

# BLACK CONTEMPORARY SOCIAL MOVEMENTS, RESOURCE MOBILIZATION, AND BLACK MUSICAL ACTIVISM

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## I

### INTRODUCTION

In the last few years a grassroots social movement has emerged from the Black community. This movement aims to eliminate police and vigilante violence against Blacks nationwide. Blacks in America have long been subjected to this violence, and the issue has recently captured the country's attention. Multiple groups are pressing for change, including Ferguson Action, Black Lives Matter, Say Her Name, and the leaderless social media effort organized by DeRay McKesson and Johnetta Elzie, to name a few.<sup>1</sup> These fledgling activist groups have already experienced some success, garnering public attention and government response.<sup>2</sup> As it currently stands, this nascent civil-rights movement has the potential to advance racial justice in twenty-first-century America, but its path is not without obstacles.

According to social-movement theory, the ability of activists to further marshal support is vital to the continued development of this civil-rights movement. Whether engaging in street-level activism or pursuing formal change through judicial, legislative, or electoral processes, movement organizers will have to think rationally and strategically about resource mobilization and oppositional forces. At a minimum, they must amass money and manpower for their activities, establish group credibility in the eyes of their participants and

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1. For information on these groups, see BLACK LIVES MATTER, <http://blacklivesmatter.com/> (last visited Feb. 15, 2016); FERGUSON ACTION, <http://fergusonaction.com/> (last visited Feb. 15, 2016); SAY HER NAME, <http://www.aapf.org/sayhernamereport/> (last visited Feb. 15, 2016); WE THE PROTESTORS, THE PLANNING TEAM, <http://www.wetheprotesters.org/about/> (last visited Feb. 15, 2016).

2. See Wesley Lowery, *On Policing, the National Mood Turns toward Reform*, WASH. POST (Dec. 13, 2015), [https://www.washingtonpost.com/national/on-policing-the-national-mood-turns-toward-ref-orm/2015/12/13/1174ef1e-a03f-11e5-a3c5-c77f2cc5a43c\\_story.html](https://www.washingtonpost.com/national/on-policing-the-national-mood-turns-toward-ref-orm/2015/12/13/1174ef1e-a03f-11e5-a3c5-c77f2cc5a43c_story.html).

the public, and remain sensitive to the costs of movement participation imposed by government officials and countermovements.

To address these concerns, social-movement theory and history reveal that Black music and musicians can and should play a key role in Black America's next-generation battle for criminal justice and civil rights. Social-movement activists should draw Black musicians, especially hip-hop artists, into the movement fold, encouraging Black musicians to initiate a massive wave of cultural activism.

This article proceeds in four parts. Part II offers several definitions of "social movement," summarizes the resource mobilization approach to social-movement theory, and digests the theory underlying oppositional efforts to counter social movements. Part III makes the case that Black music and musicians should play a key role in Black contemporary social movements battling police and vigilante violence against Blacks. It opens by identifying Black social movements in American history and then examines several genres of Black music that have helped mobilize Black social movements. Part III closes by accounting for the various ways in which legal and extralegal measures historically have been deployed to counter Black musical activists and musical expression in social movements, thereby demonstrating the resilience of Black musical protest in the face of significant challenge. Part IV reflects on today's Black musical activism, particularly hip-hop activism, and considers how music and musicians can engage in the next-generation fight against violence inflicted upon Blacks. Part V briefly concludes.

## II

### SOCIAL-MOVEMENT THEORY

Social scientists and legal scholars employ various definitions of social movements, though all embrace the idea of marginalized groups publicly challenging and demanding change in the existing social structure from power holders using sustained, collective efforts aimed at swaying the public and government officials. Social-movement theory indicates that successful movements mobilize tangible and intangible resources, including, most importantly, money, manpower, and legitimacy. Once social movements arise, opposition from government officials and private groups will likely appear and may coalesce into a countermovement that asserts competing claims and also seeks public attention and legitimacy. To achieve their aims, countermovements deploy legal and extra-legal tactics, including public protest, criminal-justice charges, surveillance, and violence. To maintain their progress, movements must strategically respond to the costs imposed by countermovements. Music has been an integral part of the response of many social movements because it creates and spreads movement identity and culture, empowers and motivates participants, frames demands, and establishes legitimacy.

### A. Definitions of “Social Movement”

Early social-science scholars broadly defined a social movement as “a set of opinions and beliefs in a population which represents preferences for changing some elements of the social structure and/or reward distribution of a society.”<sup>3</sup> A social-movement organization, thus, is a formal group identifying its goals with a social movement and attempting to implement those goals.<sup>4</sup> Social movement has also been defined more concretely as

a sustained series of interactions between power holders and persons successfully claiming to speak on behalf of a constituency lacking formal representation, in the course of which those persons make publicly visible demands for changes in the distribution or exercise of power, and back those demands with public demonstrations of support.<sup>5</sup>

Legal scholars, too, have defined the phenomenon of a social movement. In legal scholarship, a social movement is described as allowing democratic minorities to challenge and possibly change majoritarian constitutional norms.<sup>6</sup> Social movements utilize connected structures and shared identities to engage in sustained, disruptive collective action against elites and opponents to change the balance of power.<sup>7</sup> Additionally, social movements have been linked with participatory democracy in which citizens seek to directly influence public policy.<sup>8</sup> “Participants in social movements engage in a sustained, interactive campaign that makes sustained, collective claims for relief or redistribution in response to social marginalization, dislocation, change, or crisis.”<sup>9</sup>

Although social scientists and legal scholars offer different definitions of social movement, the definitions are similar in that they capture marginalized groups using continuous, collective action to publicly challenge the existing social structure and demand power holders and government authorities make changes.

### B. Resource Mobilization

Social scientists studying social movements using a resource-mobilization approach consider “the dynamics and tactics of social movement growth, decline, and change.”<sup>10</sup> More particularly, the resource mobilization perspective

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3. John D. McCarthy & Mayer N. Zald, *Resource Mobilization and Social Movements: A Partial Theory*, 82 AM. J. SOC. 1212, 1217–18 (1977).

4. *Id.* at 1218 n.7.

5. Charles Tilly, *Social Movements and National Politics*, in STATEMAKING AND SOCIAL MOVEMENTS 297, 306 (Charles Bright & Susan Harding eds., 1984).

6. Lani Guinier & Gerald Torres, *Changing the Wind: Notes toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2756–57 (2014).

7. *Id.* at 2757.

8. Tomiko Brown-Nagin, *Elites, Social Movements and the Law: The Case of Affirmative Action*, 105 COLUM. L. REV. 1436, 1503 (2005).

9. *Id.*

10. McCarthy & Zald, *supra* note 3, at 1213. Others writing in the field include J. Craig Jenkins, *Resource Mobilization Theory and the Study of Social Movements*, 9 ANN. REV. SOC. 527 (1983); Doug McAdam, *Tactical Innovation and the Pace of Insurgency*, 48 AM. SOC. REV. 735, 736–37, 742 (1983);

“examines the variety of resources that must be mobilized, the linkages of social movements to other groups, the dependence of movements upon external support for success, and the tactics used by authorities to control or incorporate movements.”<sup>11</sup> Each of these factors influences the sustainability and success of the social movement.

Respecting the assortment of needed resources, social movements must garner tangible and intangible assets. Tangible assets include money, facilities, and communication means. Intangible assets include manpower, organizational and legal skills, technical expertise, and legitimacy.<sup>12</sup> Money, manpower, and legitimacy are of particular import in the early stages of a movement. Money must be collected to fund movement activities. Individuals and entities, whether internal or external to the movement, may directly contribute money. Fundraising events or programs also can be held. Money may be expended on organizing facilities including brick-and-mortar and virtual spaces, equipment such as phones and computers, personnel, recruiting, marketing, and programming.

