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THE DIGNITY AND HUMANITY OF BRUCE SPRINGSTEEN'S CRIMINALS

Abbe Smith*

*Well they closed down the auto plant in
Mahwah late that month
Ralph went out lookin' for a job but he
couldn't find none
He came home too drunk from mixin'
Tangueray and wine
He got a gun, shot a night clerk, no
they call 'm Johnny 99¹*

I. INTRODUCTION

To those who know Bruce Springsteen for his popular rock songs, and not his more understated ballads, Springsteen seems an unlikely champion of criminals and prisoners. They think of songs like "Born to Run,"² "Glory Days,"³ and "Born in the U.S.A.,"⁴ and picture crowds chanting along to songs about ordinary Americans, their dreams, cars, and girls. But, they wouldn't have to dig very deep to find trouble just beneath the surface.

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¹ BRUCE SPRINGSTEEN, *Johnny 99*, on NEBRASKA (Columbia Records 1982).

² BRUCE SPRINGSTEEN, *Born to Run*, on BORN TO RUN (Columbia Records 1975).

³ BRUCE SPRINGSTEEN, *Glory Days*, on BORN IN THE U.S.A. (Columbia Records 1984).

⁴ BRUCE SPRINGSTEEN, *Born in the U.S.A.*, on BORN IN THE U.S.A. (Columbia Records 1984).

In "Born in the U.S.A.," probably Springsteen's most famous song,⁵ the central character tells a familiar tale of growing up hard, getting into trouble, and joining the military to get out of it:

Born down in a dead man's town
The first kick I took was when I hit the ground
You end up like a dog that's been beat too much
Till you spend half your life just covering up
...
Got in a little hometown jam
So they put a rifle in my hand
Sent me off to a foreign land
To go and kill the yellow man⁶

After serving in Vietnam, the central character returns home to no job, no employment prospects, and no real future. He sings of his grim life, in the "shadow of the penitentiary":

Down in the shadow of the penitentiary
Out by the gas fires of the refinery
I'm ten years burning down the road
Nowhere to run, ain't got nowhere to go⁷

Like no other popular musician today, Springsteen identifies with the common man.⁸ As Springsteen biographer Dave Marsh has

⁵ Springsteen credits the album *Born in the U.S.A.* with "chang[ing his] life" and giving him his "largest audience," and says that the song "Born in the U.S.A." is "probably one of my five or six best songs." BRUCE SPRINGSTEEN, *SONGS* 167 (1998).

⁶ SPRINGSTEEN, *Born in the U.S.A.*, *supra* note 4.

⁷ *Id.* "Born in the U.S.A." has been widely misunderstood as a celebration of America instead of an ironic anthem. See ERIC ALTERMAN, *IT AIN'T NO SIN TO BE GLAD YOU'RE ALIVE: THE PROMISE OF BRUCE SPRINGSTEEN* 146-69 (2001) (discussing the release of "Born in the U.S.A.," its exploitation by President Ronald Reagan and the Republican Party, and the flag-waving at concerts). As social critic Eric Alterman notes, "Nothing in this lyric can credibly be interpreted as optimistic, much less celebratory of life in the United States. To be born in the U.S.A. is a curse for its hero, a cross to bear, not cause for a rousing cheer." *Id.* at 157. Springsteen himself said he wrote the song "to strip away that mythic America which was Reagan's image of America." *Id.*

written: "[W]e know these characters—from time to time, we may have been them . . ."⁹ What's more, Springsteen identifies with the common criminal. Springsteen writes songs about the damaged, the dispossessed, the poor, the prisoner. He writes about people at the margins, people struggling to survive. He writes about the moment when the margins don't hold and an otherwise ordinary life breaks: "the thin line between stability and that moment when time stops and everything goes to black, when the things that connect you to your world—your job, your family, friends, your faith, the love and grace in your heart—fail you."¹⁰

In this essay, I discuss Springsteen's criminals by focusing on two albums, *Nebraska*¹¹ and *The Ghost of Tom Joad*,¹² and Springsteen's title song to the movie soundtrack *Dead Man Walking*.¹³ These are classic albums about criminals and prisoners, and "Dead Man Walkin'" may be one of the best songs ever written about being on death row.¹⁴ Before getting into the music, I first note

⁸ See DAVE MARSH, *TWO HEARTS* 143 (Routledge 2003) (discussing the song "Thunder Road" as not about "salvation" or "heroism" but about how "there's always a chance if the girl . . . will only believe as deeply as the singer . . . [that there] may be a way of escaping these cruel streets, of leaving the poverty and desperation of the empty lives around them").

