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## “Deserve Got Nothin’ to Do with It:” The Value of Homicide Victims in *The Wire*

Janice Nadler<sup>†</sup>

The moral principle of placing the highest value on human life is a basic one. It underlies a central responsibility of criminal law. But within the universe of “The Game” in *The Wire*, these fundamental principles break down. The enforcement of the law of homicide in this place and time does not derive primarily from the assumption of the sacredness of life, and grading of offenses and punishment is not primarily guided by notions of malice. In the series, murders sometimes go barely investigated or not even classified as such.<sup>1</sup> Some of the victims are depicted as being mourned by their loved ones,<sup>2</sup> but their deaths barely register in public life. The focus of government investigations is framed by the drug war, which sometimes distorts the goals and decisions of law enforcement strategy. For homicide victims in inner-city Baltimore, these distortions lead to some murder victims receiving elevated status while others are demoted with respect to investigation priority and community discourse. At most, each killing in the inner city is typically acknowledged by the state in the form of an

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<sup>1</sup> As in the case of D’Angelo. *The Wire: All Prologue* (HBO television broadcast July 6, 2003) (Season Two, Episode Six). Or the bodies in the vacant row houses undiscovered for a long period due chiefly to lack of curiosity about the persons who went missing. *The Wire: That’s Got His Own* (HBO television broadcast Dec. 3, 2006) (Season Four, Episode Twelve).

<sup>2</sup> Omar was depicted mourning several times, and his anguished cries upon seeing the mutilated body of his boyfriend Brandon were especially poignant. *The Wire: The Wire* (HBO television broadcast July 7, 2002) (Season One, Episode Six). Brianna mourned D’Angelo. *The Wire: Backwash* (HBO television broadcast July 13, 2003) (Season Two, Episode Seven). Bunk despaired about the frequency of murders in the neighborhood and demanded “no more bodies” from Omar. *The Wire: Know Your Place* (HBO television broadcast Nov. 12, 2006) (Season Four, Episode Nine). But as I explain below, the series portrayed desensitization more frequently than mourning.

uptick in the police department's weekly ComStat counts, by the press as a story buried deep within the paper, or not mentioned at all.

In this Article, I will argue that the frequency of killings and the sheer number of victims can itself result in the distortion of basic values and priorities. Exposure to large human death tolls can result in what researchers have called psychic numbing.<sup>3</sup> The basic idea is that, against the background of a large aggregate tragedy, each new death represents an incremental increase, which fails to register emotionally because our compassion becomes fatigued. In *The Wire*, psychically-numbed characters pursue institutional goals unencumbered by the negative emotions that otherwise might prompt them to question their participation in acts that lead to perverse outcomes. Police officers defile corpses to invent a serial killer,<sup>4</sup> and a reporter fabricates phone calls from the non-existent serial killer to create good copy.<sup>5</sup> Psychically-numbed Players in *The Game* clean house to avoid detection, killing close friends (Wallace)<sup>6</sup> and even close family members (D'Angelo),<sup>7</sup> even when it is not clear that they pose an immediate threat. And on numerous occasions, the murder of rivals is motivated by a petty desire to perform a show of power (Jelly,<sup>8</sup> Boo,<sup>9</sup> Rico,<sup>10</sup> Tatar,<sup>11</sup> Devonne,<sup>12</sup> Junebug<sup>13</sup>); murder of rivals is motivated by this desire to show power as often as it is motivated by sensible economic motives or self-preservation. In response to Michael's questioning about why Big Walter (putatively their next target) deserves to be killed, Snoop responds, "Deserve got nothin' to do with it. It's his time, that's all."<sup>14</sup>

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<sup>3</sup> See, e.g., Paul Slovic, "If I Look at the Mass I Will Never Act": *Psychic Numbing and Genocide*, 2 JUDGMENT & DECISION MAKING 79 (2007); Paul Slovic & Daniel Västfjäll, *Affect, Moral Intuition, and Risk*, 21 PSYCHOL. INQUIRY 387 (2010).

<sup>4</sup> *The Wire: Unconfirmed Reports* (HBO television broadcast Jan. 13, 2008) (Season Five, Episode Two).

<sup>5</sup> *The Wire: The Dickensian Aspect* (HBO television broadcast Feb. 10, 2008) (Season Five, Episode Six).

<sup>6</sup> *The Wire: Cleaning Up* (HBO television broadcast Sept. 1, 2002) (Season One, Episode Twelve).

<sup>7</sup> *The Wire: All Prologue*, *supra* note 1 (Season Two, Episode Six).

<sup>8</sup> *The Wire: All Due Respect* (HBO television broadcast Sept. 26, 2004) (Season Three, Episode Two).

<sup>9</sup> *The Wire: Homecoming* (HBO television broadcast July 6, 2003) (Season Three, Episode Six).

<sup>10</sup> *The Wire: Back Burners* (HBO television broadcast Nov. 7, 2004) (Season Three, Episode Seven).

<sup>11</sup> *The Wire: Moral Midgetry* (HBO television broadcast Nov. 14, 2004) (Season Three, Episode Eight).

<sup>12</sup> *The Wire: Reformation* (HBO television broadcast Nov. 28, 2004) (Season Three, Episode Ten).

<sup>13</sup> *The Wire: Unconfirmed Reports*, *supra* note 4 (Season Five, Episode Two).

<sup>14</sup> *The Wire: Late Editions* (HBO television broadcast Mar. 2, 2008) (Season Five, Episode Nine).

Psychic numbing is a critical skill for Players in *The Game*; those who fail to develop it are forced to exit, usually by becoming murder victims themselves.

In the aggregate, the community depicted in *The Wire* is the home of people who are treated as though their lives do not matter, for big picture reasons of race and poverty. Simultaneously, warped institutional incentives press on Players in *The Game*, on law enforcement officers, and on institutions of civil society, which fail to respond to the mass killings with the horror and outrage they deserve. Psychic numbing sets the stage for a neighborhood in which murders become commonplace, and the law of homicide operates in a manner that appears indiscriminate and haphazard. Less visible is the implicit hierarchical ordering of victims which, in addition to psychic numbing, contributes to law operating in a manner not always predicted by the law in the books. There were many premeditated murders depicted in *The Wire*, and the responsible individuals were depicted as almost never receiving punishment by the criminal justice system. This fictional depiction of the absence of accountability for killings is unfortunately largely accurate in many large U.S. cities today.

### I. PSYCHIC NUMBING

The fact that both police and Players in *The Wire* have become numb to killings—both the killings themselves and the very idea of killing—can be understood in terms of psychic numbing, which occurs when individuals “turn off” the feeling of compassion and other emotions when thinking about the death of large numbers of people.<sup>15</sup> As a general matter, both positive and negative affect plays an important role in guiding judgments and actions. When our capacity to experience affect is overwhelmed by large numbers of victims, our ability to comprehend the heinousness of a large death toll can be compromised.

Paul Slovic has written about the role of psychic numbing in the context of lack of attention to genocides on the part of political leaders, the press, and ordinary people.<sup>16</sup> The world largely ignored the Rwandan and Darfur genocides both as they were occurring and afterwards.<sup>17</sup> Samantha Power argued in 2003 that “No U.S. president has ever made genocide prevention a priority, and no U.S. president has ever suffered politically for his indifference to its occurrence. It is thus

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<sup>15</sup> See Slovic, *supra* note 3.

<sup>16</sup> See *id.*, at 79–95.

