

African American Culture and Legal Discourse

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Edited by Lovalerie King and Richard Schur
with a Foreword by Gerald Horne

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AFRICAN AMERICAN CULTURE AND LEGAL DISCOURSE
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Softcover reprint of the hardcover 1st edition 2009 978-0-230-61988-3

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First published in 2009 by PALGRAVE MACMILLAN® in the United States—a division of St. Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

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ISBN 978-1-349-38243-9 ISBN 978-0-230-10172-2 (eBook)
DOI 10.1057/9780230101722

Library of Congress Cataloging-in-Publication Data

African American culture and legal discourse / edited by Lovalerie King and Richard Schur, with foreword by Gerald Horne.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-349-38243-9 (alk. paper)

1. African Americans—Intellectual life. 2. African Americans—Legal status, laws, etc.—History. 3. Race discrimination—Law and legislation—United States—History. 4. Law—Social aspects—States—History. 5. Law and literature—United States—History. 6. Literature and society—United States—History. 7. American literature—African American authors—History and criticism—Theory, etc. I. King, Lovalerie II. Schur, Richard L.

E185.86A3316 2009

342.7308'73—dc22

2009015664

A catalogue record of the book is available from the British Library.

Design by Scribe Inc.

First edition: December 2009

10 9 8 7 6 5 4 3 2 1

Loverie would like to dedicate this book to her brothers,
Freddy, Charles, Chris, Bobby, Billy, and Stevie King.

Richard would like to dedicate this book to Victor and
Eileen Schur, who inspired his passion for justice.

Was this what so many places in America were going to be like until the law, *justice*, took off her goddamn blindfold and saw what she had been doing with it *on*?

—John A. Williams, *The Man Who Cried I Am*

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Acknowledgments

We would first like to thank our families and friends for the love and support that keeps us going every day. We are indebted to Drury University and Pennsylvania State University as well as our many wonderful colleagues at both institutions whose support made this project possible. Marie Tracy (Drury) provided a wealth of help with editing and formatting the manuscript. Elizabeth Neyens and Aqsa Ahmad (both Pennsylvania State University) provided additional editing and proofreading assistance. Carla Mulford (Pennsylvania State University) provided space in her Working Papers program for early dialogue about the issues covered in the volume.

We especially acknowledge and appreciate our contributors' patience and hard work during the years it took to bring this project to fruition. Finally, we would like to thank Rachel of Twin Oaks Indexing for going far beyond the call of duty in creating our index.

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Foreword

Gerald Horne

Not so long ago, the ties between law and art were considered to be as tenuous as those between chalk and cheese. This kind of thinking was part of a rigid binary, a dichotomy that divided intellectual life into separate spheres as impervious to penetration as the separate spheres that were said to characterize life along the gender line.¹ But in any case, the idea of the “male public sphere” and the “female private sphere” hardly applied to African Americans and, likewise, the supposed barrier separating law from art is equally inapplicable.

More than that, attempting to maintain such a “Great Wall” between law and literature in the realm of African American Studies can be not only misleading but also dangerous. Thus, when the phenomenon known as “gangsta rap” erupted some years ago, it was discussed almost exclusively in the light it supposedly shone on African Americans, with much blathering about our alleged “pathologies.” Yet, few bothered to note that historically the entertainment industry in the United States—and, indeed, in other nations as well—has been suffused by the influence of organized crime; this has been notably true of Hollywood,² the synecdoche for movie-making—which just happens to be situated in Los Angeles,³ the headquarters of “gangsta rap.” In other words, discussing this turn in music as a “thing in itself,” apart from a broader discussion of the political economy, would be as fallacious as discussing other trends within popular culture beyond the broader context.

Thus, as Akilah N. Folami points out cogently, trends within hip-hop—not least, the rise of “gangsta rap”—were influenced decisively by the Telecommunications Act of 1996, just as the grittiness of this music itself was shaped inexorably by its birthplace in the Bronx, New York, which was being squeezed by a kind of “planned shrinkage” that involved escalating unemployment, growing poverty, proliferating racism, and worse. This disturbing tendency reached an apogee during a national television broadcast of baseball’s “World Series” in 1977, when the announcer of stentorian tones, Howard Cosell, informed a stunned viewing audience that had tuned in to the game unfolding in the Bronx’s Yankee Stadium: “Ladies and Gentlemen, the Bronx is Burning.”⁴ The television cameras then panned from the pastoral green of the baseball diamond to the disturbing scene beyond the warning track, where buildings were ablaze, an outgrowth of a dastardly scheme by rapacious landlords to burn out tenants and reclaim property. It was in such an environment that hip-hop itself was born and, consequently, analyzing this cultural form without consideration of its origins would be akin to seeking to analyze American racism without consideration of the African slave trade⁵ and Jim Crow. Similarly, discussing

