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ON THE CULTIVATION OF BLACK LETTER LAW

*Etienne C. Toussaint**

Engaging with the sociocultural dimensions of race and racism across U.S. history is essential when creating, critiquing, and reforming the law. Building on Robin West's exploration of the law and culture movement, this Piece introduces a novel "hermeneutic" project that reads Black American culture throughout U.S. history to gain critical insights into the nature and function of law in America. Black American culture, deeply rooted in the sociocultural traditions uniting members of the African diaspora, has consistently challenged White supremacy and played a foundational role in shaping U.S. law. Moreover, cultural perceptions of Blackness and the vulnerability of Black life under racial capitalism have significantly influenced the relationship between legal reform and democratic discourse in the U.S. political economy, affecting both the interpretation and application of the law.

To illustrate the value of studying law through the lens of race and culture, this Piece incorporates an analysis of Ralph Ellison's Invisible Man *alongside the author's experiences in a Black urban neighborhood in the South Bronx. It argues that intentionally "reading culture" is crucial for uncovering deeper insights into the inherent nature of law. This cultural-legal approach provides a framework for recognizing the limitations of liberal legalism, understanding the cultural production of legal meaning, and advancing legal reform, democracy, and justice in American society. By blending cultural analysis with legal critique, this Piece aims to promote more equitable legal practices informed by the lived experiences and cultural contributions of Black Americans and other marginalized groups.*

* Associate Professor of Law, University of South Carolina Joseph F. Rice School of Law. I thank the many people who provided helpful comments and constructive feedback on drafts of this Piece, including Ron Slye, Marsha Griggs, Darren Bush, Patricia Williams, Marlon Ross, Norman Spaulding, and Christopher Hamson. I benefited from critical feedback during the 2023 Law & Humanities Interdisciplinary Workshop for Junior Scholars at Georgetown Law Center and the 2023 Harvard/Stanford/Yale Junior Faculty Forum at Yale Law School. I thank Jurnee Jones Holcombe for research assistance and Ashley Alvarado for editing assistance. I am especially grateful to the editors of *Columbia Law Review* for exceptional editing and support during the publication process, including T.J. Braxton and the Staff Editorial team. Finally, I thank Ebony, Etienne, Edward, and Erwin—I am, because we are. Any errors or omissions contained in this Piece are my own.

"What had an old slave to do with humanity?"
— Ralph Ellison.[1]

"A new generation of street criminals is upon us—the youngest, biggest and baddest generation any society has ever known."
— William J. Bennett, John J. DiIulio, Jr. & John P. Walters.[2]

INTRODUCTION

I could begin by telling you about Nolan Brown. For starters, if Nolan and I were to get into a fight, it would be him, hard shoulders inching toward six feet tall above basketball-sized hands, against me, a pudgy five-foot-five with Harry Potter frames and a sagging JanSport bookbag full of textbooks. He would throw hands like a youthful Mike Tyson, and I would duck and weave on the cracked asphalt like an aging Muhammad Ali, dancing clumsily while admiring his gleaming Nike Air Jordan sneakers and oversized Rocawear jeans, each making far more of a fashion statement beside my creased Nike Air Force Ones and weathered green cargo pants. Smirking, Nolan would smack my bicep until its caramel hue matched his dark-brown sheen, and I would eventually give in, as I so often did, because hanging out with Nolan Brown was kind of a big deal.

I might proceed by explaining why a thirteen-year-old boy found joy in the routine submission of feeble arms to clenched fists; why he found comfort in the violent embrace of a heavy hand after that familiar, yet mundane question mediating almost every encounter in this part of the hood: "What's good?" Yes, Nolan was physically big. Even while running from the Latina girls at recess with a stolen hair clip and a mischievous wink, even while caged in the solitary desk in the back of Mr. Miller's seventh-grade classroom with a paper plane and a defiant smirk, even while pocketing his detention slip like a cowboy sliding his gun into the holster, even while standing in the hallway where our mostly White teachers sent their disruptive Black and Latinx students, Nolan's outsized stature was forever at ease. But more than that, Nolan was the kind of kid every Black boy in the South Bronx wanted to become, including me. He was kind of a big deal—bigger than Michael Jordan when he dunked from the free-throw line in the 1988 Slam Dunk contest to defeat Dominique Wilkins,[3] maybe even bigger than B.I.G.'s *Life After Death* when the album

1. Ralph Ellison, Invisible Man 354 (Second Vintage Int'l ed. 1995) (1952).

2. William J. Bennett, John J. DiIulio, Jr. & John P. Walters, Body Count: Moral Poverty . . . and How to Win America's War Against Crime and Drugs 26 (1996).

3. Pro Hoops Daily, Michael Jordan Dunks From Free Throw Line 1987, YouTube (June 27, 2015), https://www.youtube.com/watch?v=Ifh-ZndgQyQ (on file with the *Columbia Law Review*).

dropped almost ten years later in March 1997.[4] Witty shooter in class, sharpshooter on the court, straight shooter around the block, even the boys in eighth grade greeted Nolan with respect.

Beginning with Nolan might clarify how the concept of a person racialized as Black—one who embodies a trendsetting popular culture celebrated by mass media—highlights the paradoxical nature of law in a society shaped by a liberal capitalist economy, a constitutional republican government, and a long history of legally sanctioned racial injustice. Black bodies are essentialized on the covers of hip-hop magazines like *The Source* or *XXL*—a swaggering cultural aesthetic embellished with the luxuries of modern society[5]—even as Black communities battle the undertow of socioeconomic landscapes anchored by physical decay and human carnage off the page. In political economies like the United States, the democratic ideals of liberty and equality stand clumsily alongside the underdevelopment and exploitation of impoverished communities, often largely populated by racially and ethnically minoritized people.[6]

This juxtaposition of cultural representation and lived experience highlights the need to examine how the law interacts with these cultural narratives. The concept of the Black racial subject, unable to escape the weight of anti-Black biases and stereotypes, illustrates how cultural ideas can shape legal meaning. These ideas perpetuate specific notions of the human condition that are reinforced by law, manifesting in concepts like chronic misbehavior or disorderly conduct that cloak the shoulders of Black boys like Nolan. But perhaps I am getting ahead of myself. Perhaps my attempt to convey the complexities of Black urban culture in late

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4. The Notorious B.I.G., Life After Death (Bad Boy Records 1997).

5. For more information on the history of hip-hop magazines, see generally The Evolution and Influence of Hip-Hop Magazines, Show Discipline Mag. (Sept. 24, 2023), https://show.substack.com/p/flowershiphop-mags [https://perma.cc/H6JA-TZBR] (describing the emergence and influence of hip-hop magazines); Imani Mixon, Jaz Cuevas & Rob Kenner, The Stories Behind the First Covers of Famous Rap Magazines, Complex (Oct. 7, 2013), https://www.complex.com/style/a/imani-mixon/stoires-behind-frst-covers-of-famous-rap-magzines [https://perma.cc/5RRB-4EDG] (chronicling the stories behind some of the famous covers of hip-hop magazines).

6. While capitalism is generally touted as a vehicle for economic growth, productivity, and innovation, it has paradoxically resulted in the underdevelopment of marginalized, low-income Black communities across U.S. history. See Manning Marable, How Capitalism Underdeveloped Black America: Problems in Race, Political Economy, and Society 1–2 (1983) ("Capitalist development has occurred not in spite of the exclusion of Blacks, but because of the brutal exploitation of Blacks as workers and consumers."); Cedric J. Robinson, Black Marxism: The Making of the Black Radical Tradition 26 (3d ed. 2020) (arguing that capitalist European political economies tend "not to homogenize but to differentiate—to exaggerate regional, subcultural, and dialectical differences into 'racial' ones"); Charisse Burden-Stelly, Modern U.S. Racial Capitalism: Some Theoretical Insights, Monthly Rev., July–Aug. 2020, at 8, 16 (arguing that there is a "past and present expropriation of Black people by the ruling class of modern U.S. racial capitalism through consistent and persistent discrimination in employment, unfair wages, forced ghettoization, inequitable and inferior accommodation and services, and the denial of justice in the courts").

twentieth-century New York City—the signs and symbols I observed growing up, the shared sociocultural mores that unite those urbanites who personify the Black freedom struggle, or what English sociologist and cultural studies scholar Paul Gilroy called the "changing same" of Blackness throughout U.S. history[7]—is presumptuous, or naïve at best, without first discussing the intersection of "law and culture."[8]

According to American legal scholar Robin West, the law and culture movement that emerged in the late twentieth century overshadowed the earlier law and literature movement.[9] While legal scholars have discussed the relevance of literature to the study and practice of law since at least the early twentieth century,[10] many cite Professor James Boyd White's 1973 book, *The Legal Imagination*,[11] as the catalyst for the modern law and literature movement.[12] The 1980s saw numerous law school symposia exploring the role of literature and literary studies in interpreting legal texts,[13] despite critical views from scholars like Richard Posner.[14] While Posner argued that literature can provide a "valuable supplementary perspective" on the law and teach rhetorical techniques that enhance legal

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7. Paul Gilroy, Sounds Authentic: Black Music, Ethnicity, and the Challenge of a Changing Same, 11 Black Music Rsch. J. 111, 111 (1991). While the performative aspects of Blackness are always evolving, Blackness continues to reflect the unwavering tradition of freedom struggle in response to the enduring mythologies of White supremacy. See id. at 113, 122–23, 134–35 (arguing against essentialism in Black cultural analysis but concluding that concepts of Blackness, particularly as expressed in music, can authentically change over time and diversify, even if rooted in similar stories and the same history).

8. For a history of the law and culture movement, see generally Cultural Analysis, Cultural Studies, and the Law: Moving Beyond Legal Realism (Austin Sarat & Jonathan Simon eds., 2003).

9. See Robin West, Literature, Culture, and Law at Duke University, *in* Teaching Law and Literature 98, 99 (Austin Sarat, Cathrine O. Frank & Matthew Anderson eds., 2011) [hereinafter West, Literature, Culture, and Law]. For a history of the law and literature movement, see generally New Directions in Law and Literature (Elizabeth S. Anker & Bernadette Meyler eds., 2017).

10. See, e.g., Benjamin N. Cardozo, Law and Literature, 14 Yale Rev. 699, 699 (1925) (discussing the role of literature and literary style in judicial opinions).

11. James Boyd White, The Legal Imagination (abr. ed. 1985).

12. See, e.g., Marijane Camilleri, Lessons in Law From Literature: A Look at the Movement and a Peer at Her Jury, 39 Cath. U. L. Rev. 557, 557 n.1 (1990) ("The publication of James Boyd White's book, *The Legal Imagination*, has been identified as the germinative point in the law and literature movement.").

13. See id. at 557–58.

14. See Richard A. Posner, Law and Literature: A Misunderstood Relation 15 (1988) [hereinafter Posner, Misunderstood Relation] (arguing that literature about law does not engage with the law in the same way as lawyers). But Posner claims that the negative tone of his text was removed in later editions. See Richard A. Posner, Law and Literature 6 (3d ed. 2009) ("Law and literature is a rich and promising field; and if the first edition of this book had rather a negative and even defensive character . . . the negative tone was gone by the second edition.").

writing, he maintained that it does not enhance one's understanding of statutes and constitutions.[15]

Conversely, White contended that Posner's analysis was misguided because it "denies the special character of literary discourse," viewing textual expression as a scientific endeavor rather than as "a form of cultural, ethical, and political action, as constitutive of community and character."[16] According to White, literature provides an experience that can "change one's way of seeing and being, of talking and acting."[17] Scholars of the law and literature movement, following White's lead, have argued that literature not only reveals "the rich cultural context in which law operates,"[18] but also offers new frameworks for legal interpretation that might address the "moral questions or cross-cultural dilemmas" underlying many modern legal debates.[19]

More than simply a critical response to literary-legal studies, as some scholars suggest,[20] West argued that cultural-legal studies emerged as an extension of the law and literature movement.[21] West identified three key similarities between these domains. First, the law and literature movement pursued a "literary" project, recognizing that literature often engages with law as its subject, providing insights that law itself, empirical social sciences, or analytic philosophy may not offer.[22] Similarly, cultural works that address legal themes, both explicitly and implicitly, can deepen one's understanding of formal law by revealing how such laws are disseminated, perceived, and received among various societal groups.