With respect to manpower, researchers have developed a taxonomy of individuals related to social movements. Categories of individuals include adherents, constituents, nonadherents, bystanders, and opponents.<sup>13</sup> Adherents believe in the movement’s objectives.<sup>14</sup> Constituents provide resources for the movement.<sup>15</sup> Nonadherents do not believe in the goals of the movement.<sup>16</sup> Bystanders are nonadherents who do not oppose the movement but stand on the sidelines and witness activity.<sup>17</sup> Finally, opponents actively work to defeat the movement.<sup>18</sup> These categories of individuals are each further divided on two dimensions. The first considers whether the individual controls limited resource pools (hence is one of the masses) or larger resource pools (hence is elite).<sup>19</sup> The second focuses on whether the individual will benefit directly from the achievement of the movement’s goals (hence is a beneficiary) or does not stand to benefit but nonetheless takes part in the movement (hence is conscience).<sup>20</sup>

Social movements are primarily concerned with “converting adherents into

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Suzanne Staggenborg, *The Consequences of Professionalization and Formalization in the Pro-Choice Movement*, 53 AM. SOC. REV. 585 (1988).

11. McCarthy & Zald, *supra* note 3, at 1213. Two other social-science theoretical approaches to social movements include the cultural-change theory and the political-process theory. See William N. Eskridge, Jr., *Channeling: Identity-Based Social Movements and Public Law*, 150 U. PA. L. REV. 419, 419 (2001) (identifying three social movement theory frameworks).

12. Jenkins, *supra* note 10, at 533; McCarthy & Zald, *supra* note 3, at 1220.

13. McCarthy & Zald, *supra* note 3, at 1221.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

constituents and maintaining constituent involvement.”<sup>21</sup> They also may work to transform bystanders and nonadherents into adherents.<sup>22</sup> Many factors influence the ability of a movement to attract constituent labor, including whether an individual will benefit from the movement, the ability to bind individuals to the group’s identity, the group’s credibility, and the potential costs of movement participation.

Finally, social movements must establish legitimacy and favorably move the public opinion needle.<sup>23</sup> Coverage by mainstream, traditional news sources has historically been necessary to accomplish these objectives.<sup>24</sup> Media coverage educates bystanders about the movement, helps raise funds, and empowers activists.<sup>25</sup> Today, alternative, Internet-based media has also proven influential, particularly social media.<sup>26</sup> By its nature, social media allows ordinary citizens to share street-level events in real-time or shortly thereafter, avoiding reliance on older media forms. Additionally, social media dramatically facilitates information-sharing—both farther and faster—and group coordination.<sup>27</sup>

### C. Opposition to Social Movements

As social movements develop, government officials and others react, and countermovements arise. These oppositional forces can potentially diminish the availability of movement resources.<sup>28</sup> Movement opposition drives up the costs of participation in movements and can negatively affect the willingness of adherents, constituents, and bystanders to be or become involved in movements.<sup>29</sup> As a consequence, social movements may dissolve or be destroyed.<sup>30</sup>

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21. *Id.*

22. *Id.* at 1221–22.

23. See Jack Balkin, *How Social Movements Change (or Fail to Change) the Constitution: The Case of the New Departure*, 39 SUFFOLK U. L. REV. 27, 30, 32–36 (2005); Brown-Nagin, *supra* note 9, at 1509.

24. See William A. Gamson & Gadi Wolfsfeld, *Movements and Media as Interacting Systems*, 528 ANNALS AM. ACAD. POL. & SOC. SCI. 114, 116 (1993); Jenkins, *supra* note 10, at 546; Barbara Bennett Woodhouse & Sarah Rebecca Katz, *Martyrs, the Media and the Web: Examining a Grassroots Children’s Rights Movement through the Lens of Social Movement Theory*, 5 WHITTIER J. CHILD & FAM. ADVOC. 121, 159 (2005).

25. See Jenkins, *supra* note 10, at 546; Woodhouse & Katz, *supra* note 24, at 159.

26. See, e.g., Malcolm Gladwell & Clay Shirky, *From Innovation to Revolution: Do Social Media Make Protests Possible?*, 90 FOREIGN AFF. 153, 154 (2011); Woodhouse & Katz, *supra* note 24, at 160 (predicting that the Internet will level the playing field for grassroots activists). For an example of McKesson’s and Elzie’s use of social media to organize social movements, see THIS IS THE MOVEMENT, <http://thisisthemovement.launchrock.com/> (last visited Feb. 15, 2016).

27. Gladwell & Shirky, *supra* note 26, at 154.

28. Eskridge, *supra* note 11, at 469; McAdam, *supra* note 10, at 736–37, 742; McCarthy & Zald, *supra* note 3, at 1222; Mayer N. Zald & Bert Useem, *Movement and Countermovement: Loosely Coupled Conflict* 13 (U. Mich. Ctr. for Res. on Soc. Org., Working Paper No. 302, 1983), <http://deepblue.lib.umich.edu/bitstream/handle/2027.42/51070/302.pdf>.

29. See McCarthy & Zald, *supra* note 3, at 1221.

30. Edward L. Rubin, *Passing through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 47 (2001); see McAdam, *supra* note 10 (describing countermovement tactics that neutralized Civil Rights activist efforts and eventually led to the cessation of street-level

Government responses opposing a movement include gathering information on movement participants, limiting a movement's access to resources, and negatively portraying a movement.<sup>31</sup> Surveillance of participants may require the movement to stem internal information-sharing and member participation, enact security measures, and turn away participants.<sup>32</sup> The government may also thwart movements by limiting access to public funds, facilities, and services such as police security.<sup>33</sup>

A "countermovement" has been defined as "a set of opinions and beliefs in a population opposed to a social movement"<sup>34</sup> and as "a movement that makes contrary claims simultaneously to those of the original movement."<sup>35</sup> Countermovements are "networks of individuals and organizations that share many of the same objects of concern as the social movements that they oppose."<sup>36</sup> They assert competing claims on policy and politics and vie for public attention.<sup>37</sup>

According to research into movement–countermovement interaction, "movements of any visibility and impact create the conditions for the mobilization of countermovements."<sup>38</sup> Oppositional movements employ a wide range of tactics including attacking movement leaders, using physical force, and associating the movement with evil intentions. In response, movements direct significant effort toward "neutralizing, confronting, or discrediting" countermovements.<sup>39</sup>

Movements and countermovements operate in a world of government authorities, where both may try to use official authority and actions to their benefit.<sup>40</sup> When the state acts, the question arises whether the government is operating as part of a movement or countermovement, or independently.<sup>41</sup> Regardless of the source of opposition or categorization, oppositional efforts increase the cost of movement participation and affect resource mobilization. In turn, movements must develop strategies to deal with both government opposition and countermovements.

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actions).

31. Zald & Useem, *supra* note 28, at 13.

32. *Id.*

33. *Id.* at 15.

34. McCarthy & Zald, *supra* note 3, at 1218.

35. David S. Meyer & Suzanne Staggenborg, *Movements, Countermovements, and the Structure of Political Opportunity*, 101 AM. J. SOC. 1628, 1631 (1996) (addressing countermovement formation, mobilization, and tactics); see Zald & Useem, *supra* note 28, at 1.

36. Meyer & Staggenborg, *supra* note 35, at 1632.

37. *Id.*

38. Zald & Useem, *supra* note 28, at 1.

39. *Id.*

40. Eskridge, *supra* note 11, at 468–74; Zald & Useem, *supra* note 28, at 19–24.

41. See Zald & Useem, *supra* note 28, at 19 n.4; see also Meyer & Staggenborg, *supra* note 35, at 1642–43.

#### D. Music and Social Movements

Sociologists have examined the role of culture, and music specifically, in social movements.<sup>42</sup> Movements can “develop a distinctive cultural life in contrast to or at odds with the broader culture.”<sup>43</sup> A movement’s culture, meaning “the norms and values specific to a particular social movement,”<sup>44</sup> can affect whether the movement achieves its goals. Cultural expression, a weapon used in power conflicts, aims at changing material structures and serves as a mechanism for cognitively framing movements.<sup>45</sup> The deployment of culture to achieve a movement’s aims has been dubbed a “cultural project.”<sup>46</sup> Specialists who undertake such work

typically deliberately decide which genres to adopt, the cultural forms that are appropriate [e.g., music, art, drama, dance, poetry, or other expressive cultural forms], how culture contributes to the goals of the movement, and what makes culture political. They also develop<sup>47</sup> cultural infrastructure, producing, distributing, and promoting their cultural work.

