Nov. 24, 2015), <https://nmbx.newmusicusa.org/composers-performers-and-consent/> [<https://perma.cc/TTP8-QXRZ>] (citing EDWARD SAID, *ORIENTALISM* 93 (Vintage Books ed. 1979)) (internal quotation marks omitted).

3. Janet Jackson, Jimmy Jam & Terry Lewis, *Control*, GENIUS, <https://genius.com/Janet-jackson-control-lyrics> [<https://perma.cc/H7Q9-NLA3>] (last visited May 1, 2018).

## INTRODUCTION

Igor Stravinsky said that “music should be transmitted . . . not interpreted, because interpretation reveals the personality of the interpreter rather than that of the author, and who can guarantee that such an executant will reflect the author’s vision without distortion?”<sup>4</sup> Ernst Krenek, however, once countered that while it is totally understandable for a composer to need to “get his message across . . . in undistorted and unadulterated fashion[,]’ . . . [he] should have sufficient confidence in human nature to ‘enjoy rather than to fear the medium of personal life through which his message is filtered.’”<sup>5</sup>

One place where these contrasting views might be resolved is in the world of chance-based music.<sup>6</sup> The late white, gay, composer, and poet John Cage often used the I-Ching as a source of inspiration,<sup>7</sup> leaving open-ended instructions on how his pieces should be performed.<sup>8</sup> In a piece called *Solo for Voice #8* (“Solo”) from his 1960s collection of ninety vocal pieces called *Song Books*,<sup>9</sup> Cage gave this instruction: “[P]erform a disciplined action. . . . Fulfilling in whole or part an obligation to others.”<sup>10</sup> Since no details are given about what the action should entail, performers would seem to have a great deal of leeway in what they can do.

In 1975, however, the late African American, gay, vocalist, and composer Julius Eastman turned Cage’s innocuous directions on their head by engaging in a politically provocative, overtly queer, interpretative performance.<sup>11</sup> Cage was infuriated because he felt Eastman had inserted identity politics into a piece that transcended those issues. The next day, in a post-concert talk to students, Cage lambasted Eastman for being “closed in on the subject of

4. IGOR STRAVINSKY, AN AUTOBIOGRAPHY 75 (W.W. Norton & Co. 1998) (1936).

5. Jerome N. Frank, *Words and Music: Some Remarks on Statutory Interpretation*, 47 COLUM. L. REV. 1259, 1261 (1947) (citing Ernst Krenek, *The Composer and the Interpreter*, 3 BLACK MOUNTAIN C. BULL. (1944) and ERNST KRENEK, *MUSIC HERE AND NOW* (1939)).

6. See generally Alan L. Durham, *The Random Muse: Authorship and Indeterminacy*, 44 WM. & MARY L. REV. 569, 569–642 (2002). Indeterminant artists employ chance or random techniques to create artistic results. *Id.*

7. Marc Thorman, *John Cage’s “Letters to Erik Satie,”* 24 AMERICAN MUSIC 95, 95–123 (2006).

8. See generally Allan Kaprow, *Right Living: John Cage, 1912–1992*, 37 TDR 12, 12–14 (1993).

9. Ryan Dohoney, *John Cage, Julius Eastman, and the Homosexual Ego*, in TOMORROW IS THE QUESTION: NEW DIRECTIONS IN EXPERIMENTAL MUSIC STUDIES 39, 43 (Piekut ed., 2014).

10. *Id.* at 45 (citing JOHN CAGE, *SONG BOOKS* 31 (Peters ed., 1970)).

11. See generally Steven Schlegel, *John Cage at June in Buffalo, 1975* (2008) (M.A. thesis, State University of New York at Buffalo) (on file with author). The transcription was further edited by John Bewley and Adam Overton in 2012 and Laura Kuhn in 2015. *John Cage Lecture at June in Buffalo June 5 1975: Transcription with annotations*, STATE UNIVERSITY OF NEW YORK AT BUFFALO MUSIC LIBRARY (last viewed May 1, 2018) (on file with author).

homosexuality.”<sup>12</sup> Was Cage’s anger or Eastman’s behavior justified? More importantly, why were the two men unable to negotiate a mutually agreed-upon course of action beforehand?

A typical intellectual property law analysis would focus on the competing rights of Cage and Eastman. Namely, Cage’s right to own his work as if it were a piece of property,<sup>13</sup> a right from which other rights flow, including the right to withhold permission from others wishing to publicly perform the work, the right to create derivative iterations thereof, and the more ethereal moral right to control the work’s reputational and even spiritual dimensions from being diluted or defamed.<sup>14</sup> On the other side would be Eastman’s free speech right to appropriate Cage’s work for the purpose of critiquing or sufficiently transforming it,<sup>15</sup> sidestepping having to get Cage’s permission altogether. But what would happen if the focus was on the extent to which a different kind of conversation could have taken place between the two men before the event—one built on trust and self-awareness? What if the dynamic shifted from the adversarial to the relational? Would that have produced a different outcome?

Law scholar Carys Craig observes that “[i]f the communicative function of authorship were not lost beneath the commodified object of copyright, the significance of *appropriation as communication* would be evident, and the value of its contribution to cultural dialogue could be appreciated.”<sup>16</sup> Inspired by feminist relational theory, she notes, “We can also perceive the nature of authorship as a form of dialogue through which individuals actively participate in a cultural conversation.”<sup>17</sup> Cultural conversations like this only exist in the abstract, however. Real face-to-face dialogue can be messy, especially when issues concerning race, sexuality, and privilege are at play. One of feminist relational psychology’s main tenets is that healing can only occur when we try to

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12. Schlegel, *supra* note 11, at 15, 32.

13. See Durham, *supra* note 6, at 607. An interesting twist to this is that because of its chance-based elements, some of Cage’s work might not be copyrightable *at all*. See *id.* at 606 (explaining that U.S. copyright law protects works of original authorship and that “[a] common theme in these experiments with chance is the suppression of the artist’s conscious will. . . . Certainly, claims of property seem crude next to the mystical aspirations many of these artists profess.”).

14. Betsy Rosenblatt, *Moral Rights Basics*, HARV. L. SCH., <https://cyber.harvard.edu/property/library/moralprimer.html> [<https://perma.cc/C5WZ-DQ6E>] (last modified Mar. 1998).

15. See *Cariou v. Prince*, 714 F.3d 694, 708 (2nd Cir. 2013). “The more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use.” *Id.* (quoting *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994)).

16. Carys J. Craig, *Reconstructing the Author-Self: Some Feminist Lessons for Copyright Law*, 15 AM. U. J. GENDER SOC. POL’Y & L. 207, 232 (2007) (discussing the work of Roland Barthes) (emphasis added).

17. *Id.* at 267–68.

talk to each other in such instances.<sup>18</sup> Perhaps this can lead to opportunities for the creation of compelling collaborative art that bridges some of these painful divides.