Second, the law and literature movement engaged in a "jurisprudential" project, asserting that literature, both historically and in contemporary society, retains a "force of law" and therefore comprises part of the informal, or *vernacular*, aspects of law.[23] Both literary and legal texts possess the power to "define, generate, and preserve, as well as

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15. See Posner, Misunderstood Relation, supra note 14, at 17, 353.

16. See James Boyd White, What Can a Lawyer Learn From Literature?, 102 Harv. L. Rev. 2014, 2016, 2023–24 (1989) [hereinafter White, What Can a Lawyer Learn] (reviewing Posner, Misunderstood Relation, supra note 14).

17. See id. at 2018.

18. See Camilleri, supra note 12, at 560.

19. Id. at 561 ("Without the continual reaffirmation, or reformulation when necessary, of the moral values that direct the law, the citizens become slaves to the law, rather than the sovereigns of it, and the law prematurely thwarts the evolution toward the ideal of perfect justice.").

20. See, e.g., Guyora Binder & Robert Weisberg, Literary Criticisms of Law 538 (2000) ("[R]eading and criticizing the fictions, figures, and stratagems of law is indispensable to cultural criticism.").

21. See West, Literature, Culture, and Law, supra note 9, at 99.

22. See id.; Camilleri, supra note 12, at 563–64 ("The experiential quality of literary texts makes literature a more effective tool for developing conceptions of justice, and articulating a public morality, than either the empirical social sciences or analytic philosophy." (footnote omitted)).

23. See West, Literature, Culture, and Law, supra note 9, at 98.

reflect, shared community values."[24] Similarly, cultural practices can embody "the political and normative force of legal authority,"[25] conveying a sense of "law as culture," as American legal scholar Naomi Mezey put it.[26]

Third, the law and literature movement pursued a "hermeneutic" project, recognizing that both genres stem from "the world of texts" and share a "to-be-interpreted textual essence."[27] Traditionally, scholars have sought to discern an author's intention in drafting a text under the theory that the text contains one ascertainable meaning.[28] Structuralists derive meaning from a text's structure, while poststructuralists view meaning as a product of the dynamic interaction between the reader and the text.[29] Deconstructionism, a prominent method of textual interpretation from the 1970s and 1980s, posits that the meaning of a text emerges through an analysis of what is absent or repressed.[30] During this era, advocates for legal reform began liberating legal texts from authorial intent, seeking to articulate fundamental meanings and contemporary applications without reliance on the drafter's perspective.[31] Further, they challenged the normative assumptions embedded in legal texts, exposing "the privileging of a particular social theory or interpretation of human nature which defines the public moral vision and the common good."[32]

West argued that while we can "*read literature* for its substantive contribution to our understanding of law"[33]—a notion reflected in the "interpretive turn" in legal studies that emphasizes the parallels between literary and legal hermeneutics[34]—no analogous approach exists for

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24. Robin West, Communities, Texts, and Law: Reflections on the Law and Literature Movement, 1 Yale J.L. & Humans. 129, 130 (1988) [hereinafter West, Communities]; see also James Boyd White, Law and Literature: "No Manifesto", 39 Mercer L. Rev. 739, 745 n.14 (1988) ("Every text is written in a language, and the language always entails commitments to views of the world . . . with which the writer must somehow come to terms. . . . [E]very text is radically social: it always defines a speaker, an audience, and a relation between them . . . .").

25. See West, Literature, Culture, and Law, supra note 9, at 99.

26. See Naomi Mezey, Law as Culture, 13 Yale J.L. & Humans. 35, 45–48 (2001).

27. See West, Literature, Culture, and Law, supra note 9, at 102–03.

28. See Mark Poster, Interpreting Texts: Some New Directions, 58 S. Cal. L. Rev. 15, 15 (1985) (describing the traditional belief that a given piece of literature has a "unitary meaning" which was determined by the author's intentions).

29. See id. at 16 (explaining how structuralists and post-structuralists disagree on whether a "true" meaning can be divined from a text).

30. See J.M. Balkin, Deconstructive Practice and Legal Theory, 96 Yale L.J. 743, 744 (1987) (discussing how deconstructive techniques often involve "teasing out the hidden antinomies in our language and thought").

31. See, e.g., id. at 779 (celebrating the ways in which "authors' words have worked themselves pure in spite of the authors' intentions").

32. Camilleri, supra note 12, at 570.

33. See West, Literature, Culture, and Law, supra note 9, at 99 (emphasis added).

34. Id. at 102–04; see also Ronald Dworkin, Law as Interpretation, 9 Critical Inquiry 179, 181–82 (1982) (arguing that legal interpretation has similarities to and can benefit from literary theories of interpretation).

cultural-legal scholars. In other words, West claimed that we have not *read culture* to enrich our understanding of law itself, or at least "[t]here has been no systematic treatment . . . of the possibility that cultural products . . . might actually contain insights into the nature of law that influence jurisprudential debates"[35]—a sense of law *in* culture, and culture *in* law.

This Piece engages with West's claim, arguing that exploring the depths of Black culture and the breadth of Black lived experiences across U.S. history—the positive and the negative, the profane and the mundane—must be central to the project of discerning the substantive meaning and political promise of law in America. From a literary standpoint, reading Black American culture alongside law—the study of law *and* culture—reveals unique insights about the nature of law, from how it is formed to how it is perceived, received, and enforced in everyday life, including when it contradicts its stated aims.[36] From a jurisprudential standpoint, reading anti-Black cultural views (especially views rooted in White supremacy) about the vulgarity of Blackness and the precarity of Black cultural life that enjoy the force of law in society—the study of law *as* culture—exposes how culture shapes the symbiotic relationship between law and democratic discourse.[37]

The central contribution of this Piece is the revelation of cultural-legal studies as a hermeneutic project. Gaining substantive insights into the essential nature of law through the study of Black American culture involves examining both law *in* culture and culture *in* law. This approach, which includes reading Black literature and interpreting Black nontextual legal discourse,[38] challenges the "indeterminacy" critique levied by critical legal studies. It demonstrates how culture often *determines* the unique application of legal rules and principles in various factual contexts.[39] By

35. See West, Literature, Culture, and Law, supra note 9, at 107.

36. See Camilleri, supra note 12, at 562 ("[L]iterature expresses the moral experience of the community from a perspective that incorporates the integral existential experience of individuals.").

37. See White, What Can a Lawyer Learn, supra note 16, at 2023 ("Reading texts composed by other minds in other worlds can help us see more clearly . . . the force and meaning of the habits of mind and language in which we have been brought up . . . and to which we shall . . . remain unconscious unless led to perceive or imagine other worlds.").

38. See Camilleri, supra note 12, at 564 ("The reader of a novel is a creative participant in the inner experience of the protagonist, gaining intimate knowledge about the protagonist's history, joys, frustrations, agonies, reasons, and irrationalities.").

39. Literary critics differ on whether they believe textual interpretation is an objective or subjective enterprise. A purely subjectivist view suggests that a text holds no inherent fixed meaning, which critics argue can lead to nihilism. See, e.g., Stanley Fish, Interpretation and the Pluralist Vision, 60 Tex. L. Rev. 495, 498 (1982) (arguing that individuals' views are always shaped by their own values and interests); Sanford Levinson, Law as Literature, 60 Tex. L. Rev. 373, 377 (1982) (describing the "contemporary" subjectivist view of meaning as unstable and indeterminate). Yet some legal scholars contend that legal texts are unique because they have interpretive constraints derived from the nature of adjudication and society's conventional morality. See, e.g., Camilleri, supra note 12, at 576 ("'Obedience to

exploring how culture frames law, particularly through the study of Black literature, we uncover how liberal legalism—the dominant legal theory undergirding U.S. law that claims individual autonomy as a central human value[40]—selectively conceives liberty as a means of protecting citizens from external influences and structures human agency around individual rights.[41] However, recognizing this theory as a culturally specific construction underscores the importance of studying the cultural production of legal meaning throughout U.S. history.

In the case of Nolan and other Black boys who struggle against racial biases, the shadow of stereotypes like chronic misbehavior or disorderly conduct is not just a societal narrative—it is part of the cultural-legal landscape that law inscribes and reinforces. The legal system, influenced by cultural perceptions of Blackness, defines and applies rules in ways that maintain these stereotypes, cloaking Black boys in the expectations of criminality. By turning to cultural-legal studies, and in particular to law and literature, we gain the tools to unravel these dynamics, revealing how racialized legal subjects like Nolan are constructed and constrained within a broader cultural narrative. Examining law and literature—particularly through the lens of Black culture—illuminates how law operates in lived experiences, exposing the dissonance between its stated ideals of liberty and equality and the realities of racialized inequality. This deeper

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an authoritative legal text' solves the problem of unrestrained personal or partisan political power because judges would be compelled by reason to render the objectively determinate interpretation of the law at issue." (quoting Posner, Misunderstood Relation, supra note 14, at 212)); Robin L. West, Adjudication Is Not Interpretation: Some Reservations About the Law-as-Literature Movement, 54 Tenn. L. Rev. 203, 206–07, 215 (1987) [hereinafter West, Adjudication]. But this objectivist approach also suffers from its moral relativism, making it difficult to determine true morality or justice. See Camilleri, supra note 12, at 577 (explaining that "[t]he manifest problem with this objectivist interpretation construct is that it ties the morality of adjudication to the contemporary strain of moral relativism, guaranteeing neither true morality nor true justice"). Conversely, the subjectivist approach to legal interpretation places heavy emphasis on the political nature of the law, viewing interpretation as an act of coercion or an exercise of power. See West, Adjudication, supra, at 244. Yet, this approach also lacks an objective basis for moral criticism of the law. Id. at 247. Ultimately, scholars argue that it is the law's authoritative power that distinguishes legal interpretation and forms its "special hermeneutic character." See Camilleri, supra note 12, at 580.

40. See Richard C. Boldt, A Study in Regulatory Method, Local Political Cultures, and Jurisprudential Voice: The Application of Federal Confidentiality Law to Project Head Start, 93 Mich. L. Rev. 2325, 2359 (1995) ("[L]iberal legalism seeks . . . to protect individuals' freedom to engage in autonomous choice by insulating private 1ife from the intrusion of overzealous government officials.").

41. But see Carol Gilligan, In a Different Voice: Psychological Theory and Women's Development 8 (2d ed. 1993) (discussing how "masculinity is defined through separation while femininity is defined through attachment"); Suzanna Sherry, Civic Virtue and the Feminine Voice in Constitutional Adjudication, 72 Va. L. Rev. 543, 584 (1986) ("[T]he feminine perspective views individuals primarily as interconnected members of a community."); Robin West, Jurisprudence and Gender, 55 U. Chi. L. Rev. 1, 16–18 (1988) [hereinafter West, Jurisprudence and Gender] (explaining that feminist legal theory offers an alternate conception of human morality).

understanding of how law is culturally produced and interpreted is essential for reforming the legal system, enhancing democracy, and advancing justice for those, like Nolan, who are most affected by the intersection of race, culture, and law.

