

CHAPTER I

From Chattel to Intellectual Property: Legal Foundations of African American Cultural Critique

Copyright and intellectual property are the real estate of the future.

—Dexter Scott King, *Growing Up King*

Many critics charge that the King family has neglected King's social and moral legacy in favor of exploiting for themselves his commercial appeal.

—Michael Eric Dyson, *I May Not Get There with You*

The U.S. Postal Service has issued over 150 stamps of African Americans. From Frederick Douglass and Harriet Tubman to Malcolm X and Charlie Parker, the images of African American leaders, musicians, athletes, scientists, and business leaders have been captured on stamps of all sizes and denominations. The watershed year for this representational emphasis is 1980. Between 1940 and 1980, about twenty African Americans appeared on postage stamps. In the last quarter-century, nearly seven times that number of African Americans have appeared on postage stamps and postcards. Despite the continued existence of racial hierarchy and white supremacist thought in American life, what does this sudden explosion of images from African American history mean? How does this shift in

American popular visual culture demand a rereading of the very tradition of African American cultural criticism these stamps seek to represent? How does the “materialization” of this tradition of dissent alter the very meaning of the original messages for contemporary readers? Does this commodification of such figures reveal absences, gaps, or new ways of reading and understanding these canonized figures?

The hip-hop and Post-Soul generations (who came of age after the March on Washington, but before the rise of commercialized hip-hop) encountered the great leaders of African American history not only within their homes and churches but within American popular culture as well. Unlike earlier generations, who learned about the accomplishments of Douglass, Jacobs, Cooper, Washington, and Du Bois primarily within the confines of the African American community, more recent generations have encountered the canonized versions of King and Malcolm X, alongside the African American community’s memories. If their parents and grandparents knew their words, the hip-hop generation is just as likely to recognize the images of Martin and Malcolm as their ideas. On the one hand, this increased visibility demonstrates a shift in American culture because most people consider it “normal” to recognize African American heroes. On the other hand, more images within American visual culture do not necessarily translate into a broader-based commitment to end racism or white supremacy. Ironically, the civic recognition of King and others has persuaded many whites that racism is a thing of the past. The increased visibility of African American leaders may also cause the hip-hop generation to grow cynical about Civil Rights Movement heroes because the apparent widespread acceptance of their efforts has not helped to realize their visions of freedom and equality for African Americans.

From the hip-hop generation’s viewpoint, the translation of the Civil Rights Movement into stamps or other commodities creates an ambiguity about the movement itself. Coupled with the general ironic attitude toward politicians, athletes, and Hollywood stars, this has led to widespread cynicism about social activists and activism. For example, the main character of *Barbershop* (Eddie, played by Cedric the Entertainer) calls Martin Luther King a “ho” because of his adulterous behavior and states that “Rosa Parks ain’t do nothin’ but sit her black ass down.” These comments (and the ones critical of Jesse Jackson as well) reflect disenchantment with the Civil Rights Movement, its tactics, and its vision because the movement and its main figures have become unquestionable, especially as white leaders from across the political spectrum genuflect at the past while in-

creasingly ignoring the continued legacy of racial hierarchy in American culture.¹

This chapter provides an intentionally revisionist account of African American cultural criticism. My goal here is to trace the origins of the hip-hop generation's approach to property law and why materialism and propertizing one's identity, at least on the surface, appear to be more appealing than social activism for many young African Americans. Building on the work of many hip-hop commentators who have examined, criticized, and defended hip-hop's materialism, I seek to place hip-hop's attitude toward property in a historical context. My purpose is not to rehearse the arguments made so ably by Derrick Alridge, Regina Austin, Yvonne Bynoe, Jeff Chang, Nelson George, Robin Kelley, James Peterson, Ted Swedenburg, S. Craig Watkins, and Kristine Wright on this topic. Rather, I hope to find a broader historical explanation for this "return" to property rights and contextualize it as part of the ebb and flow of African American cultural criticism. Todd Boyd has begun this project by articulating the dawning self-consciousness among the hip-hop generation.² Regina Blackburn has also initiated the project of revising African American cultural history through the lens offered by hip-hop.³ This chapter, in essence, is equal parts archaeology, genealogy, and hermeneutics. Using the material practices and frequent materialism of hip-hop as a primary analytic, I reread the classic texts of African American studies to help them speak to the challenges of the post-Civil Rights era.

Stephen Best has recently argued that slave law in the nineteenth century laid the foundation for the contemporary *propertization* of life via intellectual property law.⁴ In this chapter, I seek to extend his account and show how African American culture has increasingly placed property law at the center of cultural criticism. Rather than providing a definitive reading of any one text or period, I am trying to stitch together remnants of historical memory and develop a narrative to explain recent shifts in African American cultural production. This new/old narrative breaks up African American intellectual history into three periods based on the main question the period posed for property law. The first period (1780–1880) asked *who could own property*. While there was a range of writings, sermons, and speeches during this period, I am specifically interested in how some of the most famous slave narratives addressed this question about the subject in property law.⁵ The second period (1880–1964) begins with the enactment of Jim Crow laws and caused African Americans to struggle with the question of *where could African Americans own property* and the spatial logic of

property law. These questions about the geography of race can be found in the debates between Du Bois and Washington and between Malcolm X and Martin Luther King. The last period (1964 to the present) represents the beginnings of a new era in which the question becomes *who owns the imaginary domain out of which African Americans form cultural identity*. In this section, I explore the lawsuit between Rosa Parks and Outkast. The post-Civil Rights era has been marked by multiculturalism and identity politics. The legal battle over Parks's name suggests how the ownership over the symbols and metaphors of American and African American life has become a central issue in African American cultural criticism.⁶ My rereading of African American history through the lens of property implies both continuity and change between generations or historical periods.⁷ While admittedly painting with a broad historical brush, my goal here is to provide a historical context for hip-hop aesthetics and its attitude about property.