⁹ *Id.*

¹⁰ *Id.* (Springsteen describing the theme of the album *Nebraska*). Dave Marsh describes the songs on *Nebraska* as "character studies . . . grounded in the new depression" of the early 1980s, when unemployment was high, people were losing their homes, communities were crumbling, and there was a growing economic divide in the country. *Id.* at 369, 367-68.

¹¹ BRUCE SPRINGSTEEN, *NEBRASKA* (Columbia Records 1982). Several songs on *Born in the U.S.A.*, including the title track, "Working on the Highway," "My Hometown," and "Downbound Train" were left over from *Nebraska* and offer similar themes. See SPRINGSTEEN, *SONGS*, *supra* note 5, at 163-67; ALTERMAN, *supra* note 7, at 139. However, I will not be discussing those songs.

¹² BRUCE SPRINGSTEEN, *THE GHOST OF TOM JOAD* (Columbia Records 1995).

¹³ BRUCE SPRINGSTEEN, *Dead Man Walkin'*, on *DEAD MAN WALKING: MUSIC FROM AND INSPIRED BY THE MOTION PICTURE* (Columbia Records 1996).

¹⁴ See Stephen Holden, *Critic's Notebook: A Guide to Pop Albums for Adults*, N.Y. TIMES, Nov. 29, 1996, at C1 (calling "Dead Man Walkin'" one of Springsteen's "most powerful performances"); see also Jim Farber, "Dead"-ly Songs Are Full of Life: Super Soundtrack for Death Row Film Offers Springsteen's Killer Title Tune & Gems From Vedder and Carpenter, N.Y. DAILY NEWS, Jan. 16, 1996, at 36 (noting that Springsteen's song "capture[s] [Sean Penn's] character's broken soul," and "offer[s] a more stinging line than anything in the script: 'I won't ask for

the historical context—Springsteen's career has taken place during a particularly hostile time for lawbreakers—and offer a brief biographical sketch of Springsteen.

II. SPRINGSTEEN'S EMBRACE OF CRIMINALS IN A HOSTILE CLIMATE

Since the 1970s, when mandatory sentencing swept the United States, sending more men and women to prison than ever before and for longer periods of time, life has been increasingly difficult for people who commit crime.¹⁵ We do not want to know or understand these people, or consider the circumstances of their crimes.¹⁶ Instead, we dismiss them as criminals and dispense punishment, the more the better.¹⁷

As we continue to make our way into the Twenty-first Century, things have only gotten worse for lawbreakers. The United States now has the highest incarceration rate in the world.¹⁸ According to Justice Department figures, more than 2 million people are locked up

forgiveness,' he sings, 'my sins are all I have.'). "Dead Man Walkin'" has competition from two moving songs by Steve Earle: "Billy Austin," told from the perspective of a death row inmate, and "Ellis Unit One," told from the perspective of a death row guard, offer competition. See STEVE EARLE, *Billy Austin*, on SHUT UP AND DIE LIKE AN AVIATOR (MCA Records 1991); STEVE EARLE, *Ellis Unit One*, on DEAD MAN WALKING: MUSIC FROM AND INSPIRED BY THE MOTION PICTURE (Columbia Records 1995).

¹⁵ See generally MARC MAUER, RACE TO INCARCERATE (1999); LOIS G. FORER, A RAGE TO PUNISH (1994); see also Brent Staples, *Why Some Politicians Need Their Prisons to Stay Full*, N.Y. TIMES, Dec. 27, 2004, at A20.