I. LAW *AND* CULTURE

Each morning in class, Nolan and I would rise from our seats, our chairs scraping the linoleum floor in unison. With our right hands pressed firmly over our chests and our eyes pointed skyward toward the wooden dowel dangling above the entryway, we pledged allegiance to the United States flag. This daily ritual was more than just a memorized recitation; it was a carefully orchestrated lesson in American patriotism. The flag, with its bold stripes and steadfast stars, symbolized a nation committed to the lofty ideals of republicanism, liberty, and justice for all. As we stood there, our voices joining those of our classmates, we were taught to feel pride swell within us, to believe in the promise of a country built on the cornerstones of equality and freedom. This sense of allegiance served as a balm, soothing the dissonance we felt when confronted with the stark realities of the South Bronx. Despite the poverty, crime, food insecurity, and inadequate education that plagued many neighborhoods around us, the ritual of the pledge convinced us that America itself was not to blame. Instead, it implied that the source of these inequities lay elsewhere—not in our law, but in our culture—reinforcing our faith in the nation's founding ideals and the rule of law, even as we confronted law's historic contradictions as Black Americans.

For some, cultural signs and symbols merely express mundane attempts to make sense of the social world, celebrating community values and building faith in collective hopes. For others, they can become weapons, imbuing the world with legal meanings that serve social and economic self-interests. Yet in both cases, the concept of culture has generally been treated by political leaders, lawmakers, and legal scholars alike as distinct from law. For example, when President Ronald Reagan invoked the "welfare queen" cultural trope during his 1970s presidential campaign,[42] it was not marketed as a critique of how law had failed to reckon with the material conditions of low-income women in the U.S. labor market.[43] Rather, President Reagan deployed the concept of culture

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42. See 'Welfare Queen' Becomes Issue in Reagan Campaign, N.Y. Times, Feb. 15, 1976, at 51, https://www.nytimes.com/1976/02/15/archives/welfare-queen-becomes-issue-in-reagan-campaign-hitting-a-nerve-now.html (on file with the *Columbia Law Review*) ("'There's a woman in Chicago,' the Republican candidate said recently to an audience in Gilford, N.H. . . . . '[S]he's collecting Social Security on her cards. She's got Medicaid, getting food stamps and she is collecting welfare under each of her names. Her tax-free cash income alone is over $150,000.'" (quoting Ronald Reagan)).

43. See Etienne C. Toussaint, Tragedies of the Cultural Commons, 110 Calif. L. Rev. 1777, 1826 (2022) [hereinafter Toussaint, Tragedies] ("The 1970s also saw state programs for the elderly and disabled moved to the federal level . . . . Expenditures on these public

to pathologize the behaviors of marginalized populations,[44] leading voters to believe that Black women on welfare were lazy, irresponsible, and seeking handouts.[45] This cultural rhetoric not only fueled racially biased legal and public policy interventions into the so-called Black ghettoes of America[46] but also furthered the private interests of corporations and wealthy Americans. In some instances, it seems, the impact of culture on law depends on how those in power choose to wield it.

The weaponization of culture in politics—what the Marxist intellectual Antonio Gramsci described as an ongoing struggle for cultural hegemony[47]—reflects culture's central role in the political debates within liberal democracies, particularly around legal rights, privileges, and duties of citizenship.[48] As Welsh socialist Raymond Williams succinctly put it, our so-called political "culture wars" are largely contestations over "a particular way of life."[49] Cultural studies scholars maintain that shifting

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assistance programs increased during the 1970s and 1980s, yet poverty persisted, often due to unemployment." (footnote omitted)); see also Rebecca M. Blank, Trends in the Welfare System, *in* Welfare, the Family, and Reproductive Behavior: Research Perspectives 33, 33–34 (Robert A. Moffitt ed., 1998) (examining the large increase in welfare spending over the course of the '60s and '70s).

44. See Franklin D. Gilliam, Jr., The 'Welfare Queen' Experiment: How Viewers React to Images of African-American Mothers on Welfare, Nieman Reps., Summer 1999, at 49, 50 ("The implicit racial coding is readily apparent. The woman Reagan was talking about was African-American. Veiled references to African-American women, and African-Americans in general, were equally transparent.").

45. See id. at 52 (summarizing an empirical study that found that people were more likely to believe welfare recipients were to blame for their poverty when presented with a depiction of a Black woman).

46. I embrace a strong conception of the term "ghetto" in the tradition of French sociologist Loïc Wacquant to describe "a social-organizational device" characterized by "(i) stigma, (ii) constraint, (iii) spatial confinement, and (iv) institutional parallelism" that "employs space to reconcile two antinomic functions: (1) to maximize the material profits extracted out of a category deemed defiled and defiling, and (2) to minimize intimate contact with its members so as to avert the threat of symbolic corrosion and contagion they are believed to carry." Loïc Wacquant, A Janus-Faced Institution of Ethnoracial Closure: A Sociological Specification of the Ghetto, *in* The Ghetto: Contemporary Global Issues and Controversies 1, 7 (Ray Hutchison & Bruce D. Haynes eds., 2012) (emphasis omitted).

47. See T.J. Jackson Lears, The Concept of Cultural Hegemony: Problems and Possibilities, 90 Am. Hist. Rev. 567, 568 (1985) ("[T]he concept of cultural hegemony can aid intellectual historians trying to understand how ideas reinforce or undermine existing social structures and social historians seeking to reconcile the apparent contradiction between the power wielded by dominant groups and the relative cultural autonomy of subordinate groups whom they victimize.").

48. See Camilleri, supra note 12, at 566 ("The law rests upon assumptions about the fundamental nature of human experience which reflect the perspective of the dominant legal culture, but these assumptions are neither adequate nor universally agreed upon.").

49. Raymond Williams, Keywords: A Vocabulary of Culture and Society 89–90 (rev. ed. 1983) (discussing German philosopher Johan Gottfried Von Herder's argument that culture exists in plurality). For examples on the way the term "cultural war" has been deployed in politics in recent history, see generally Gary Gerstle, America's Culture Wars Distract From What's Happening Beneath Them, The Guardian (Apr. 5, 2022), https://www.theguardian.com/commentisfree/2022/apr/05/america-politics-culture-

cultural beliefs about what it means to live a good life are socially "produced, performed, contested, or transformed."[50] Cultural practices, therefore, express discrete meanings, values, and preferences that are communicated through everyday social signifiers and symbols, which are themselves constantly evolving.[51]

When culture is understood in this way—that is, socially—laws, as signifying practices, symbols, and rituals, can be seen as expressions of a society's *legal culture*.[52] Legal texts help to order shifting cultural beliefs about "the nature of things" that govern the pursuit of human well-being.[53] As Robin West explained, law can be oppositional—seeking to "contain, minimize, censor, or neutralize culture . . . that threatens mainstream values"—or law can be accommodational—"by protecting [subcultures] against the machinery of ordinary law, carving 'exceptions' to general rules so as to protect the insularity and identity of a preferred group."[54] For example, the notion that the "luxuries and the comforts of life belong to the leisure class," as American economist and sociologist Thorstein Veblen proposed in the late nineteenth century, reflects a cultural belief about who can afford the costs of "conspicuous consumption."[55] Such dominant cultural beliefs about leisure were subsequently sanctioned by law, legitimating the gross wealth disparities that have long characterized the U.S. political economy.

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wars-republicans-democrats [https://perma.cc/X429-HCFF] (discussing the neoliberal order of the 1990s, where "broad agreement on matters of political economy nurtured two strikingly different moral perspectives" between Democrats and Republicans); Shadi Hamid, The Forever Culture War, The Atlantic (Jan. 8, 2022), https://www.theatlantic.com/ideas/archive/2022/01/republicans-democrats-forever-culture-war/621184/ (on file with the *Columbia Law Review*) (describing the left-right divide as divergent conceptions of "who we are" instead of "what works"); Scott Neuman, The Culture Wars are Pushing Some Teachers to Leave the Classroom, NPR (Nov. 13, 2022), https://www.npr.org/2022/11/13/1131872280/teacher-shortage-culture-wars-critical-race-theory [https://perma.cc/35CK-4PMP] (describing how political divides have created "culture wars" over what is taught in America's classrooms).

50. See Mezey, supra note 26, at 42.

51. See id. (referencing the work of cultural historian William H. Sewell, Jr.).

52. To be sure, some scholars dispute this view. See, e.g., Edward A. Purcell, Jr., Exploring the Origins of America's "Adversarial" Legal Culture, 70 Stan. L. Rev. Online 37, 37 (2017), https://review.law.stanford.edu/wp-content/uploads/sites/3/2017/07/70-Stan.-L.-Rev.-Online-37-Purcell.pdf [https://perma.cc/4VEB-43BQ] (reviewing Amalia D. Kessler, Inventing American Exceptionalism: The Origins of American Adversarial Legal Culture, 1800–1877 (2017)) ("Changing social and economic conditions may force the law to adapt . . . but they scarcely determine the particular nature of the reforms that follow.").

53. Thorstein Veblen, The Theory of the Leisure Class: An Economic Study of Institutions 70–71 (2d ed. 1912).

54. See West, Literature, Culture, and Law, supra note 9, at 104–05.

55. See Veblen, supra note 53, at 70 ("Drunkenness and the other pathological consequences of the free use of stimulants therefore tend in their turn to become honorific, as being a mark, at the second remove, of the superior status of those who are able to afford the indulgence.").

As a result, as American political scientist Austin Sarat and American philosopher Thomas Kearns argued, the law is unique among cultural institutions because it has "meaning-making" power.[56] As law determines the background rules that coordinate social action and inaction, its ideological power not only reflects the social world but also "*creates* the social world"[57]—establishing owners, possessions, and distributions of power that exclude some and coerce others.[58] The language of law becomes a communal text, serving as "the source of its members' conviction in the *truth*, rather than in mere facticity, of their moral claims."[59] For instance, in the antebellum American South, law legitimized the legal fiction that Black people—many of them sixth-generation Americans—were "mere commodities with production value, who had no proper legal status, social standing, or public worth."[60] Some scholars contend that culture shaped the convictions underpinning these laws, pointing to the White supremacist beliefs that dominated in colonial and postrevolutionary America.[61] For others, it is the law that constituted the evolving culture of early American society, citing the antebellum slave codes that set the stage for Black Codes and state-sanctioned racial terrorism after the Civil War.[62]

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56. See Austin Sarat & Thomas R. Kearns, The Cultural Lives of Law, *in* Law in the Domains of Culture 1, 10 (Austin Sarat & Thomas R. Kearns eds., 2000).

57. See Pierre Bourdieu, The Force of Law: Toward a Sociology of the Juridical Field, 38 Hastings L.J. 814, 839 (1987) ("[L]aw is the quintessential form of 'active' discourse, able by its own operation to produce its effects. It would not be excessive to say that it *creates* the social world, but only if we remember that it is this world which first creates the law."); Mezey, supra note 26, at 46 (describing how social practices are inseparable from law).

58. Morris R. Cohen, Property and Sovereignty, 13 Cornell L.Q. 8, 12–13 (1927) ("[T]he law of property helps me directly only to exclude others from using the things which it assigns to me."); see also Joseph William Singer, Legal Realism Now, 76 Calif. L. Rev. 465, 490 (1988) (reviewing Laura Kalman, Legal Realism at Yale 1927–1960 (1986)) ("Property law, when combined with contract law, delegates to property owners the power to coerce nonowners to contract on terms imposed by the stronger party.").