Slave Narratives

Slave narratives depict the monstrous cruelty of slavery, enabling formerly enslaved African Americans to write themselves into American culture and providing a forum for demonstrating how slavery tainted the entire country with immorality. According to Robert Stepto, "The strident, moral voice of the former slave recounting, exposing, appealing, apostrophizing, and above all *remembering* is the single most impressive feature of a slave narrative."⁸ These highly crafted narratives allowed certain talented writers, like Frederick Douglass, to assume a high level of authorial control in spite of the many generic restrictions and engage in social, cultural, and political criticism.⁹ Hazel Carby notes that "in the slave narratives written by black women the authors placed in the foreground their active roles as historical agents."¹⁰ Carby's study also demonstrates that African American women used the slave narrative both to assert control over racial and gender stereotypes and to create, via writing, a more authentic self. Henry Louis Gates argues that because slave narratives frequently were honed and perfected on the speaking podium prior to being written down, the texts incorporate both authorial intent and audience response.¹¹ Gates contends that from the beginning, slave narratives constituted revisionist accounts of African American history. Hip-hop's rereading of slave narratives thus merely serves as the latest iteration of revisionist criticism.

Hip-hop's rereading of slavery and slave life is perhaps no more shocking than Booker T. Washington, who downplayed the hardships of slavery to promote the value of labor, but it nonetheless clashes with more established views and fosters tensions between generations of African Americans.¹² Near the conclusion of Jake Lamar's *The Last Integrationist* (1996), Emma Person, one of the main characters, states quite bluntly that "what the slave wants is not freedom, but a slave of his own."¹³ Through Emma Person, Lamar argues that freedom is not the main goal of the slave—property ownership is. If Lamar alone had articulated such a position about slavery, it might be idiosyncratic to highlight it here. However, Edward P. Jones won the 2004 Pulitzer Prize for fiction for his novel *The Known World* (2003), where he presents a complex portrait of antebellum life that includes a former slave becoming a slave owner himself. In Jones's fictional account, Henry Townsend, a freed slave and plantation owner, quickly adapts and adopts the attitudes toward property held by whites of the period. In the visual arts, the MacArthur Foundation presented Kara Walker with a prestigious "genius" grant for her black cut-paper silhouettes that resurrect forgotten images of African Americans from the South. Walker has been criticized for producing work that so closely resembles forms and images designed originally to demean and oppress African Americans. Because Walker's silhouettes tell complex stories, Thelma Golden once commented to Walker, "I imagine that there must be 500 pages of some sort of parody of a slave narrative lurking in your studio."¹⁴

Do these fairly well-received instances of contemporary artists and writers rewriting slave life suggest how hip-hop is revising our understanding of slavery? Annette Dixon writes: "Adopting the antiquated medium of the silhouette, Walker turns it into a power tool with which she evokes the system of slavery, exploring themes of exploitation, accommodation, and complicity in the institution of slavery on the part of both the powerful and the oppressed."¹⁵ Novels about slavery written in the transition period between the Civil Rights era and the full-blown emergence of hip-hop aesthetics in the late 1980s, such as Ernest J. Gaines's *The Autobiography of Miss Jane Pittman* (1971), Gayl Jones's *Corregidora* (1975), and Sherley Ann Williams's *Dessa Rose* (1986), retain a much more reverent attitude toward those who were enslaved and clearly criticize every aspect of racism from that era. More recent images and novels present a much more ambiguous image of slave life and the goals and hopes of enslaved African Americans. By analyzing a few select passages from three of the more important slave narratives, I will bring attention to several moments in these texts that critics have

tended to overlook but that are likely to gain in importance as a result of the hip-hop challenge to African American cultural criticism.

Most scholars identify Olaudah Equiano's text as one of the earliest slave narratives. A hip-hop rereading of the text might, for instance, focus on the narrative's conclusion, after Equiano is free and is attempting to find success in a postliberation (at least for him) setting. The narrative's ultimate anecdote relates his efforts to serve the English government and aid a group of Africans the British wished to return to Africa. Initially, Equiano refused to join the mission but was ultimately convinced to participate. The misappropriation of funds by government officials, however, caused the ship to lack the basic requirements needed to complete the journey. A number of the Africans perished as a consequence of this misuse of public property. As a result of the improprieties, the government relieved Equiano of his position. Equiano then uses his narrative to protect his integrity and incorporates in his text a number of letters that demonstrate that his virtue was ultimately vindicated by later investigations.

A hip-hop reader is likely to focus on this passage because it confronts the dilemma of hip-hop culture: how does one maintain one's integrity (i.e., keep it real) in a material world? This concluding story from his narrative allows Equiano to remind his readers one last time that slavery constitutes barbarity and a form of theft. Equiano demands that English law take seriously its own property laws. Slavery circumvents property law properly understood and undermines the budding capitalist ethic. Equiano's argument is structurally similar to hip-hop's critique of contemporary property law because both reiterate the value of protecting property interests but question what can and cannot be owned. Even though the narrative as a whole is much more concerned with developing a critique of slavery and stating the case for abolition, its attention to property relations allows the book to speak in a different register to contemporary audiences, especially as it makes clear that the evil of slavery is that it is not a small step from the misappropriation of black bodies to the misappropriation of government property.¹⁶