<sup>17</sup> See *id.*, at 80–82.

no coincidence that genocide rages on.”<sup>18</sup> Slovic has proposed that political apathy toward genocide derives in part from a psychological mechanism: diminished sensitivity to death as the magnitude of deaths increase.<sup>19</sup> He posits that diminished sensitivity to death might resemble the same kind of psychophysical function that characterizes diminished sensitivity to perceptual phenomena such as light, noise, and heaviness.<sup>20</sup> Human minds are good at detecting small changes in our environment when inputs are low, but we are less good at detecting changes when inputs are already high.

Analogously, we are less able to appreciate incremental increases in the loss of life as magnitudes become larger. Because of psychic numbing, the importance of saving a life seems great when it is the first or only life to be saved.<sup>21</sup> But as the total number of lives lost becomes large, the perceived importance of each marginal life diminishes.<sup>22</sup> In the setting of *The Wire*, the community experiences a large number of violent deaths.<sup>23</sup> Psychic numbing might contribute to the specific ways that characters within institutions of law enforcement make judgments in response to institutional incentives in the context of high crime and specifically a high rate of murders. At the same time, the leadership as well as the foot soldiers in *The Game* are in an environment requiring continuous judgments and decisions shaped by considerations of strategy, rivalry, honor, and avoiding government detection. Psychic numbing to killing nudges decisions toward killing as a way of survival within *The Game* and of *The Game*. I will examine the influence of psychic numbing on each group of characters in turn.

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<sup>18</sup> SAMANTHA POWER, “A PROBLEM FROM HELL”: AMERICA AND THE AGE OF GENOCIDE xxi (2002).

<sup>19</sup> Slovic, *supra* note 3.

<sup>20</sup> *Id.* at 84. As a general psychophysical matter, people’s ability to detect changes in a physical stimulus like light decreases as input magnitude increases. That is, constant increases in stimulus magnitude produce increasingly smaller changes in response. Thus, for example, for an individual to be able to detect a change in a very dim light, only a small amount must be added; but to be able to detect a change in a very bright light, a very large amount of light must be added. Thus, this operates at the most basic level—human minds are good at detecting small changes in our environment when inputs are low, but we are less good at detecting changes when inputs are already high.

<sup>21</sup> *Id.* at 85–86.

<sup>22</sup> *Id.*

<sup>23</sup> *See, e.g., The Wire: Time After Time* (HBO television broadcast Sept. 19, 2004) (Season Three, Episode One) (featuring a scene where the Mayor pressures the Police Commissioner to reduce annual murders by 5% to 275 in order to bolster the Mayor’s political ambitions).

## II. LAW ENFORCEMENT DESENSITIZATION

## A. Routine Emotion Suppression

As a general matter of emotion management, the job of homicide detective resembles many other jobs, in that it entails managing and sometimes suppressing one's own affect to create the appropriate emotional display during social interactions.<sup>24</sup> In *The Wire*, one of the first murder victims depicted onscreen is Gant, the "working man" killed in retaliation for his truthful court testimony.<sup>25</sup> In the morgue, the medical examiner bureaucratically and robotically delivers from memory the relevant facts: "Gant, William. 41 years. Single headshot, close range. Bullet pancaked on the inner skull."<sup>26</sup> At the same time that he recites the particulars, he spoons his snack from a container to his mouth, desensitized to the endless series of murder victim corpses he works with every day.<sup>27</sup> The officers are also nonplussed by the body, as well as by the sight of the electric autopsy saw moving downward to enter a different corpse nearby.<sup>28</sup> Like the medical examiner, McNulty and Bunk suppress any emotion or disgust they might feel as a matter of professional survival.

In that sense, emotion suppression clearly serves a useful purpose—permitting the detectives to focus on the strategy for the investigation, as they debate whether to frame the case to the Major as a possible witness retaliation or as a "stone f\*\*\*ing whodunit."<sup>29</sup> The advantage of the former framing is that it possibly triggers more resources to investigate the Barksdale drug gang, McNulty's current obsession. In this sense, Gant is a very valuable victim for McNulty, if he can leverage Gant's death to amass the investigatory resources he seeks. Implicit here is the knowledge that the murder of a witness signals a very substantial tear in the social fabric. The murder of a witness is a credible threat to the life of anyone who considers providing any information to police—indeed to anyone who is merely seen in the presence of police, whether he is cooperating or not. As a result, the murder of trial witnesses triggers political and community alarm bells, resulting in pressure on the police department to bring to justice those responsible for murdering witnesses. With this in mind,

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<sup>24</sup> See generally ARLIE RUSSELL HOCHSCHILD, *THE MANAGED HEART: COMMERCIALIZATION OF HUMAN FEELING* (1983) (discussing the concept of emotional labor, which describes how employees conform their emotions to meet the demands of their employer).

<sup>25</sup> *The Wire: The Target* (HBO television broadcast June 2, 2002) (Season One, Episode One).

<sup>26</sup> *The Wire: The Detail* (HBO television broadcast June 9, 2002) (Season One, Episode Two).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

McNulty strives to find evidence showing that the Barksdale organization murdered Gant in retaliation for his trial testimony against one of its members.<sup>30</sup> In this instance, McNulty's ability to desensitize himself in the presence of a corpse serves him well in his quest to bring down the Barksdale gang.

## B. Desensitization Associated with Injustice

At the same time, desensitization to the act of killing—as opposed to absence of emotional reaction to dealing with a corpse—is also portrayed throughout the series, and gives rise to various failures by law enforcement to bring the law to bear to vindicate the lives of the victims. For example, during the arrest and plea negotiations involving Wee-Bey at the end of Season One, police and prosecutors seem happy to permit Wee-Bey to take responsibility for seven murders, even though it is clear that he is not responsible for committing all of them.<sup>31</sup> The scene portrays an atmosphere of corruption and rotten cynicism. In the initial negotiation between lawyers without clients present, Levy is working on minimal prison time for Avon.<sup>32</sup> When the subject of murder arises, Wee-Bey's lawyer volunteers that “to avoid the death penalty he'll proffer to at least a half-dozen of your open murders.”<sup>33</sup> Instead of expressing skepticism at the assertion that he was in fact guilty of all of these murders, the prosecutors and police are intrigued at the possibility of closing these cases, regardless of whether it is by a true conviction of the real perpetrator or a false conviction of a person who happens to be willing to take the fall.<sup>34</sup> It becomes clear that closing the cases is the institutional end goal, rather than imposing punishment on the person actually responsible. The responsibility of the government to vindicate the interests of the victims and their families is apparently long forgotten.

Wee-Bey's proffer plays out in a later scene.<sup>35</sup> We see Wee-Bey in an interrogation room enjoying a favorite meal and a Coke.<sup>36</sup> While enthusiastically munching on fries he listens as Bunk names the vic-

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<sup>30</sup> *Id.*

<sup>31</sup> *The Wire: Sentencing* (HBO television broadcast Sept. 8, 2002) (Season One, Episode Thirteen).

<sup>32</sup> *Id.* Levy's work on behalf of Avon was at the expense of his other client D'Angelo. Levy had a conflict of interest so flagrant that in real life it probably would have been questioned by prosecutors and/or remedied by the judge prior to the plea.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

tims he might agree to claim that he murdered (or in the case of Kima, attempted to murder).<sup>37</sup> Another officer asks if that is all.<sup>38</sup> Each victim Wee-Bay names represents an open homicide case weighing on the minds of detectives and their supervisors. And with each offer to confess to the murder of these victims, the officers become a bit more unburdened, and eventually, almost giddy at this stunning turn of good fortune. With his mouth full of fries, Wee-Bey turns to his lawyer and asks nonchalantly, “I do better if I give them more?”<sup>39</sup> After his lawyer explains that he should include every murder he might be charged with later, Wee-Bey responds matter-of-factly with a counteroffer: “For another pit beef sandwich and potato salad I’ll go a few more. . . . Alright, I did Little Man.”<sup>40</sup> He voraciously devours his food as he continues to explain who he killed and why, naming victims he knows about and pausing to gauge whether law enforcement would be willing to pretend to believe his confession.<sup>41</sup> The discussion of dead bodies—a topic that usually induces feelings of nausea and an impulse to expel food from the stomach—is juxtaposed with Wee-Bey’s continual munching and gluttonous demands for more. Food and drink and death and bodies are intermixed in a noxious brew concocted cooperatively by the assassin and his lawyer and agents of the state.