59. See West, Communities, supra note 24, at 130.

60. Cornel West, The New Cultural Politics of Difference, 53 Humans. as Soc. Tech. 93, 102 (1990) [hereinafter West, New Cultural Politics] (describing the historical disregard for Black humanity).

61. See, e.g., Ruth Colker, The White Supremacist Constitution, 2022 Utah L. Rev. 651, 653 (arguing that White supremacy has roots in the Constitution and is maintained through politics, economics, and culture).

62. See, e.g., Michael Kent Curtis, Reflections on Albion Tourgée's 1896 View of the Supreme Court: A "Consistent Enemy of Personal Liberty and Equal Right"?, 5 Elon L. Rev. 19, 34 (2013) (discussing the Black Codes passed by Southern states during Reconstruction); see also, e.g., Black Code of St. Landry's Parish, Louisiana, 1865, § 6, reprinted in Michael Miller Topp, Racial and Ethnic Identity in the United States, 1837–1877, *in* The Columbia Documentary History of Race and Ethnicity in America 223, 296 (Ronald H. Bayor ed., 2004) ("[N]o negro shall be permitted to preach . . . without a special permission . . . . Any negro violating the provisions . . . shall pay a fine of ten dollars, or in default thereof shall be forced to work ten days on the public road, or suffer corporeal punishment . . . ."); Act of Nov. 24, 1865, ch. 6, § 2, 1865 Miss. Laws 90–91, reprinted in Laws of the State of Mississippi, Passed at a Regular Session of the Mississippi Legislature, held in

Anthropologist Clifford Geertz and sociologist Pierre Bourdieu attempted to bridge this ideological divide by suggesting that law can be viewed "not so much [as] operating to shape social action," nor as shaped by social action, "but *as* social action" itself.[63] From this perspective, law does not just oppose or accommodate various subcultures in a society; it actively disseminates contingent social norms and cultural understandings into society, shaping political discourse and influencing the law's evolution. Both law and culture, then, function as communal languages—just as cultural practices express communal meanings, so too do legal texts "constitute and constrain [a] community's moral commitments."[64] Thus, the post–Reconstruction Era laws known as Jim Crow dictated the actions and lived experiences of emancipated Black people, embodying what Professor Cornel West called "the modern Black diaspora problematic of invisibility and namelessness."[65] These laws reveal how cultural perceptions of Blackness can shape legal definitions of Black humanity.

Is it problematic that popular cultural discourse can shape both the production and interpretation of law? According to White, whether a text reflects a community's values or can be critiqued depends on whether it originates from the shared constitutive texts of a "textual community."[66] The ability to interpret and critique communal texts relies on one's membership in the textual community. However, when the cultural views of the critic are shaped by the same shared texts they seek to critique, transforming the constitutive texts becomes the only way to bring about real change. In other words, as Robin West argued, when the cultural critic accepts the moral legitimacy of the text that they critique, the result is "social criticism [that] is constrained and stunted" by the text itself.[67] What does this mean for democratic discourse about legal texts? Cultural criticism falls short when certain members of society are excluded from the textual community—those who "do not participate as subjects in the process of critique and self-transformation" but instead "become literally

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the City of Jackson, October, November, and December 1865 (Jackson: J.J. Shannon & Co., State Printers, 1866) ("[A]ll freedmen, free Negroes and mulattoes in this state, over the age of eighteen years . . . with no lawful employment or business . . . shall be deemed vagrants, and on conviction thereof, shall be fined . . . and imprisoned at the discretion of the court . . . .").

63. See Patricia Ewick & Susan S. Silbey, The Common Place of Law: Stories From Everyday Life 34–35 (1998).

64. West, Communities, supra note 24, at 131.

65. See West, New Cultural Politics, supra note 60, at 102 ("The modern Black diaspora problematic of invisibility and namelessness can be understood as the condition of relative lack of Black power to present themselves to themselves and others as complex human beings, and thereby to contest the bombardment of negative, degrading stereotypes put forward by White supremacist ideologies." (emphasis omitted)).

66. See James Boyd White, Is Cultural Criticism Possible?, 84 Mich. L. Rev. 1373, 1380–81 (1986) (noting that social context is essential to analysis and judgment).

67. See West, Communities, supra note 24, at 138, 139 (noting that in the novel *Adventures of Huckleberry Finn*, Huck remains unchallenged by the conflict between his personal code and the racist society in which he lives).

objectified."[68] Such individuals, West claimed, "do not speak, they are objects; . . . they are outside the community."[69] As a result, West concluded that "if we ground our criticism in our texts, then we will not grant moral entitlement to those 'others' our texts objectify."[70]

While West highlighted the importance of including marginalized or stereotyped individuals in democratic discussions about the law, her conclusion that the objectified "other" does not participate in the production of foundational shared legal texts obscures the biases embedded in such texts. The objectification lies in the silencing of these cultural exchanges—for instance, naming Black culture as nontextual, nonliterary, or nonlegal. Instead of assuming that we must transform our foundational shared legal texts by including outsiders into the textual community, we should recognize the silenced "other" as an unrecognized member of the textual community. By doing so, we may uncover foundational shared legal texts that are simply not being acknowledged or read, our "hidden transcript."[71] For example, the legal concept of the Black racial subject, rooted in colonial-era legal texts and reinforced by modern cultural discourse, embeds Euromodern ideas about the legitimacy of racial differentiation. This concept operates as a legal text in its own right, used to interpret the meaning of law and legal culture. In essence, the Black body—and the Black bodily experience—serves a foundational shared legal text in U.S. law and political economy.

Accordingly, the reading of literary and cultural narratives that explore the matter of Black lives can illuminate how law and culture interact as distinct, yet interrelated phenomena, both functioning as types of language. For example, the cultural notion of Black invisibility and namelessness, perpetuated by Jim Crow laws, is vividly portrayed in Ralph Ellison's 1952 novel *Invisible Man*.[72] Published nearly a century after the abolition of chattel slavery in the United States, and two years before my mother's birth, *Invisible Man* chronicles the journey of an unnamed, college-educated Black man during the 1940s and 1950s, from the Jim Crow South to Harlem, New York City.[73] In the novel's opening chapter,

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68. Id. at 140.

69. Id.

70. Id.

71. See James C. Scott, Domination and the Arts of Resistance: Hidden Transcripts 15 (1990) (discussing how analysis of hidden transcripts "uncovers contradictions and possibilities, [and] looks well beneath the placid surface that the public accommodation to the existing distribution of power, wealth, and status often presents").

72. Ellison, supra note 1.

73. The absence of the narrator's name signifies not only the injustice of racial discrimination endured by Black Americans but also the loss of identity and invisibility inflicted upon such populations. See id, at 239 ("A tremor shook me . . . and I was overcome with swift shame. I realized that I no longer knew my own name."); see also Shelly Jarenski, Invisibility Embraced: The Abject as a Site of Agency in Ellison's *Invisible Man*, 35 MELUS 85, 86 (2010) ("[I]nvisibility allows Ellison to create a black male subjectivity that is fully outside of visually constructed white, hetero-male hegemony.").

the narrator—speaking from the perspective of a Black man in his forties reflecting on his youth—describes the challenges of pursuing personal achievement in a society dominated by the myths and rituals of White supremacy. He recounts the death of his grandfather, who pronounced on his deathbed,

> [A]fter I'm gone I want you to keep up the good fight. I never told you, but our life is a war and I have been a traitor all my born days, a spy in the enemy's country ever since I give up my gun back in the Reconstruction. Live with your head in the lion's mouth. I want you to overcome 'em with yeses, undermine 'em with grins, agree 'em to death and destruction, let 'em swoller you till they vomit or bust wide open . . . . Learn it to the younguns . . . .[74]

These words fill the young narrator with anxiety—not only because his parents dismiss his grandfather's statement as the ramblings of a confused old man, but because his grandfather had described meekness "as a dangerous activity" and "as *treachery*."[75] The words puzzle the young man since meekness and docility had already earned him praise from "the most lily-white men in town."[76] Despite this, he carries a deep sense of guilt and fear, worried that one day the Black community "would look upon [him] as a traitor and [he] would be lost."[77] Wrestling with his grandfather's words like a curse, the boy concludes on his high school graduation day that "humility was the secret . . . the very essence of progress," even though he secretly doubts its truth.[78] Throughout the novel, the narrator grapples with the meaning of his grandfather's words, encountering a range of interpretations within the Black textual community.[79] Ultimately, in the epilogue, the narrator concludes that his grandfather was instructing him "to affirm the principle on which the country was built"[80]—the notion of human equality expressed in America's founding documents, such as the Constitution and the Declaration of Independence.

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74. See Ellison, supra note 1, at 16.

75. Id. at 16–17.

76. Id. at 16.

77. Id. at 17.

78. Id.

79. For instance, Dr. Bledsoe epitomizes the pragmatic pursuit of power within a racially segregated society, manipulating the system to maintain his influence. In stark contrast, Ras the Exhorter champions the ideal of Black unity, advocating for radical, even violent, measures to dismantle racial oppression. Meanwhile, the Brotherhood's methodical, scientific approach to understanding human life and social issues ultimately falls short, leaving the narrator unable to unravel his grandfather's enigmatic advice. Each perspective, with its distinct focus and limitations, highlights the complex and multifaceted struggle for identity and justice within the novel. See Danielle Allen, Ralph Ellison on the Tragi-Comedy of Citizenship, *in* Lucas E. Morel, Ralph Ellison and the Raft of Hope: A Political Companion to Invisible Man 37, 37–39 (2004).

80. Ellison, supra note 1, at 574.

I was stunned the first time I read *Invisible Man*, my eyes performing a death march through that first chapter toward the infamous Battle Royal scene. More than being entranced by the novel's vivid imagery and powerful symbology which plunged me into the depths of the Black American freedom struggle, I realized that the invisible man Ellison described could very well have been me. This young Black man wrestled with the guilt of thriving in a dog-eat-dog world with his head "in the lion's mouth,"[81] even as war against White supremacy raged on. Even more, Ellison's depiction of how legal fictions are ritualized and made sacred through everyday sacrifices reminded me of stories from my own community. Reading Black literature, and the culture it described, illuminated my understanding of the nature of law.

II. LAW *AS* CULTURE

Some scholars, such as Mezey, have concluded that law can reasonably be considered synonymous with American culture itself.[82] It certainly felt that way to thirteen-year-old me. The cultural beliefs, practices, and norms that governed life in my South Bronx neighborhood enjoyed the weight of law, reflecting a world where Black boys were often on the run from trouble. At least, that's how it seemed to me. Running from the law in search of validation and recognition echoed the journey of Ralph Ellison's narrator in *Invisible Man*.

When Nolan and I broke the neighbor's car window while playing catch in the alley behind our block, I ran home convinced I was the innocent one. It was, after all, Nolan's wild arm that had sent our baseball out of bounds. It was his bright idea to turn a dirt road into our field of dreams within the concrete jungle where grass, trees, and public parks are few and far between.[83] The evidence was conclusive. Nolan took the blame and confessed to his dad. A judgment was rendered, the neighbor was paid, I was spared, and Nolan was punished with sharp words that faded into quiet sobs behind the screen door.

By the next day, we were playing again, and Nolan washed away my self-contempt with a soft smile.

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81. Id. at 16 (internal quotation marks omitted).