Music—as a contributing element to movement culture—is a tool for social-movement formation, including recruitment and sustenance of participants, as well as movement longevity. Music creates group identity and consciousness, fosters belonging and solidarity, empowers members, and establishes group visibility.<sup>48</sup> It invokes a sense of continuity with the past;<sup>49</sup> generates financial and moral support, both active and passive;<sup>50</sup> and also promotes alliances between different groups.<sup>51</sup> Importantly, music can achieve all of these goals “free from the censorship of the dominant culture.”<sup>52</sup>

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42. See, e.g., William F. Danaher, *Music and Social Movements*, 4 SOC. COMPASS 811 (2013) (describing role of music in forming collective identities in various movements and at various times); Ron Eyerman, *Music in Movement: Cultural Politics and Old and New Social Movements*, 25 QUALITATIVE SOC. 443 (2002) (exploring the role of music in American civil rights movement and Swedish white power movement). Although beyond the limits of this article, an understanding of the sociology of music is helpful for understanding the relationship between social movements and music. For a succinct description of the sociology of music, including what music is, the meaning of music, and the function of music, see WILLIAM G. ROY, REDS, WHITES, AND BLUES: SOCIAL MOVEMENTS, FOLK MUSIC, AND RACE IN THE UNITED STATES 9–20 (2010).

43. ROY, *supra* note 42, at 7.

44. Danaher, *supra* note 42, at 816–18.

45. See Eyerman, *supra* note 42, at 445; see also Danaher, *supra* note 42, at 812.

46. ROY, *supra* note 42, at 7.

47. *Id.*

48. *Id.* at 8–9; Eyerman, *supra* note 42, at 447.

49. Eyerman, *supra* note 42, at 447.

50. ROY, *supra* note 42, at 8–9; Eyerman, *supra* note 42, at 447.

51. Danaher, *supra* note 42, at 818–19.

52. Eyerman, *supra* note 42, at 447.

## III

BLACK SOCIAL MOVEMENTS, MUSIC AS MOBILIZATION, AND  
MOVEMENT OPPOSITION

Throughout almost four hundred years, Blacks in America have constantly used music to contest the omnipresence of social and legal injustice in Black lives. Because Blacks have not often had the privilege to publicly express their concerns to the majority, music has allowed for the free communication of Blacks within the community and to others who would not ordinarily listen.<sup>53</sup> Black music and musicians have facilitated social movements by using musical expressions to convey group consciousness and pride, self-identification, public commentary, and demands. They have recruited, sustained, and empowered movement participants, and they have established public credibility. Their successes have spurred resistance from public officials and private parties, who have criminalized, surveilled, and committed physical violence against Black musical activism by both prominent artists and ordinary individuals. Nonetheless, Black music has remained a key aspect of all Black social movements and a powerful tool for change.

## A. Black Social Movements

The Black community has launched or been part of many social movements in American history. Historic social movements invariably linked with the Black community include abolition, civil rights, and Black nationalism. The abolitionist movement is considered one of the earliest social movements in America.<sup>54</sup> Arguably before and apart from the organized abolitionist movement, however, slaves engaged in a social movement through their daily individual and collective efforts to resist their owners and white society.<sup>55</sup> Thus, on-the-ground slave resistance falls within the definition of social movement.<sup>56</sup>

Recently, the Black community has initiated a new social movement in opposition to police and vigilante violence against Blacks. Nationwide, mass media coverage of legal and extra-legal violence against Blacks has sparked a collective, widespread, street-level response. The ever-growing list of well-known individual victims includes Trayvon Martin, Michael Brown, Tamir Rice, Eric Garner, Freddie Gray, Walter Scott, and Sandra Bland, to name a few. Other notorious incidents are simply referenced by their location; for example, McKinney, Texas (police officer physically assaults a Black female teenager at a party); Charleston, South Carolina (man kills nine Black churchgoers); and South Carolina high school (school police officer slams a high schooler to the

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53. Lawrence W. Levine, *African American Music as Resistance—Antebellum Period*, in *AFRICAN AMERICAN MUSIC: AN INTRODUCTION* 587, 588 (Mellonee V. Burnim & Portia K. Maultsby eds., 2006).

54. Rubin, *supra* note 30, at 66.

55. *Cf.* Brown-Nagin, *supra* note 9, at 1495–97 (describing the efforts of slaves to resist as a distinct aspect of the abolitionist movement).

56. *See supra* Section II.A for definitions of “social movement.”

ground in classroom). The long-standing violent tactics employed by officers in the Chicago Police Department have finally drawn national public attention. In response to these and other situations, activists have consistently taken to the streets and the airwaves to protest and issue demands for change.

Black social movements in America have consistently experienced strong resistance by the state and public opinion. The tactics used to nullify social movements in the Black community are long-standing, well documented, and robustly studied.<sup>57</sup> Strategic, oppositional responses to Black social movements have been both legal and extra-legal in nature, including criminalization, surveillance, and violence.<sup>58</sup> These oppositional responses can be observed from the days of slavery and through the subsequent centuries. Given this long history of countermovement tactics, it is not surprising that the current Black Lives Matter movement has recently been the target of shooting violence<sup>59</sup> and government surveillance.<sup>60</sup>

Despite its infancy, this current movement merits academic scrutiny alongside earlier movements. Current events fall within the definitions of social movements and countermovements, notwithstanding the varied definitions of the terms. One question for immediate consideration is: How can this nascent movement sustain and grow its efforts? History and social-science literature make clear that resource mobilization is vital and that music can play an important role in this regard. As they have in the past, Black musicians and music can play a crucial role in establishing a movement's group identity and credibility, in mobilizing individuals to participate in the movement, and in empowering individuals to sustain their efforts. History also makes clear that artists who become involved in a movement, despite their elite status, will likely face criminal justice backlash just as ordinary participants do. Nevertheless, Black contemporary social movements should call on artists to engage in musical activism for the civil-rights cause.

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57. Eskridge, *supra* note 11, at 468–74; McAdam, *supra* note 10, at 736–37, 742.

58. See Ian F. Haney-López, *Protest, Repression, and Race: Legal Violence and the Chicano Movement*, 150 U. PA. L. REV. 205, 227 (2001) (noting the connection between community protest, legal repression, and racial identity in the fight for Black equality during the 1950s and 1960s); McAdam, *supra* note 10, at 741–42, 744, 748, 751 (describing various extra-legal and legal responses to Black activist tactics during the 1960s Civil Rights Movement).

59. See Matt Furber & Dave Phillips, *4 Arrested in Shooting at Black Lives Matter Protest Are Identified*, N.Y. TIMES (Nov. 25, 2015), [http://www.nytimes.com/2015/11/26/us/4-arrested-in-shooting-at-black-lives-matter-protest-are-identified.html?\\_r=0](http://www.nytimes.com/2015/11/26/us/4-arrested-in-shooting-at-black-lives-matter-protest-are-identified.html?_r=0); Laura Wagner, *4 Men Charged in Shooting of Black Lives Matter Protestors in Minneapolis*, N.P.R. (Nov. 30, 2015), <http://www.npr.org/sections/thetwo-way/2015/11/30/457889553/4-men-charged-in-shooting-of-black-lives-matter-protesters-in-minneapolis>.

60. See Matt Cagle, *This Surveillance Software Is Probably Spying on #BlackLivesMatter*, A.C.L.U. (Dec. 15, 2015), <https://www.aclunc.org/blog/surveillance-software-probably-spying-blacklivesmatter>; Julia Craven, *Surveillance of Black Lives Matter Movement Recalls COINTELPRO*, HUFFINGTON POST (last updated Aug. 20, 2015), [http://www.huffingtonpost.com/entry/surveillance-black-lives-matter-cointelpro\\_55d49dc6e4b055a6dab24008](http://www.huffingtonpost.com/entry/surveillance-black-lives-matter-cointelpro_55d49dc6e4b055a6dab24008); Conrad Wilson, *Oregon Orders A Stop To Surveillance Of Black Lives Matter Supporters*, N.P.R. (last updated Nov. 15, 2015, 9:02 AM), <http://www.npr.org/2015/11/13/455862583/oregon-orders-a-stop-to-surveillance-of-black-lives-matter-supporters>.

## B. Mobilization through Black Music

A historical snapshot of Black music in American social movements reveals the extent to which the Black music scene has assembled and can mobilize activist resources. Black music and musicians long have advanced the goals of social movements, whether in the form of spirituals sung by slaves, the Freedom Songs of the Civil Rights Movement, or Black nationalist protest music.