Similarly, Harriet Jacobs's *Incidents in the Life of a Slave Girl* concludes by reinforcing the importance of reconstructed property law for African Americans. Although one might assume that a woman, such as Jacobs, who had been an object of property would demand a complete abolition of the propertization of life, Jacobs endorses ownership as long as the subject of property law (i.e., *who* can own things) is expanded to include African Americans. Under antebellum law, slave owners stole a slave's labor. To

this, Jacobs responds, “When a man has his wages stolen from him, year after year, and the laws sanction and enforce the theft, how can he be expected to have more regard to honesty than the man who robs him?”¹⁷ She argues that property law will be just only if the right to own property (i.e., the power to exclude others from enjoying or reaping the benefits of an object) is guaranteed to those at the bottom of society as it is those at the top. A society that limits the rights of ownership to a specific class of men will necessarily be an unstable one because it will be, in effect, condoning theft. Jacobs’s slave narrative concludes with the claim that “the dream of my life is not yet realized. I do not sit with my children in a home of my own. I still long for a hearthstone of my own, however humble. I wish it for my children’s sake far more than for my own.”¹⁸ The last scene suggests that freedom and property ownership are intertwined and that the realization of property ownership will help her achieve her ultimate dream. Jacobs’s last wish, however, links property ownership with virtue because it is primarily for the sake of her children that she wishes to become a property owner. Within this context, freedom from slavery is not freedom enough. The final liberation occurs, at least textually, when the freed slave becomes an owner herself and can transmit her wealth to her children.

If Jacobs and Equiano attack slavery while explicitly arguing for the importance of property ownership, Frederick Douglass appears to assume the necessity of property rights for achieving freedom and equality.¹⁹ In his speech “What to the Slave Is the Fourth of July?” Douglass announces his support for John Locke’s approach to property in his *Second Treatise* and its inclusion within the Declaration of Independence and the Constitution.²⁰ In *My Life and Bondage*, Douglass discusses the controversy that arose when abolitionists purchased his freedom while he was visiting England. In defending the abolitionists, he argues that this action should be viewed “in light of a ransom, or as money extorted by a robber,” and that such an action did not violate “the laws of morality.” In addition to absolving his liberators from any moral guilt, Douglass reminds abolitionists that the problem with slavery is not the possession of a right of property, but of “a right of property *in man*.”²¹ Because James Wright immediately manumitted Douglass, the laws of morality were satisfied by his actions, and property law was rehabilitated.

While these three moments cannot represent the entirety of the slave narrative tradition, they do point to a contemporary reading of African American history that emphasizes ethical forms of ownership. This reading of the tradition diverges significantly from Marxist or radical analyses

in which the elimination of property rights should theoretically lead to a greater equality among all Americans. In the post-Civil Rights era, critical race theorists (and hip-hop artists as well) have pretty much accepted capitalism as a necessary ground for any social change. For example, Cheryl Harris argues in her 1993 article, "Whiteness as Property," that whiteness has functioned as a property interest for most white Americans and that affirmative action has been and continues to be necessary to remedy the effects of this ongoing racial legacy. She concludes that "in protecting the property interest in whiteness, property is assumed to be no more than the right to prohibit infringement on settled expectations, ignoring countervailing equitable claims that are predicated on the right to inclusion. It is long past time to put the property interest in whiteness to rest."²² It is crucial to note that Harris seeks to redefine property by eliminating racialized properties, which her revisionist legal history traces back to the antebellum period, not to dismantle the property concept altogether.²³ While the slave narratives can be (and have been) read in a number of ways, recent debates about multiculturalism, property rights, and reparations help define the meaning of the slave narratives for the hip-hop generation. Perhaps the hardship most shared by the slaves and today's hip-hop generation is a general exclusion from the market economy. Hip-hop aesthetics reenacts the slave narratives' desire to become the subjects of property law.

The Great Debate: Washington and Du Bois

My attempt to offer a new periodization for African American cultural criticism jumps from the great slave narratives (from the mid-nineteenth century) to the turn-of-the-twentieth-century debate between Booker T. Washington and W. E. B. Du Bois. The transition from the slave narratives of Equiano, Jacobs, and Douglass to Washington and Du Bois's nonfiction clarifies the categorical differences between the two periods' approaches to property law. Once the crisis of defining objects and subjects of property law (or who can own what within property law) gets resolved, at least temporarily, through the Civil War, the battle within legal discourse turns increasingly to the geography of race and the spatial dimensions of property law. Although few historians have described it as such, the debate between Washington and Du Bois concerns geographic distinctions within property law, as Jim Crow segregation primarily attempted to create spatial distinctions to replace the status distinctions that had been outlawed with the

Emancipation Proclamation. The question shifted from *who* could own to *where* do the boundaries of property law extend.

Booker T. Washington's Atlanta Exposition speech in 1895 sets the grounds for this new debate about property law. The speech's first image is that of two ships meeting. One of the ships is suffering from lack of water. When the distressed ship asks for water, the response is, "Cast down your bucket where you are."²⁴ Washington, unlike many others of this period, urges African Americans to remain in the South and "put brains and skill into the common occupations of life."²⁵ He advocates using whatever materials people can find and whatever skills they have toward earning money and building wealth.²⁶ Washington specifically refuses to dismantle Jim Crow laws first. Rather, he argues that material prosperity will lead the way to other forms of equality.