What I want to explore then is not the *rights* of performers to reshape a work in order to critique it, but how the idea of trust-based dialogue can give us an alternative understanding about the nature of authorial control and interpretation across identity-based differences. Part One will discuss the respective personal stories, philosophies, and competing historical understandings that influenced Cage's creation of *Solo* and Eastman's interpretation thereof. Part Two will offer definitions of trust and communication from the fields of feminist relational psychology,<sup>19</sup> philosophy,<sup>20</sup> and law.<sup>21</sup> Throughout Part Two, I will reflect on the extent to which a trust-based dialogue could have taken place between Cage and Eastman. My general sense is that the answer is "no." Both men had fairly fixed views about the trajectory their art should take, and talking about it probably would not have changed that. Nevertheless, with my conclusion later, I suggest that contemporary composers/authors should still try to create the conditions under which honest, self-aware dialogue about control and trust can arise. Who knows what kind of joint innovative and thought-provoking work could be developed as a result.

#### I. CAGE, EASTMAN, AND THE *SOLO* CONTROVERSY

With the contemporary gay rights movement well underway,<sup>22</sup> Julius Eastman stepped onto the stage to perform his now-infamous rendition of *Solo* in 1975.<sup>23</sup> He is supposed to have tried to undress a woman (who resisted) and succeeded at undressing a male student—both of whom were invited by him to come on stage.<sup>24</sup> He then emitted a series of campy, burlesque "ahs" at the

18. Maureen Walker, *Race, Self and Society: Relational Challenges in a Culture of Disconnection*, in *THE COMPLEXITY OF CONNECTION: WRITINGS FROM THE STONE CENTER'S JEAN BAKER MILLER TRAINING INSTITUTE* 90, 92 (Jordan, Walker & Hartling eds., 2004).

19. See generally JEAN BAKER MILLER, *TOWARDS A NEW PSYCHOLOGY OF WOMEN* (1976).

20. See generally Carolyn McLeod, *Trust*, *STAN. ENCYCLOPEDIA OF PHIL.*, <https://plato.stanford.edu/entries/trust/> [<https://perma.cc/3ALV-WQ9U>] (last updated Aug. 3, 2015).

21. See generally Robert Kutcher, *Breach of Fiduciary Duties*, in *BUSINESS TORTS LITIGATION* 1, 3–4 (Soley, Gwin & Georgehead eds., 2005).

22. Gloria Teal, *The Spark that Lit the Gay Rights Movement, Four Decades Later*, PBS: NEED TO KNOW (June 30, 2010), <http://www.pbs.org/wnet/need-to-know/culture/the-spark-that-lit-the-gay-rights-movement-four-decades-later/1873/> [<https://perma.cc/7D5P-F47U>] (discussing the Stonewall Riots in New York City). It should be noted that some people feel that the modern gay rights movement began in the 1940s, right around the time of WWII. See Vern Bullough, *When Did the Gay Rights Movement Begin?*, *HIST. NEWS NETWORK* (Apr. 17, 2005), <http://historynewsnetwork.org/article/11316> [<https://perma.cc/9PHW-CA63>].

23. Dohoney, *supra* note 9, at 45 (citing Interview with Peter Kotik).

24. *Id.* In one version of this event, the woman resisted being undressed. See Kyle Gann,

naked man as he gave a mock lecture.<sup>25</sup> Cage later ranted that Eastman focused on his sexuality too much in the performance.<sup>26</sup>

Cage once said he wanted his art “to diminish . . . the ego and . . . increase the activity that accepts the rest of creation.”<sup>27</sup> For him, the rest of creation was a nonpolitical space where the experiences of African Americans, gays, women, and other marginalized groups should not be highlighted. By taking this stance, however, he risked the all too frequent practice of people in majority cultures equating their concept of reality with actual reality. Talking about how this phenomenon plays out in cross-racial relations, cultural studies scholar Richard Dyer says that “[a]s long as race is something only applied to non-white peoples, as long as white people are not racially seen and named, they . . . function as a human norm. Other people are raced, we are just people.”<sup>28</sup> Thus, Cage’s concept of the universal was not as all-encompassing as he asserted.

In 1975, you probably could not have come across two similar, yet dramatically different, artists at a critical time in the history of modern music and American sexual and racial politics. In the late 1940s and early 1950s, Cage, along with his lover and creative partner Merce Cunningham, had created some of their most innovative and influential works at Black Mountain College, a place where “nascent ideas and emerging artists seemed to effortlessly cross-pollinate.”<sup>29</sup> By 1975, Cage was in his 60s and firmly established as a pioneer in modern music and performance art.<sup>30</sup>

*Damned Outrageous: The Music of Julius Eastman*, NEW WORLD RECORDS (2005), <http://www.new-worldrecords.org/uploads/fileEp3v.pdf> [<https://perma.cc/GG3R-8MEB>] (providing the liner notes for *Unjust Malaise*); see also *UNJUST MALAISE* (New World Records 2005). Of course, this leads to the whole other question of the extent to which Eastman *himself* was engaging in a similar level of betrayal of trust by behaving in a disrespectful and sexist manner towards the woman by tricking her into volunteering without telling her in advance what was going to happen.

25. Dohoney, *supra* note 9, at 45–46 (first citing Interview with Peter Kotik; then citing Jeff Simons, *Artists Enjoy Options in All-Cage Program*, BUFFALO EVENING NEWS (June 5, 1975); and then quoting RENÉE LEVINE-PACKER, *THIS LIFE OF SOUNDS* 146 (2010)).

26. Schlegel, *supra* note 11, at 31.

27. Thorman, *supra* note 7, at 100 (citing RICHARD KOSTELANETZ, *CONVERSING WITH CAGE* 42–43 (1988)) (internal quotation marks omitted). Talking about why experimental artists community began to develop work increasingly fueled by intention rather than randomness, Cage said: “I think that those people . . . are interested in themselves. I came to be interested in anything but myself. . . . When I say that anything can happen I don’t mean anything . . . I *want* to have happen.” John Cage et al., *An Interview with John Cage*, 10 TUL. DRAMA REV. 50, 70 (1965).

28. Richard Dyer, *The Matter of Whiteness*, in *WHITE PRIVILEGE: ESSENTIAL READINGS AT THE OTHER SIDE OF RACISM* 9, 10 (Rothenberg ed., 2005).

29. Francesca Wilcott, *Composing Silence, John Cage and Black Mountain College*, *INSIDE OUT* (Jan. 3, 2014), [https://www.moma.org/explore/inside\\_out/2014/01/03/composing-silence-john-cage-and-black-mountain-college-3/](https://www.moma.org/explore/inside_out/2014/01/03/composing-silence-john-cage-and-black-mountain-college-3/) [<https://perma.cc/QH9P-HCQF>].