¹⁶ For a classic treatment of these questions, see CURTIS BOK, STAR WORMWOOD (1959). *Star Wormwood*, written by former justice of the Pennsylvania Supreme Court Curtis Bok (and father of Harvard University President Derek Bok), is the story of a Depression-era orphan named Roger who is charged with capital murder and rape. It falls to his court-appointed lawyer to make the jury understand both his innocence (he is a true innocent, an unworldly young man whose crime is more the product of misfortune than will) and his guilt (he is not guilty of rape and he lacks the intent required for murder, but the gruesome nature of the crime suggests otherwise). The book is organized into three chapters, followed by commentary: The Crime, The Trial, and The Execution.

¹⁷ See generally Abbe Smith, *The Burdens of Representing the Accused in an Age of Harsh Punishment*, 18 NOTRE DAME J.L. ETHICS & PUB. POL'Y 451 (2004).

¹⁸ Gail Russell Chaddock, *US Notches World's Highest Incarceration Rate*, CHRISTIAN SCI. MONITOR, Aug. 18, 2003, at 2.

in this country,¹⁹ and more than 5.6 million Americans are either in prison or have served time there.²⁰ Notwithstanding declining crime rates, we cannot seem to satisfy the demand for ever greater punishment.²¹ As we continue to "get tough" on crime, prison terms get longer.²² Some states now spend more to incarcerate people than to educate them.²³

¹⁹ Fox Butterfield, *Despite Drop In Crime, An Increase In Inmates*, N.Y. TIMES, Nov. 8, 2004, at A14 [hereinafter Butterfield, *Increase in Inmates*] (reporting that there are 2,212,475 men, women, and children behind bars in the United States).

²⁰ Chaddock, *supra* note 18, at 2; Staples, *supra* note 15 (noting that, since the 1970s, the prison population has increased tenfold, creating a large and growing "felon class," currently numbering 13 million); *see also* JENNIFER GONNERMAN, *LIFE ON THE OUTSIDE* 7-8 (2004):

The reality is inescapable: America has become a nation of ex-cons. Thirteen million people have been convicted of a felony and spent some time locked up. That's almost 7 percent of U.S. adult residents. If all of these people were placed on an island together, that island would have a population larger than many countries, including Sweden, Bolivia, Senegal, Greece, or Somalia.

²¹ *See* Butterfield, *Increase In Inmates*, *supra* note 19, at A14 (reporting that, despite a decline in the national crime rate, the number of jail and prison inmates rose 2.1 percent in 2003); *see also* MAUER, *supra* note 15, at 19-37 (finding that from 1972 to 1997, the prison population increased by 500 percent despite a decrease in the rate of violent crime); Marc Mauer, *The Causes and Consequences of Prison Growth in the United States*, in *MASS IMPRISONMENT: SOCIAL CAUSES AND CONSEQUENCES* 4, 6 (David Garland ed., 2001) (noting that the growth of the prison population is due primarily to changes in sentencing, probation, and parole policy and not changes in the rate of crime).

²² *See* Butterfield, *Increase In Inmates*, *supra* note 19 (reporting that the average time served in prison rose from 23 months in 1995 to 30 months in 2001); Fox Butterfield, *Almost 10% of All Prisoners Are Now Serving Life Terms*, N.Y. TIMES, May 12, 2004, at A17 (reporting that nearly 10 percent of all inmates in state and federal prisons are serving life sentences, an increase of 83 percent from 1992).

²³ *See, e.g.*, Fox Butterfield, *Crime Keeps on Falling; but Prisons Keep on Filling*, N.Y. TIMES, Sept. 28, 1997, at D1 ("Already, California and Florida spend more to incarcerate people than to educate their college-age populations."); *see also* Fox Butterfield, *Study Finds Big Increase in Black Men as Inmates Since 1980*, N.Y. TIMES, Aug. 28, 2002, at A14 (discussing study finding that more black men are in prison than in colleges or universities).

Of course, the cost of so much incarceration goes beyond mere dollars spent. There is a social and moral cost.²⁴ There is also a cost to the American psyche, to our self-image as a free country. How do we square our ideals of freedom and fairness with the reality of so many people—a disproportionate number of whom are poor and nonwhite²⁵—either behind bars or otherwise under the control of the criminal justice system?²⁶ As one commentator has noted, "This is an unprecedented event in the history of the USA and, more generally, in the history of liberal democracy."²⁷

Even when the incarcerated manage to emerge from prison after having "paid their debt to society," they are not entirely free.²⁸

²⁴ See generally Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271 (2004) (noting that mass incarceration damages social networks, infects social norms, and destroys social citizenship).