"In all things that are purely social," Washington says, "we can be as separate as the fingers, yet one as the hand in all things essential to mutual progress."²⁷ His famous symbol of the hand provides a ready metaphor to describe the fight for equality and prioritizes the struggles that African Americans will need to overcome. The first hurdle is economic for Washington. For African Americans to succeed economically, Washington advocates an initial acceptance of Jim Crow and the geography of race in the South. African American material prosperity will "bring our beloved South a new heaven and new earth."²⁸ Much like the writers of the slave narratives, Washington reinforces the importance of property rights. He demands neither the immediate abolition of property rights nor the dismantling of Jim Crow. Rather, his autobiography condemns theft early and often in order to demonstrate how the logic of self-improvement hinges on property rights.²⁹ Washington is careful to align the goals of the African American community with those of the white community. What Washington, in effect, requests is that the South respect the very racial lines it has drawn and allow African Americans to acquire property within those boundaries. Washington thus answers the question of *where* can or should African Americans own property by saying, wherever whites allow African Americans to do so, as long they consistently respect those boundaries. At least one hip-hop studies scholar has argued that the rhetorical construct of the "hip-hop mogul," and its performance by Russell Simmons, Sean Combs, and others, embraces Washington's approach to racial uplift.³⁰

For Du Bois, Washington's answer is unacceptable. Du Bois argues that the Atlanta Exposition speech "represents in Negro thought the old attitude of adjustment and submission" and that the "program practically ac-

cepts the alleged inferiority of the Negro races.”³¹ While criticizing the economic tenor of Washington’s thought, Du Bois appears to exit the language of property and adopt *politics*, *civil rights*, and *education* as key words in his analysis of Jim Crow. It is my contention, though, that Du Bois does not fully abandon economics or property law in his critique of American culture. Rather, his analysis of the relationship between geography and property relies on psychological metaphors to emphasize that ownership is not how a person relates to an object, but how communities determine the relations between objects and subjects. What Washington attempts to stabilize in his Atlanta Exposition speech (the boundary lines where African American property claims will be respected), Du Bois remaps entirely. Du Bois argues that any strategy for African American liberation must first create the conditions where social and self-respect can be won and then rework the rules about property ownership based on this new psychological geography.

In the opening chapter of *The Souls of Black Folks*, Du Bois articulates his famous notion of double consciousness. In an oft-quoted passage, Du Bois writes:

It is a peculiar sensation, this double-consciousness, this sense of always looking at one’s self through the eyes of the other, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity. One ever feels his twoness,—an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.³²

Many argue that this passage constitutes an attempt to represent the struggles faced by African Americans. Earnest Allen has recently challenged this view. Allen notes that despite the popularity of this concept, especially in the post-Civil Rights era, he doubts Du Bois found it a successful description of the psychic condition of African Americans because he quickly abandoned the phrase after introducing it.³³ Allen presents a compelling case for rethinking the now standard interpretation that focuses on self-esteem or self-realization. Certainly, the recently rediscovered and rereleased collection of photos Du Bois prepared for the 1900 Paris World Fair displays no signs of “unreconciled strivings” or “warring ideals.” The images reflect dignified middle-class African Americans striving to improve themselves and the race.³⁴

Viewing this famous quotation through hip-hop aesthetics' engagement with intellectual property law suggests Du Bois deployed psychological terminology to describe the spatial problem at the heart of property law and thus to respond to Washington's embrace of economics. Du Bois has taken the racialized or segregated geography that Washington accepts and tries to move it within the body in order to show its danger. He develops three arguments against Washington. First, Du Bois, relying on psychology, argues that segregated spaces ultimately lead to segregated minds and that segregated minds cause madness, not empowerment. Du Bois concludes that Washington's bargain with the South is a failure because it would allow African Americans to own only a part of themselves. Limiting African American ownership claims to restricted areas within the black community, for Du Bois, is not really ownership at all: "He [Washington] is striving nobly to make Negro artisans business men and property-owners; but it is utterly impossible, under modern competitive methods, for workingmen and property-owners to defend their rights and exist without the right of suffrage."³⁵ In this passage, Du Bois makes clear that his disagreement with Washington is over not the importance of property rights, but how African Americans can best attain them.

The geography of difference and ownership is inscribed in a second way in Du Bois's account of double consciousness. Du Bois posits a scene where identity is constructed through a series of views.³⁶ Although many rely on this account to explain how identity is constructed and how the visual shapes cultural formation, reading Du Bois's description of double consciousness through property law theory suggests a different meaning. An object (in this case, a person) does not have identity a priori. Rather, identity is a product of human effort that gets mixed with a seemingly natural object (in this case, the body). In other words, Du Bois relies on a theory of racial consciousness where the properties of identity always already require a network or constellation of views or perceptions.

By insisting that the social matters for acts of self-ownership, Du Bois undermines Washington's reliance on an uncritical rhetoric of self-improvement. Washington implicitly endorses the capitalist ethic. Central to this ethic is John Locke's theory of property. Locke writes:

Every man has a *property* in his own *person*: this no body has any right to but himself. The *labour* of his body, and the *work* of his hands, we may say are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his

labour with, and joined to it something that is his own, and thereby make it his *property*.³⁷

In his account of how property is created, John Locke argues that a human being owns himself, without regard to social rule or custom, and owns whatever his labor touches. Washington, however, quickly retreats from an orthodox Lockean position because he cannot talk of natural property rights without running afoul of segregation laws because within a segregated society, a person is prohibited from owning whatever his labor mixes with unless it falls within the limited geography permitted by Jim Crow laws. Through his speech, Washington implicitly accepts the Southern attempts to define African Americans regardless of how individuals define themselves. Du Bois's description of double consciousness allows him to unmask the failed foundation of "segregated ownership" as a philosophy. Ownership claims within the limited spaces left to African Americans constitute incomplete acts of ownership because a racialized legal discourse could just as easily ignore or repudiate them. According to Du Bois, the central problem of African American history has not been the failure to demand self-ownership, but the failure of whites and legal discourse to recognize those demands.