### C. Desensitization and Mass Death

Perhaps the most salient example of mass death in the series is the human trafficking murder of thirteen women in a shipping crate.<sup>42</sup> The coroner initially rules the cause of death to be accidental suffocation.<sup>43</sup> It is not until McNulty checks the airpipe in the crate and observes that it appears to have been deliberately crushed, that the case transforms to a murder investigation.<sup>44</sup> The women were said to be killed because one of them refused to have sex with the men on the ship.<sup>45</sup> The evidence of psychic numbing with respect to these deaths is mixed. Police and prosecutors pursue the case throughout Season

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *The Wire: Ebb Tide* (HBO television broadcast June 1, 2003) (Season Two, Episode One).

<sup>43</sup> *The Wire: Collateral Damage* (HBO television broadcast June 8, 2003) (Season Two, Episode Two).

<sup>44</sup> *Id.*

<sup>45</sup> *The Wire: Hot Shots* (HBO television broadcast June 15, 2003) (Season Two, Episode Three).



Two, but only as part of a larger drug investigation. In the end, they ascertain almost by accident how the women died, as they learn the identities of the drug lords of the ports and attempt unsuccessfully to capture them.<sup>46</sup>

Throughout the investigation, the women in the crate are referred to only in the collective as “the Jane Does.” This is understandable because their identities remained unknown. At the same time, the collective anonymous label distances institutional actors from the tragedy of their possible kidnapping, harrowing voyage, and ultimate demise. Commanders of various departments squabble over the location of the women at their time of death, each trying to avoid taking jurisdiction over the case. Presumably they fear that it will be a resource-intensive and difficult case to solve. Even worse, it will increase the responsible department’s homicide count, resulting in negative political fallout.<sup>47</sup> The Jane Does are listed as a single line (rather than as one separate line for each victim) on Landsman’s whiteboard, reinforcing the absence of individual meaning that each of their lives represented.<sup>48</sup> The detectives in the department try to duck the case, and Cole is delighted when he is ordered to hand over the case to Freamon and Bunk.<sup>49</sup> By contrast, later during the investigation, viewers observe McNulty and Russell lament the idea that the women would remain unidentified and their bodies be used as medical cadavers.<sup>50</sup> In addition, McNulty has been carrying a photo of the woman found floating in the harbor, apparently trying to focus on the real human being whose life was heartlessly taken.<sup>51</sup> This response displayed clear sensitivity to the women’s value as human beings.

On one level, the murder of the women in the shipping crate was solved as a result of the tireless work of many detectives. But the assignment of an effective team was an accident of political backstabbing: Lt. Valchek wanted revenge against union leader Frank Sobotka for having secured premium space in their church for a donated stained glass window. It was Valchek’s desire for payback that led him to propose a deal to Deputy Commissioner Burrell: appoint Cedric Daniels to lead the team investigating the union leader, in exchange for Valchek’s political support. Under Daniels’ effective leadership his team of detectives eventually discovered the identity of the killers of the women in the shipping crate, as an almost incidental part of Val-

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<sup>46</sup> *Id.*

<sup>47</sup> *The Wire: Collateral Damage*, *supra* note 43 (Season Two, Episode Two).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *The Wire: Hot Shots*, *supra* note 45 (Season Two, Episode Three).

<sup>51</sup> *Id.*

check's effort to take down his enemy. This success was a product of a base and petty whim rather than the desire to seek justice for over a dozen victims of human trafficking and murder. One of the most successful investigations depicted in the series was inadvertent. This success was also short lived, for in the end, a new group of trafficked sex workers was unloaded from a shipping container.<sup>52</sup> Clearly, the police were not able to solve the underlying problem.

Later in the series, when police finally discover that Marlo's crew has been hiding murder victim bodies in the vacant row houses, the horror of this discovery is not the focus of most officers.<sup>53</sup> Instead, strategic political thinking overwhelms any natural sense of horror and outrage, exemplified by Landsman ordering Freamon to stop looking for bodies because it will lower the clearance rate.<sup>54</sup> Daniels tells Freamon he will need to ask the bosses whether they will investigate whether there are bodies in the vacants, with the alternative presumably being a cover up.<sup>55</sup> Daniels and Rawls decide that the bodies should be discovered by the end of the year so that the increase in murder statistics gets attributed to Royce.<sup>56</sup> In the meantime, Freamon finds another body and has to wait to hear from his bosses about whether he can call it in to the crime lab or keep the knowledge to himself.<sup>57</sup> Thus, the handling of a dozen bodies hidden in vacant row houses is determined by purely political considerations, in an effort to ensure the uptick in the homicide count can be attributed to the outgoing mayor. The chief motive here is self-preservation, of course. But the willingness to treat murder victims' bodies as pieces on a game board is abetted by their desensitization to killings.

The police department is not the only site of desensitization. In a city with a large number of killings, the press also sometimes becomes numb. For example, at one point three people are murdered in an apartment.<sup>58</sup> When Kima arrives at the scene, which has been secured by uniformed officers for some time, she finds a young child hiding in a closet, presumably having witnessed the carnage.<sup>59</sup> Gutierrez, the young, ambitious reporter, writes the story, expecting to get her first

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<sup>52</sup> *The Wire: Port in the Storm* (HBO television broadcast Aug. 24, 2003) (Season Two, Episode Twelve).

<sup>53</sup> *The Wire: That's Got His Own*, *supra* note 1 (Season Four, Episode Twelve).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *The Wire: Unconfirmed Reports*, *supra* note 4 (Season Five, Episode Two).

<sup>59</sup> *Id.*

front-page byline, and is devastated to learn that the story gets relegated to the middle of the paper.<sup>60</sup>

### III. PLAYER DESENSITIZATION

Players' decisions to kill in *The Wire* are often in response to perceived social slights, minor acts of disloyalty, and failure on the part of the victim to display the devaluation of others' lives required by the rules of The Game. Like soldiers in battle, Players in The Game are required to numb themselves to the horror of frequent murders as a matter of survival within The Game. Players must unlearn the strongly-held intuitions about killing shared by virtually all members of society. They must abandon the sense that murder is a serious threat to the integrity of the social fabric and a debasing of the value of human lives. Those that find that they cannot perform the requisite psychic numbing are forced to exit The Game, usually by becoming a murder victim themselves.

#### A. Training Kids to Become Num

Players learn habits of psychic numbing at a young age. Wallace, a young drug hopper is thrust into simultaneous roles of father and child.<sup>61</sup> As a surrogate father, he cares for a group of about six young siblings and others who stay with Wallace and Poot in a vacant apartment with no running water.<sup>62</sup> Wallace ensures that everyone is ready for school in the morning, making sure they brush their teeth and collect the snacks he distributes in lieu of breakfast.<sup>63</sup> Yet he is also still a child, depicted in an earlier scene pretend playing with an action figure at the site of the open air drug market where he was supposed to be working.<sup>64</sup>

As a good soldier, he points out a young member of Omar's crew (Brandon) who previously robbed the Barksdale gang at gunpoint.<sup>65</sup> But as a man-child, he does not cope well with the fact that this identification led his bosses to kidnap, torture, and kill Brandon, and to

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<sup>60</sup> *The Wire: Not for Attribution* (HBO television broadcast Jan. 20, 2008) (Season Five, Episode Three).