²⁵ See Butterfield, *Increase in Inmates*, *supra* note 19 (reporting that 44 percent of state and federal prisoners are black, 35 percent are white, 19 percent are Hispanic, and 2 percent are other races, and also noting that nearly 10 percent of black men between the ages of twenty-five and twenty-nine are in prison).

²⁶ See Fox Butterfield, *U.S. 'Correctional Population' Hits New High*, N.Y. TIMES, July 26, 2004, at A10 (reporting that the number of Americans under the control of the criminal justice system grew by 130,700 last year to reach a new high of nearly 6.9 million).

²⁷ David Garland, *Introduction: The Meaning of Mass Imprisonment*, in MASS IMPRISONMENT: SOCIAL CAUSES AND CONSEQUENCES 1 (David Garland ed., 2001).

²⁸ See Fox Butterfield, *Freed From Prison, but Still Paying a Penalty*, N.Y. TIMES, Dec. 29, 2002, at A18 [hereinafter Butterfield, *Freed From Prison*] (recounting the story of a man released from prison after fourteen years who was not allowed to live with or visit his mother in a public housing project without risking her eviction); Fox Butterfield, *Often, Parole Is One Stop On the Way Back to Prison*, N.Y. TIMES, Nov. 29, 2000, at A1 [hereinafter Butterfield, *Often Parole is One Stop*] (recounting the story of a woman who earned a college nursing degree and passed the registered nurse licensing test while in prison for shooting an abusive boyfriend, but was not allowed to practice nursing). For a gripping nonfiction account of a first-time drug offender's transition back to society after serving sixteen years in prison, see GONNERMAN, *supra* note 20 (recounting the struggles of Elaine Bartlett, who left three young children behind when she was incarcerated). For a memorable film portrayal of a parolee's difficulty adjusting to life on the outside, see THE WOODSMAN (Lee Daniels Entertainment/Newmarket Films 2005) (Kevin Bacon playing a child molester who spent twelve years in prison). For a hip-hop rendering of this reality, see Mos Def, *Mathematics*, on BLACK ON BOTH SIDES (Rawkus Records 1999), cited in Paul Butler, *Much Respect: Toward a Hip-Hop Theory of Punishment*, 56 STAN. L. REV. 983, 1012

Former prisoners may be denied public housing, student loans, a driver's license, parental rights, welfare benefits, certain types of jobs, and the right to vote.²⁹ Because the conditions of life are so hard, and the rules of release so strict, parole is often just a brief excursion from prison.³⁰

If prisons weren't enough, there is also the death penalty.³¹ No matter how many questions are raised about the death penalty—chief among them, the execution of innocents in the face of more than 250 death row exonerations³²—and no matter the growing prominence of organizations like the Innocence Project,³³ we continue to prosecute capital cases in record numbers.³⁴ It wasn't until March 1, 2005, when *Roper v. Simmons*³⁵ was decided, that the juvenile death penalty ended in the United States. Prior to *Simmons*, only the United States and Somalia allowed the execution of juveniles.³⁶

The desire to punish, banish, and kill criminals is not a new phenomenon. Prior to the advent of the modern prison in the

(2004) ("And even if you get out of prison still livin / Join the other five million under state supervision."). Coincidentally, Mos Def plays a hostile police officer in *The Woodsman*.

²⁹ See Butterfield, *Freed From Prison*, *supra* note 28. These additional penalties were seen as extra deterrents to crime with the added benefit of costing nothing and/or saving money. *Id.* For a thoughtful essay on criminal disenfranchisement, see Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate Over Felon Disenfranchisement*, 56 STAN. L. REV. 1147 (2004).

³⁰ Fox Butterfield, *Often, Parole Is One Stop*, N.Y. TIMES, Nov. 29, 2000, at A1.