Du Bois's third and final critique of Washington's approach to property also involves the *where* question, but holds that the most important properties are cultural—not material. As is well-known, Du Bois and Washington differed greatly on the kind of education that African Americans needed. Du Bois advocated for higher education, and Washington favored vocational training. A way of understanding this debate is to consider it an effect of how they answered the question about *where* African Americans should own property. Du Bois believed that cultural properties would lift up the race, while Washington preferred a focus on the accumulation of material objects.

Following Du Bois's lead, many African Americans sought to create social and cultural institutions that challenged segregation. For example, the early twentieth century saw a boom in African American fraternal lodges. Frequently, African Americans tried to model their organizations after successful white organizations, such as the Elks or the Masons. Borrowing regalia and symbols, they frequently gave their organizations names like the Black Elks and the Black Masons in an effort to show solidarity with white lodges. Despite the appearance of segregation, participants viewed themselves as integrating into American culture by joining these civically

minded organizations. Anticipating more contemporary debates and controversies, the white lodges frequently resorted to law, sometimes even intellectual property law, to prohibit their black counterparts.³⁸ Interestingly, the courts relied on theories of “territorial jurisdiction,” with its connection to Jim Crow segregation, to determine when and where black organizations could appropriate the regalia and symbols of white lodges.³⁹ Some scholars have argued that these lawsuits helped develop the legal tactics that would be deployed later, during the Civil Rights Movement.⁴⁰ These disputes illustrate how African Americans sought to claim ownership over segregated spaces and objects in American culture.

In addition to its effects on political and social life, segregation created tremendous barriers for African American musicians. Ironically, the modern music industry developed concurrently with Jim Crow segregation during the late nineteenth and early twentieth centuries, and Jim Crow thus contributed to its overall structure. K. J. Greene argues that three factors made it difficult for jazz and blues musician, especially African Americans, to succeed: “(1) inequalities of bargaining power, (2) the clash between the structural elements of copyright law and the oral predicate of Black culture, and (3) broad and pervasive social discrimination which both devalued Black contributions to the arts and created greater vulnerability to exploitation and appropriation of creative works.”⁴¹ In many ways, intellectual property rights issues, which are the subject of this book, had not ripened because artists had to overcome other barriers first. Russell Sanjek and David Sanjek note that segregated unions also affected the ability of many African American musicians to earn a living, play music live, and participate in recording sessions.⁴² Even industry practices regarding recording contracts differed based on the musician’s race. Frank Kofsky describes how Billie Holiday and Charlie Parker worked under particularly ungenerous contracts.⁴³ The first major copyright clearinghouse (ASCAP) had rules that made it difficult for many blues and folk musicians to join. Without the creation of BMI in the 1940s, artists such as Huddie Ledbetter, Arthur “Big Boy” Crudup, and Fats Domino may not have been able to receive royalties from their work.⁴⁴ Because the question of segregation dominated this historical moment, African American criticism about the definition and distribution of ownership rights over cultural texts has only recently become a central concern. Even though intellectual property law has become a focal point in the ongoing quest of racial justice, hip-hop artists still face numerous political, economic, social, and contractual hurdles.⁴⁵

The rise of Jim Crow and the entrenchment of segregation presented the problem of *where* African Americans should own property. Washington went along with the racialized geography in order to help African Americans build material wealth and an economic base. Du Bois looked to psychology, sociology, and culture as more fertile and ultimately more significant areas for making claims of ownership. While the debate between these two giants of African American thought has long been foundational to African American studies, a hip-hop rereading of their disagreement helps us understand how property concerns shaped the debate's terrain. As will become apparent in later chapters, hip-hop culture has not embraced *either* Washington or Du Bois, but both of them. Of course, this produces tension and can appear paradoxical or contradictory, but it also reflects the hybrid nature of hip-hop, where samples of seemingly contradictory beats, rhythms, or melodies can be brought into a certain harmony through hip-hop artistry.

Martin Luther King and Malcolm X

Despite the nearly fifty years between the Washington–Du Bois and the King–X debates, the question about *where* African Americans should own property remained an open one even after *Brown v. Board of Education* ruled that “separate but equal” was unconstitutional. Lorraine Hansberry’s *A Raisin in the Sun* (1959) portrays the debate within a fictional black family, the Youngers. Through the play’s dialogue, Hansberry considers which kinds of property claims will best serve the family after they receive an insurance check following the father/husband’s death. On a basic level, the play asks whether it is better to own a liquor store in segregated Chicago or purchase a home in an integrated neighborhood. The Youngers ultimately opt to demand integration.⁴⁶ While Hansberry’s play explores other issues and conflicts besides property law, it nonetheless provides a ready bridge to connect debates between Washington and Du Bois with those between King and Malcolm X. Although not typically considered primarily critics of property law, Martin Luther King and Malcolm X returned to the Washington–Du Bois debate about property (although some would say it never completely left African American culture). In more conventional histories of the period, King comes to represent integration, and Malcolm X becomes a spokesperson of Black Nationalism. For King, integration means the ability to own property alongside or next to white people and

would allow African Americans to buy homes where they wanted, open businesses, and participate fully in society. Black Nationalism, on the other hand, argues that African Americans must develop their own businesses, social structures, and cultural institutions in order to gain true equality. In contrast to integration, true liberation will occur when African Americans develop their own resources without relying on or mixing with white people and their institutions. For Malcolm X, integration would prove a failure because it would force African Americans to give up or sell their birthright (Black culture) as the price of social recognition.

James Hal Cone, quite astutely, points out that any mapping of Martin Luther King and Malcolm X into an ideological binary is simple and incomplete: “We should never pit them against each other. Anyone, therefore, who claims to be for one and not the other does not understand their significance to the black community, for America, or for the world. We need both of them and we need them *together*. Malcolm keeps Martin from being turned into a harmless American hero. Martin keeps Malcolm from being an ostracized black hero.”⁴⁷ Cone argues that over the course of their lives, their respective philosophies moved closer together. For my purposes here of exploring a hip-hop rereading of King and X, however, it is interesting to examine how their words invoke a series of property claims. Both sought to answer the question of *where* should African Americans own property.