30. See generally Cage et al., *supra* note 27, at 50–72.

With a graduate degree in composition from the Curtis Institute, Eastman became a member of SUNY Buffalo's Creative Associates in 1966, a group of young artists aligned with composers Lukas Foss and Morten Feldman.<sup>31</sup> When Feldman put together the 1975 concert that is the subject of this article, Eastman was already a recorded vocalist on a Grammy-nominated album and had his work conducted by the Brooklyn Philharmonic.<sup>32</sup> With his 1973 ensemble piece *Stay On It*, he was employing elements of experimental notation, pop music, and improvisational features,<sup>33</sup> "forecast[ing] things that would be happening to the [minimalist] movement fifteen years hence."<sup>34</sup>

Cage and Eastman took very different approaches to their sexual orientation in their artistic personas. For Cage, "silence was a strategic aesthetic historically appropriate for Cold War America . . ."<sup>35</sup> In his book *Story/Time: The Life of An Idea*, contemporary dancer/choreographer and noted African American, gay artist Bill T. Jones said that Cage "represented for me everything cool and removed and sophisticated at a time when I was trying to wend my way into the art world."<sup>36</sup> Jones tried to get Cage to endorse the kind of politically-charged work Jones and his partner Arnie Zane were doing, but Cage's reaction was "like 'No way!' We were too 'obvious.' We were too 'in your face.'"<sup>37</sup>

Silence about homosexuality, however, "was not . . . the only option practiced by gay artists, musicians, and poets"<sup>38</sup> in the mid-1970s.<sup>39</sup> Eastman frequently participated in and contributed to the underground gay music scene in New York in the late 1960s and 1970s.<sup>40</sup> For him, "[e]xperimentalism was . . . as much sexual as it was musical, and it often took the form of critical camp."<sup>41</sup> Further, long before the concept of intersectionality became an au courant term, Eastman's defiant sense of himself, as both gay *and* African American,<sup>42</sup> made

31. Gann, *supra* note 24, at 1.

32. *Id.*

33. *Id.*

34. *Id.*

35. Dohoney, *supra* note 9, at 54.

36. John Killacky, *Bill T. Jones on John Cage*, VTDIGGER: COMMENTARY (Nov. 12, 2014), <https://vtdigger.org/2014/11/12/john-killacky-bill-t-jones-john-cage> [<https://perma.cc/NB4W-6TU2>].

37. *Id.*

38. Dohoney, *supra* note 9, at 54.

39. *Id.*

40. Andrew Male, *Julius Eastman: The Groundbreaking Composer America Almost Forgot*, THE GUARDIAN (Sept. 14, 2016), <https://www.theguardian.com/music/2016/sep/14/julius-eastman-american-composer-pianist-femenine> [<https://perma.cc/NJX8-62WJ>].

41. Dohoney, *supra* note 9, at 46.

42. Toni Lester, *Introduction*, in GENDER NONCONFORMITY, RACE, AND SEXUALITY: CHARTING THE CONNECTIONS 3, 10 (Lester ed., 2003). People like Eastman have overlapping racial, ethnic, and sexual/affectional orientations and identities that influence how they see themselves and how others treat them. . . . [D]epending on the context race, ethnicity or sexuality may figure more prominently . . . [in their] experience than . . . [their] gender. That is why, for instance, the only black

its way into seminal pieces like *Crazy Nigger* (1980)<sup>43</sup> and *Gay Guerilla* (1980).<sup>44</sup> Of his tenacious personal and artistic radicalism, poet R. Nemo Hill, writer and early lover of Eastman, said:

His categorical refusal to play by any rules he suspected of even the slightest infraction of his core principles, his refusal to obey any authority other than that which he had identified in his own conscience as the Law—this program was carried out with all the solemnity of a full-blown heresy against prevailing doctrine.<sup>45</sup>

It is important to note that *Song Books* was heavily inspired by the music of early twentieth-century French composer Eric Satie,<sup>46</sup> who is known for the “mingling of high art and vernacular culture that was central to [his] sound—and to the history of modernist art.”<sup>47</sup> On the score, Cage instructed, “We connect Satie to Thoreau.”<sup>48</sup> Cage complained that “the question of homosexuality [arose in Eastman’s performance even though] . . . [n]either Satie nor Thoreau is known to have had any sexual connection with anyone or anything . . . they were two great people who never were in love, neither one of them.”<sup>49</sup>

The truth is that Satie did once have a female lover<sup>50</sup> and was a regular invitee into Paris’ queer arts community. In 1916, the lesbian expatriate, heir-ess, and music patron Winnaretta Singer-Polignac commissioned Satie to

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gay man in a room full of black male heterosexuals may primarily feel isolated because of his sexual orientation; on the other hand, if he is in a room full of white gay men he may feel racially isolated. *Id.*

43. JULIUS EASTMAN, *Crazy Nigger*, on UNJUST MALAISE (New World Records 2005), [http://www.newworldrecords.org/album.cgi?rm=view&album\\_id=15097](http://www.newworldrecords.org/album.cgi?rm=view&album_id=15097) [https://perma.cc/TY2E-6G4M].

44. JULIUS EASTMAN, *Gay Guerilla*, on UNJUST MALAISE (New World Records 2005), [http://www.newworldrecords.org/album.cgi?rm=view&album\\_id=15097](http://www.newworldrecords.org/album.cgi?rm=view&album_id=15097) [https://perma.cc/TY2E-6G4M].

45. R. Nemo Hill, *The Julius Eastman Parables*, in GAY GUERRILLA: JULIUS EASTMAN AND HIS MUSIC 83, 89 (Packer & Leach eds., 2015).

46. See generally Thorman, *supra* note 7, at 95–123. So enamored was Cage with Satie that in 1978, he composed “Letters to Satie,” a sophisticated combination of modern poetry and text, chance-based performance, and noise elements. See generally *id.* And as early as 1945, Cage arranged a portion of *Socrate* for dance. See Douglas Kahn, *John Cage: Silence and Silencing*, 81 THE MUSICAL QUARTERLY 556, 572 (1997).

47. Keith Clifton, *Review of ERIK SATIE*, 64 NOTES 741, 741 (citing MARY E. DAVIS, ERIK SATIE 8 (2007)).

48. John Cage, SONG BOOKS 31 (Peters ed., 1970).

49. Schlegel, *supra* note 11, at 31.

50. Clifton, *supra* note 47, at 741.



compose *Socrate*.<sup>51</sup> There were premiers in Polignac's home,<sup>52</sup> and Adrienne Monnier and Sylvia Beach's Les Amis bookstore, with many of the leading Parisian intellectuals of the time, including some of the most famous lesbians of the era, in the audience.<sup>53</sup> The lyrics for *Socrate* came from Plato's *Dialogues* about the life and death of Socrates, who was executed for corrupting the young.<sup>54</sup> In a major passage in *Dialogues*, Alcibiades, Socrates' former student, complains about his sexual attraction to and rejection by Socrates.<sup>55</sup> Satie chose to use some of Alcibiades' speech in his lyrics but deleted its references to homosexuality altogether.<sup>56</sup>

*Socrate* also played a role in the movement by certain artists to reclaim white, colonial culture and align it with a classic Greek aesthetic at a time when France's international reputation was waning.<sup>57</sup> Satie explained to a friend that he wanted Socrates "to be white and pure like the Antique."<sup>58</sup> While on the surface this probably relates to Satie's desire to create simplified melody lines, *Socrate* "does not present Plato's text . . . as it was; the text is offered as a white and pure idealized past."<sup>59</sup>

51. Samuel N. Dorf, *Erik Satie's Socrate (1918), Myths of Maryssa, and un style dépouillé*, 98 CURRENT MUSICOLOGY 95, 97 (2014).

52. Andrea Decker Moreno, Honors Thesis, *The Cult of Socrates: The Philosopher and His Companions in Satie's Socrate*, UTAH ST. U.: UNDERGRADUATE HONORS CAPSTONE PROJECTS 5 (2013) (citing Samuel N. Dorf, "Étrange n'est-ce pas?": *The Princesse Edmond de Polignac, Erik Satie's Socrate, and a Lesbian Aesthetic of Music?*, in QUEER SEXUALITIES IN FRENCH AND FRANCOPHONE LITERATURE AND FILM 87, 94–95 (James T. Day ed., 2007)).