### 1. Slave Spirituals

In the early years of slavery, whites did not expose slaves to Christianity for a variety of reasons, including the belief that slaves did not need religion, and the fear that slaves would learn to read and write.<sup>61</sup> Eventually, however, whites came to believe that slaves who learned religion would be more subservient, and that religion could be a useful tool in maintaining the institution of slavery.<sup>62</sup>

Spiritual songs became a significant aspect of religiosity for slaves and served as a means to subvert white society and force change. As the following lyrical examples reveal, slaves used spirituals to spread the message of discontent, encourage resistance, boost morale, and promote perseverance. Additionally, the spirituals served as a means to communicate actual subversion. Lastly, during the abolitionist movement, slave spirituals legitimized claims for freedom.

Religious songs spoke not merely of life in the hereafter but also of a better life in this world.<sup>63</sup> Thus, spirituals “permitted [slaves] to speak . . . openly of the afflictions of bondage and their longings for freedom. In this sense, there was always an element of protest in the slaves’ religious songs.”<sup>64</sup> The well-known spiritual “Go Down, Moses” is particularly exemplary in this regard:

Go down, Moses,  
Way down in Egypt’s lan’  
Tell ole Pharaoh to let my people go  
Thus saith the Lord, bold Moses said,  
Let my people go,  
If not I’ll smite your first born dead.  
Let my people go.<sup>65</sup>

Slaves sang spirituals not only to covertly express their objections to their circumstances but also to send coded messages to engage in active subversion. For example, slaves announced secret, prohibited meetings by singing:

Steal away, steal away, steal away to Jesus.<sup>66</sup>

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61. NORRECE T. JONES, JR., *BORN A CHILD OF FREEDOM, YET A SLAVE* 131 (1990).

62. *Id.* at 131–32.

63. Levine, *supra* note 53, at 588.

64. *Id.*

65. H.T. BURLEIGH, *Go Down, Moses, in NEGRO SPIRITUALS* (1917).

66. Levine, *supra* note 53, at 591.

Escape from slavery could be indicated by singing:

O Canaan, sweet Canaan

I am bound for the land of Canaan.<sup>67</sup>

Although a literal interpretation of the lyrics suggests the singer's desire to be in Heaven near Christ, these lyrics and others have frequently been linked with the Underground Railroad. Frederick Douglass wrote after his escape from slavery that the lyrical references to Canaan meant the North and freedom.<sup>68</sup>

Finally, spirituals supported not only the daily, ground-level resistance by slaves but also the formal abolitionist movement that eventually developed. White abolitionists displayed the singing talents of slaves to humanize them. "When whites were debating whether slaves were full human beings, few demonstrations were more effective with white audiences than showing [B]lacks' capacity to make music."<sup>69</sup>

## 2. Freedom Songs

Black American troops returning to the United States from fighting in World War II suffered the irony of discriminatory treatment on their home shores. Furthermore, white troops returning from the war abruptly displaced Blacks who had been profitably working at home in industry during the war. This treatment sowed seeds of resentment among Blacks. The end of the war also marked the beginning of a period in which whites once again escalated racial threats and violence against Blacks.<sup>70</sup> This socio-legal milieu birthed the Civil Rights Movement of the 1950s and 1960s,<sup>71</sup> spawning more examples of musical activism in Black social movements.

The music of this movement—called Freedom Songs—drew heavily on Black musical tradition and collective identity, deriving from spirituals and utilizing call-and-response.<sup>72</sup> Both professional artists and ordinary citizens involved in the movement deployed Freedom Songs.<sup>73</sup> The songs unified and empowered protestors confronted with violent and racist mobs, arrest, and mistreatment in jails and courts.<sup>74</sup> Freedom Songs also allowed protestors to publicly state demands and call out those who would resist those demands.<sup>75</sup>

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67. See EILEEN SOUTHERN, *THE MUSIC OF BLACK AMERICANS* 143 (2d ed. 1983).

68. *Id.* at 142–43.

69. ROY, *supra* note 42, at 22.

70. Harvard Sitkoff, *Racial Militancy and Interracial Violence in the Second World War*, 58 J. AM. HIST. 661, 661 (1971).

71. Michael J. Klarman, *Rethinking the History of American Freedom (Review Essay of Eric Foner, the Story of American Freedom (1998))*, 42 WM. & MARY L. REV. 265, 273 (2000).

72. Bernice Johnson Reagon, *African American Music as Resistance—The Civil Rights Movement*, in *AFRICAN AMERICAN MUSIC: AN INTRODUCTION*, *supra* note 53, at 598, 599–600.

73. *Id.* at 599–623.

74. *Id.*

75. *Id.* at 611–12.

Finally, the songs provided legitimacy.<sup>76</sup>

Martin Luther King, Jr. promoted freedom songs as a psychological aid and weapon during the bus boycotts of the Civil Rights Movement. For the 1955 Montgomery bus boycott, King and the Montgomery Improvement Association created a chorus to sing songs that were recorded by journalists and shared with the larger public during news reports. Of her experience, singer Jamila Jones of the Montgomery Gospel Trio recounted,

Pretty soon after the first mass meetings in 1955 we started singing for the Montgomery Improvement Association. We were doing songs of the movement, “This Little Light of Mine, I’m Gonna Let It Shine.” . . . We would make up songs. All the songs I remember gave us strength to go on . . . It was kind of spontaneous; if somebody started beating us over the head with a billy club we would start singing about the billy club, or either the person’s name would come out in a song.<sup>77</sup>

Freedom Songs later became a key measure employed by King’s Southern Christian Leadership Conference.<sup>78</sup> King did not stand alone in his deployment of music to aid those on the front lines. In addition to the Montgomery chorus, groups such as the Nashville Quartet and the Birmingham Music Singers formed. The Student Nonviolent Coordinating Committee also used music, creating the SNCC Freedom Singers.<sup>79</sup>

Movement participants, unaided by organized choirs, also deployed songs in their efforts. During the 1961 Freedom Rides organized by the Congress of Racial Equality from Washington, D.C., to the Deep South, white vigilantes confronted bus riders with extreme violence. Police escorts for the bus riders disappeared. In the face of danger, bus riders sang songs to stem their fear. When they were later arrested, they sang in jail.<sup>80</sup> During the marches of the Children’s Crusade, in Birmingham, Alabama, for four days in 1963, Sheriff “Bull” Connor turned fire hoses and police dogs on the peaceful, young demonstrators. The children responded by singing:

Ain’ scared of your dogs  
Cause I want my Freedom  
I want my Freedom now . . .<sup>81</sup>

### 3. Black Nationalist Protest Music

As the mainstream Civil Rights Movement peaked in the 1960s, a Black nationalist movement emerged.<sup>82</sup> Musicians who self-identified as Black nationalist were a significant segment of that movement, utilizing music to identify and contest injustice against Blacks, and support Black nationalist

76. See *id.* at 601–02, 609, 612 (identifying instances of favorable mainstream media coverage).

77. *Id.* at 602.

78. BURTON W. PERETTI, *LIFT EVERY VOICE* 144 (2009).

79. *Id.*

80. Reagon, *supra* note 72, at 610–11.

81. *Id.* at 620.