In two of his most important texts, King relies on property talk to lay a foundation for his appeal for equality. Neither moment has become part of the national myth, like King’s dream that his children “will not be judged by the color of their skin, but the content of their character” or his claim that he is “an extremist for love.” However, his appeals to property law suggest that it forms an emotional and theoretical basis for his call for integration. Hip-hop generation readers of King’s “Letter from Birmingham Jail” find King’s lament about how “you suddenly find your tongue twisted and your speech stammering as you seek to explain to your six-year-old daughter why she can’t go to the public amusement park” particularly powerful.⁴⁸ This image helps white readers “feel” the emotional pain caused by segregated property rules. A hip-hop revision emphasizes the consumerist or materialist mentality that underlies this powerful historical moment. Even though King eventually questioned capitalism as an engine for equality, in this justly famous letter he updates Du Bois’s argument about segregated spaces to include how a segregated marketplace leads to fundamental unfairness and inequality. Probably because of the class divisions within the

African American community, King initially emphasized the “ordinary” middle-class longings of African Americans in order to build a bridge with whites and demonstrate the plausibility and inevitability of integration in a market economy. The vocabulary of property and loss marked within this anecdote suggests that property- or materially based critiques were not completely foreign to the Civil Rights generation. In fact, even King, the Student Nonviolent Coordinating Committee (SNCC), and the Southern Christian Leadership Conference (SCLC) relied on such metaphors to mobilize middle-class African Americans and to persuade whites that all people wanted the same (material) things.

In his “I Have a Dream” speech, King lays the theoretical groundwork for his dream by noting that the ideals of the Declaration of Independence and the Constitution have not been realized. The metaphor that he chooses to represent this failure is that of a returned “promissory note” that “has come back marked ‘insufficient funds.’”⁴⁹ According to legal discourse, a promissory note is a property interest. Akin to cash or stock, a promissory note allows its owner to protect his interests and confers rights and remedies on the owner if a problem arises. Within the speech, King relies on social contract theory to explain the origins of American democracy and to appeal to conventional notions about how society works. King reiterates the founding contract, which brought the United States into being, in order to write African Americans back into that contract. He also suggests that the basic rules of exchange and contract require white America to respond in good faith and live up to their promises. According to King, “we’ve come to cash this check, a check that will give us upon demand the riches of freedom and the security of justice.”⁵⁰ This promissory note, this property interest, becomes the driving force in “purchasing” liberty and justice. Within the logic of the speech, King’s dream must be purchased through the transfer of property. The unspoken, but all too dearly paid consideration for this transaction, was the labor of slaves and the burdens imposed by segregation.

Obviously, Malcolm X would not have relied on such a metaphor because he argued that whites could not be persuaded into giving African Americans rights and that this framework perpetuates the central lie of American culture (i.e., that the American Revolution, the Declaration of Independence, and the Constitution offered freedom to all). Nor would Malcolm X have quite endorsed efforts to gain the right to eat with or play with white people because integration was not his solution to race in America. Malcolm X answered the question of *where* African Americans should

own property quite differently and thus deployed property rights to other ends. Malcolm X argued that revolutions are “based on land” and that “a revolutionary wants land so he can set up his own nation, an independent nation. These Negroes [Martin Luther King and other more moderate or integrationist approaches] aren’t asking for any nation—they’re trying to crawl back on the plantation.”⁵¹ Malcolm X argued that *where* African Americans should own property was the crucial question. For him, this question was not simply one of physical geography, but of how culture and social institutions define and transform a space into a place. In “Message to the Grass Roots,” Malcolm argues that integration cannot be a sufficient response to the *where* question because that will only address the effects, not the causes of white supremacy in America. Later in the same speech, Malcolm states that “this modern house Negro loves his master. He wants to live near him. He’ll pay three times as much as the house is worth just to live near his master.”⁵² Malcolm X belittles integration because it fails to redefine ownership. In many ways, he blends Booker T. Washington’s economics and Du Bois’s sociology to transcend existing property rules and create a more just social structure.

Malcolm X does not just criticize King and other reformers without offering his reformulated definition of property and true ownership:

The economic philosophy of Black Nationalism is pure and simple. It only means that we should control the economy of our community. Why should white people be running all the stores in our community? Why should white people be running the banks of our community? Why should the economy of our community be in the hands of the white man? Why? If a black man can’t move his store into a white community, you tell me why a white man should move his store into a black community.⁵³

For Malcolm X, a revised property law must go beyond looking at who owns individual tracts of land. Rather, Malcolm X looks at patterns of ownership and seeks to build networks of property relations. Black Nationalism, according to Malcolm X, transcends Booker T. Washington’s approach to property law because it refuses to ignore overall economic structures and the tremendous inequalities they produce. Self-reliance or self-help without concerted effort and a desire to take control of the community cannot empower the entire community. It only enriches certain chosen individuals. Unlike Martin Luther King, Malcolm X does not be-

lieve that increased property exchanges, which lead to more integrated neighborhoods, will improve the situation of the African American community. Integration only further isolates African Americans from one another. The goal of Black Nationalism is to draw new cultural boundaries, not accept existing ones, as integration does. Because African Americans would establish these new spatial divisions, they would be empowered. Black Nationalism thus stresses the geography of ownership, perhaps even more so than other theoretical orientations, because it subordinates individual property rights in favor of communal needs. In this instance, the answer to the question of *where* African Americans should own property is not so much a particular physical space, but a metaphysical or cultural one.