<sup>61</sup> *The Wire: The Wire*, *supra* note 2 (Season One, Episode Six).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *The Wire: The Pager* (HBO television broadcast June 30, 2002) (Season One, Episode Five).

<sup>65</sup> *Id.*

leave his body on display as a signal of dominance.<sup>66</sup> This knowledge haunts him, and this is too apparent to the bosses who are cracking down under police scrutiny, and culling the herd in anticipation of weak links bringing them down. Wallace fails to psychically numb himself to his role in Brandon's torture and death, and Wallace is ordered murdered.<sup>67</sup>

For young Players, lessons in psychic numbing are learned on the job, and demonstrating that one is numb is necessary for an ambitious foot soldier to be promoted in the ranks. With this in mind, Bodie eagerly offers to murder Wallace, in an effort to demonstrate to Stringer his own toughness and loyalty.<sup>68</sup> But when the moment arrives, finding himself face to face with Wallace who is meekly begging for his life and wetting his pants, Bodie hesitates.<sup>69</sup> He orders Wallace to act like a man in the face of death and is angered by Wallace's weakness.<sup>70</sup> But Bodie cannot bring himself to shoot.<sup>71</sup> Poot yells at him to do it, and finally Bodie gets off one shot, but then seems stunned by the sight of Wallace's slumped figure, seriously wounded but still alive.<sup>72</sup> Bodie again hesitates.<sup>73</sup> Poot tries to demonstrate superior psychic numbing by grabbing the gun from Bodie.<sup>74</sup> But then, he too hesitates for a few seconds, while we hear Wallace weakly coughing in the background.<sup>75</sup> Poot finally finishes the job.<sup>76</sup> Here we witness children completing their desensitization training—killing a schoolmate and friend on behalf of the organization. Wallace is not reliable because he could not numb himself, and he was forced to exit The Game by becoming a victim. Bodie and Poot cement their status in the organization themselves by this act of cold blooded murder, and now they are ready for the next assignment.

## B. All in the Family

D'Angelo is perhaps the most central illustration of a Player being forced to exit for his failure to become sufficiently psychically numb to

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<sup>66</sup> *The Wire: The Wire*, *supra* note 2 (Season One, Episode Six).

<sup>67</sup> *The Wire: Cleaning Up*, *supra* note 6 (Season One, Episode Twelve).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

death. The first episode depicted D'Angelo as an inside member of the Barksdale family, who had been previously promoted to a position for which he was not quite ready.<sup>77</sup> D'Angelo is troubled by what he sees as unnecessary violence in *The Game*.<sup>78</sup> He tries to ignore the death of Keisha, a party guest and overdose victim whose body D'Angelo's colleagues callously rolled in a rug and left in a dumpster.<sup>79</sup> He is clearly troubled when Shardene (Keisha's friend and D'Angelo's girlfriend) finds out and accuses him of thinking of her too as just a piece of trash.<sup>80</sup>

Later, D'Angelo is arrested for transporting a large amount of drugs, and is facing the prospect of serving a long prison sentence.<sup>81</sup> He suspects that his gang had ordered the killing of his friend Wallace.<sup>82</sup> D'Angelo had assured his bosses that Wallace was not a risk, but they killed him anyway, to be safe. D'Angelo's breaking point comes when the police show him a gruesome photo of Wallace's body.<sup>83</sup> He flips and proceeds to provide information against his family and the Barksdale crew generally.<sup>84</sup> His mother Brianna later persuades him to renege on his offer to cooperate, and he accepts the 20-year prison sentence offered in a plea deal.<sup>85</sup> But his moment of weakness came back to haunt him, and Stringer later had him murdered in prison because of the risk of disloyalty.<sup>86</sup> D'Angelo was insufficiently numb to the visual depiction of Wallace's bloody corpse, and he was forced to exit *The Game* as a victim. Throughout, D'Angelo is depicted as a victim of his circumstances, occasionally glimpsing the world outside *The Game* and struggling to escape:

My grandfather was Butch Stanford . . . all my people man, my father, my uncle, my cousins . . . it's just what we do. You just live . . . with this shit . . . till you can't breathe no more [looking at the photo of Wallace's body]. I was courtside [in jail] for eight months and I swear to God I was freer in jail than I was at

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<sup>77</sup> *The Wire: The Target*, *supra* note 25 (Season One, Episode One).

<sup>78</sup> See, e.g., *The Wire: The Buys*, (HBO television broadcast June 16, 2002) (Season One, Episode Three) ("You can't tell me [The Game] can't get done without people beating on each other, killing each other, doing each other like dogs.").

<sup>79</sup> *The Wire: Lessons* (HBO television broadcast July 28, 2002) (Season One, Episode Eight).

<sup>80</sup> *The Wire: Game Day* (HBO television broadcast Aug. 4, 2002) (Season One, Episode Nine).

<sup>81</sup> *The Wire: Cleaning Up*, *supra* note 6 (Season One, Episode Twelve).

<sup>82</sup> *Id.*

<sup>83</sup> *The Wire: Sentencing*, *supra* note 31 (Season One, Episode Thirteen).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *The Wire: All Prologue*, *supra* note 1 (Season Two, Episode Six).

home. . . I just want to go somewhere where I can breathe like regular folk. You give me that, and I'll give you them."<sup>87</sup>

In the end he cannot escape his familial handlers; he suffocates to death in prison at the hands of a hired hitman who strangles him in the prison library.<sup>88</sup>

### C. Facing Down Death

Players in *The Game* even become desensitized to their own impending deaths. For example, in one chilling scene, Snoop has previously come to understand off-screen that Michael is unreliable and must be killed.<sup>89</sup> Snoop falsely tells Michael that they are on their way to kill Big Walter, when actually Snoop is driving Michael to a place where she will kill him.<sup>90</sup> Michael questions what Big Walter did to deserve being killed, and Snoop tells Michael, "Deserve got nothin' to do with it. It's his time, that's all."<sup>91</sup> Michael, however, is able to correctly guess that he himself is the true target, and he tricks Snoop into believing that Michael wants to stop in the alley to urinate.<sup>92</sup> Once in the alley, Michael pulls a gun on Snoop.<sup>93</sup> She is surprised but simultaneously completely and immediately resigned to her impending death.<sup>94</sup> She answers Michael's question about why they planned to kill him: ". . . it's how you carry yourself . . . always apart, always asking why . . . when you should be doin' what you told." And then derisively adds, "You was never one of us, and you never could be."<sup>95</sup> Michael angrily cocks the pistol, signaling that Snoop is about to die.<sup>96</sup> She turns left and looks out the driver side window into the side view mirror of the car, smoothing the top of her braids.<sup>97</sup> Without ever looking back at Michael she says, "How my hair look, Mike?"<sup>98</sup> He quickly pivots from his anger and replies, tenderly, "You look good, girl" and then shoots her.<sup>99</sup> In this instance, contrary to Snoop's earlier words,

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<sup>87</sup> *The Wire: Sentencing*, *supra* note 31 (Season One, Episode Thirteen)

<sup>88</sup> *The Wire: All Prologue*, *supra* note 1 (Season Two, Episode Six).

<sup>89</sup> *The Wire: Late Editions*, *supra*, note 14 (Season Five, Episode Nine).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

‘deserve’ had everything to do with Snoop’s death, given that she was a serial killer who was about to murder her protégé.