“gangsta rap” without consideration of the Telecommunications Act is equally misleading. This legislation fed a concentration of ownership, particularly in the radio business, that contributed to a reduction in alternative voices, ideas, news, and art heard on the airwaves. This radio deregulation had as damaging an impact as its counterparts in the airlines (poorer service, higher fares, fewer airlines, etc.) or Wall Street (more scams, more bankruptcies, more layoffs, etc.). More to the point, rap was reduced to the lowest common denominator in the logic of Gresham’s law; arising from the rubble was “gangsta rap,” and buried in the rubble was a more hopeful “conscious” or more politicized rap.

Folami illuminates both law and rap by probing their intersection. D. Quentin Miller performs a similar service in his scintillating analysis of James Baldwin’s signature work, *The Fire Next Time*. This trailblazing book is difficult to comprehend without engaging how the law defined enslaved Africans as chattel and then substantiated Jim Crow. Indeed, as the author notes perceptively, the entire corpus of African American fiction is grounded in law, insofar as it is compelled perforce to grapple with this constructed status of inferiority. Police and imprisonment are inescapable aspects of the black experience, which implicates the machinations of criminal law. Like any stimulating piece of writing, Miller’s work forces the reader to consider weighty matters that soar beyond the meticulousness of his finely honed prose. Thus, should not black intellectuals retrospectively withdraw diplomatic recognition of the United States because of slavery and Jim Crow eras? This legal maneuver would not only complement the force of Baldwin’s brilliance but it would also raise the profound question the legitimacy of the American Revolution and its progeny. It would also convey enhanced retrospective recognition on those rebels who merit more honor, including Gabriel Prosser, Denmark Vesey, Paul Robeson, Shirley Graham Du Bois,⁶ and others.

D. Quentin Miller is not the only author, however, in this illuminating collection who forces the reader to ponder profundities. I speak of Matthew L.M. Fletcher: in limning the snares that have entangled the Cherokee Nation and their insistence on sovereignty and African American leaders and their objection to stripping the Black Freedmen of tribal membership (a putative violation of U.S. law), it does seem that appeals to a third legal regime—beyond the Cherokees and the United States, that is, international law—could be the sharp blade to slice this Gordian knot. Certainly, the author is correct in observing that the sovereignty of indigenes should be contemplated more carefully by all those concerned with progress. Thus, those desiring to preserve and extend affirmative action should examine more carefully the legal basis of tribal sovereignty, which is grounded not on the “racial character” of indigenes but, instead, on the “political relationship” between indigenes and the government now based in Washington, DC. The latter basis strikes me as something of particular significance for African Americans. Similarly, if reproductive rights are circumscribed on territory administered by Austin or Albany, conceivably tribal sovereignty could wind up being a savior for women in particular. In a similar vein, Sharon Harris’s exposition of the life of Lucy Terry, the first recorded African American poet, reminds us once more that those designated as enemies by Washington are not necessarily the enemies of those of African descent.

There may be no clearer connection between art and the law than the sordid tale of how African Americans who developed ragtime, blues, and jazz—among

other art forms—found their copyrights divested and, through inequitable contracts, their earnings pilfered, a story told quite well by K. J. Greene. Complementing this work quite nicely is Richard Schur's exploration of trademark law and its intersection with Aunt Jemima and other racialized emblems that have descended through the decades.

Unfortunately, space constraints do not allow for consideration of the other gems that comprise this wonderful collection. Suffice it to say, however, that a real treat awaits the reader who digs deeply into this enlightening text. For herein it is not only justice that is unveiled but also the ineffable bonds that bind the presumed separate spheres that are law and art.

Notes

1. See Rosenberg, *Beyond Separate Spheres*, and Davidson and Hatcher, *No More Separate Spheres!*
2. See Horne, *Class Struggle in Hollywood*, and Horne, *The Final Victim of the Blacklist*.
3. See Horne, *Fire This Time*.
4. See Mahler, *Ladies and Gentlemen, the Bronx is Burning*.
5. See Horne, *The Deepest South*.
6. See Horne, *Race Woman*.

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