53. Dorf, *supra* note 51, at 98–99, 101. Polignac was a part of the vibrant Parisian lesbian community of arts and letters. See Winaretta Singer, ALCHETRON (Jan. 16, 2018), <https://alchetron.com/Winaretta-Singer> [<https://perma.cc/3ELE-VLVF>]; see also Jamison Pfeifer, *The Patron Saint of Bookstores*, JSTOR DAILY (Oct. 5, 2019), <https://daily.jstor.org/the-patron-saint-of-bookstores> [<https://perma.cc/5AB5-WKS9>].

54. *Eric Satie \ Socrate + Melodies [LTMCD 2459]*, LTM RECORDINGS, [https://www.ltmrecordings.com/socrate\\_melodies\\_ltmcd2459.html](https://www.ltmrecordings.com/socrate_melodies_ltmcd2459.html) [<https://perma.cc/6CKX-2TR7>] (last visited Nov. 13, 2019).

55. Moreno, *supra* note 52, at 8 (citing Samuel N. Dorf, "Étrange n'est-ce pas?": *The Princesse Edmond de Polignac, Erik Satie's Socrate, and a Lesbian Aesthetic of Music?*, in QUEER SEXUALITIES IN FRENCH AND FRANCOPHONE LITERATURE AND FILM 87, 94–95 (James T. Day ed., 2007)).

56. *Id.* (citing Samuel N. Dorf, "Étrange n'est-ce pas?": *The Princesse Edmond de Polignac, Erik Satie's Socrate, and a Lesbian Aesthetic of Music?*, in QUEER SEXUALITIES IN FRENCH AND FRANCOPHONE LITERATURE AND FILM 87, 94–95 (James T. Day ed., 2007)).

57. Dorf, *supra* note 51, at 96 (citing CAROLYN J. DEAN, THE FRAIL SOCIAL BODY: PORNOGRAPHY, HOMOSEXUALITY, AND OTHER FANTASIES IN INTERWAR FRANCE 34 (2000)).

58. Katharina Clausius, *John Cage's 'Whiteness': 'Cheap Imitation,' 65*, TEMPO 11, 12 (2011). Satie also claimed during this time to have only eaten white food to inspire his white compositional objectives! See The Cross-Eyed Pianist, *Erik Satie lives—for one night only in Barnes . . . .*, THE CROSS-EYED PIANIST (Mar. 15, 2016), <https://crosseyedpianist.com/2016/03/15/erik-satie-lives-for-one-night-only-in-barnes> [<https://perma.cc/3FX8-9RXH>].

59. Dorf, *supra* note 51, at 98.

Of course, there was no such idealized white past. France, after all, was a major colonial power in Africa,<sup>60</sup> and Paris had a growing and vibrant artistic African American culture during Satie's time in large part due to the African American writers and artists who fled the U.S. seeking greater tolerance at the end of World War I.<sup>61</sup> Certainly this must have affected Satie, for his expressed desire to focus on whiteness in *Socrate* is in direct contrast to a piano piece he composed—*Heures Séculaires & Instantanées*<sup>62</sup>—just two years before *Socrate*. The lyrics to the piece introduce a scenario in which “the immense part of the world is inhabited by only one man: a black man.”<sup>63</sup> The lyrics then proceed to show the man reaching a disturbing and stereotyped fate that harkens to longstanding racist and negative imagery in which blacks are either depicted as or devoured by animals:<sup>64</sup> “Four nameless serpents enslave him, hanging from the shirt tails of his uniform which grief and loneliness have made shapeless.”<sup>65</sup>

Lastly, Satie was a social activist who created art programs for the poor.<sup>66</sup> He was even a member of the communist party for a time,<sup>67</sup> and once mocked his great friend, Debussy, for being too bourgeoisie in his daily life, even as his music was more adventurous.<sup>68</sup>

While most historians acknowledge that the Concord transcendentalist Henry David Thoreau was asexual for most of his life, he too was once in love with a woman who rejected him and wrote about her extensively in his journals.<sup>69</sup> Like Satie, Thoreau also set out to cure some of the world's ills. He

60. *History of the French Empire*, HISTORY WORLD 3, <http://www.history-world.net/wrldhis/PlainTextHistories.asp?ParagraphID=oxy> [<https://perma.cc/S5T9-76MW>] (last visited Dec. 15, 2019).

61. Toni Pressley-Sanon, *Review of “When African Americans Came to Paris,”* 57 AFRICAN STUDIES REV. 250–52 (2014).

62. Erik Satie, “*Heures Séculaires & Instantanées*,” in PIANO MUSIC OF ERIK SATIE 69–70 (Max Eschig / Paris & Associated Music Publishers, Inc. / New York eds., Jacqueline Nicole Beaulieu trans., 1971).

63. *Id.* at 69.

64. See *Sex Stereotypes of African Americans Have Long History*, NPR: News & Notes (May 7, 2007), <https://www.npr.org/templates/story/story.php?storyId=10057104> [<https://perma.cc/M2QK-EP4E>] (discussing a comment by interviewee, Professor Robert Samuels). “[I]f you look at the history, and really going back to the mid-1500s or so and continuing on to slavery within the United States and even further than that, black men and women were said to be animalistic in their sexual desires, particularly black men.” *Id.*

65. Satie, *supra* note 62, at 71.

66. See CAROLINE POTTER, ERIK SATIE: A PARISIAN COMPOSER AND HIS LIFE 202 (2016).

67. *Id.* at 189.

68. See *id.* at 202. Of Debussy, Satie said: “This artistic revolutionary was very bourgeois in his life. . . . Raises in salary—other than for him—were not very agreeable to him. . . . A strange anomaly.” *Id.*

69. *About Thoreau*, THE WRITINGS OF HENRY DAVID THOREAU, [http://thoreau.library.ucsb.edu/thoreau\\_faqs.html](http://thoreau.library.ucsb.edu/thoreau_faqs.html) [<https://perma.cc/2CAN-RV83>] (last visited May 1, 2018).

served in prison for refusing to pay a poll tax, the experience for which formed the basis of his 1846 book *Civil Disobedience*,<sup>70</sup> and he was a staunch abolitionist who helped shepherd underground slaves to freedom.<sup>71</sup> Thoreau also supported John Brown, who, along with a band of followers, slaughtered white slave owners in Harper's Ferry in 1859 to protest slavery in the American South.<sup>72</sup>

Thus, over 50 years after *Socrate* was composed and 129 years after *Civil Disobedience* was published, Eastman stepped onto the stage to interpret a piece by Cage inspired by Satie and Thoreau by literally putting the historical color, sexuality, and social commentary hiding in plain sight back into the equation. Some accounts of the *Song* performance say Eastman introduced the event by saying he would be lecturing about "a new system of love."<sup>73</sup> A few years later in a talk he gave about *Gay Guerilla* that echoes Thoreau's writings on social activism, he said, "A guerilla is someone who . . . sacrifice[es] [their] life for . . . a great cause . . . . I use 'gay guerilla,' in hopes that I might be one if called upon to be one."<sup>74</sup> Such was his passionate determination to elevate questions of race and sexuality oppression in his work that in the dedication to his 1981 piece *The Holy Presence of Joan d'Arc*, he wrote, "I offer [this work] as a reminder to those who think that they can destroy liberators by acts of treachery, malice, and murder."<sup>75</sup>

## II. TRUST AND COMMUNICATION DEFINED AND APPLIED

Some psychology scholars define trust as "the willingness to be vulnerable to the actions of a trustee on the basis of the expectation that the trustee will perform a particular action . . . ."<sup>76</sup> Others focus on trustworthiness itself,

70. See *Thoreau's Life*, THE WALDEN WOODS PROJECT, [www.walden.org/thoreau/a-brief-chronology](http://www.walden.org/thoreau/a-brief-chronology) [<https://perma.cc/EKW9-65BJ>] (last visited May 1, 2018).