Some Players seem to have long ago accepted the inevitability of their own violent deaths, and have been living in anticipation of it, not so much seeking it, but knowing it. When Stringer is cornered by Omar and Brother Mouzone, he demands to know what they want and it immediately becomes clear that they seek to kill him, but after humiliating him with news that Avon has betrayed him.<sup>100</sup> As they stand with their guns drawn for what seems like ages, Stringer commands them “Well get on with it.”<sup>101</sup> While not desensitized to his own death, Stringer certainly has accepted its imminent inevitability with a clearer head than those not inured to the violent world he inhabits, and he commands his killers not to belabor the inevitable. In another scene, Bodie seems to have a chance to escape violent death by giving up his corner and running.<sup>102</sup> But by this point he had had enough humiliation and chooses death over dishonor.<sup>103</sup> As his killers creep closer in the dark, he taunts them even as his death seems certain, “I don’t give a f\*\*\*. I’m right here! [gesturing to an implied target on his chest].”<sup>104</sup> His friend Poot urges him one last time to escape, which seems would allow him to save his own life.<sup>105</sup> But he declines and chooses to stand his ground and die on his corner.<sup>106</sup>

#### D. One Graceful Exit

Cutty is an interesting example of desensitization followed by re-sensitization. Because he was re-sensitized, Cutty was forced to exit, but he was permitted to do so gracefully rather than as a murder victim.<sup>107</sup> After serving a prison stint as a loyal Barksdale soldier, Cutty is released and given an assignment that involves killing a rival, Fruit—the very same rival who ripped him off immediately after his release when he was getting his bearings and trying to re-enter The Game.<sup>108</sup> Thus, Cutty might have derived a special satisfaction from

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<sup>100</sup> *The Wire: Middle Ground* (HBO television broadcast Dec. 12, 2004) (Season Three, Episode Eleven).

<sup>101</sup> *Id.*

<sup>102</sup> *The Wire: Final Grades* (HBO television broadcast Dec. 10, 2006) (Season Four, Episode Thirteen).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *The Wire: Homecoming*, *supra* note 9 (Season Three, Episode Six).

<sup>108</sup> *Id.*

this assignment. But instead, he finds himself unable to pull the trigger even though he had a clear shot.<sup>109</sup> Interestingly, after his years in prison, Cutty is no longer psychically numb. He is considerably older now, and unaccustomed to the norms and life on the street. Post-prison Cutty could not bring himself to continue his old life, and remarkably, he strived to make a contribution to something larger than himself; he dreamed of (and eventually succeeded in) opening a boxing gym to provide opportunities for neighborhood youth.<sup>110</sup> Cutty's rehabilitation and legitimate ambition is probably more attributable to his aging out of crime than any valuable services provided to him in prison.<sup>111</sup> His opportunity to exit The Game is a kind of retirement. His exit peacefully tracks his ambition to do good, ironically financed by Avon who all the while continues to destroy the community as a leader in the violent drug trade. Cutty alone was permitted to exit not only without negative consequences, but to a place where he was able to work hard to build something good and, in the process, gain a position of respect.

#### IV. CORPSES AND DESECRATION

In *The Wire*, the bodies of victims are repeatedly desecrated by different actors for different purposes.<sup>112</sup> The Barksdale crew mutilates Brandon's body and then displays it prominently in the community as a demonstration of power.<sup>113</sup> Treatment of corpses sometimes expresses devaluation of the life that came before. For example, McNulty spends hours studying tide charts to show that a body is not his problem, as a way of exacting revenge on colleagues.<sup>114</sup> After partying and having sex with Keisha, Barksdale gang members casually notice that she is dead from a drug overdose.<sup>115</sup> They are described as having rolled up her body in a rug and thrown it in a dumpster, symbolizing her devaluation as a female sex worker.<sup>116</sup> It is this desecra-

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<sup>109</sup> *Id.*

<sup>110</sup> *The Wire: Moral Midgetry*, *supra* note 11 (Season Three, Episode Eight).

<sup>111</sup> See John H. Laub & Robert J. Sampson, *Understanding Desistance from Crime*, 28 CRIME & JUST. 1 (2001) (discussing the correlation between aging and desistance from crime).

<sup>112</sup> Criminal law theory recognizes at least two bases for punishing the desecration of a corpse. One is that the corpse itself together with the deceased person symbolizes it is deserving of respectful treatment. A second is that the deceased person's family, friends, and community expect respectful treatment of the corpse and suffer harm if the corpse is desecrated. See Imogen Jones, *A Grave Offence: Corpse Desecration and the Criminal Law*, 37 LEGAL STUD., 599 (2017).

<sup>113</sup> *The Wire: The Wire*, *supra* note 2 (Season One, Episode Six).

<sup>114</sup> *The Wire: Ebb Tide*, *supra* note 42 (Season Two, Episode One).

<sup>115</sup> *The Wire: Lessons*, *supra* note 79 (Season One, Episode Eight).

<sup>116</sup> *The Wire: Game Day*, *supra* note 80 (Season One, Episode Nine).



tion that drives Keisha's friend Shardene to cooperate with police.<sup>117</sup> At one point, the Barksdale crew uses a funeral home as their safe house.<sup>118</sup> In a place where bodies are carefully handled and prepared for loved ones to pay their final respects, the Barksdale crew is planning future murders. Marlo's group has their own set of unusual practices regarding the treatment of their murder victims, and by the end of the series, even McNulty and Freamon stoop to corpse desecration; I discuss the latter two examples below.

Snoop and Chris face the problem of creating many victims, and so they develop a method for hiding the bodies in vacant row houses. They carefully stage the "burials" with plastic and lime, sometimes even having their victims kneel in place in their "graves" just prior to being shot.<sup>119</sup> In one scene, while making preparations just inches away from the kneeling victim, Chris and Snoop are depicted calmly discussing how they are going to preserve the dead body.<sup>120</sup> The victim begs for his life and vomits.<sup>121</sup> Chris's voice is calm and soothing—"Don't fret, boss. I got you covered. Quick and clean, I promise."<sup>122</sup> But the effort to sooth is borne out of a concern for efficient business, not compassion or empathy. Chris, Snoop, and Marlo are depicted throughout the series as nearly devoid of emotion, especially when it comes to killing. The notable exception is when Chris killed Devar Manigault, a sexual abuser of children and Michael's mother's boyfriend.<sup>123</sup> Chris ruthlessly beats Devar to death with his bare hands in a righteous rage over Devar's child sexual abuse.<sup>124</sup> Snoop watches, stunned, and quips that Chris was so angry he did not even wait until they positioned the body in the vacant house, per their usual procedure.<sup>125</sup> Just before walking away, Chris spits on the body in a final expression of contempt and disgust.<sup>126</sup> This emotional speech act be-

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<sup>117</sup> *Id.*

<sup>118</sup> See, e.g., *The Wire: Time After Time*, *supra* note 23 (Season Three, Episode One).

<sup>119</sup> *The Wire: Boys of Summer* (HBO television broadcast Sept. 10, 2006) (Season Four, Episode One). This evokes the horrific and depraved practice by Nazi soldiers of ordering victims to spend hours digging what would become their own mass grave, and then forcing the victims to position themselves so that they fall into the grave upon being shot (e.g., DANIEL JONAH GOLDHAGEN, *HITLER'S WILLING EXECUTIONERS: ORDINARY GERMANS AND THE HOLOCAUST*, 226–27 (1996)). The similarities are the depraved efficiency of killing methods; the differences in scale, motive, state actors, and so forth remain important ones.

<sup>120</sup> *The Wire: Boys of Summer*, *supra* note 119 (Season Four, Episode One).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *The Wire: Misgivings* (HBO television broadcast Nov. 19, 2006) (Season Four, Episode Ten).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

comes Chris's undoing later. Chris's DNA is found on Devar's body and he is finally arrested for one of the many murders he committed.<sup>127</sup> Chris's psychic numbing was necessary for serial killing; his failure to numb led to his capture and punishment.