82. See Mezey, supra note 26 at 37 (proposing a "theory of law as culture that, in detailing the mutually constitutive nature of the relationship, distinguishes itself from the way law and culture have been conceived by realist and critical legal scholars, as well as by social norms writers").

83. See Bernadette Corbett, Urban Parks: A Study on Park Inequity and Eco-Gentrification in New York City 17 (2016), https://www.fordham.edu/download/downloads/id/5726/bernadette_corbett_-_urban_parks.pdf [https://perma.cc/A75E-7DG5] ("According to Council Member Levine, 'by 1986 Parks had fallen to just 0.86% of the budget . . . by 1990 Parks spending had fallen further to 0.65% of the total budget, and by 2000 it had reached just 0.52%' . . . .' Neighborhoods with lower-income residents were especially affected." (first alteration in original)).

"Wanna play *NBA Jam*?" he asked, standing at my front door, his long, lanky arms hanging by his sides like two upside-down daisies.

"You mad?" I muttered through burning cheeks, fidgeting with my shirt sleeve.

"Nah, you good," he replied with a sparkle in his brown eyes and a light punch to my arm—just enough to remind me I was safe.

"Okay, well, I'm the Knicks," I replied with a quiet exhale, running to the back room to turn on my Sega Genesis.

Such was a typical ending to our daily adventures in my corner of the hood. A brush with legal culture that reinforced stereotypes about the Black racial subject in his youthful deviance, followed by shared laughter that restored our self-confidence, self-respect, and self-esteem.

Truth is, I admired Nolan. At thirteen, he looked not a day shy of fifteen. Nevertheless, despite his mature looks, he chose to play with me. He was the kind of kid who knew he could win every game but took it easy to keep things interesting, to spare egos, I suppose. At the arcade, he was relentless, setting new high scores only to beat them again, all while the Peruvian store owner watched us closely from the front.

"Hey Papi, you gotta buy something if you wanna stay here all day like that," the man shouted, his jaw tight, eyes wide.

We each bought a $1.50 slice of pizza to convince him that we meant no harm. Nolan asked the Peruvian man for eight quarters in exchange for two dollars and flicked one quarter back at the man with a quick jerk of his wrist.

"Here, amigo, go buy some Tic Tacs so we don't have to deal with that breath all day like that." Nolan flashed a wide grin, his perfectly straight teeth gleaming as we bounced back to the machine.

The owner shook his head, eyes briefly turned to the heavens, before moving on to another customer, seemingly convinced we were good kids.

We wanted to be good kids. The kind of Black boys who willingly knelt before the authority of law, answering the prayers of long-gone elders.[84] But sometimes, it felt like the rule of law forced us to kneel, pressing our knecks to the ground under the weight of history, bending our backs into a meeker version of Blackness that could be accepted as American—though it contradicted the bold cultural expressions that defined Black life under the frenetic melodies of the South Bronx.

On the walk home from the pizza shop, we would strut down Westchester Avenue with the kind of youthful joy one might mistake for indifference. The warm, slightly greasy aroma of pepperoni pizza mingled with the earthy scent of the city, creating an olfactory mosaic that was

84. West, New Cultural Politics, supra note 60, at 103 ("The initial Black diaspora response was a mode of resistance that was *moralistic in content* and *communal in character*. That is, the fight for representation and recognition highlighted moral judgements regarding Black 'positive' images over and against White supremacist stereotypes.").

uniquely ours. I remember being impressed by how many people in our community knew Nolan's name—and by extension, I assumed, must have known mine too. From the colorful graffiti splayed across brick buildings to the soulful reggaeton and hip-hop blaring from Lincoln Navigators with oversized rims, the sights and sounds of the South Bronx made it clear: To be seen or heard was to be known, and to be known meant you could become family.

"Hey son," the bus driver would shout, motioning for us to come back to the front of the bus and show our passes. The cashier at the chicken spot would casually ask if we wanted a side of fries with that. The Puerto Rican who always wore his Timberland boots without laces and drank Heineken from the bottle while perched on a milk crate outside the barbershop would throw a head nod our way. In this close-knit neighborhood, the scent of sizzling street food mixed with the city's array of aromas, carrying a promise of belonging and recognition, enveloping us in the warmth of community. This culture of recognition was vital to the fabric of our community and the possibility of collective democratic action.

Even the police officers, with their stern gazes and hands resting near their holsters, would make their presence known as we approached the stairwell to the elevated train at Elder Avenue Station. Their stoic presence turned our carefree strides into a cautious crawl, their bulletproof vests and visible firearms a silent reminder of the authority they wielded. Their eyes, without saying a word, conveyed a fundamental truth: In this world, recognition was a precondition for being. We were Black boys on the run from the law, stuck halfway between the debilitating tragedies of the so-called ghetto and the invigorating comedies of the hip-hop cypher, where swift metaphors and rhythmic swagger could render an unruly youth notorious. It was the empathy forged by our experiences of tragedy and the laughter borne from our daily comedies that provided tools for coping with the inevitability of sacrifice and loss in our social and political landscape. But to the men who surveilled our daily lives—bastions of a rule of law deeply suspicious of the perceived disorder of Black life,[85] echoing what Russian philosopher Mikhail Bakhtin called the "carnival" of modern culture[86]—we could be trouble.

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85. See Jamelia N. Morgan, Rethinking Disorderly Conduct, 109 Calif. L. Rev. 1637, 1642 (2021) ("[P]olicing of disorderly conduct, like the common law regime before it, continues to target, or risks targeting, enforcement against historically marginalized groups. . . . [D]isorderly conduct laws continue to enforce discriminatory norms for behavior and, in doing so, reinforce social hierarchies based on race, gender, sexual orientation, and disability.").

86. Mikhail Bakhtin, Problems of Dostoevsky's Poetics 122 (1984) ("In carnival everyone is an active participant, everyone communes in the carnival act. Carnival is not contemplated and, strictly speaking, not even performed; its participants live in it, they live by its laws as long as those laws are in effect; that is, they live a carnivalistic life." (emphasis omitted)).

More than expressions of unresolved racial injustice in the U.S. political economy, our bodies manifested a linguistic and even spiritual aesthetic that sought to reclaim joy amidst the sorrows of anti-Black racism. This reclamation came through the appropriation and rearticulation of European ideologies, cultures, and institutions.[87] Our Black cultural repertoire, as the Jamaican-born British Marxist sociologist Stuart Hall put it, was a product of "engagement across cultural boundaries . . . of the negotiations of dominant and subordinate positions, . . . [a] hybridized [form] from a vernacular base."[88] In essence, our Black culture was dialogic—an ongoing democratic conversation that had been unfolding for generations. Black literature, such as Ellison's *Invisible Man*, unveiled these unrecorded histories, unwritten laws, and overlooked cultural dialogues. Yet, these insights were conspicuously absent from the formal laws that governed our daily lives, which instead seemed to enshrine anti-Black notions of privacy, liberty, security, and equality.[89]

By framing Black culture as antithetical to American cultural traditions and values—rather than as an integral expression of its plurality—the law cemented fictitious legal and political boundaries. These textual boundaries dictated what was considered "civil" modes of human engagement and distinguished insiders from outsiders, all while obscuring culture's vital role in shaping our social reality. Formal law reflected America's entrenched cultural belief in the presumed criminality and incivility of Black people, particularly in low-income neighborhoods.[90] This misrepresentation not only reinforced harmful stereotypes but also ignored the rich, complex contributions of Black culture to American society.

"You boys headed home?" one officer asked.

"Yeah, we're going home," Nolan replied in a shrill voice, his shoulders clenched.

"Be good," the other officer said, responding to our unease with a stern wave and slight head nod.

We waved back and continued past the train station, our heavy book bags bouncing against our backs as we marched along in the starched white uniform shirts and clunky black shoes we wore to school each day. Nolan and I attended Catholic school about a mile away from our homes because, as we overheard one summer, the local public school was "no

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87. See West, New Cultural Politics, supra note 60, at 103 (discussing "efforts to combat racist cultural practices . . . [that] proceeded in an assimilationist manner . . . [and] rested upon a homogenizing impulse" (emphasis omitted)).

88. Stuart Hall, What Is This "Black" in Black Popular Culture?, *in* Black Popular Culture 21, 28 (Gina Dent ed., 1992).

89. See Devon W. Carbado, Unreasonable: Black Lives, Police Power, and the Fourth Amendment 14 (2022) ("[T]he police-centric nature of Fourth Amendment law has forced Black people to live their lives in a state of anticipatory mourning and trauma.").

90. See id. at 15 (discussing how racial stereotypes and racial segregation increase Black people's vulnerability to police contact).

good." "No discipline and no good books," one of our parents explained to the other at the barbeque. I recall wondering if there was something beyond tattered pages and worn binders that made a book 'no good.' *What does good mean for us?* I recall thinking to myself. *What's good?*

"F*ck those niggas," Nolan muttered under his breath as the police officers moved us along.[91]

I'm still convinced that it was Nolan who earned the officers' approval. He was the kind of kid who got into trouble every day in school—justifying the very existence of detention—but somehow always made the teachers laugh. It was as if he had figured out that being a 'good' kid meant blending the tragedy of unruly behavior with the comedy of Black life in America.[92] He knew how to make an unfair situation funny so that the unfairness did not seem as bad to the adults who could not choose to look away. Laughter pulled even those who had not suffered into an awareness of loss, followed by concern, sympathy, and sometimes, just exhaustion. It all felt quite normal to me.

Maybe that is why I took Nolan's punches with a smile and submitted to our Battle Royal. Our struggle to avoid trouble merely reflected the challenges we faced in making sense of urban America's love-hate relationship with legal culture. Like the narrator in *Invisible Man*—him by way of the Great Migration, and us by way of our Caribbean-born parents—Nolan and I had been lured into the ballroom of liberal capitalism and presented with a gift both enticing and alienating, exciting yet disheartening. In *Invisible Man*, the narrator is invited to deliver his high school graduation speech to a gathering of White male local leaders—"bankers, lawyers, judges, doctors, fire chiefs, teachers, merchants" and "[e]ven one of the more fashionable pastors"—and discovers that he is expected to participate in a blindfolded boxing match as part of the evening's entertainment.[93] Before the Battle Royal begins, the audience of

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91. This Piece uses the word "nigger" to explore the relationship between Black culture and U.S. law for several important reasons. Historically, the word has been employed to enforce racial hierarchies and justify systemic discrimination, making its inclusion essential for accurately conveying the brutality and dehumanization embedded in legal and social structures. By using the word in its original context—particularly in legal texts, literature, historical speeches, or cultural discourse—this Piece highlights the profound impact of racist language on the evolution of U.S. law and societal norms. Moreover, the term's emotional weight underscores the cultural and psychological toll of racism, illustrating how language shapes both individual identities and collective perceptions of race. Addressing the word directly allows for a deeper critical examination of how racial slurs have functioned as tools of social and legal control, as well as tools of resistance and reclamation, providing a more nuanced understanding of race, culture, and law's historical development.

92. See Miriam Strube, Pragmatism's Tragicomic Jazzman: A Talk with Cornel West, 58 Amerikastudien/Am. Stud. 291, 294 (2013) ("[T]ragicomic is the ways in which you look catastrophe in the face, understand radical incongruity, the inability to make sense of it in any holistic, coherent, and consistent way. Yet you still find something—fragments, pieces, relics—and deploy it in an improvisational manner to keep keeping on . . . .").