³¹ See generally AUSTIN SARAT, *WHEN THE STATE KILLS: CAPITAL PUNISHMENT AND THE AMERICAN CONDITION* (2001).

³² See Adam Liptak, *Study Suspects Thousands of False Convictions*, N.Y. TIMES, Apr. 19, 2004, at A15 (noting that there have been 255 death row exonerations in the past 15 years); see also BARRY SCHECK ET AL., *ACTUAL INNOCENCE* (2000).

³³ Barbara Novovitch, *Free After 17 Years for a Rape That He Did Not Commit*, N.Y. TIMES, Dec. 22, 2004, at A22 (reporting about the exoneration of a Texas prisoner and noting the role that the twelve-year-old Innocence Project has played in exonerations across the country).

³⁴ See SCHECK ET AL., *supra* note 32, at XVII.

³⁵ *Roper v. Simmons*, 125 S. Ct. 1183, 1200 (2005) (holding that the Eighth Amendment forbids the execution of offenders who were under the age of eighteen when they committed the crime).

³⁶ *Id.* at 1199.

Nineteenth Century,³⁷ all sorts of cruel punishments were inflicted upon convicted criminals, including whipping, branding, being put in the stocks, mutilation, and execution.³⁸

Still, we live in very punitive time. This is reflected in the high rate of incarceration, in rising sentences, and in the public attitude.³⁹ Explanations are seen as excuses. Crime is never committed out of misfortune, only malice. The important thing is to *be tough on crime*.⁴⁰ I have been a criminal lawyer for more than twenty years. I look back wistfully on the days when probation was a plausible sentence for nonviolent offenders and a five-year prison term was regarded as steep even for assaultive crimes. Today, no sentence is steep enough. Most people want to lock up all criminals, throw away the key, and forget about them. We think there is something wrong with "those people"⁴¹ and, whatever it is, we had better keep them far away from the rest of us.

The popular culture of crime in America reflects a complicated, love-hate relationship. Americans are both irresistibly drawn to and

³⁷ See MAUER, *supra* note 15, at 1-14 (recounting the history of prisons); see also MICHEL FOUCAULT, *DISCIPLINE AND PUNISHMENT: THE BIRTH OF THE PRISON* (Alan Sheridan trans., 1977) (1975).

³⁸ See LAWRENCE FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 31-50, 77-82 (1993).

³⁹ See Tom Wicker, *The Punitive Society*, N.Y. TIMES, Jan. 12, 1991, at A25 (referring to "panicky public fears and punitive public attitudes"). Public attitudes about crime cannot be separated from attitudes about race. As criminal justice researcher Marc Mauer states:

It is hard to imagine that this complacency [about the "permanent state of mass incarceration"] would exist if the more than a million and a half prisoners were the sons and daughters of the white middle class. However, as the image of the criminal as an urban black male has hardened into public consciousness, so too, has support for punitive approaches to social problems been enhanced.

MAUER, *supra* note 15, at 12.

⁴⁰ See generally JAMES Q. WHITMAN, *HARSH JUSTICE: CRIMINAL PUNISHMENT AND THE WIDENING DIVIDE BETWEEN AMERICA AND EUROPE* (2003) (discussing the harshness of contemporary American justice in comparison to Europe). Professor James Whitman notes that American punishment practices could have "edged into the company of troubled and violent places" like Yemen, Nigeria, China, Russia, Taliban-controlled Afghanistan, and "even Nazi Germany." *Id.* at 4.

⁴¹ See generally JAMES S. KUNEN, "HOW CAN YOU DEFEND THOSE PEOPLE?": THE MAKING OF A CRIMINAL LAWYER 27 (1983) (former defender sharing client stories and writing about his experience).

repelled by crime and criminals. Popular movies, television, and music have historically featured romantic criminal figures and outlaw-heroes, reflecting an identification with anti-authoritarianism,⁴² and yet we also love to see wrongdoers soundly rebuked.⁴³ As a friend once remarked about intimate relationships, we sleep better at night once blame has been assigned.