82. Ruth Feldstein, “*I Don’t Trust You Anymore*”: Nina Simone, Culture, and Black Activism in the 1960s, 91 J. AM. HIST. 1349, 1350 (2005).

causes. Highly popular and critically acclaimed singer Nina Simone—who combined jazz, blues, and gospel music—is a prominent example of this era of activism by Black musicians. Simone helped to increase awareness of Black claims to civil rights as well as helped to raise funds for civil rights organizations. Simone did not think of herself as involved in the movement, only encouraging activists as an artist from the stage. Yet eventually, she became “driven by civil rights and the hope of [B]lack revolution.”<sup>83</sup>

The notorious Birmingham church bombing spurred Simone to write songs of a political nature. In September 1963, white supremacists bombed the Sixteenth Street Baptist Church in Birmingham, Alabama, killing four girls and injuring twenty-two others. The church was targeted because it had become a center for Black civil rights activism in Birmingham. “According to Simone, ‘Mississippi Goddam’ erupted out of [her] right after she [] heard about the church bombing.”<sup>84</sup>

In the lyrics, Simone expressed anger and despair, and “rejected the notions that race relations could change gradually, that the South was unique in terms of discrimination, and that African Americans could or would patiently seek political rights.”<sup>85</sup> She also stridently criticized interracial activism as a viable means of achieving civil rights.<sup>86</sup> She later remarked that the song was her “first civil rights song,” written because she “suddenly realized what it was to be [B]lack in America in 1963.”<sup>87</sup> Simone went on to write “many songs . . . in which she dramatically commented on and participated in—and thereby helped to recast—[B]lack activism in the 1960s.”<sup>88</sup>

Before and after writing “Mississippi Goddam,” Simone buttressed civil rights organizations and their efforts by performing at benefit concerts in the North and the South.<sup>89</sup> Simone supported national, mainstream organizations including the Student Nonviolent Coordinating Committee, the Congress of Racial Equality, and the National Association for the Advancement of Colored People. Her concerts raised thousands of dollars for organizations, far more than what could be raised by other performers.<sup>90</sup>

### C. The Costs of Black Musical Activism

From slavery through modern times, opposition to musical activism has included criminal punishment, government surveillance, and extra-legal violence. During slavery, bans on musical expression were enacted to diminish

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83. NINA SIMONE & STEPHEN CLEARY, *I PUT A SPELL ON YOU: THE AUTOBIOGRAPHY OF NINA SIMONE* 90–91 (1992).

84. *Id.* at 89–90.

85. Feldstein, *supra* note 82, at 1349.

86. *Id.*

87. SIMONE & CLEARY, *supra* note 83, at 89–90.

88. Feldstein, *supra* note 82, at 1350.

89. *Id.* at 1361.

90. *Id.* at 1360.

movements, and in modern times investigation and prosecution of musical artists along with general surveillance of musicians has served as a means for social control. Finally, those who utilized musical expression in support of social movements frequently elicited threats of, or experienced actual, physical violence from opponents.

### 1. Criminalization

As early as the 1600s, plantation owners in the West Indies were “convinced that slaves used drumming as a code to spread calls to insurrection over long distances. As a result, laws in the West Indies [were enacted] to ban[] the ‘talking drums’ of recent African arrivals and restrict[] mass gatherings of slaves.”<sup>91</sup>

In 1739, the successful Stono Rebellion in Charleston County, South Carolina, prompted the same response to drums in the colonies. Publicly erected way-markers succinctly describe the events and aftermath.

The Stono Rebellion, the largest slave insurrection in British North America, began nearby on Sept[ember] 9[,] 1739. About [twenty] Africans raided a store near Wallace Creek, a branch of the Stono River. Taking guns and other weapons, they killed two shopkeepers. The rebels marched south toward promised freedom in Spanish Florida, waving flags, beating drums, and shouting “Liberty.”

The rebels were joined by [forty] to [sixty] more during their [fifteen]-mile march. They killed at least [twenty] whites, but spared others. The rebellion ended late that afternoon when the militia caught the rebel, killing at least [thirty-four] of them. Most who escaped were captured and executed; any forced to join the rebels<sup>92</sup> were released. The S.C. assembly soon enacted a harsh slave code, in force until 1865.

The referenced slave code, enacted in 1740, specifically responded to the Stono rebellion with an eye toward preventing future rebellions. Among other matters, the code prohibited slaves from the “using or keeping of drums, horns, or other loud instruments, which may call together or give sign or notice to one another of their wicked designs and purposes.”<sup>93</sup> It has been widely reported that “by the 1800s all slave states had such laws.”<sup>94</sup>

Well after Emancipation, government officials continued to punish musical activism during the 1950s and 1960s Civil Rights Movement. At times, singing Freedom Songs provided the basis for arrest. For example, on August 28, 1962, seventy-five protestors in front of City Hall in Albany, Georgia, read aloud from the Bible and sang “We Shall Overcome.”<sup>95</sup> Chief Pritchett ordered them

91. PERETTI, *supra* note 78, at 23.

92. To view and read online images of the actual way-markers, see THE HISTORICAL MARKER DATABASE, <http://www.hmdb.org/marker.asp?marker=14855&Result=1> (last visited Feb. 15, 2016).

93. STATUTES AT LARGE OF SOUTH CAROLINA 670 § XXXVI (1740), <https://archive.org/stream/statutesatlarge07edit#page/410/mode/2up>.

94. See PERETTI, *supra* note 78, at 24. This statement is oft-repeated but has proved hard to document. Regardless of whether legally enacted in formal law, one would expect that by local custom most slave owners and white communities outlawed such musical expression.

95. *Northern Clergy Protest in Albany*, U. GA. FREEDOM ON FILM, <http://civilrights.uga.edu/cities/albany/clergy.htm> (last visited Feb. 15, 2016).

to disperse and told them they would be arrested if they did not do so.<sup>96</sup> The protestors did not disperse.<sup>97</sup> As the demonstrators were arrested, hundreds of white citizens standing nearby whistled, cheered, and approvingly clapped.<sup>98</sup> Pritchett charged the demonstrators with disorderly conduct, creating a disturbance, congregating on the sidewalk, and refusing to obey a police order.<sup>99</sup> The protestors were detained pending the payment of bond set at \$200 cash.<sup>100</sup>

## 2. Surveillance

During the era of slavery, white society generally, and slave owners more particularly, surveilled slaves constantly in order to detect, prevent, investigate, and prosecute Black misconduct. Informants were used to police a wide assortment of offending behavior, and they were deemed especially helpful at preventing and quashing rebellions.<sup>101</sup>

This pattern and practice of surveillance continued after Emancipation and was then formalized as part of the criminal justice process. The Federal Bureau of Investigation (FBI) has a long history of surveilling Black activists, including Black activist artists. Federal surveillance of Black artists was robust in the years leading up to and during the civil rights era. During the Civil Rights Movement, musicians and other entertainers featured prominently in the FBI rosters of those who were monitored, sometimes for decades.

Publicly available FBI records on legendary jazz musician Duke Ellington span over a decade.<sup>102</sup> In 1943, Duke Ellington premiered “New World A-Comin” and “Black, Brown and Beige: A Tone Parallel to the History of the Negro in America” at New York City’s Carnegie Hall. “Black, Brown and Beige” traced “the African American odyssey from Africa to slavery, from freedom to the promise of the Great Migration.”<sup>103</sup> The FBI, however, did not take notice of that historic performance at Carnegie Hall. Instead, it documented another performance he gave that year at a “benefit to ban poll taxes,” which restricted Blacks’ ability to vote.<sup>104</sup> Almost twenty years later, during the Civil Rights Movement, the FBI was still surveilling Ellington. FBI files from 1966 note that Ellington appeared in Texas with James Foreman, who led the Student Nonviolent Coordinating Committee.<sup>105</sup>

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96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. See Andrea L. Dennis, *A Snitch in Time: An Historical Sketch of Black Informing During Slavery*, 97 MARQ. L. REV. 279, 289–96 (2013).

102. *FBI Records: The Vault, Edward Kennedy (Duke) Ellington*, FED. BUREAU OF INVESTIGATION, <https://vault.fbi.gov/Edward%20Kennedy%20%28Duke%29%20Ellington> (last visited Apr. 27, 2016).

103. PERETTI, *supra* note 78, at 101.

104. Andrew Lehren, *Jazz and the FBI: Guilty Until Proven Innocent*, JAZZ TIMES (Apr. 2009), <http://jazztimes.com/articles/24396-jazz-and-the-fbi-guilty-until-proven-innocent>.