The only meeting between Martin Luther King and Malcolm X occurred during the congressional hearings about the Civil Rights Act of 1964. This act transformed American culture by granting formal equality to African Americans in public facilities and marked the beginning of the end of this debate. Within the context of my argument that African American cultural criticism has frequently focused on property law, it is important to review with some care this watershed moment for the Civil Rights Movement and the hip-hop generation. The legislation states, "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, and privileges, advantages, and accommodations of any place of public accommodation." The bill continues by identifying the physical spaces covered by these rights:

- (1) any inn, hotel, motel, or other establishment . . . ;
- (2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;
- (3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment.⁵⁴

While Congress would wait until the Civil Rights Act of 1965 to address inequalities in voting, and the Civil Rights Act of 1968 to specifically address home ownership and apartment rentals, this first major legislative victory focused squarely on opening up public spaces, especially sites of interaction and entertainment, to integration. The underlying logic of this

and other Civil Rights acts implicitly endorses a property-centered analysis of African American cultural criticism. This legislation transforms equality into a consumer transaction.

This victory (clearly more integrationist than Black Nationalist) set the wheels in motion for a new property paradigm to take hold in African American cultural criticism. Physical integration, for better or worse, would become the new national paradigm for improving race relations and the quality of life for African Americans. Although advocates for “color-blind” jurisprudence would see this as the logical end for civil rights activism and African American cultural critique, raced cultural criticism continues.⁵⁵ Instead of focusing on delineating the physical boundaries that limit black life, the question, mirroring a much wider debate in American culture, centers on *who owns the imaginary domain out of which African Americans form cultural identity*. This battle not only pits African Americans against whites but has also created a rift between the Civil Rights and the hip-hop generations.

Rosa Parks and Outkast

Despite the wonderful idealism of Civil Rights leaders, their legacy has become the subject of property disputes. After the deaths of King and Malcolm X, heated battles ensued over who owns the rights to their work and who should have the right to purchase and display their intellectual property. The King estate has sought to control his legacy by threatening and initiating lawsuits against Boston University, the television program *60 Minutes*, and even the federal government for planning to use King’s likeness in a memorial without paying for the rights.⁵⁶ The King family has asserted its *intellectual property* rights in his papers and his image in order to protect his legacy. While we might question from whom or what they are protecting him, it is quite clear that copyright law allows King’s heirs to control access to and authorize who may copy his papers. These rights have allowed the King family to claim ownership over a central figure of African American culture and American history. The life and thoughts of Martin Luther King have become *propertized* and transformed into a resource to be developed, managed, marketed and sold. Obviously, this situation is troubling, or at least an impediment, to students of American culture and anyone who wishes to claim and extend King’s legacy.

But King is not alone in becoming the subject of intellectual property

disputes after his death. Lost to history, the papers of Malcolm X suddenly appeared in an eBay auction in February 2002. A few weeks later, eBay pulled the auction because the auctioneers, who had presented the materials, could not adequately determine the legitimate title for the materials. Academics argued that these items needed to remain together within an archive or library that could appropriately manage them.⁵⁷ The Shabazz family and scholars feared that intellectual property law would allow important historical, cultural, and literary data about Malcolm X to slip behind a “veil” of private ownership and possibly be lost to scholarly inquiry.⁵⁸ One scholar even suggested that these documents constitute the inalienable inheritance of all African Americans.⁵⁹ Ultimately, the Schomburg Center for Research in Black Culture purchased the documents and is preparing them for further study and public display.

The controversies surrounding the cultural legacies of Martin Luther King and Malcolm X reveal the increasing importance of intellectual property law for regulating how contemporary African Americans remember these icons, pay homage to them, and build upon their ideas. The academics who commented on the Malcolm X papers saw a need to protect some private ownership rights for the Shabazz family and to allow some form of cultural ownership rights for all African Americans. These cases suggest the difficulties inherent in drawing a line between the public domain, what is “our” common heritage from which we may borrow, and the needs of individuals to hold their own documents, ideas, and stories in private ownership.

The lawsuit between Rosa Parks and Outkast demonstrates just how much the debate about property within African American culture has changed and become much more complicated because it involves tensions not only between blacks and whites but between generations of African Americans as well.⁶⁰ Mark Anthony Neal argues that the Outkast “song can be seen as a tribute to her [Parks] and the movement that her actions helped incubate. I see the use of Rosa Parks in this context as one of the components of Post-Soul strategies that willingly ‘bastardize’ black history and culture to create alternative meanings, a process that was largely introduced to the Post-Soul generation via the blaxploitation films of the 1970s.”⁶¹ Todd Boyd argues that Parks’s actions reveal how the Civil Rights generation misunderstands hip-hop.⁶² Building on the astute analyses of Neal and Boyd, I would add that both Outkast and Parks willingly appropriate, or transform their ideas and values into potential property interests. Who won the dispute is of less interest to me than how their economic mo-

tives for commencing the lawsuit undermine their ability to articulate any kind of claim that does not appear motivated by materialism or greed. The Civil Rights ethic of working together to create a more just world has appeared to slip away. Besides Rosa Parks, Bobby Seale claimed that a film company falsely represented him in its movie about the Black Panthers, and Faith Ringgold filed suit against Black Entertainment Television (BET) for using a reproduction of her art as part of the scenery in an episode of *Roc*.⁶³ Neither won their case, but both activists, who had previously made claims about the collective cultural experiences of African Americans, articulated their claims under the rubric of private property.