Chris and Snoop desecrate the bodies in the vacant row houses by hiding them. Family members have no idea that the body of their missing loved one is now in a plastic tomb in a vacant house just blocks away. The police perpetuate this desecration because they are largely not investigating these missing persons as murder victims. Virtually no resources are devoted to the Snoop/Chris serial killings, possibly because the victims are drug war players or consumers, possibly because they are Black, possibly because the police do not know in every case that the person is missing or otherwise lack the means to investigate properly. All the while, Chris and Snoop fill vacant buildings with corpses and nobody notices. These hidden bodies permit Marlo to rise to power undetected, because police assume he has some secret to success that does not involve lethal violence. When the bodies are finally discovered, an entire year goes by with Bunk still awaiting the lab work from the medical examiner due to a paperwork error attributable to city budget cuts.<sup>128</sup>

The theme of corpse desecration is amplified in the final season of the series, with McNulty's and Freamon's manipulation of dead bodies to support McNulty's fabricated story of a serial killer.<sup>129</sup> Their acts are supported by the city newspaper which is in economic decline and employs a reporter who is an unethical opportunist who promotes the story, at first independently and then with McNulty's manipulation.<sup>130</sup> At first, it looks as though McNulty's efforts to secure department resources through this corrupt scheme will fail because of the department's explicit devaluation of homeless people.<sup>131</sup> But after Landsman tells McNulty that he does not care about the serial killer of homeless vagrants, McNulty leaks his fabrication to the press.<sup>132</sup> Ultimately, McNulty and Freamon get the resources they seek to intercept Marlo's gang's communication.<sup>133</sup> Marlo's gang is stopped, but the Players that

<sup>127</sup> *The Wire: Clarifications* (HBO television broadcast Feb. 24, 2008) (Season Five, Episode Eight).

<sup>128</sup> *E.g., The Wire: The Dickensian Aspect*, *supra* note 5 (Season Five, Episode Six).

<sup>129</sup> *E.g., The Wire: Unconfirmed Reports*, *supra* note 4 (Season Five, Episode Two).

<sup>130</sup> *E.g., The Wire: React Quotes* (HBO television broadcast Feb. 3, 2008) (Season Five, Episode Five).

<sup>131</sup> See Lasana T. Harris & Susan T. Fiske, *Dehumanizing the Lowest of the Low: Neuroimaging Responses to Extreme Out-Groups*, 17 *PSYCHOL. SCI.* 847 (2006) (demonstrating that groups that are both "stereotypically hostile" and "stereotypically incompetent"—such as the homeless—are more likely to be perceived as less than human).

<sup>132</sup> *The Wire: React Quotes*, *supra* note 130 (Season Five, Episode Five).

<sup>133</sup> *Id.*

remain standing re-group and prepare for the next iteration of the murderous drug trade.

## V. VICTIM HIERARCHY

*The Wire* depicts an unspoken hierarchy of victims constructed not by notions of legal malice, justification, or excuse, but rather by the usefulness of the victim to institutional goals. On the one hand, an important expressive function of punishment is repairing the perceived status of the victim.<sup>134</sup> On the other hand, the possibility of inadvertently producing an improper status hierarchy of victims is one of the reasons that victim impact statements in homicide cases is the subject of hot debate. In murder cases, victim impact statements typically describe the deceased victim's personal characteristics and the murder's psychological effect on the survivors. When members of the jury perceive the victim to be more "respectable," they sometimes make a corresponding judgment that the crime was more serious.<sup>135</sup> This presents a problem, because victim characteristics such as socioeconomic status and race might improperly influence—via victim impact statements—the jury's perception of victim worth, and ultimately, crime seriousness.<sup>136</sup>

### A. Police Perspective

*The Wire* depicts two different frameworks of victim status hierarchy: one for police and one for Players. For police, other police officers who are killed are at the top of the victim hierarchy. Police officers are depicted reacting to the killing of fellow officers, somewhat understandably, with an unmatched zeal to identify and capture the killer. To the extent that solidarity and loyalty are integral aspects of police culture, the extra-legal punishment by police officers of a suspected cop-killer bears some resemblance to the Anglo-Saxon practice of the blood feud in the middle ages. Historically, the kin of the slain took their vengeance by killing the murderer (or in earlier periods, the murderer's kin).<sup>137</sup> In *The Wire*, police react to the shooting of a fellow

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<sup>134</sup> See Heather Strang & Lawrence W. Sherman, *Repairing the Harm: Victims and Restorative Justice*, 2003 UTAH L. REV. 15 (2003).

<sup>135</sup> See Edith Greene et al., *Victim Impact Evidence in Capital Cases: Does the Victim's Character Matter?*, 28 J. APPLIED SOC. PSYCHOL. 145, 154 (1998).

<sup>136</sup> See Janice Nadler & Mary R. Rose, *Victim Impact Testimony and the Psychology of Punishment*, 88 CORNELL L. REV. 419 (2002).

<sup>137</sup> Thomas A. Green, *Societal Concepts of Criminal Liability for Homicide in Mediaeval England*, 47 SPECULUM 669, 687 (1972).

officer by terrorizing the neighborhood until the person believed responsible is found, at which point they extract immediate vengeance through physical punishment.<sup>138</sup> Unlike in the middle ages, this contemporary form of blood feud is of course not reflected in the law in the books; the contemporary practice is nevertheless tolerated to some extent by society and by the justice system. Because slain police officers are at the top of the status hierarchy, this contemporary version of vengeance is generally reserved for them.

At the same time, extra-legal punishment practiced by police officers is not limited to vengeance for lethal violence. Any disrespect shown by suspects toward officers is usually met with immediate physical punishment. For example, in Season One, Bodie and his crew are subjected to a police sweep after police fail to find the crew's stash (the crew having moved it to a new location).<sup>139</sup> The police swarm in and take everyone present into custody.<sup>140</sup> Bodie pushes back, first verbally, and then turns around and punches an older officer.<sup>141</sup> The other officers swiftly administer a brutal beating.<sup>142</sup> This includes Kima, who sprints from a distance to join in on the retribution,<sup>143</sup> thus performing traditional masculinity and serving to maintain her high standing in the eyes of many colleagues. Extra-legal punishment is extracted on her behalf in a later episode, when Bird, who is in custody, subjects Kima to a series of vile homophobic slurs.<sup>144</sup> In response, her colleagues join her in administering a vicious beating to Bird while he is in handcuffs.<sup>145</sup> The suggestion is that they are defending her honor. Interestingly, the beating is led by Daniels, a police lieutenant, a lawyer, and her boss.

Another illustration of victim hierarchy occurs just before Bird is beaten. Kima points out to Bird that he will face the death penalty for killing a state's witness, in an effort to get him to confess and/or provide information.<sup>146</sup> She is invoking the status of the victim Gant—high on the totem pole as a witness. In the same scene, the camera cuts to Omar, who is just outside Bird's interrogation room discussing

<sup>138</sup> *The Wire: The Hunt* (HBO television broadcast Aug. 18, 2002) (Season One, Episode Eleven) (in this episode Detective Holley believes Bubbles to be the shooter of Officer Kima Greggs and begins to beat Bubbles until other officers restrain him).

<sup>139</sup> *The Wire: The Buys*, *supra* note 78 (Season One, Episode Three)

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *The Wire: One Arrest* (HBO television broadcast July 21, 2002) (Season One, Episode Seven).

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

with Bunk his own perception of the high status of Gant in the hierarchy of victims.<sup>147</sup> Bunk asks Omar why he is coming forward on Gant's murder, and Omar invokes Gant's status as a "working man," someone uninvolved in The Game and so off limits according to Omar's code of conduct.<sup>148</sup> The Barksdale gang's violation of this code by killing a "Citizen" prompts Omar to violate the general no-snitching norm and go to police.