105. *Id.*

Incredibly, the FBI monitored jazz musician Louis Armstrong, who the U.S. State Department frequently asked to serve as a cultural ambassador to foreign nations. In fall of 1957, when nine Black students unsuccessfully attempted to integrate Central High School in Little Rock, Arkansas, Armstrong publicly and strongly critiqued President Eisenhower for not actively enforcing integration. Armstrong also said he would not tour the Soviet Union at the government's request. The FBI took note of these pronouncements. Eisenhower apparently did as well, sending in armed guards to force integration. Armstrong then expressed support for Eisenhower and willingness to tour again.<sup>106</sup> Though this may be a well-known incident that the FBI monitored, it was neither the first nor the only. The FBI had been watching Armstrong for a decade beforehand.<sup>107</sup>

In July 1965, FBI agents interviewed renowned drummer Max Roach. He acknowledged his support of the fight for integration, and his activism in the mainstream Civil Rights Movement. Roach rejected violent overthrow of the government as a means to achieve integration and confirmed that he played benefit concerts for groups such as the Student Nonviolent Coordinating Committee and the Congress of Racial Equality. When agents asked him about more revolutionary organizations on its watch list, particularly the Revolutionary Action Movement, which the FBI considered a precursor to the Black Panther Party, Roach admitted familiarity with the group and several of its members but denied involvement.<sup>108</sup> The FBI continued to surveil Roach into the 1970s, when it briefly became concerned that he was a member of either the Black Panther Party or the Black Liberation Army.<sup>109</sup>

Ellington, Armstrong, and Roach are but three of many artists who the FBI surveilled before, during, and after the Civil Rights Movement. Other prominent artists monitored during that era include Charles Mingus, Paul Robeson, and Cab Calloway.<sup>110</sup>

### 3. Violence

Popular artists who performed in the South during the civil rights era exposed themselves to physical danger. For example, in 1956, white segregationists attacked jazz musician Nat King Cole in Birmingham, Alabama, while he performed onstage with an integrated band before an all-white audience. Local law enforcement—present at the concert because of security concerns—immediately arrested the attackers, who were later convicted of various charges.<sup>111</sup> The next year, in February 1957, at one of Louis Armstrong's

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106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* The FBI has released publicly extensive records on Robeson. *FBI Records: The Vault, Paul Robeson, Sr.*, FED. BUREAU OF INVESTIGATION, <https://vault.fbi.gov/search?SearchableText=paul+robeson> (last visited Apr. 27, 2016).

111. Brian Ward, *Civil Rights and Rock and Roll: Revisiting the Nat King Cole Attack of 1956*, OAH

concerts in Knoxville, Tennessee, a dynamite bomb thrown from a car exploded near the stage. Like Cole, Armstrong was performing with an integrated band. Reports identify the likely assailant as a white segregationist who was imitating one of Cole's attackers.<sup>112</sup> FBI files do not indicate that the identity of the bomber was ever discovered.<sup>113</sup>

Ordinary movement participants engaged in front-line protests also faced violent retribution. Choirs of freedom-song singers performed on the front lines to empower protestors. Like the protestors, these groups performed at their peril, as they were often confronted by white Southern mobs.<sup>114</sup>

#### IV

##### HIP-HOP AS A NEXT-GENERATION SOCIAL MOVEMENT TACTIC

In light of history and social-movement theory, contemporary social movements in the Black community should seek out Black musicians to support their efforts. In particular, hip-hop activism should be recognized and cultivated.<sup>115</sup> Hip-hop, or rap, artists have long engaged in protest through lyrical expression, and the hip-hop community has already experienced and withstood the oppositional responses to its efforts. Presently the hip-hop community is voicing an interest in participating in the movement against police and vigilante violence against Blacks. This interest should be tended, fueled, and leveraged. Hip-hop today connects with the wider public and the media, offering movements the opportunity to gain new adherents and constituents who may then serve as resources.<sup>116</sup>

##### A. Hip-Hop as Protest

The 1970s gave birth to both the War on Drugs and hip-hop. Since then, Black rappers—whether party, conscious, political, or gangsta—have crafted lyrics that are critical of social and legal injustices, particularly the devastating impact of criminal behavior and the criminal justice system on Black communities.

In 1982, Grandmaster Flash and the Furious Five recorded “The Message.” The song critiqued the impoverished conditions of urban housing projects. “The Message” was the first of what would become rap's relationship with political or protest music.<sup>117</sup>

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MAG. HIST., Apr. 2010, at 21.

112. CLIVE WEBB, *RABBLE ROUSERS: THE AMERICAN FAR RIGHT IN THE CIVIL RIGHTS ERA* 48–49 (2010).

113. Lehren, *supra* note 104.

114. PERETTI, *supra* note 78, at 143–44.

115. PAUL BUTLER, *LET'S GET FREE* 125 (2009) (noting generally that hip-hop's “strong critique of the state” offers the “potential to transform.”).

116. *Cf.* Woodhouse & Katz, *supra* note 24, at 159 (describing ability of television to draw constituents to social movements).

117. PERETTI, *supra* note 78, at 165; Mark Anthony Neal, *Post-Civil Rights Period*, in *AFRICAN AMERICAN MUSIC: AN INTRODUCTION*, *supra* note 53, at 624, 627.

In 1984, Run-DMC released “It’s Like That” and “Hard Times.” “It’s Like That” critiqued unemployment, the cost of living, homelessness, and the difficulties of life in poor, urban environments.<sup>118</sup> Similarly, “Hard Times” illustrated financial difficulties and the need to work hard to overcome challenges.<sup>119</sup> Run-DMC went on to become a consistently successful group that combined social messages with party rap.<sup>120</sup>

In the late 1980s, a Black nationalist style emerged in hip-hop culture; Public Enemy, KRS-One and Boogie Down Productions, the X-Clan, Poor Righteous Teachers, Brand Nubian, and others led the way.<sup>121</sup> Public Enemy was the most successful of this group, producing albums and songs that contained strident social critique.<sup>122</sup> Notably, in 1988, Public Enemy released its album “It Takes a Nation of Millions to Hold Us Back,” which contained the song “Black Steel in the Hour of Chaos.” The song tells the story of a draft dodger who escapes from prison. The storyteller refused to join the Army because he believed society mistreated Black men.<sup>123</sup> Also, on the album, the group publicly allied itself with Black nationalism and Louis Farrakhan—leader of the Nation of Islam.<sup>124</sup> Two years later, its album “Fear of a Black Planet” dealt with themes of antimiscegenation and white supremacy,<sup>125</sup> institutional neglect and racism,<sup>126</sup> and Black pride.<sup>127</sup>

Also in the late 1980s, rap took a new turn with the emergence of gangsta rap.<sup>128</sup> From South Central Los Angeles, Ice-T and N.W.A. were the pioneers of what would eventually be labeled gangsta rap. Other early gangsta rap artists included Ice Cube, Dr. Dre, Snoop Dogg, Tupac, and Notorious B.I.G. Many of these artists grew up in urban areas experiencing severe economic marginalization, high crime, and police misconduct that informed their music. Unlike most socially conscious rap, gangsta rap critiques of law enforcement and police brutality had crossover appeal with multiple audiences, becoming popular in the mainstream market.<sup>129</sup>

118. RUN-D.M.C., *It's Like That*, on RUN-D.M.C. (Profile Records 1984).

119. RUN-D.M.C., *Hard Times*, on RUN-D.M.C., *supra* note 118.

120. PERETTI, *supra* note 78, at 165.

121. Neal, *supra* note 117, at 628.

122. PERETTI, *supra* note 78, at 166.

123. PUBLIC ENEMY, *Black Steel in the Hour of Chaos*, on IT TAKES A NATION OF MILLIONS TO HOLD US BACK (Def Jam Recordings 1988).

124. PUBLIC ENEMY, *Bring the Noise*, on IT TAKES A NATION OF MILLIONS TO HOLD US BACK, *supra* note 123.

125. PUBLIC ENEMY, *Fear of a Black Planet*, on FEAR OF A BLACK PLANET (Def Jam Recordings 1990).

126. PUBLIC ENEMY, *9-1-1 Is a Joke*, on FEAR OF A BLACK PLANET, *supra* note 125.

127. PUBLIC ENEMY, *Fight the Power*, on FEAR OF A BLACK PLANET, *supra* note 125.

128. Neal, *supra* note 117, at 628.

129. Portia K. Maultsby, *Rhythm and Blues*, in AFRICAN AMERICAN MUSIC: AN INTRODUCTION, *supra* note 53, at 245, 263. “Crossover” has been defined as “[t]he process by which a recording released in a secondary market achieves hit status in the mainstream market.” *Id.*

Although N.W.A. and Ice-T produced anti-law enforcement songs that were commercially successful, their works also drew negative attention from many in government and the public.<sup>130</sup> In 1988, N.W.A. released “Fuck Tha Police” on its album *Straight Outta Compton*.<sup>131</sup> The lyrics, which begin by parodying a courtroom scene, excoriated local law enforcement for racial profiling, unlawful conduct, and targeting young men of color for violent treatment. The song continued by challenging the authority of law enforcement and depicting violent responses to law enforcement. The song is laced with vignettes revealing police mistreatment of citizens.<sup>132</sup> The song still resonates today.<sup>133</sup> In 1992, Ice-T’s heavy metal group Body Count issued “Cop Killer.” The song protested police brutality and referenced by name then-Los Angeles Police Department Chief Daryl Gates and Rodney King, whose beating by LAPD officers in 1991 was video-recorded. Like “Fuck Tha Police,” the character in “Cop Killer” sought violent revenge for victims of police brutality.<sup>134</sup>

## B. Criminalizing Hip-Hop

When hip-hop was born in New York in the 1970s, rappers avoided police scrutiny and resistance, although their compatriots—break-dancers and graffiti artists—did not, due to the public nature of their activities.<sup>135</sup> Once rap music became generally popular and developed “overtly political content,” the criminal justice system began to focus on it.<sup>136</sup> The criminal justice system has been used to punish socially conscious musical expression as subversive and threatening, and as evidence of criminality.