71. Richard J. Schneider, *Life and Legacy: Thoreau's Life*, THE THOREAU SOCIETY, <https://www.thoreausociety.org/life-legacy> [<https://perma.cc/FW9Z-HDZY>] (last visited Oct. 25, 2019).

72. Henry David Thoreau, *A Plea for John Brown*, THE WALDEN WOODS PROJECT, [www.walden.org/wp-content/uploads/2016/03/PleaJohnBrown.pdf](http://www.walden.org/wp-content/uploads/2016/03/PleaJohnBrown.pdf) [<https://perma.cc/26H7-E77X>] (last visited May 1, 2018).

73. Dohoney, *supra* note 9, at 45 (citing an interview with Eastman's friend and colleague, Peter Kotik).

74. Ellie M. Hisama, "Diving Into The Earth": *The Musical Worlds of Julius Eastman*, in *RETHINKING DIFFERENCE IN MUSIC SCHOLARSHIP* 260, 280 (Bloch, Lowe & Kullberg eds., 2015) (citing Eastman's talk before a concert featuring his work at Northeastern University).

75. Brian Droitcour, *Julius Eastman: New York at the Kitchen*, ART IN AMERICA MAG. (Apr. 1, 2018), <https://www.artinamericamagazine.com/reviews/julius-eastman> [<https://perma.cc/EAF6-YPFU>] (quoting Julius Eastman's dedication for *The Holy Presence of Joan d'Arc*) (internal quotation marks omitted).

76. Jason A. Colquitt & Jessica B. Rodell, *Justice, Trust and Trustworthiness: A Longitudinal Analysis Integrating Three Theoretical Perspectives*, 54, *ACAD. MGMT. J.* 1183, 1184 (2007) (citing

which is comprised of three attributes: ability, benevolence, and integrity.<sup>77</sup> Benevolence refers to the extent to which the trustee is open to doing right by the trustor, and integrity refers to the extent to which the trustee will implement shared values held with the trustor.<sup>78</sup>

Philosophical writers about interpersonal trust posit that trustors must know that they are putting themselves in a vulnerable position, thus risking betrayal.<sup>79</sup> Scholar Margaret Urban Walker echoes this by stating that “to be trustworthy is to live up to [the trustor’s normative] expectations, and a failure to do so can result in betrayal.”<sup>80</sup> In addition, writing about negotiations between world leaders, scholar Andrew Kydd notes that “the more trusting one starts out, the more fluid one’s beliefs will be, because one will be willing to experiment.”<sup>81</sup>

In partnership law, a duty of trust is broken when one of the partners does something for their own individual benefit that conflicts with the interests of the overall partnership.<sup>82</sup> Similarly, “agents may be held liable for serving their own interests above those of their principal.”<sup>83</sup> Breaking such a duty is treated like a “betrayal . . . more than [just a mere] disappointment . . .”<sup>84</sup>

The above discussion provides some useful insights into the challenges Cage and Eastman would have faced had they tried to engage in a genuine conversation before the performance. On the surface, it would seem the two shared values about the nature of chance-based art based on their membership in seemingly like-minded artistic communities. Cage once said he preferred to be “on the side of the things one shouldn’t do.”<sup>85</sup> Eastman tried to do just that by inserting sexuality into the piece in order to shake up the status quo. However, in his talk the day after the performance, Cage emphasized that he and Eastman espoused drastically different philosophies. Cage said he associated the word “discipline” with certain spiritual practices in which you abandon your need to exert your own will, thus freeing yourself from “likes and dislikes.”<sup>86</sup> He

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Roger C. Mayer et al., *An Integrative Model of Organizational Trust*, 20 ACAD. MGMT. REV. 709, 726 (1995) and F. David Schoorman et al., *An Integrative Model of Organizational Trust: Past, Present, and Future*, 32 ACAD. MGMT. REV. 344, 347–48 (2007) (emphasis omitted).

77. *Id.* at 1183.

78. *Id.*

79. McLeod, *supra* note 20.

80. *Id.* (citing MARGARET URBAN WALKER, MORAL REPAIR: RECONSTRUCTING MORAL RELATIONS AFTER WRONGDOING 78 (2006)).

81. ANDREW H. KYDD, TRUST AND MISTRUST IN INTERNATIONAL RELATIONS 43 (2005).

82. Kutcher, *supra* note 21, at 11.

83. *Id.* at 15.

84. Deborah A. DeMott, *Disloyal Agents*, 58 ALA. L. REV. 1049, 1050 (2007) (citing Deborah A. DeMott, *Breach of Fiduciary Duty: On Justifiable Expectations of Loyalty and Their Consequences*, 48 ARIZ. L. REV. 925 (2006)).

85. Cage et al., *supra* note 27, at 61.

86. Schlegel, *supra* note 11, at 34.

chastised Eastman for thinking that the term meant to do what you wanted to do.<sup>87</sup> This then was a Cage only open to experimental vulnerability on his own terms. But it was more than mere terminology or philosophical belief that contributed to their divergent views. As said previously, the two men had totally different perspectives about their place in the world, and the ways that race, sexuality, privilege, and power informed their respective positions.

There is an expectation in partnership law that all concerned are vested in the success of the *overall* project. Self-dealing that benefits someone individually is seen as a serious betrayal.<sup>88</sup> Agency law also presupposes that agent self-dealing is also anathema.<sup>89</sup> Yet neither legal theory considers inequities that might make such situations untenable to people like Eastman. Original agency law developed in ancient times when slaves were called upon to serve as proxies for their masters.<sup>90</sup> The latter had all the power, and the former did not. Writing on the role that power plays in cross-racial communication, organizational, and feminist relational scholar Marcy Crary observes that whites need to “show awareness of White privilege . . . and [be] motivated to care about, be aware of, . . . and learn about race dynamics.”<sup>91</sup> Otherwise, they run the serious risk of “[e]xperiencing it only unconsciously, as a vague sense of uneasiness, they let blacks bear the burden of awareness.”<sup>92</sup> Similar observations can be made about the dynamic that can exist between LGBTQI people and heterosexuals.

Further, feminist relational psychology scholar Maureen Walker notes that “[t]o the extent that we are unable to speak with authenticity about conflict, . . . [over] race, we become caught in the grip of shame where historical hurts can

87. *Id.* at 11.

88. Diana Fitzpatrick, *General Partnership and Fiduciary Duties*, LAWYERS.COM, <https://www.lawyers.com/legal-info/business-law/small-business-law/general-partnership-and-fiduciary-duties.html> [<https://perma.cc/FZ82-WMB9>] (last visited Nov. 17, 2019) (“Partners stand in a fiduciary relation to one another in all matters pertaining to the partnership. . . . Partners must always place the interest of the partnership above their own personal or business interests.”).