93. Ellison, supra note 1, at 17–18.

drunken men is first entertained by the erotic dance of a naked White woman, and by no choice of their own, the Black boys are entertained too.[94] The narrator recounts:

> We were rushed up to the front of the ballroom, where it smelled even more strongly of tobacco and whiskey. . . . A sea of faces, some hostile, some amused, ringed around us, and in the center, facing us, stood a magnificent blonde—stark naked. . . . I felt a wave of irrational guilt and fear. My teeth chattered, my skin turned to goose flesh, my knees knocked. Yet I was strongly attracted and looked in spite of myself. Had the price of looking been blindness, I would have looked.[95]

Here, Ellison uses the erotic dance of a naked White woman to depict the distorted values of America's legal culture, with her as its symbol. The woman's belly is tattooed with a small American flag above her thighs that curve into a capital "V," suggesting America as a land of victory and freedom.[96] Yet her face is "heavily powdered and rouged, as though to form an abstract mask," with eyes "hollow and smeared a cool blue, the color of a baboon's butt," signifying an attempt to hide the bitter truth of her sexual exploitation, rendering her cold, indifferent, and empty.[97] In other words, Ellison presents the law in the United States as a culture driven by an erotic lust for materialistic self-interest and fleeting self-gratification. Hey body, described as having breasts "firm and round as the domes of East Indian temples,"[98] obscures the underlying sadness of gross inequality and unfreedom experienced by marginalized populations. She is objectified and commodified, stripped of her subjectivity, while simultaneously serving as a representation of the U.S. legal culture. This eroticized image of the White woman is central to establishing "the relationship between white power, male power, and (hetero)sexual power" in the room.[99] These legal fictions are sanctified through the ritual of her symbolic sacrifice.

The narrator struggles to reconcile a dignified Black masculinity within the discordant roles thrust upon him in the ballroom. On the one hand, he feels a sense of kinship with the objectified White woman. Yet, on the other hand, he is consumed with paralyzing fear over the possibility of being seen as the stereotypical Black male aggressor toward the innocent White women—an image that has historically justified lynchings whenever the mere suspicion of interracial sex became a dogged belief.[100] "I wanted

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94. Id. at 19.

95. Id. at 18–19.

96. See id. at 19.

97. See id.

98. See id.

99. See Jarenski, supra note 73, at 89.

100. Id. at 91–92; see also CalvinJohn Smiley & David Fakunle, From "Brute" to "Thug:" The Demonization and Criminalization of Unarmed Black Male Victims in America, 26 J. Hum. Behav. Soc. Env't. 350, 353–57 (2016) (discussing the history of the "Black brute"

at one and the same time to run from the room," he says, "to sink through the floor, or go to her and cover her from my eyes and the eyes of the others with my body . . . ."[101] Much like the residents of the South Bronx and other urban enclaves across the United States, where aspirations for social mobility must contend with persistent social stigma and labor exploitation, the narrator in *Invisible Man* faces an existential identity crisis. As he gazes upon Ellison's symbol of American democracy—embodied by this eroticized figure of legal culture—he is torn: He wants "to caress her and destroy her, to love her and to murder her, to hide from her, and yet to stroke" the places that evoke America's dream.[102] However, the narrator is not free to resolve the contradictions of America's color line that define his world—to "affirm the principle on which the country was built."[103] He must conform to the coercive power of law and order, which demands his submission rather than his liberation.

Similarly, the struggles that Nolan and I faced in the South Bronx—trying to experience liberty and equality in a landscape marked by socioeconomic inequality, inadequate educational opportunities, and heavy-handed supervisory policing—often left us with a crippling sense of futility. Much like the Battle Royal in *Invisible Man* that follows the blonde woman's exotic dance, we had been thrown into a rigged game. In Ellison's narrative, the protagonist is forced into a boxing ring with other Black men, "blindfolded with broad bands of white cloth . . . tight as a thick skin-puckering scab."[104] The rules of boxing do not apply in this chaotic space where the "smoke [is] agonizing" and "there [are] no rounds, no bells at three minute intervals to relieve [their] exhaustion."[105] The White men shout at the young Black boxers—"Slug him, black boy! Knock his guts out!"—and the narrator realizes that submission is his only option.[106] "The harder we fought the more threatening the men became."[107] While some of the White men show a degree of sympathy,

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stereotype and the harms stemming from it); Richard Pérez-Peña, Woman Linked to 1955 Emmett Till Murder Tells Historian Her Claims Were False, N.Y. Times (Jan. 27, 2017), https://www.nytimes.com/2017/01/27/us/emmett-till-lynching-carolyn-bryant-donham.html (on file with the *Columbia Law Review*) (discussing the confession of the woman who wrongly accused fourteen-year-old Emmett Till of sexual assault, which led to a group of white men lynching him in 1955); The Birth of a Nation (David W. Griffith Corp. 1915) (portraying through silent film the stereotype of a hypersexual Black man who chases a white woman refusing to accept his advances, leading to her fatal fall from a cliff and his subsequent lynching by the Ku Klux Klan).

101. Ellison, supra note 1, at 19.

102. Id.; see also Ta-Nehisi Coates, Between the World and Me 11 (2015) (discussing how the "Dream" the narrator wished to escape to would not be a reality because it rested on the oppression of him and other Black people, drawing upon the ever-evasive nature of the American Dream to many in the Black community).

103. Ellison, supra note 1, at 574.

104. Id. at 21–22.

105. Id. at 23.

106. See id. (internal quotation marks omitted).

107. Id. at 23–24.

trying "to cheer [the Black boys] up as [they] stood with [their] backs against the ropes,"[108] these gestures offer little relief. Like Martin Luther King Jr.'s critique of the White moderate who prefers "the absence of tension" over "the presence of justice,"[109] such overtures are hollow and do nothing to change the underlying injustice.

Ellison uses the chaos and violence of the Battle Royal to convey the struggle that Black Americans must face in confronting the anti-Black racism embedded in Jim Crow America, a cultural system of racial oppression baked into the language of law. White supremacy imposes conditions upon Black subjectivity that not only obscure the pathways toward individual flourishing but also render such efforts futile, forcing the oppressed to turn upon one another for mere survival.[110] As Ellison's narrator explains:

> Blindfolded, I could no longer control my motions. I had no dignity. I stumbled about like a baby or a drunken man. The smoke had become thicker and with each new blow it seemed to sear and further restrict my lungs. My saliva became like hot bitter glue. A glove connected with my head, filling my mouth with warm blood. It was everywhere. . . . Everyone fought hysterically. It was complete anarchy.[111]

Although the winner of the Battle Royal is promised an economic prize, the real beneficiaries are the White men in attendance placing bets on the outcome. As one White male attendee declares, "I got my money on the big boy,"[112] making it clear that the Black participants' struggle is ultimately for the entertainment and profit of others. Similarly, within the competitive culture of capitalism, those in positions of economic privilege exploit marginalized and disinvested communities by betting on market trends like gentrification and urban development—playing a different game altogether.[113]

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108. Id. at 21.

109. See Martin Luther King, Jr., Letter From Birmingham Jail, *in* Why We Can't Wait 76, 84 (1964) ("[T]he Negro's great stumbling block in his stride toward freedom is . . . the white moderate who is more devoted to 'order' than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice . . . .").

110. See W.E.B. Du Bois, The Souls of Black Folk 9 (1903) (discussing the "double-consciousness" Black people experience in a society shaped by White supremacy and how this affects the relationship with self and others in the Black community); Ibram X. Kendi, How to Be an Antiracist 35 (2019) (arguing systemic racism leads to internalized oppression, and feelings of inferiority and self-doubt).

111. Ellison, supra note 1, at 22–23.

112. Id. at 25.

113. Some scholars have pointed to former President Donald Trump's Opportunity Zones Program as an example of law that creates markets for the wealthy to profit from the suffering of the poor. See Edward W. De Barbieri, Opportunism Zones, 39 Yale L. & Pol'y Rev. 82, 91 (2020) (describing how the Opportunity Zones Program may harm the very individuals it is supposed to benefit by increasing wealth and income disparity); Jesse Drucker & Eric Lipton, How a Trump Tax Break to Help Poor Communities Became a Windfall for the Rich, N.Y. Times (Aug. 31, 2019), https://www.nytimes.com/2019/08/31/

At thirteen, it often felt like Nolan and I were also playing a different game altogether. As we watched local neighborhoods, from Co-op City down to Harlem, undergo urban development that pushed out low-income Black and Latinx families while attracting wealthy young professionals,[114] we were told that the law promised fair housing opportunities for everyone.[115] As we watched police officers swarm our streets, stopping and frisking young Black teenagers who looked like us,[116] as wealthier suburban neighborhoods enjoyed routine serenity with little police presence, we were told that the law protected us from "unreasonable searches and seizures" by law enforcement.[117] As technology evolved and new industries emerged, we were told that higher education was our pathway to success, despite ongoing legal battles over affirmative action threatening existing diversity, equity, and inclusion programs at universities.[118] The contradictions within law confounded our

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business/tax-opportunity-zones.html (on file with the *Columbia Law Review*) (last updated Sept. 27, 2020) (discussing the origins of the Opportunity Zone Program, which endeavored to encourage developments in housing, schools, and businesses in low-income, high-need areas, and critiquing the outcomes).

114. See Ginia Bellafante, Tracking the Hyper-Gentrification of New York, One Lost Knish Place at a Time, N.Y. Times (Sept. 27, 2017), https://www.nytimes.com/2017/09/27/books/review/vanishing-new-york-jeremiah-moss.html (on file with the *Columbia Law Review*) (discussing the book *Vanishing New York: How a Great City Lost Its Soul*, which describes 1993 in New York City as "the beginning of the end" in terms of gentrification (citing Jeremiah Moss, How a Great City Lost Its Soul (2017)).

115. See Title VII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (codified as amended at 42 U.S.C. §§ 3601–3619 (2018)) (prohibiting discrimination in the sale, rental, and financing of housing based on race, color, religion, sex, national origin, disability, and familial status).

116. See Natalie Rosenblatt, "Stop-and-Frisk" Policing in New York City (2021), https://deepblue.lib.umich.edu/bitstream/handle/2027.42/168402/%E2%80%9CStop-and-Frisk%E2%80%9D%20Policing%20in%20New%20York%20City.pdf [https://perma.cc/XMJ7-2AXT] (discussing the history of the controversial policing policy in New York City); see also Bridge Initiative Team, Factsheet: NYPD Stop and Frisk Policy, Geo. Univ.: Bridge Initiative (June 5, 2020), https://bridge.georgetown.edu/research/factsheet-nypd-stop-and-frisk-policy/ [https://perma.cc/H38C-F7M9] (detailing the history and implications of stop and frisk policing, particularly under New York City Mayors Rudolph Giuliani and Michael Bloomberg, including the infamous Street Crimes Unit and the killing of Amadou Diallo).

117. U.S. Const. amend. IV; see also Findings, Stan. Univ.: Open Policing https://openpolicing.stanford.edu/findings/ [https://perma.cc/5CP3-GJCE] (last viewed Aug. 7, 2024) (detailing statistical findings of racial disparities and discrimination in policing).

118. See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141, 2175 (2023) (holding that race-conscious undergraduate admissions programs violate the Equal Protections Clause of the Fourteenth Amendment); Grutter v. Bollinger, 539 U.S. 306, 318–20 (2003) (holding that public educational institutions that consider race as a factor for admission are lawful under the Fourteenth Amendment when the policy is narrowly tailored to promote diversity in student populations); Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 318–19 (1978) (ruling that race could be considered as a factor in college admissions but that schools could not lawfully set quotas to increase diversity); see also Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 227 (1995) (holding that all state

understanding of American culture. As a result, like the narrator in *Invisible Man*, I found myself dancing around trouble in the Bronx like an anxious boxer in a crowded ring, eagerly awaiting my opportunity to deliver my speech and prove to the powerful people in the many rooms I would enter that I too belonged.