In recent times, hostility toward and fear of people who commit crime is clearly winning out over fonder feelings. The hostility and fear is especially reflected in network television, arguably still the most dominant popular culture medium.⁴⁴ The prevailing anti-crime, pro-law enforcement mood has fueled the success of television shows like *Law and Order*⁴⁵ and its offspring,⁴⁶ and *CSI*⁴⁷ and its

⁴² See Naomi Mezey & Mark C. Niles, *Screening the Law: Ideology and Law In American Popular Culture*, 28 COLUM. J.L. & ARTS 91, 161-67 (2004) (discussing the "ubiquitous [American] outlaw movie"). Mezey and Niles offer several categories of these films: For wrongly accused criminal stories, see *TO KILL A MOCKINGBIRD* (Brentwood Productions 1962); *NUTS* (1987); *PRESUMED INNOCENT* (Warner Bros. 1990); *THE FUGITIVE* (1993). For attractive but guilty criminal stories, see *BONNIE AND CLYDE* (Warner Bros. 1967); *THE GODFATHER* trilogy (Paramount Pictures 1972, 1974, 1990). For hero-outlaw stories, where the lawbreaker is more valorous and likeable than the law enforcers, see *THE DEFIANT ONES* (United Artists 1958); *THE GREAT ESCAPE* (United Artists 1963); *COOL HAND LUKE* (Warner Bros. 1967); *ONE FLEW OVER THE CUCKOO'S NEST* (Pioneer Entertainment 1975); *ESCAPE FROM ALCATRAZ* (Paramount 1979); *BRUBAKER* (1980); *THE SHAWSHANK REDEMPTION* (Castle Rock Entertainment 1994). For criminal caper films, see *BUTCH CASSIDY AND THE SUNDANCE KID* (20th Century Fox 1969); *THE STING* (Universal 1973); *OCEAN'S 11* (Warner Bros. 2001).

⁴³ See MAUER, *supra* note 15, at 9 (noting the "virtual institutionalization of a societal commitment to the use of a massive prison system").

⁴⁴ See Mezey & Niles, *supra* note 42, at 166-76 (discussing the differences between television and film, including independent film). There is no question that independent films offer a more complex, nuanced look at social issues, and there have been some excellent independent films about crime and criminals over the years. See *id.* at 169 (noting that independent movies provide a "much broader spectrum of characters and issues" than mainstream movies). Recent examples include the film *Monster*, starring Charlize Theron, see *MONSTER* (MPD Worldwide 2003) (offering a multidimensional portrait of multiple killer Aileen Wuornos), and *The Woodsman*, starring Kevin Bacon, see *THE WOODSMAN*, *supra* note 28 (offering a multidimensional portrait of a child molester).

⁴⁵ *Law and Order* (NBC television broadcast).

⁴⁶ *Law and Order: Special Victims Unit* (NBC television broadcast); *Law and Order: Criminal Intent* (NBC television broadcast); *Law and Order: Trial By Jury* (NBC television broadcast). See Jacques Steinberg, *Impact of a 'Law & Order' Star*

offspring.⁴⁸ These shows and others like them⁴⁹ seem to be on the air—either new episodes or reruns—almost constantly.⁵⁰ *Law and Order*, *CSI*, and the crime-dominated nightly news⁵¹ reflect the view that life, no matter how complex, is easily reduced to good and evil, the righteous and the wrongdoer, us and them.⁵² We root for the good guys (police, prosecutors, and other law enforcement types) to rout out the bad guys (petty offenders, felons, and other outlaw types).⁵³

Lingers as Spinoff Begins, N.Y. TIMES, Feb. 22, 2005, at B1. One television critic notes that *Law and Order* is "not really a show anymore but a designer label that is affixed to at least one new series per season." Tom Shales, *A Case for Cloning*, WASH. POST, Mar. 3, 2005, at C1.

⁴⁷ *CSI: Crime Scene Investigation* (CBS television broadcast).

⁴⁸ See *CSI: Miami* (CBS television broadcast); *CSI: New York* (CBS television broadcast).

⁴⁹ See, e.g., *Cops* (Fox television broadcast); *America's Most Wanted: American Fights Back* (Fox television broadcast).

⁵⁰ See Shales, *supra* note 46, at C7 (commenting that *Law and Order*, while avoiding the clichés of most courtroom dramas, has become "such an established and dominant fixture" that it has developed clichés of its own).