89. *Agency—The Basic Law*, STIMMEL, STIMMEL & ROESER: ARTICLES, <https://www.stimmel-law.com/en/articles/agency-basic-law> [<https://perma.cc/FR45-EHTL>] (last visited Nov. 17, 2019) (“Other duties of an agent include: not to acquire any undisclosed material benefit from a third party in connection with transactions conducted or through the use of his/her positions as an agent; . . . [and] to act reasonably and to refrain from conduct that is likely to damage the principal’s interests.”).

90. Wolfram Müller-Freienfels, *Agency Law*, BRITANNICA, <https://www.britannica.com/topic/agency-law> [<https://perma.cc/MR6P-GT5X>] (last visited Oct. 27, 2019) (“[In Roman times] the head of the household could transact business through his slaves or his dependent sons, who were not conceived of as agents but as ‘long arm’ extensions of the contracting master or father.”).

91. Marcy Crary, *Working from Dominant Identity Positions: Reflections from “Diversity-Aware” White People About Their Cross-Race Work Relationships*, 53(2) J. APPLIED BEHAV. SCI. 290, 310 (2017).

92. *Id.* at 313 (citing David A. Thomas, *Mentoring and Irrationality: The Role of Racial Ta-boos*, 28 HUM. RESOURCE MGMT. 279, 284 (1994)).

override our most genuine yearnings for connection.”<sup>93</sup> When such hurts arise, feminist relational psychology’s founder Jean Baker Miller observes that “the conflict may be expressed in extreme forms, as one seeks to hold onto a sense of well-being and safety [in part] by overwhelming and shaming the other . . . .”<sup>94</sup>

Whether he viewed himself as an equal partner in Cage’s project, or simply someone directed to complete a task like an agent, all of these factors of power and privilege would have informed the situation in which Eastman was placed. Partly because of the historical hurts of slavery and contemporary anti-African American discrimination in the U.S., African Americans are generally distrustful of whites in a wide variety of contexts.<sup>95</sup> When white composers and authors come together with African American performers, the legacy of this history is as palpable as the script or score in front of them. The recent uproar that occurred when Tony award-winning, African American singer Audra McDonald participated in a re-envisioning of George and Ira Gershwin and DuBose and Dorothy Heyward’s all African American opera *Porgy and Bess*<sup>96</sup> is an example of the minefield an artist of color faces when they recast old racist tropes to accommodate their humanity. With the permission of Gershwin and Heywood’s estates, white director Diane Paulus teamed up with Pulitzer Prize-winning African American playwright Susan Lori Parks to redraft certain portions of *Porgy and Bess* to create a backstory for McDonald that countered negative racial stereotypes about her character found in the original play.<sup>97</sup>

However, noted white Broadway composer Stephen Sondheim was not pleased. In a scathing critique in the *New York Times*, he complained, “I can hear the outraged cries now about stifling creativity and discouraging . . . ‘fresh perspectives,’ . . . but there is a difference between reinterpretation and wholesale rewriting.”<sup>98</sup> Parks remarked that while Sondheim was entitled to his

93. Walker, *supra* note 18, at 97.

94. *Id.* at 96 (citing JEAN BAKER MILLER, *TOWARD A NEW PSYCHOLOGY OF WOMEN* (1976) and JEAN BAKER MILLER, *TOWARD A NEW PSYCHOLOGY OF WOMEN* (2d ed. 1987)) (emphasis omitted).

95. See Giselle Corbie-Smith et al., *Distrust, Race, and Research*, 162 *ARCH INTERN MED.* 2458, 2458 (2002); John F. Dovidio et al., *Why Can’t We Just Get Along? Interpersonal Biases and Interracial Distrust*, 8 *CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL.* 88, 88 (2002).

96. See, e.g., Hilton Als, *A Man and a Woman—Porgy and Bess Reimagined*, *NEW YORKER MAG.* (Sept. 19, 2011), <https://www.newyorker.com/magazine/2011/09/26/a-man-and-a-woman> [<https://perma.cc/T27A-Z9LT>].

97. *Id.*

98. See Chad Batka, *Stephen Sondheim Takes Issue with Plan for Revamped ‘Porgy and Bess’*, *N.Y. TIMES BLOG: ARTS BEAT* (Aug. 10, 2017), <https://artsbeat.blogs.nytimes.com/2011/08/10/stephen-sondheim-takes-issue-with-plan-for-revamped-porgy-and-bess> [<https://perma.cc/4H9G-97B9>]. It should be noted that the Gershwin and Heywood estates apparently gave their approval for the new production. Als, *supra* note 96.

opinion, it empowered theater critics to think, “Ah, yes, let’s use his words to sharpen our knives.”<sup>99</sup>

Had Eastman asked for Cage’s permission, Cage would not have said “no.” Cage saw Eastman as a means to his own ends, not as a collaborator. During the discussion session that followed the performance, one of the other performers accused Cage of trying to have it both ways—wanting to give up control to see what arises, yet being unhappy with certain results to which he was opposed.<sup>100</sup> As a young, African American, gay man standing in the shadows of the revered, white, elder Cage, Eastman was, therefore, put in a difficult position. He could challenge Cage directly with his reservations about the piece. If Cage’s reaction after the performance is any indication of how the conversation would have gone, it is pretty clear that effort would have failed. He could go against Cage’s suspected wishes and risk feeling like a hypocrite. Or he could engage in his own kind of guerilla tactics on stage and take the chance that he would be ridiculed.

Note that Eastman’s voice is conspicuously absent from Cage’s public scolding. There is no record of his standing up to Cage at the post-concert talk. Recently, a friend of Eastman’s said he told her at the time that he was surprised by Cage’s reaction.<sup>101</sup> Cage claimed that Eastman, who had performed the piece before with Cage not in attendance (one time Eastman jumped rope for the “disciplined action” instruction), cited boredom as the reason for his performance.<sup>102</sup> Talking to an interviewer a few years later about his boredom performing another composer’s piece multiple times, Eastman said, “there wasn’t any more meat in it for me to eat . . . . You have to eat meat, spiritual meat . . . . Some pieces . . . there’s always something to eat no matter how many times you play it.”<sup>103</sup> His *Song* performance was probably motivated by similar reasons. Through it, he chose spiritual authenticity over silence—a righteous form of defection (from Eastman’s perspective) and betrayal (from

99. Rob Weinert-Kendt, ‘*Porgy and Bess*’ Reboot Perseveres Despite Its Critics, L.A. TIMES: ENT. & ARTS (Mar. 14, 2018), <https://www.latimes.com/entertainment/arts/la-xpm-2014-mar-14-la-et-cm-preview-paulus-parks-story.html> [<https://perma.cc/634S-WF6Z>] (quoting Suzan-Lori Parks) (internal quotation marks omitted).

100. Schlegel, *supra* note 11, at 37 (Kotik said, “I think, [it’s] not possible to solve that problem for satisfaction, to have just the good side of it.”).

101. Sasha Frere-Jones, *Hammered into Clouds: Nine Beginnings for Julius Eastman*, THE VILLAGE VOICE (May 2, 2018), <https://www.villagevoice.com/2018/05/02/hammered-into-clouds-nine-beginnings-for-julius-eastman/> [<https://perma.cc/QVG9-2NHZ>] (including an interview with Susan Stenger).