III. LAW *IN* CULTURE

Legal culture shaped how I understood the world around me. When I was accepted as one of only two kids from my seventh-grade class into an exclusive summer enrichment program at Fordham Preparatory School, just weeks after Nolan and I had our brief encounter with the police at the Elder Avenue train station, Nolan wouldn't mention it. Instead, he asked if I wanted to grab a chopped-cheese sandwich at the corner store or play handball against the government building down our block. Around the same time, President George W. Bush declared that "too many . . . children are segregated into schools without standards, shuffled from grade to grade,"[119] introducing the No Child Left Behind Act of 2001 to demand more from the law.[120] Yet, the law in our hood reserved the best schools, teachers, and resources for the best students (or those who could afford to pay).[121] As a result, the top educational opportunities went to the

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actions based on race require strict scrutiny, meaning the government must justify them by showing they are necessary to achieve a compelling government interest); City of Richmond v. J.A. Croson Co., 488 U.S. 469, 505–09 (1989) (holding that a city ordinance requiring city contractors to set aside thirty percent of subcontracts for minority businesses is unconstitutional); Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 723 (1982) (holding that cases alleging discrimination against men require the same high level of scrutiny as those alleging discrimination against women and thus, a state law that excluded men from a women's university was unconstitutional); Fullilove v. Klutznick, 448 U.S. 448, 478 (1980) (upholding a federal law that set aside ten percent of public works contracts for minority businesses); United Steelworkers v. Weber, 443 U.S. 193, 207–08 (1979) (upholding a voluntary affirmative action plan for minority workers at a Kaiser Aluminum plant).

119. George W. Bush, Address Accepting the Presidential Nomination at the Republican National Convention in Philadelphia (Aug. 3, 2000), https://www.presidency.ucsb.edu/documents/address-accepting-the-presidential-nomination-the-republican-national-convention-0 [https://perma.cc/2FUH-AR5B].

120. See Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified as amended in scattered sections of 15, 20, 42, and 47 U.S.C.) ("An Act To close the achievement gap with accountability, flexibility, and choice, so that no child is left behind.").

121. See Ralph Richard Banks, The New Racial Segregation in Education, 96 N.Y.U. L. Rev. Online 144, 145 (2021), https://nyulawreview.org/wp-content/uploads/2021/06/Banks-fin.pdf [https://perma.cc/VZG6-LKQU] ("[T]he practice of allocating educational opportunity on the basis of students' prior academic achievement . . . relegates lower-achieving students, who are disproportionately Black, to inferior educational opportunities . . . [and] thus functions as a racially exclusionary means of rationing access to the most sought after educational opportunities."); Linda Darling-Hammond, Unequal Opportunity: Race and Education, Brookings (Mar. 1, 1998), https://www.brookings.edu/articles/unequal-opportunity-race-and-education/ [https://perma.cc/UL3X-Z7PY] ("The presumption that guides much of the conversation is that equal opportunity now exists; therefore, continued low levels of achievement on the

kids who knew how to stay out of trouble, master the rules, and whose parents could afford weekend trips to the bookstore and private education—kids like me.

When twenty-three-year-old Amadou Diallo—a West African immigrant and street peddler of bootlegged tapes and cheap tube socks mistaken for a serial rapist—was shot forty-one times by four plainclothes New York City police officers outside his apartment doorway,[122] Nolan wouldn't mention it. Instead, we hurried home past the heavyset preacher with permed hair shouting into a megaphone at the protest near the bus stop, only three blocks from the place where Nolan and I had broken my neighbor's car window.[123] Later, Nolan would ask if I wanted to play basketball in the back driveway, where my father had hammered a rim to the porch railing, or if I wanted to play *Metal Gear Solid* on my PlayStation One, which I had gotten the previous year for Christmas. Even though NYPD Commissioner William Bratton had pledged in the 1990s to "reclaim the streets" and make everyone feel safe,[124] the law in our hood reserved supervisory policing for working-class immigrants and Black folks hustling to make ends meet.[125] It felt safer to keep our eyes glued to video games and to confine our hands to hoop dreams. Our innocence flourished behind chain-linked fences where passive smiles greeted patrolling officers,[126] even though they had already judged us guilty by

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part of minority students must be a function of genes, culture, or a lack of effort and will . . . .").

122. See Christian Red, Years Before Black Lives Matter, 41 Shots Killed Him, N.Y. Times (July 19, 2019), https://www.nytimes.com/2019/07/19/nyregion/amadou-diallo-mother-eric-garner.html (on file with the *Columbia Law Review*) (discussing the legacy of the murder of Amadou Diallo). For more on this killing, see generally Trial by Media: 41 Shots (Netflix 2020).

123. See Kit R. Roane, Sharpton Among 28 Arrested in Rally on Diallo Killing, N.Y. Times, Mar. 4, 1999, at B3, https://www.nytimes.com/1999/03/04/nyregion/sharpton-among-28-arrested-in-rally-on-diallo-killing.html (on file with the *Columbia Law Review*) (describing a large protest in the wake of Diallo's murder).

124. See George L. Kelling, How New York Became Safe: The Full Story, City J. (2009), https://www.city-journal.org/article/how-new-york-became-safe-the-full-story [https://perma.cc/EH8D-NGHY] ("Giuliani and Bratton were heroes in reclaiming public spaces.").

125. See Vesla Weaver, Gwen Prowse & Spencer Piston, Withdrawing and Drawing in: Political Discourse in Policed Communities, 5 J. Race Ethnicity & Pol. 604, 606 (2020) (recounting "how black participants in poor and working-class neighborhoods co-construct meaning around state authority in conversation with one another, given their unique experience with state violence, surveillance, and discipline, and police as enforcers of racial order"); Jess Bird, "The Scourge of the '90s:" Squeegee Men and Broken Windows Policing, Gotham Ctr. for N.Y.C. Hist. (Feb. 4, 2021), https://www.gothamcenter.org/blog/the-scourge-of-the-90s-squeegee-men-and-broken-windows-policing [https://perma.cc/KK93-N3JE] (discussing the disparate application and structural inequities of broken windows policing through the lens of the "New York Squeegee men" and the trauma it inflicted upon Black and brown communities).

126. See Tracy R. Whitaker & Cudore L. Snell, Parenting While Powerless: Consequences of "the Talk", 26 J. Hum. Behav. Soc. Env't 303, 304 (2016) (describing the

association,[127] rendering our concrete playground a holding cell in disguise. The legal fiction of reasonable suspicion was reaffirmed with Diallo's sacrifice, justified by the perceived threat of his presence. Consequently, our Black legal culture of fearing and avoiding the police became our law.

That same year, when I was selected from hundreds of eighth-grade applicants to attend Regis—the prestigious all-boys Jesuit high school in Manhattan's Upper East Side, and the only all-scholarship private school in the country—Nolan wouldn't mention it. Instead, he asked if I had heard about Jay-Z's upcoming album, *Vol. 3 . . . Life and Times of S. Carter*, and later told me about the girls who came to football games at his more diverse Catholic high school in the Bronx. Although HUD's Moving to Opportunity Program helped thousands of low-income families transition from high-poverty public housing projects across New York City into nearby low-poverty neighborhoods with more resources,[128] the law in our hood reserved the most prestigious opportunities for those select few chosen to leave the hood altogether.[129] For those left behind—kids like Nolan—it often felt like they had been deemed unworthy.

As an adult, I now wonder if kids like Nolan are essential to the American Dream, not merely because their social status breathes life into the idea of upward mobility, but because their cultural association with disorder conjures "the illusion of power through the process of inventing an Other," enabling the privileged few to pretend that those left behind in the game of capitalism are strangers, rather than "versions of ourselves."[130]

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process in which Black parents have "the Talk" with their children about how to avoid being harmed by police).

127. West, New Cultural Politics, supra note 60, at 104 (referring to this phenomenon as "the end of innocence or the end of the innocent notions of the essential Black subject . . . the recognition that 'Black' is essentially a politically and culturally *constructed* category" (alteration in original) (internal quotation marks omitted) (quoting Stuart Hall, New Ethnicities, *in* Selected Writings on Race and Difference 246, 248–49 (Paul Gilroy & Ruth Wilson Gilmore eds., 2021))).

128. See Moving to Opportunity, HUD User, https://www.huduser.gov/portal/mto.html [https://perma.cc/YZN5-LHTN] (last visited Aug. 8, 2024).

129. See Sheryll Cashin, White Space, Black Hood: Opportunity Hoarding and Segregation in the Age of Inequality 74 (2021) ("Predominantly Black neighborhoods, even relatively elite ones . . . are usually spatially linked to Black communities of concentrated disadvantage"); Sheryll Cashin, Opportunity Hoarding, Schools, and Racial Reckoning, Poverty & Race, May–Sept. 2021, at 3, 3 ("According to a recent analysis on school boundaries, one in five public school students 'live[s] virtually across the street from a significantly whiter and richer school district' and for every student enrolled in affluent bastions, three neighboring students 'are left behind in lower-funded schools serving far more nonwhite students.'" (alteration in original) (quoting EdBuild, Dismissed: America's Most Divisive Borders (2019), https://edbuild.org/content/dismissed/edbuild-dismissed-full-report-2019.pdf [https://perma.cc/KF52-W7PN])).

130. Toni Morrison, The Origin of Others 24, 38 (2017).

Black boys like Nolan and me were told that a culture of poverty plagued our neighborhood, the segregated spaces where low-income folks strived to turn substandard apartments and row houses into homes. Figures like Daniel Patrick Moynihan loomed large in our history books, particularly his 1965 report *The Negro Family: The Case for National Action*.[131] In the 1970s, *New York Times* warned that a "social cancer" threatened to destroy the Bronx and the rest of New York City.[132] Moynihan described it as a "tangle of pathology," a product of broken families.[133] Other public intellectuals, such as James Q. Wilson, argued that the broken windows in places like the Bronx were early warnings of criminal activity,[134] setting the stage for New York City's "Zero Tolerance" policing strategy.[135]

These cultural theories about the supposed brokenness of urban life—ideas meant to explain why poverty persists and what liberal democracy can do about it—shaped debates about law and public policy. Yet these debates were saturated with racial stereotypes, cultural biases, and Malthusian views on the role of law.[136] Much like how President Reagan called for slashes to social welfare programs in the 1980s,[137] English economist T.R. Malthus had argued two centuries earlier in his *Essay on the Principle of Population* that laws aiding the poor only worsened

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131. See Daniel Patrick Moynihan, DOL, Off. of Pol'y Plan. & Rsch., The Negro Family: The Case for National Action 5 (Mar. 1965), https://web.stanford.edu/~mrosenfe/Moynihan%27s%20The%20Negro%20Family.pdf [https://perma.cc/G2GV-KZRN] ("The white family has achieved a high degree of stability and is maintaining that stability. By contrast, the family structure of lower class Negroes is highly unstable, and in many urban centers is approaching complete breakdown.").

132. Urban Cancer, N.Y. Times, Jan. 18, 1973, at 40, https://timesmachine.nytimes.com/timesmachine/1973/01/18/79832031.html?pageNumber=40 (on file with the *Columbia Law Review*).

133. Moynihan, supra note 131, at 28–29 ("[T]he Negro community has been forced into a matriarchal structure which . . . seriously retards the progress of the group as a whole, and imposes a crushing burden on the Negro male, and in consequence, on a great many Negro women as well.").