⁵¹ See MAUER, *supra* note 15, at 172-74 (describing studies of crime coverage on network and local news shows, and noting that between 1993 and 1995 there was a 52 percent increase in crime stories); Butler, *supra* note 28, at 987 (asserting that the message conveyed by TV news programs is that 'street' crime [by African American and Latino men] is a "major threat to our well-being").

⁵² See Edward Wyatt, *Even for an Expert, Blurred TV Images Became a False Reality*, N.Y. TIMES, Jan. 8, 2005, at B7 (characterizing episodes of *Law & Order* as "fictionalized versions of real events . . . sensationalized and stripped of nuance"); see also Dawn Keetley, *Law & Order*, in PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE 33, 51-53 (Robert M. Jarvis & Paul R. Joseph, eds. 1998) (discussing an episode on "black rage" on the television show *Law & Order*, which sidesteps key questions about the systemic and institutional causes of crime in order to "[convict] one man of homicide").

In the newest *Law and Order* spinoff, *Law and Order: Trial by Jury*, *supra* note 46, the defendants are always guilty. See Alessandra Stanley, *A Spinoff Lets Women Administer The Justice*, N.Y. TIMES, Mar. 3, 2005, at B1, B10.

⁵³ See Wyatt, *supra* note 52. (noting that courtroom television shows have become increasingly "prosecutor friendly"). As Professor Stanley A. Goldman of Loyola Law School notes, "On 'Perry Mason,' the lawyers were always working to save defendants who were wrongly accused On 'Law & Order' everybody's guilty once they take them to trial." *Id.* at A18.

The heroes on these television shows are inevitably police officers and prosecutors.⁵⁴ Heroic defenders don't last on TV.⁵⁵ But, it hasn't always been this way. There was a time when the faithful advocate for the poor, powerless, and unjustly accused—a combination of Atticus Finch, Clarence Darrow, and Perry Mason—was a television staple.⁵⁶ There was also a time when concern for the downtrodden was much more at the heart of American popular culture.⁵⁷

⁵⁴ See ELAYNE RAPPING, *LAW AND JUSTICE AS SEEN ON TV* 21-35 (2003) (discussing the displacement of the heroic defense attorney on television by heroic police officers and prosecutors).

⁵⁵ Prior to its cancellation in 2004, which was preceded by a cast purging the year before, the series *The Practice* was a criminal defense alternative to *Law and Order* and *CSI*. But it did not exactly depict the defense lawyer as hero. The show was more about the moral anguish of defenders who must represent people they find repugnant in the name of the law. See RAPPING, *supra* note 54, at 35-47. My own favorite defender show, *The Trials of Rosie O'Neill*, lasted only two seasons in the early 1990s. It featured Sharon Gless (formerly Detective Christine Cagney on *Cagney and Lacy*, and now gay rights activist Debbie Novotny on *Queer as Folk*) as a recently divorced public defender, whose wealthy family scorns her work. See *id.* at 24; see also Abbe Smith, *Rosie O'Neill Goes to Law School: The Clinical Education of a Sensitive New Age Public Defender*, 28 HARV. C.R.-C.L. L. REV. 1 (1993) (using the Rosie O'Neill character to discuss feminism, clinical education, and criminal defense).

⁵⁶ See RAPPING, *supra* note 54, at 21; see also David Ray Papke, *The Defenders*, in *PRIME TIME LAW*, *supra* note 52, at 3 (discussing the 1961 television series that featured a father-son criminal law firm).

⁵⁷ Consider, for example, two beloved American novels, John Steinbeck's *The Grapes of Wrath* and Harper Lee's *To Kill a Mockingbird*. JOHN STEINBECK, *THE GRAPES OF WRATH* 572 (1939) (Viking Penguin 50th Anniversary Ed. 1989); HARPER LEE, *TO KILL A MOCKINGBIRD* (1960) (HarperCollins 35th Anniversary Ed. 1995). Both books offer a dignified portrait of a poor laborer who has either broken the law or is charged with having done so. Both were immediately regarded as classics, received Pulitzer Prizes, and were soon made into movies. See *THE GRAPES OF WRATH* (20th Century Fox 1940); *TO KILL A MOCKINGBIRD* (Universal International/Pakula-Mulligan, Brentwood Productions 1962). The movies were themselves instant classics, featuring prominent actors Henry Fonda and Gregory Peck in leading roles. Fonda was nominated for an Academy Award for his portrayal of Tom Joad in *The Grapes of Wrath*, and Peck won one for his portrayal of Atticus Finch in *To Kill a Mockingbird*.