In 1998, Outkast released the album *Aquemini*, which features the song “Rosa Parks.” The song does not really reference Rosa Parks or her famous refusal to stand in 1955, which led to the Memphis bus boycott, but it does contain the line: “Ah ha, hush that fuss / Everybody move to the back of the bus.” Parks sued Outkast because she claimed that the use of her name (1) constitutes false advertising, suggesting that Parks either approved of the music or endorsed the compact disc; and (2) intrudes on her right of publicity. Based on documents submitted in the lawsuit, it is clear that Parks did not want her name associated with a hip-hop album because she had recently licensed an album of gospel recordings, *Verity Records Presents: A Tribute to Mrs. Rosa Parks*. This lawsuit suggests that Parks and, by implication, the Civil Rights generation have shifted focus from civil rights to property rights. Parks displays some of the same motivations and values for which the Civil Rights generation criticizes the hip-hop generation. The lawsuits filed by Civil Rights era leaders and their heirs, from Martin Luther King to Malcolm X to Bobby Seale to Faith Ringgold to Rosa Parks, seem to reflect more continuity with the hip-hop generation’s concerns than most would like to admit. Nelson George identifies a key moment in this transition to a new approach to property: “Public Enemy made politics seem cool. In the process, they also made politics a commodity.”⁶⁴ The reparations movement offers another example of the influence of property rhetoric on African American cultural criticism. Proponents of reparations hope to use the money from any settlement to remedy poverty, unemployment, and illiteracy and/or create museums, libraries, and educational curricula.

In district court, Outkast successfully defended itself as the court ruled that the bus reference establishes a strong connection between the song and its title and that the group’s First Amendment rights allow them to use Parks as a symbol within their song. That court dismissed the lawsuit after

Outkast submitted a motion for summary judgment.⁶⁵ Parks appealed this decision to the U.S. Court of Appeals for the Sixth Circuit, which overturned the lower court's decision. The Court of Appeals questioned the connection between the title and the song and determined (through its own reading of the lyrics) that little binds the song to the title and that therefore it was possible for a jury to conclude that the song merely uses Parks's name to get free publicity. Therefore, it denied Outkast's motion for summary judgment and returned the case to the district court for a trial.

Both juridical attempts to determine "whether there is any artistic relationship between the title and the underlying work" deserve close scrutiny because they reveal the new tensions within African American culture as it confronts contemporary intellectual property doctrine.⁶⁶ Before exploring these analyses, it should be noted that Rosa Parks and Outkast brought different interpretative lenses to the text. Parks argued that her name had nothing to do with the song's meaning and that Outkast simply wanted to get free publicity. She took a fairly literal reading of the song and determined that because there was no mention of the Civil Rights Movement, Montgomery, or the 1955 bus boycott, the song had no connection to her. Parks relied on Civil Rights era understandings of racial narratives in which racial uplift serves as the primary storyline in her interpretation of the song. Because there is no clear view expressed in the song about politics or culture, the lens Parks brings to "Rosa Parks" cannot make any connection between the song and its title.

In the court documents, Outkast did not really explain how Parks's name is connected to the song or why they had chosen to use it. The district court judge argued that the lyrics about moving to the back of the bus connect Outkast's boasting about their excellence to Rosa Parks's famous refusal to give up her seat. Within the aesthetic of hip-hop, referencing people, places, and trademarked objects constitutes a primary method of establishing location and identity. Unlike other forms of poetry or writing, hip-hop does not always aim to build a coherent narrative, but to construct a flow or rhythm out of "used" phrases or images. (Hip-hop can be described as an aural analog to the scrap quilts of Gee's Bend, Romare Bearden's collages, or David Hammons's sculptures made out of discarded objects.)⁶⁷ In other words, the aesthetic of hip-hop requires the use of names, locations, and objects to establish one's context, one's identity, and one's hip-hop virtuosity. Robin Kelley writes that "what counts more than the story is the 'storytelling'—an emcee's verbal facility on the mic, creative

and often hilarious use of puns, metaphors, and similes.”⁶⁸ For Outkast, Rosa Parks was simply another possible referent to add to their repertoire of imagery and wordplay.

The Sixth Circuit, however, needed to resolve which interpretation would define the meaning of “Rosa Parks” for its decision. Speaking for the three-judge panel, Judge John Holschuh attempted to discern the “plain meaning” of the song. Based on a blend of judicial common sense and *YZ’s Unofficial Rap Dictionary*, the court concluded that “there is a genuine issue of material fact whether the use of Rosa Parks’ name . . . is artistically related to the content of the song.”⁶⁹ The court, however, did not believe that this question could be easily answered, and it remanded the case to the district court for a hearing on this issue. By returning the case to the district court, the Sixth Circuit Court allowed the opportunity for both sides to call witnesses and experts to explain whether or not Parks’s name has any connection to the song. Ultimately the case settled and legal discourse was not forced to choose which interpretative lens, that of the Civil Rights generation or the hip-hop generation, would be adopted in this case. For at least awhile longer, the question of *who owns the imaginary domain out of which African Americans form cultural identity* remains unanswered.

The dispute between Parks and Outkast shows the continued importance of property law to African American culture because the shift from slavery to segregation to intellectual property both (1) demonstrates property’s continued central role in African American thought and (2) sets the stage for the emergence of critical race theory as a major force in shaping how African American culture criticizes law and legal discourse. By focusing on hip-hop aesthetics throughout the remainder of this book, I will deploy hip-hop culture as a practical example of critical race theory’s attempt to “race” legal discourse through a philosophical rewriting of law’s foundation. The Sixth Circuit’s decision in *Parks v. Laface Records* demonstrates that law, especially intellectual property law, must increasingly make interpretative judgments about cultural matters to apply legal doctrine. Without attending to the origins of cultural practices, it is impossible to apply intellectual property doctrines fully or fairly.