102. See Schlegel, *supra* note 11, at 32; see also Frere-Jones, *supra* note 101.

103. David Garland, *Interview: Julius Eastman in His Own Voice*, SPINNING ON AIR PODCAST, <https://spinningonair.org/episode-2-julius-eastman> [<https://perma.cc/C7C7-TL3Q>] (last visited May 1, 2018).

Cage's)—dismantling Cage's "practices of domination and normalization"<sup>104</sup> in the process.

In his talk after the concert, Cage accused Eastman of lacking both integrity and imagination. He said: "I don't approve because the ego of Julius Eastman is closed in on the subject of homosexuality. And we know this because he has no other idea to express."<sup>105</sup> Cage also characterized another one of the performances—enacted by a woman—as having been done "stupidly" because he felt she did whatever she wanted without any real "distinction."<sup>106</sup> He then maligned anyone who went against his wishes as having devolved back to the "lowest habits [of the human race] as though it were a bunch of alligators instead of people."<sup>107</sup> These last remarks play into the larger culture's negative stereotypes about African American men as being hyper-sexed, predatory, and animal-like<sup>108</sup>—the ultimate form of cross-racial shaming predicted by Jean Baker Miller. Ironically and unfortunately, the remarks also echo to some degree Satie's grotesque description of the black man being devoured by snakes in his *Heures Séculaires & Instantanées* piano piece mentioned earlier.

That Cage felt he could make these kinds of ugly remarks about an African American, gay man and a woman (her ethnicity is unknown) and not suffer the consequences is simply more evidence of the influence and power he wielded with impunity. Rather than trying to understand how he was implicated in this, he redirected his energy toward critiquing the activity as the source of his discomfort.<sup>109</sup> One wonders how much this reaction affected Eastman's ability to forge a successful career afterward, as rumors that he was difficult to work with surrounded him for the rest of his short life and probably contributed to his failure to land a steady music teaching job. Eastman's brother Gerry, a jazz musician, attributed his relative obscurity during his lifetime to "[r]acism within the classical world . . . The system was rigged against him."<sup>110</sup>

Although I do not condone the offensive language Cage used to disparage Eastman's performance, I am not wholly unsympathetic to his concern that

104. Hisama, *supra* note 74, at 263 (citing Cathy J. Cohen, *Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?*, 3 GLQ 437, 441 (1997)).

105. Schlegel, *supra* note 11, at 32.

106. *Id.* at 35 ("[S]he couldn't understand when I explained to her afterward that she hadn't performed the piece. . . . Why do we go to these schools, if we're going to decide to live stupidly? Why do we speak of education?").

107. *Id.* at 33.

108. *The Murder of Emmett Till: Lynching in America*, PBS: THE AMERICAN EXPERIENCE, <http://www.pbs.org/wgbh/americanexperience/features/emmett-lynching-america/> [<https://perma.cc/U9W9-K4HB>] (last visited May 1, 2018).

109. Brian Arao & Kristi Clemens, *From Safe Spaces to Brave Spaces: A New Way to Frame Dialogue Around Diversity and Social Justice*, in *THE ART OF EFFECTIVE FACILITATION: REFLECTIONS FROM SOCIAL JUSTICE EDUCATORS* 135, 139–140 (Landreman ed., 2013).

110. Hisama, *supra* note 74, at 272 (citing GANN, *supra* note 1, at 291).



someone redirected the arc of his work against his wishes. As a pioneer in the history of modern performance art and music, it is totally understandable that he would want to protect his reputation from interpretations that diluted his (what he felt were clear) objectives. Many creative artists justly view their work as if it were an extra limb, a core part of their spiritual and identity. Cage himself later lamented, “Why . . . doesn’t [Eastman] try to do the work that he sets out to perform in its spirit?”<sup>111</sup> He also complained, “I have apparently done my work in such a way that, when people do their worst work and throw every consideration to the winds, they connect it with me.”<sup>112</sup>

In law, some countries sympathize with these sentiments by granting artists moral and reputational rights that attach to their work long after it has been sold or licensed to others.<sup>113</sup> But by using chance-based instructions, Cage left the door open for unanticipated interpretation that fell outside the bounds of his metaphysical sense of himself and the universe. Paraphrasing Janet Jackson’s lyrics referenced at the start of this article: Eastman walked through that door and decided to run his own life. He had his own soul to save.

Soon after the *Song* incident, Eastman dedicated his time to an even greater embrace of his blackness and sexuality in pieces like *Crazy Nigger* and *Gay Guerilla*. When African American students threatened to protest a performance of *Crazy Nigger* at Northeastern University in 1980 because they were offended by its title, “Eastman made it clear that he was reclaiming the word ‘nigger’ as something to be proud of” in his program notes for the piece.<sup>114</sup> Working in the creative art music world dominated by white men, he did his best to find alternative outlets for his contrasting, radical vision. While he could have chosen to castigate Cage through the creation of parodies or critiques, he carved his own path, using some of the open-ended frames of chance-based art but with more direct attention paid to radical identity politics and his dizzying ecumenical use of other styles and methods.<sup>115</sup> It is this vision for which Eastman

111. Schlegel, *supra* note 11, at 32.

112. *Id.* at 30.

113. Scott A. Cromar, Note, *Copyright and Moral Rights in the U.S. and France* 12 (May 1, 2011), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1898326](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1898326) [<https://perma.cc/44YH-TV53>].

114. Gann, *supra* note 24, at 4.

115. See generally Ryan Dohoney, *A Flexible Music Identity: Julius Eastman in New York City, 1976–90*, in GAY GUERRILLA: JULIUS EASTMAN AND HIS MUSIC 116, 116–130 (Packer & Leach eds., 2015). After Eastman moved to New York City, he was part of a collective of black composers, along with Tania Leon and Talib Hakim, who produced concerts performed by the Brooklyn Philharmonic. *Id.* at 121. Towards the end of his life, he even connected with punk and new wave artists in the downtown New York scene. *Id.* at 124. Probably in part as an act of artistic survival, he embarked on a “flexible musical identity that opened up new possibilities and musical relations.” *Id.* at 126.

is now being championed in concerts, books, and laudatory reviews around the world.<sup>116</sup> Unfortunately, he is not here now to enjoy the acclaim.<sup>117</sup>

Around 1980, depending on who tells the story, Eastman, in the throes of alcoholism, drugs, or illness, was evicted from his apartment in New York City, leaving him to live on the streets for a few years.<sup>118</sup> He died of a heart attack in relative obscurity at the age of 45 in 1990.<sup>119</sup> Cage died two years later in 1992 at the age of 79.<sup>120</sup> His New York Times obituary said he was a “driving force in the world of music.”<sup>121</sup>

## CONCLUSION

Does the above discussion mean that the only way for performers on the margins to have more agency when they perform the work of majority culture creators is to abandon the idea of collaboration altogether and converse with it in the abstract by creating legally contested parodies or other forms of critique against the will of the originators? African Americans have a long history of creating new work that critiques earlier work by whites and having to defend those critiques in court. Some of the most famous cases have ended with them either winning or settling in a satisfactory manner out of court.<sup>122</sup> Yet this exercise in free speech is time-consuming and expensive.