The place of Citizens in Omar's code of conduct is mirrored by the place of Citizens in the police department's victim hierarchy framework. For the police, Citizens (people not involved in The Game) are next highest on the victim hierarchy, after police officers. Within that category, victims who are state's witnesses are higher status than those who are not, and Gant's murder illustrates this once again. Gant was a very important victim for McNulty, not because of the value of Gant as a living person, but rather because Gant's murder serves to justify pursuing what McNulty has been seeking to convince the department to do: to investigate the drug gang that is taking over West Baltimore. Gant is important, but only as a means to McNulty's end.

Moving lower in the police framework of victim hierarchy are Players in The Game. These victims' deaths are investigated only to the extent that the expenditure of resources is incentivized by the department. D'Angelo's killer stages the murder as a suicide, and law enforcement is happy to accept it as such because no individual feels compelled to investigate further.<sup>149</sup> Eventually, McNulty gets curious and his research determines that D'Angelo was actually murdered.<sup>150</sup> But McNulty's motivations are almost *sui generis* within the police department—he is one of the only officers who derives personal satisfaction from solving especially challenging cases.<sup>151</sup> And the case is depicted as never fully investigated.

## B. Players' Perspective

From within The Game, Players have their own framework of victim hierarchy. "Citizens" with no involvement in The Game are valued most and are generally considered off limits for harm. Citizens who are family members—even family members of enemies—are similarly

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<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *The Wire: All Prologue*, *supra* note 1 (Season Two, Episode Six).

<sup>150</sup> *The Wire: All Due Respect*, *supra* note 8 (Season Three, Episode Two).

<sup>151</sup> The writers suggest implicitly that McNulty pursues especially difficult cases for reasons of ego gratification to assure himself that he's the "smartest boy on the class," after having dropped out of college.

off limits. For example, a scandal ensued when a Barksdale enforcer put Omar's grandmother in harm's way during an attempted hit.<sup>152</sup> She lost her best church hat, and the Barksdales were obliged to replace it.<sup>153</sup> At the same time, if Citizens involve themselves as witnesses they become fair game, and are subject to killing, as in the examples of William Gant<sup>154</sup> and Nakeisha Lyles.<sup>155</sup> Conformity to The Game's code of devaluation of human life is essential. To the extent any individual Player is unable to demonstrate a willingness to murder anyone the bosses target, they are forced to exit The Game, often by becoming a homicide victim themselves.

## VI. THE LAW OF MURDER: IN THE BOOKS AND IN ACTION

Historically in English common law, and across many cultures, homicide stands alone as one of the most basic and serious wrongs that is associated with prohibitions and serious punishment.<sup>156</sup> Within the law of homicide, the doctrine of legal malice provides a framework for grading homicides and assigning punishment. The legal distinction between stealthy and unplanned homicides can be found in the early middle ages or before.<sup>157</sup> And imposing the most serious punishment (usually death) for homicide is a constant historically.<sup>158</sup> This unique place of homicide in law is reflected by (and a reflection of) social values regarding the sacredness of human life.

Most homicides depicted in *The Wire* would be recognized by formal law as being of the most serious kind: premeditated and deliberate killings—first degree murder in common law terms. Yet, for almost every murder in the series, the responsible individuals were not depicted as receiving punishment by the criminal justice system. Over the course of the series there were, by my count, roughly 70 killings depicted.<sup>159</sup> A large majority of these were premeditated murders. This

<sup>152</sup> *The Wire: Slapstick* (HBO television broadcast Nov. 21, 2004) (Season Three, Episode Nine).

<sup>153</sup> *Id.*

<sup>154</sup> *The Wire: The Target*, *supra* note 25 (Season One, Episode One)

<sup>155</sup> *The Wire: Cleaning Up*, *supra* note 6 (Season One, Episode Twelve).

<sup>156</sup> Originally, a hallmark of murder was that it was secret, in the sense that the killer hid the victim's body to conceal the killing. See Green, *supra* note **Error! Bookmark not defined.**, at 689. Later, murder was expanded to refer to any killing where the perpetrator was unknown. *Id.* Non-murderous killings were those done out in the open, usually as a result of a fight or quarrel. *Id.*

<sup>157</sup> *See id.*

<sup>158</sup> *See id.* at 688.

<sup>159</sup> Actual annual homicide counts in Baltimore have ranged from about 200 to 340 per year in the past decade (2007–17). *Baltimore Homicides*, BALT. SUN, <http://data.baltimoresun.com/news/police/homicides/> [<https://perma.cc/FJ62-Z2KC>]. In the Western District (where most homi-

fictional depiction of the absence of accountability for killings is unfortunately largely accurate. In major cities both then and today, there are hundreds of murders each year. The clearance rate for these murders is discouragingly low.<sup>160</sup> On the show, the steady accumulation of murders is unaddressed by mechanisms of condemnation and punishment. Like many neighborhoods in many large cities, West Baltimore is portrayed as what Alexandra Natapoff calls an “underenforcement zone”<sup>161</sup> where murders routinely go unsolved and unpunished.<sup>162</sup> The glaring incongruity within law is that overenforcement and underenforcement simultaneously ravage communities, resulting in many young community members winding up either dead or imprisoned. Law in the books implies that autonomous individuals choose whether or not to comply with law, and law enforcement applies liability and punishment of those who choose not to. One of the unique contributions of *The Wire*, as others have previously observed, is its illustration of law in action being determined by social status, group membership, institutions and their incentives, political forces, among other dynamics, all within a single series.<sup>163</sup>

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cides in the series took place), the annual homicide count during the past decade was about 20 to 65 per year. *Id.* In 2015, 93% of homicide victims in Baltimore were Black. Jess Bidgood, *The Numbers Behind Baltimore’s Record Year in Homicides*, N.Y. TIMES (Jan. 15, 2016), <https://www.nytimes.com/interactive/2016/01/14/us/Baltimore-homicides-record.html> (last visited Feb. 10, 2018).

<sup>160</sup> Recent clearance rates in Baltimore range from about 30% to 50%. *Baltimore Police Solving Disturbingly Low Number of the City’s Murders*, CBS BALT. (Aug. 4, 2015), <http://baltimore.cbslocal.com/2015/08/04/baltimore-police-have-only-cleared-about-a-third-of-the-citys-murders/> [https://perma.cc/ERY9-M5KS]; Justin Fenton, *Baltimore Homicide Closure Rate Near 50 Percent, but Figure is Complicated*, BALT. SUN (Apr. 22, 2017), <http://www.baltimoresun.com/news/maryland/investigations/bs-md-ci-baltimore-homicide-clearance-rate-20170422-story.html> [https://perma.cc/9UDR-KXFD]. In Chicago, in 2016, less than 20% of 763 murders had been solved. Chip Mitchell & Michael Lansu, *Chicago’s Murder-Clearance Rate Falls to Historic Low*, WBEZ (Jan. 26, 2017), <https://www.wbez.org/shows/wbez-news/chicagos-murderclearance-rate-falls-to-historic-low/fecb9e20-595d-405b-8dd8-331a83f09e1d> [https://perma.cc/976G-NMSK].

<sup>161</sup> See Alexandra Natapoff, *Underenforcement*, 75 *FORDHAM L. REV.* 1715, 1717 (2006).