The anti-police brutality and misconduct protest songs written by N.W.A. and Ice-T in the 1980s and 1990s drew both the attention and the ire of law enforcement. In 1989, the FBI sent a letter to N.W.A.’s record label accusing the song “Fuck tha Police” of misrepresenting and disrespecting law enforcement, and of encouraging violence against the police. The FBI denied that it was trying to intimidate the group or its label.<sup>137</sup> During the group’s thirty-six-date tour, however, police officials pressured venues by threatening or

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130. PERETTI, *supra* note 78, at 166.

131. N.W.A., *Fuck tha Police*, on *STRAIGHT OUTTA COMPTON* (Ruthless Records 1988).

132. *Id.*

133. Kelly L. Carter, *How “Fuck Tha Police” Started A Revolution*, BUZZFEED (Aug. 13, 2015 7:06 PM), <http://www.buzzfeed.com/kelleycarter/how-fuck-tha-police-started-a-revolution>.

134. BODY COUNT, *Cop Killer*, on *BODY COUNT* (Sire/Warner Bros. Records 1992).

135. Erik Nielson, “Can’t C Me”: *Surveillance and Rap Music*, 40 J. BLACK STUD. 1254, 1256–57 (2010).

136. *Id.* at 1257.

137. Steve Hochman, *Compton Rappers Versus the Letter of the Law: FBI Claims Song by N.W.A. Advocates Violence on Police*, L.A. TIMES (Oct. 5, 1989), [http://articles.latimes.com/1989-10-05/entertainment/ca-1046\\_1\\_law-enforcement](http://articles.latimes.com/1989-10-05/entertainment/ca-1046_1_law-enforcement); Asawin Subsaeng, *The FBI Agent Who Hunted N.W.A.*, THE DAILY BEAST (Aug. 14, 2015, 2:37 AM), <http://www.thedailybeast.com/articles/2015/08/14/the-fbi-agent-who-hunted-n-w-a.html>.

actually refusing to provide security.<sup>138</sup> In turn, venues either forbade the performance of the song, subject to a performance penalty, or canceled performances.<sup>139</sup> N.W.A. stood its ground, continuing to perform the song, despite arrests and loss of income.

Law enforcement successfully elevated their pressure tactics against Ice-T and “Cop Killer.” At the time, Ice-T was signed to Time Warner’s record label, which initially backed the artist.<sup>140</sup> Police organizations and government officials called for public boycott of all Time Warner products. The boycott call occurred during a presidential election cycle, thus attracting the attention and criticism of the president and presidential candidates. Ice-T eventually withdrew the song from circulation, once he heard that Time Warner management had received death threats.<sup>141</sup>

In the last couple decades, prosecutors nationwide have used rap lyrics authored by criminal defendants to convict those defendants. Prosecutors use defendants’ lyrics to prove knowledge, motive, or intent to commit a crime; confession to criminal behavior; or the communication of a criminal threat. The vast majority of these artists are amateur or aspiring gangsta rappers facing drug, violent crime, or threats charges.<sup>142</sup>

### C. Surveilling Hip-Hop

Many well-known, conscious and gangsta rappers from the 1980s and 1990s, including Public Enemy, Boogie Down Productions, and Tupac Shakur, have expressed belief or awareness that they were being watched by government officials. Public Enemy’s logo is a picture of a man in crosshairs.<sup>143</sup> Tupac wrote many songs depicting his surveillance by state and federal law enforcement and government officials.<sup>144</sup> Almost a decade after Tupac’s murder in 1996, Former U.S. Congresswoman Cynthia McKinney introduced the Tupac Amaru Shakur Records Collection Act.<sup>145</sup> The bill required federal, state, and local authorities to publicly disclose government records on Tupac.<sup>146</sup> The bill was aimed both at

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138. Richard Harrington, *The FBI as Music Critic*, WASH. POST (Oct. 4, 1989), <https://www.washingtonpost.com/archive/lifestyle/1989/10/04/the-fbi-as-music-critic/3f9abdb7-bed1-45b2-83ca-7a6e7da59fa9/>.

139. *Id.*

140. Alan Light, *The Rolling Stone Interview: Ice-T*, ROLLING STONE (Aug. 20, 1992), <http://www.rollingstone.com/music/news/the-rolling-stone-interview-ice-t-19920820>.

141. Chuck Phillips, *Ice-T Pulls ‘Cop Killer’ Off the Market*, L.A. TIMES (July 29, 1992), [http://articles.latimes.com/1992-07-29/news/mn-4656\\_1\\_cop-killer](http://articles.latimes.com/1992-07-29/news/mn-4656_1_cop-killer).

142. Andrea L. Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, and Criminal Evidence*, 31 COLUM. J. L. & ARTS 1 (2007); see Charis E. Kubrin & Erik Nielson, *Rap on Trial*, 4 RACE & JUST. 185, 192–97 (2014).

143. See the group’s official twitter page for its logo, PUBLIC ENEMY, <https://twitter.com/PublicEnemyFTP> (last visited Feb. 15, 2016). See Nielson, *supra* note 135, at 1257.

144. Nielson, *supra* note 135, at 1259–60.

145. H.R. 4210, 109th Cong. (2005).

146. *Id.* § 6.

helping solve Tupac's murder and exposing whether the FBI was engaged in a modern surveillance program targeting Black artists.<sup>147</sup>

In the early 2000s, the New York City Police Department established a hip-hop task force. Other major cities soon followed, including Atlanta, Chicago, Las Vegas, Los Angeles, and Miami. These task forces have monitored artists of all rap genres. The task forces keep abreast of rap artists' disputes, criminal histories and activities, and general whereabouts.<sup>148</sup> As recently as 2014, journalists reported on the activities of these task forces.<sup>149</sup> As before, artists are continuously aware that they are being surveilled.<sup>150</sup>

#### D. New-School Hip-Hop Activism

In the past year or so, many prominent Black musicians from the hip-hop community have publicly supported the movement against law enforcement and vigilante violence against Blacks. Artists have frequently commented on social media.<sup>151</sup> They, however, have not limited themselves to this form of activism.

In August 2014, rapper Killer Mike penned an op-ed for *Billboard Magazine* in response to police shootings.<sup>152</sup> Killer Mike is one of a small number of commercially successful artists today who fuses social activism with his music and work more generally.<sup>153</sup> Many of his songs could be considered conscious political or protest songs. For example, in 2012, he released the song "Reagan,"

147. Alex Abnos, *House Bill Would Release Tupac Surveillance Records*, GEO. WASH. HATCHET (Nov. 14, 2005), <http://www.gwhatchet.com/2005/11/14/house-bill-would-release-tupac-surveillance-records/>.

148. See Dasun Allah, *The HipHop Cop*, VILLAGE VOICE (Mar. 30, 2004), <http://www.villagevoice.com/news/the-hiphop-cop-6407665>; Dasun Allah, *NYPD Admits to Rap Intelligence Unit*, VILLAGE VOICE (Mar. 16, 2004), <http://www.villagevoice.com/news/nypd-admits-to-rap-intelligence-unit-6407962>; Adam Matthews, *Seen Acting in Concert*, VILLAGE VOICE (Sept. 25, 2007), <http://www.villagevoice.com/news/seen-acting-in-concert-6424265>.