There are examples of non-adversarial cross-cultural artistic dialogue, however, that have been successful. Witness the collaboration discussed above between the Gershwin and Heyward estates and Audra McDonald, Diane Paulus,

116. Adam Shatz, *Bad Boy from Buffalo*, N.Y. REV. BOOKS (May 10, 2018), <https://www.ny-books.com/articles/2018/05/10/julius-eastman-bad-boy-buffalo/> [<https://perma.cc/G9HU-S92M>]; see also Droitcour, *supra* note 75.

117. Male, *supra* note 40.

118. *Id.* (“All his belongings, including his music, were abandoned on the street and, when he didn’t return, taken to the city dump. Effectively homeless, still composing, Eastman became increasingly reliant on alcohol and drugs. He lived rough for a few years in Tompkins Square Park . . .”).

119. Hisama, *supra* note 74, at 270.

120. Allan Kozinn, *John Cage, 79, a Minimalist Enchanted with Sound, Dies*, N.Y. TIMES (Aug. 13, 1992), <https://archive.nytimes.com/www.nytimes.com/learning/general/onthis-day/bday/0905.html> [<https://perma.cc/GSG7-7UXV>].

121. *Id.*

122. See, e.g., *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994) (discussing a suit against rap group 2 Live Crew for doing a parody of the Roy Orbison song, “Pretty Woman” where 2 Live Crew won the case on free speech grounds); see also Toni Lester, *Oprah, Beyoncé and the Girls Who “Run the World”—Are Black Female Cultural Producers Gaining Ground in Intellectual Property Law?*, 15 WAKE FOREST J. BUS. & INTELL. PROP. L. 537, 559–60 (2015) (discussing *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1270 (11th Cir. 2001)). In *Suntrust Bank v. Houghton Mifflin Co.*, the appeals court vacated order against black author, Alice Randall, who penned a parody of the white author, Margaret Mitchell’s southern classic *Gone with the Wind* in order to redress negative stereotypes against blacks covered in the book. Lester, *supra* note 122, at 560. The case was ultimately settled, with Randall being required to put a sticker on the book’s sales label that said “unauthorized parody.” *Id.*

and Susan Lori Parks on *Porgy and Bess*, which ended winning McDonald a Tony award for best actress in 2014.<sup>123</sup> Or the famous collaboration in the 1950s, 1960s, and 1970s between white composer Samuel Barber and the great African American soprano Leontyne Price, who premiered many of Barber's most famous works. When Price became "the first black artist to appear in an opera on TV [as] . . . [a]n African-American Tosca, [in 1955] singing opposite a white tenor as her lover, . . . NBC affiliates in 11 southern cities refused [to] broadcast" the concert.<sup>124</sup> During many of her performances in the South, African American audience members were required to sit in segregated sections.<sup>125</sup>

The very fact that Barber chose to compose for an African American woman from the South in the 1950s and have her be the face of his music was thus, in and of itself, a radical act.<sup>126</sup> Price, probably in part due to the expectation at that time that African Americans in the public eye should be conciliatory in their demeanor concerning matters of race relations, was always reticent about stating her personal opinions publicly about the indignities to which she was subjected.<sup>127</sup> While she never set out to overtly recast Barber's music as a vehicle for her own political views, the very fact of her towering and commanding presence as his chief artistic interpreter represented the utmost expression of dignified activism she could offer at the time. No doubt, in a similar situation

123. Daniel McDermon, *How Audra McDonald Won Six Tony Awards*, N.Y. TIMES: ARTS BEAT (June 9, 2014), <https://artsbeat.blogs.nytimes.com/2014/06/09/how-audra-mcdonald-won-six-tony-awards> [<https://perma.cc/MHR4-PX4D>].

124. Tom Huizenga, *Leontyne Price at 90: The Voice We Still Love to Talk About*, NPR MUSIC: DECEPTIVE CADENCE (Feb. 10, 2017), <https://www.npr.org/sections/deceptivecadence/2017/02/10/513284623/leontyne-price-at-90-the-voice-we-still-love-to-talk-about> [<https://perma.cc/8UFU-66VF>].

125. Anthony Tommasini, *Leontyne Price, Legendary Diva, is a Movie Star at 90*, N.Y. TIMES (Dec. 22, 2017), <https://www.nytimes.com/2017/12/22/arts/music/leontyne-price-met-opera.html> [<https://perma.cc/8UFU-66VF>].

126. Here is the kind of critique that the great diva, Price, was subjected to by music critics at the time: "When I look at what is happening on a stage, my imagination still cannot accommodate itself to a black in the role of a white." Tracie Rhesean Davis, *Racism in 20th Century Opera: A Retrospective*, SCAPIMAG. (Feb. 23, 2018), <https://scapimag.com/2018/02/23/racism-in-20th-century-opera-a-retrospective> [<https://perma.cc/8GLF-WGAY>] (referring to a review by B.H. Haggin in the 1970s) (internal quotation marks omitted).

127. Philip Kennicott, *Defining Diva*, OPERA NEWS, [https://www.operanews.com/Opera\\_News\\_Magazine/2014/11/Features/Defining\\_Diva.html](https://www.operanews.com/Opera_News_Magazine/2014/11/Features/Defining_Diva.html) [<https://perma.cc/YJD3-3KPJ>] (last visited Nov. 17, 2019) ("One can't listen . . . not wonder about the many lacunae in our knowledge of Price—her personality, her family, her memories of youth, all those things she has so decorously obscured over the years. . . . In retrospect, from the midst of our confessional age, her reticence is admirable; so too her repeated insistence in interviews that she doesn't want to dwell on the challenges, the hard years, the struggles it took to conquer the musical world. Anyone from my generation, and anyone younger, who learns to appreciate her astonishing artistry must make an effort to fill in those gaps. . . . [I]t was dogged by the ugliness of racism, too.").

just a couple of decades later, Eastman would have taken the whole enterprise to another more radical level.

In our current politically charged climate, where race relations and attitudes about the LGBTQI rights are being hotly contested,<sup>128</sup> many feel we are living in a time of great intolerance that harkens back to Price's 1950s and Eastman's 1970s. For contemporary composers/authors and performers, the fractured relationship between Cage and Eastman only reminds us how important it is to confront these issues and try to come to terms with them. Music critic Alex Temple states that there is always a "power dynamic inherent in the very act of writing music for someone. . . . [Y]ou can't get around the fact that . . . you're taking control of their body for a period of time."<sup>129</sup> If we want to change the dynamic wherein the adversarial always take precedence over the relational, and money damages serve as a stand-in for failed cooperation, greater attention needs to be paid to the role that power, privilege, racism, homophobia, and sexism play in relations between composer-authors and performers. While Cage and Eastman were not able to tackle these questions head-on, hopefully, their story will motivate contemporary artists to try even harder to do so. Otherwise, each side will continue to walk away feeling betrayed or devalued, respectively, and the future of new performance art and music will be all the poorer for it.

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128. Mark Sherman, *More LGBT Issues Loom as Justices Near Wedding Cake Decision*, BOS. GLOBE (May 26, 2018), <https://www.boston.com/news/politics/2018/05/26/more-lgbt-issues-loom-as-justices-near-wedding-cake-decision> [<https://perma.cc/TP65-V5X4>].

129. Temple, *supra* note 2.