134. See Bernard E. Harcourt, Illusion of Order: The False Promise of Broken Windows Policing 3–4, 81–82 (2005); see also Bernard E. Harcourt & Jens Ludwig, Broken Windows: New Evidence from New York City and a Five-City Social Experiment, 73 U. Chi. L. Rev. 271, 273 (2006) (discrediting the broken windows theory).

135. Judith A. Greene, Zero Tolerance: A Case Study of Police Policies and Practices in New York City, 45 Crime & Delinq. 171, 172 (1999) ("Zero-tolerance policing put major emphasis on the kinds of 'quality-of-life' issues that set the drumbeat rhythm for Giuliani's 1993 mayoral campaign. . . . [T]he petty drug dealers, the graffiti scribblers, and the prostitutes who ruled the sidewalks in certain high-crime neighborhoods all were targeted . . . .").

136. 2 T.R. Malthus, An Essay on the Principle of Population 85 (6th ed., London, John Murray 1826) (1798) ("The whole business of settlements . . . is contradictory to all ideas of freedom . . . [a]nd the obstructions continually occasioned in the market of labour by these laws, have a constant tendency to add to the difficulties of those who are struggling to support themselves without assistance.").

137. See David Stoesz & Howard Jacob Karger, Deconstructing Welfare: The Reagan Legacy and the Welfare State, 38 Soc. Work 619, 620 (1993) (noting the Reagan Administration's severe cuts to public assistance benefits).

their plight by encouraging irresponsible population growth, diminishing their industriousness, and undermining the needs of those who struggle without assistance.[138] Then, as now, culture found its way *into* the law, determining who deserved rights and privileges based on dominant cultural beliefs.

But our voices—the Black counternarratives expressed through the Civil Rights and Black Power movements; the prophetic witness of Black jazz musicians; the blues sentimentality of hip-hop artists; the communal ethos of DJs, breakdancers, and graffiti artists—were often missing from such debates. Hip-hop culture, in particular, was more than just an expression of the joys and sorrows of the mundane. More poignantly, it embodied the persistence of Black radicalism in American life and its creative engagement with democratic cultural discourse about the meaning of law.[139] Yet, hip-hop's message was often crowded out of the political arena and ultimately commodified by the market. Laws and policies that criminalized and suppressed Black culture highlighted the hegemony of anti-Black cultural beliefs and the failures of political liberalism to address the realities of low-income communities across the United States.[140]

Perhaps this treatment of Black culture by law, as American literary critics Peter Stallybrass and Allon White have suggested,[141] says less about the social deviance and low status of the so-called Black "Other,"[142] and far more about the cultural production of legal meaning. Perhaps the eroticized fantasies of Black culture that exist at the social periphery—or in the hidden ballrooms of White supremacy, as Ellison portrayed in his famous Battle Royal scene—are in fact central, symbolically, to the constitution of law in the United States, alongside the many efforts by

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138. See 2 Malthus, supra note 136, at 85.

139. See, e.g., Toussaint, Tragedies, supra note 43, at 1805–39 (discussing how "hip-hop culture presented a countercultural view of urban law and public policy").

140. For example, Mayor Rudolph Giuliani resurrected New York City's Cabaret Law in the 1990s as part of his "Zero Tolerance" policing strategy and "Quality of Life" campaign. See Andrea McArdle, Introduction to Zero Tolerance: Quality of Life and the New Police Brutality in New York City 1, 4 (Andrea McArdle & Tanya Erzen eds., 2001).

141. See Peter Stallybrass & Allon White, The Politics and Poetics of Transgression 5 (1986) (discussing the "conflictual fusion of power, fear, and desire in the construction of subjectivity").

142. See Morrison, supra note 130, at 24 (discussing the social construction of the "Other" through racial identification, exclusion, and other strategies for "ascendance and power"); Nell Irvin Painter, Long Divisions, New Republic (Oct. 11, 2017), https://newrepublic.com/article/144972/toni-morrisons-radical-vision-otherness-history-racism-exclusion-whiteness [https://perma.cc/Q9MG-VH8J] ("Othering is expressed through codes of belonging as well as difference. . . . The possession of whiteness makes belonging possible, and to lack that possession is not to belong, to be defined as something lesser, even something not fully human.").

Black Americans throughout U.S. history to overcome subjection and oppression.[143] As American literary scholar Shelly Jarenski argues,

> Bodies cannot be thought to have matter (or *to matter*) outside of the regulatory norms and practices that produce them. Regulatory norms make certain discursive identifications possible, but disavow others. Therefore, the process of bodily materialization produces, and even requires the production of, a realm of nonnormative, nonidentifying and thus nonidentifiable bodies—a realm of the abject.[144]

Perhaps the Bronx was, and maybe still is, for Nolan, and for me and the world outside our borough, a realm of abjection—a place where, in the eyes of some, Black lives do not matter. If this is true, then the very existence of Black culture plays a role in the construction of subjectivity, enabling a "conflictual fusion of power, fear, and desire."[145] This psychological dependence on the "others" who are socially excluded might explain the tension between freedom, justice, and equality in the law—concepts that remain meaningless without the historic and ongoing contestations of Black life that embody key aspects of Black culture.[146] As American legal scholar T. Anansi Wilson beckoned more bluntly, "What of the 'Black' in Black Letter Law?"[147]

Is Black culture central to the constitutional ideals of liberty and equality that undergird law in America? This understudied and often overlooked question, and its manifest tensions, has resulted in tragedy for politically disempowered and socioeconomically excluded groups throughout U.S. history. Still, despite this, folks like Nolan always found a way to make everyone in our hood laugh. I will forever cherish his comedy. Eventually, I left the South Bronx in search of meaning. I would even leave the United States altogether for a few months as a college student, hoping to gain new perspectives on community development and racial justice. But I would soon realize that law and political economy, both at home and abroad, remain deeply entrenched in rituals of capitalist production that normalize crisis, neglect, and abjection.[148]

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143. See Paul Gowder, The Rule of Law in the United States: An Unfinished Project of Black Liberation 2 (2021) (discussing how "the US rule of law has been marked by a history of conflicts over inclusion within the protections of legal order").

144. Jarenski, supra note 73, at 88.

145. Stallybrass & White, supra note 141, at 5.

146. See Tendayi Sithole, The Concept of the Black Subject in Fanon, 47 J. Black Stud. 24, 25 (2016) ("Fanon's condemnation of [freedom, justice, and equality] renders them scandalous on the basis of being determined outside the existential condition of the Black subject.").

147. T. Anansi Wilson, And What of the "Black" in Black Letter Law?: A BlaQueer Reflection, 30 Tul. J. L. & Sexuality 147, 147 (2021).

148. See Darryl Li, Imperialism's Shell Game, Law & Pol. Econ. Blog (Apr. 29, 2024), https://lpeproject.org/blog/imperialisms-shell-game/ [https://perma.cc/K7V2-7TMH] ("[I]mperialism should be understood not just as a pejorative for countries projecting power in unsavory ways, but as a tool for understanding the system of relations in which the

Like the narrator at the end of Ellison's Battle Royal scene in *Invisible Man*, I was often told that I was among "the smartest boy[s] we've got out there" and celebrated for knowing "more big words than a pocket-sized dictionary."[149] Yet, I similarly struggled to reconcile this praise with the moral legitimacy of America's culture of individualism in a world rife with collective inequities and climate crises. In the ballroom scene, the narrator recites a passage from Booker T. Washington's 1895 Atlanta Exposition, declaring:

> And like him I say, and in his words, "To those of my race who depend upon bettering their condition in a foreign land, or who underestimate the importance of cultivating friendly relations with the southern white man, who is his next-door neighbor, I would say: 'Cast down your bucket where you are'!—cast it down in making friends in every manly way of the people of all races by whom we are surrounded . . ."[150]

Yet, most of the White men in the ballroom ignore Ellison's narrator, even as he tells them what he believes they want to hear. It is only when he inadvertently shouts the phrase "social equality," a phrase feared by the White men present, that the White men finally give him their rapt attention, laughter suspended "smokelike in the sudden stillness."[151] In fear, the narrator quickly corrects his mistake. "You weren't being smart, were you, boy?" one of the White men rebukes. "You sure that about 'equality' was a mistake?" The narrator replies in fear, "No, sir!" and one of the White men concludes, "We mean to do right by you, but you've got to know your place at all times. All right, now, go on with your speech."[152]

The narrator finishes his speech to thunderous applause, and one gentleman declares, "He makes a good speech and some day he'll lead his people in the proper paths."[153] Finally, the narrator is awarded a briefcase with a scholarship to attend "the state college for Negroes," and he is filled with joy.[154] Yet, his happiness fades as he dreams that night that he is at a circus with his grandfather who tells him to open his briefcase and read what is inside. When he does, the narrator finds an endless series of envelopes, each containing another envelope, until he discovers a note, which reads: "To Whom It May Concern . . . Keep This Nigger-Boy

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subjugation of some nations by others is maintained by and for the accumulation of capital across borders.").

149. See Ellison, supra note 1, at 29.

150. Id. at 30 (alterations in original) (quoting Booker T. Washington, Principal, Tuskegee Normal & Indus. Inst., Speech to the Atlanta Cotton States and International Exposition 2 (Oct. 18, 1895), https://history.iowa.gov/sites/default/files/primary-sources/pdfs/history-education-pss-areconstruction-atlanta-source.pdf [https://perma.cc/NQ2Q-GWJA]).

151. Id. at 30–31.

152. Id. at 31.

153. Id. at 31–32.

154. Id.

Running."[155] He finally awakens with his grandfather's laughter ringing in his ears, the same grandfather who had told him, "life is a war," and recommended, "let 'em swoller you till they vomit or bust wide open."[156]

The narrator is forced to confront the bitter truth that his scholarship—a symbol of progress within the confines of Jim Crow law—might actually be a tool of subjection. I, too, have come to realize that there is a part of my story that feels inherently devious. I carry with me a lingering awareness that Black culture, at times, is merely the hopeful attempt to conjure uncontrollable laughter amidst the tumultuous circus of America until crying eases the pain and sorrows of Black letter law.

CONCLUSION

I would eventually leave the South Bronx to attend college, and later law school, in Cambridge, Massachusetts—a fugitive in search of law's promise.[157] Nolan would choose to stay, eventually settling into a career as a community organizer, working to preserve and celebrate Black culture, even as the law consistently offers fear and defeat. In our own ways, we both strive to keep America's dream alive, for better or for worse, each of us gesturing toward a progressive vision of liberal democracy, both reflections of the intertwined relationship between Black culture and the law. Perhaps West was right: "Law's very positive commands cannot be fully understood unless we include in our understanding of what law is a substantial space for cultural reality."[158] We will never fully understand Black American culture without U.S. law. Nor will we ever fully understand U.S. law without Black American culture.

Nolan and I remain bound by the existential crises of our age, tragedies shaped by the enduring salience of race in the modern era. Some days, I lose myself in the bowels of that age-old question, *What's good?* On other days, all I can do is laugh, my stomach an earthquake unsettling the land where dry bones lie waiting. We were once boys. Now, I can only wonder if our teachers are proud.

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155. Id. at 33.

156. Id. at 16, 33.

157. See Etienne C. Toussaint, American Fugitive, Current Affs. (Apr. 25, 2021), https://www.currentaffairs.org/2021/04/american-fugitive [https://perma.cc/X3GU-PR24].

158. See West, Literature, Culture, and Law, supra note 9, at 105–06.