<sup>162</sup> Underenforcement has expressive potential. It can communicate to members of vulnerable groups that their lives don’t matter. That if they are murdered, their killer will not be brought to justice. And perhaps their body will lie on the ground, in the middle of the street, where it fell, for four hours in the summer heat. In the hours following the death of Michael Brown, according to the New York Times, “neighbors were horrified by the gruesome scene . . . face down in the middle of the street, blood streaming from his head.” Kids were ushered into rooms with windows that faced in the other direction so they couldn’t see. The image of Brown’s corpse in the open set the scene for the political unrest that followed. “It was very disrespectful to the community and the people who live there. It also sent the message from law enforcement that ‘we can do this to you any day, any time, in broad daylight, and there is nothing you can do about it.’” Julie Bosman & Joseph Goldstein, *Timeline for a Body: 4 Hours in the Middle of a Ferguson Street*, N.Y. TIMES (Aug. 23, 2014), <https://www.nytimes.com/2014/08/24/us/michael-brown-a-bodys-timeline-4-hours-on-a-ferguson-street.html> (last visited Feb. 10, 2018). These expressive effects can lead to disrespect for the law. See Janice Nadler, *Flouting the Law*, 83 *TEX. L. REV.* 1399 (2005).

<sup>163</sup> See, e.g., Susan A. Bandes, *And All the Pieces Matter: Thoughts on the Wire and the Criminal Justice System Commentary Symposium: The HBO Series the Wire*, 8 *OHIO STATE J. CRIM.*

In her book, *Crook County*, Nicole Van Cleve discusses the “de-futurizing” of individuals in the criminal justice system based on expectations derived from the simple happenstance of race, class, gender, and neighborhood.<sup>164</sup> Young Black and Latino men in the criminal justice system are de-futurized by prosecutors and judges who assume that it is the destiny of the young Black and Latino defendants before them that they will be convicted felons by the time they reach adulthood.<sup>165</sup> *The Wire* depicts another kind of de-futurizing in the criminal justice system, which takes place not in the courtrooms but in the streets, in communities where the violent drug trade is the destiny for many young people of color. This de-futurization is the result of many social and economic forces, including the absence of meaningful educational and employment opportunities. Police officers seek to shut down the drug trade to stem the flow of murders, but to no avail. Arrested Players, whether they are foot soldiers or leaders, are swiftly replaced, and the market continues without pause, as does the violence that inevitably accompanies it. The only disruption to the market occurs when Lt. Colvin sets up a free zone (“Hamsterdam”) where the drug market can operate without police enforcing drug laws.<sup>166</sup> They find that while crime increased near Hamsterdam, it decreased in the rest of the district.<sup>167</sup> Yet Colvin is himself just as vulnerable to institutional pressures as his colleagues, and when there is a murder in Hamsterdam he orders the body moved, preserving the chances that his experiment will continue but compromising any investigation of the murder.<sup>168</sup> The experiment is discovered and immediately shut down because it is political dynamite that threatens the positions of everyone around it.<sup>169</sup> No one ever steps back to try to extrapolate any lessons from Hamsterdam, or to examine whether the apparent decrease in violent crime in the district can be achieved through lawful means. Modifying the drug war—whether through changes in policing or changes in law—is apparently unthinkable. And so the drug war, and the murders, rage on.

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LAW 435–446 (2010).

<sup>164</sup> NICOLE GONZALEZ VAN CLEVE, *CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA’S LARGEST CRIMINAL COURT*, 55 (2016).

<sup>165</sup> *Id.*

<sup>166</sup> *The Wire: Dead Soldiers* (HBO television broadcast Oct. 3, 2004) (Season Three, Episode Three).

<sup>167</sup> *The Wire: Moral Midgetry*, *supra* note 11 (Season Three, Episode Eight).

<sup>168</sup> *The Wire: Slapstick*, *supra* note 15 (Season Three, Episode Nine).

<sup>169</sup> *The Wire: Mission Accomplished* (HBO television broadcast Dec. 19, 2004) (Season Three, Episode Twelve).



## VII. CONCLUSION

Ten years after the airing of final episode of *The Wire*, America today faces the deadliest drug epidemic in its history. The annual death toll from opioid overdoses is now almost 50,000 people.<sup>170</sup> Unlike the stickiness of the drug war depicted in *The Wire*, modifying the current war against opioid drugs shows signs of being thinkable. Communities are turning their focus to prevention, treatment, and risk reduction<sup>171</sup>—some of the same strategies employed by the social service providers who entered Hamsterdam. The current drug epidemic differs along several dimensions from the drug epidemic depicted in *The Wire*. Perhaps the most salient difference is race, prompting many to wonder whether the newfound openness to public health oriented solutions to the opioid epidemic is motivated by empathy for (white) addicts that was absent during previous drug epidemics.<sup>172</sup>

The moral principal of placing the highest value on human life relies on criminal law to enforce it. When a life is taken, the norm against killing is weakened; society relies on criminal law to redress the killing in order to reaffirm the norm. The norm against killing entails placing the highest value on human life, and without this, the criminal law is completely toothless. Just as paper currency is worthless unless we all agree to act as if it has value, human lives become worthless if they are treated as if they lack value. The criminal law cannot operate if murderers are unafraid and police do not investigate; it cannot operate if witnesses are killed and investigation resources are funneled perversely; and it cannot operate if psychopathic street criminals like Marlo, Snoop, and Chris and ordinary office criminals like Clay Davis and Maurice Levy gather power unchecked. Meanwhile, exceptional talent like McNulty and Freamon and dedicated public servants like Bunk and Pearlman are shunted off track. All of these dynamics interact to lead the most talented to stoop to the lowest immoral behavior. Corpses are mutilated, displayed, moved, tampered with, falsely staged as sexual assault victims, and hidden in haunted houses all to serve the ends of violent Players and inadequate

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<sup>170</sup> The Editorial Board, *An Opioid Crisis Foretold*, N.Y. TIMES (Apr. 21, 2018), <https://www.nytimes.com/2018/04/21/opinion/an-opioid-crisis-foretold.html> (last visited May 2, 2018).

<sup>171</sup> See, e.g., Elana Gordon, *Philly Is Floating on Opioids: Civic Leaders Address Drug Crisis, Share Solutions*, WHY (Apr. 21, 2018), <https://why.org/articles/state-of-the-city-opioid-panel/> [<https://perma.cc/6BV2-K7QF>].

<sup>172</sup> In fact, “the common perception of the epidemic as an almost entirely white problem rooted in overprescription of painkillers is no longer accurate” as drug deaths among black Americans are now at levels similar to whites, a rise that far outpaces that of any other racial or ethnic group. Josh Katz and Abby Goodnough, *The Opioid Crisis Is Getting Worse, Particularly for Black Americans*, N.Y. TIMES (Dec. 22, 2017), <https://www.nytimes.com/interactive/2017/12/22/upshot/opioid-deaths-are-spreading-rapidly-into-black-america.html> (last visited, May 2, 2018).

police. Institutional goals that are orthogonal to seeking justice become the tail that wags the dog, and lead to perverse incentives that ignore or devalue human life.

Acts of homicide generally, and murder especially, expressively attack the shared norms of the community. Criminal law is essential to the work of maintaining and repairing the social order, by condemning and punishing, thereby performing “normative reconstruction.”<sup>173</sup> But where, as in *The Wire*, criminal law’s strong prohibitions on taking human life do not reflect existing social norms, state actors fail to consistently enforce the criminal law, and so it fails to reconstruct, and wrongs go unchecked. Criminal law cannot serve its expressive function of repairing tears in the social fabric if the people do not agree on the basic moral values that the criminal law embodies in the first place. If we cannot agree that human life is sacred and taking a life is a grave wrong, then the criminal law is not well positioned to reaffirm shared moral values that we do not in fact share.

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<sup>173</sup> Joshua Kleinfeld, *Reconstructivism: The Place of Criminal Law in Ethical Life*, 129 HARV. L. REV. 1485 (2016).