149. Emily Smith & Mara Siegler, *Drake, Chris Brown on NYPD 'Hip Hop Squad' Watch List*, PAGE SIX, N.Y. POST (Aug. 28, 2014), <http://pagesix.com/2014/08/28/celebs-on-hip-hop-squad-watch-list-after-suge-knight-shooting/>.

150. JAY-Z, DECODED 162 (2011).

151. See, e.g., Joe Lynch, *Diddy to Obama on Ferguson: 'Get on a Plane—It's Serious'*, BILLBOARD (Aug. 19, 2014), <http://www.billboard.com/articles/news/6221866/diddy-obama-ferguson>; Chris Payne, *Musicians React to Ferguson & Michael Brown: Frank Ocean, J. Cole, & More*, BILLBOARD (Aug. 15, 2014), <http://www.billboard.com/articles/columns/the-juice/6221643/ferguson-michael-brown-frank-ocean-j-cole>.

152. Killer Mike, *Op-Ed: Killer Mike on the Problems Underlying the Chaos in Ferguson*, BILLBOARD (Aug. 19, 2014, 3:05 PM), <http://www.billboard.com/biz/articles/6221888/op-ed-killer-mike-on-the-problems-underlying-the-chaos-in-ferguson>.

153. Kipp Jones, *Rapper/Activist Killer Mike Lectures at MIT, Will Attend WHCA Dinner Saturday*, BREITBART (Apr. 25, 2015), <http://www.breitbart.com/big-hollywood/2015/04/25/rapperactivist-killer-mike-lectures-at-mit-will-attend-whca-dinner-saturday-night/>; *Rapper: Why This Cop is Doing It Right*, CNN (May 6, 2015, 3:05 PM), <http://www.cnn.com/videos/tv/2015/05/06/rapper-why-this-cop-is-doing-it-right.cnn> (identifying Killer Mike as rapper and social activist). Killer Mike follows the path created by Russell Simmons, co-founder of hip-hop record label Def Jam Records, who in the early 2000s very publicly became involved in political and legal activism. See BUTLER, *supra* note 115, at 128 (describing activist efforts of Russell Simmons to eliminate police brutality, repeal harsh New York drug laws, and get-out-the-vote).

which was highly critical of the Reagan Administration and its aftereffects, apparent in the Bush, Clinton, and Obama Administrations.<sup>154</sup> In December 2014, Alicia Keys released “We Gotta Pray” in response to killings and protests in Ferguson, Missouri, and in New York City.<sup>155</sup> D’Angelo, Frank Ocean, and J. Cole also have released songs related to the protests.<sup>156</sup>

In 2015, the activist efforts continued. At the nationally televised Grammy awards in February 2015, Black artists used the platform to continue to draw attention to the issue of police violence.<sup>157</sup> Multiple artists, including Pharrell Williams and Beyoncé, referenced the “hands up, don’t shoot” gesture.<sup>158</sup> During his presentation of the award for best album, Prince remarked that Black lives matter, like books and albums.<sup>159</sup> Singer John Legend and rapper Common performed the theme song for the movie *Selma*, “Glory,” which references Ferguson, Missouri.<sup>160</sup>

Public protest from musicians did not stop after the GRAMMY Awards. In April 2015, after the killing of Freddie Gray in Baltimore Police Department custody and the subsequent unrest in the city, Prince released the song “Baltimore,” calling for an end to police brutality. He also held a “Rally 4 Peace” concert in Baltimore. In August 2015, soul artist Janelle Monae and rapper Jidenna co-led a Black Lives Matter protest against police brutality in Philadelphia, Pennsylvania.<sup>161</sup> Monae and her Wondaland Collective also released a song protesting police brutality and imploring the public to say the names of recent and historic Black victims of police and vigilante violence.<sup>162</sup>

In November 2015, Black musical performers broadened their efforts. With respect to race relations generally, Black artists joined a multiracial group of highly popular musicians for the televised “Shining a Light Concert for Progress on Race.”<sup>163</sup> The concert was sponsored by the United Way, and proceeds will

154. KILLER MIKE & EL-P, *Reagan*, on R.A.P. MUSIC (Williams Street Records 2012). Interestingly, Killer Mike does not consider himself a political rapper, but rather, a social commentator. See Luke McCormick, *Hear Killer Mike’s Fiery ‘R.A.P. Music’: The MC Runs Us Through His New LP*, SPIN (May 7, 2012), <http://www.spin.com/2012/05/hear-killer-mikes-fiery-rap-music-mc-runs-us-through-his-new-lp/>.

155. ALICIA KEYS, *WE GOTTA PRAY* (RCA Records 2014), <https://www.youtube.com/watch?v=ReK4t3Pfdpo>.

156. Chris Payne, *Questlove Challenges Artists to Write Protest Songs After Mike Brown & Eric Garner Rulings*, BILLBOARD (Dec. 4, 2014), <http://www.billboard.com/articles/columns/the-juice/6363517/questlove-mike-brown-eric-garner-protest-songs-ferguson-roots-instagram>.

157. Nicky Woolf, *Grammy Performances Put #blacklivesmatter Centre Stage*, GUARDIAN (Feb. 9, 2015), <http://www.theguardian.com/music/2015/feb/09/grammy-performances-put-blacklivesmatter-centre-stage>.

158. *Id.*

159. *Id.*

160. COMMON & JOHN LEGEND, *Glory*, on SELMA (Columbia Records 2014).

161. Tshelo Mokoena, *Janelle Monáe Leads Protest Against Police Brutality in Philadelphia*, GUARDIAN (Aug. 13, 2015, 4:01 AM), <http://www.theguardian.com/music/2015/aug/13/janelle-monae-leads-protest-against-police-brutality-philadelphia>.

162. JANELLE MONÁE, *HELL YOU TALMBOUT* (Wondaland Records 2015), <https://soundcloud.com/wondalandarts/hell-you-talmbout>.

163. This benefit concert aired on various channels of the A&E network and can be viewed online.

be used to fund organizations and individuals working for racial justice and reconciliation.<sup>164</sup>

Circumstances seem quite ripe for hip-hop artists to become involved in current Black social movements, whether out of respect for historical musical activism, or due to individual motivations to engage in activism, or both.<sup>165</sup> Nonetheless, their participation is not a forgone conclusion. In addition to the possibility of criminal justice repercussions, today's hip-hop artists may face commercial ramifications for their activism. In the post-Civil Rights era, crossover appeal and commodification have complicated Black protest music. Corporatization and consumer preferences have limited the range of successful hip-hop genres and artists, and even politically conscious artists have been reduced to consumer products.<sup>166</sup> Artists are aware of the possibility of negative repercussions. In December 2014, Questlove, of the hip-hop group The Roots, called on Black musicians to produce a new wave of protest songs, despite possible backlash.<sup>167</sup> Thus, artists will have to seriously consider whether and to what extent they should become involved in such movements, and movement organizers must convince them it is in their interests to do so.

## V

### CONCLUSION

History and theory indicate that recently-formed Black social movements fighting police and private violence against Blacks should mobilize resources by calling on the hip-hop community to support the next generation battle for civil rights. Black musicians today, particularly well-known or elite hip-hop artists, can significantly attract media and political attention to movement issues, empower participants through songwriting and public appearances, and donate or raise funds. The hip-hop community already has expressed some willingness to join the movement. Artists have written protest songs, stood on the front lines at demonstrations, performed at benefit concerts, and spoken up on public platforms. These beginning efforts offer an opportunity for social movement organizers to cultivate greater participation from well-known, lesser-known, and even unknown artists. Undoubtedly, artists who support the movement will face backlash—whether legal, social, or economic. If they can withstand the threats, their activism can significantly advance the goals of today's Black social movements.

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164. *Shining a Light: A Concert for Progress on Race in America*, UNITED WAY, <https://www.unitedway.org/shining-a-light> (last visited Feb. 15, 2016).

165. See BUTLER, *supra* note 115, at 184 (hip-hop community members may be self-interested in public safety because of their experiences in dangerous communities).

166. Neal, *supra* note 117, at 626–27.

167. Patrick Flanary, *Questlove: 'Fear of Being Blackballed' Prevents Artists From Releasing Protest Music*, BILLBOARD (Dec. 23, 2014), <http://www.billboard.com/articles/news/6415132/questlove-fear-of-being-blackballed-prevents-artists-from-releasing-protest>.