Bruce Springsteen loved and was influenced by Steinbeck's *The Grapes of Wrath*, see ROBERT COLES, *BRUCE SPRINGSTEEN'S AMERICA* 38-39 (2003), and he devoted an entire album to the book's themes. See SPRINGSTEEN, *THE GHOST OF*

In these times, it is unusual to find a prominent figure in the mainstream popular culture who not only refuses to buy into the *Law and Order* creed, but who embraces the humanity of those who commit crimes. Yet, Bruce Springsteen, popular culture icon,⁵⁸ does just that. What's more, he has done it during the very same period of record high incarceration rates and escalating enmity toward lawbreakers.⁵⁹

Springsteen tells stories about people who have committed crime from their perspective, unflinchingly and without judgment. Although Springsteen is neither the first nor the only musician to have done this⁶⁰—music is often more honest (and subversive) than television—

TOM JOAD, *supra* note 12; *see also* MARSH, *supra* note 8, at 306, 338. In the title song of "The Ghost of Tom Joad," Springsteen puts one of the most memorable soliloquies in *The Grapes of Wrath* to music:

Now Tom said, "Mom, wherever there's a cop beatin' a guy
Wherever a hungry newborn baby cries
Where there's a fight 'gainst the blood and hatred in the air
Look for me Mom I'll be there
Wherever there's somebody fightin' for a place to stand
Or decent job or a helpin' hand
Wherever somebody's strugglin' to be free
Look in their eyes Mom you'll see me"

BRUCE SPRINGSTEEN, *The Ghost of Tom Joad*, on *THE GHOST OF TOM JOAD* (Columbia Records 1995).

⁵⁸ *See generally* COLES, *supra* note 57 (renowned child psychologist and award-winning writer examining how Bruce Springsteen's songs reflect and affect so many American lives, including his own).

⁵⁹ Springsteen signed with CBS (Columbia) Records in June of 1972, which released his debut album *Greetings From Asbury Park, N.J.* *See* MARSH, *supra* note 8, at 51-66. In 1974, Jon Landau, an editor of *Rolling Stone* magazine, saw Springsteen perform in Boston and wrote a passionate article for the *Real Paper*, stating, "I saw rock and roll future and its name is Bruce Springsteen." Maureen Orth et al., *Making of a Rock Star*, *NEWSWEEK*, Oct. 27, 1975, at 57. He became a prominent rock star with the 1975 release of *Born to Run*, which coincided with both *Time* and *Newsweek* putting Springsteen on their covers. *See id.*; *see also* MARSH, *supra* note 8, at 139-67.

⁶⁰ In addition to Bruce Springsteen, there are a number of singer/songwriters who have written songs about lawbreakers, but none as prominent as Springsteen. *See* TRACY CHAPMAN, *For My Lover*, on *TRACY CHAPMAN* (Elektra/Asylum Records 1988); TRACY CHAPMAN, *Freedom Now*, on *CROSSROADS* (Elektra Entertainment 1989); EARLE, *Billy Austin*, *supra* note 14; STEVE EARLE, *The Truth*, on *JERUSALEM* (Artemis Records 2002); STEVE EARLE, *John Walker's Blues*, on *JERUSALEM* (Artemis Records 2002); STEVE EARLE, *Ellis Unit One*, on *MUSIC*

FROM AND INSPIRED BY THE MOTION PICTURE DEAD MAN WALKING (Columbia Records 1996); JOHN PRINE, *Christmas in Prison*, on SWEET REVENGE (Atlantic Records 1973); JOHN PRINE, *Sam Stone*, on JOHN PRINE (Atlantic Records 1971); LOU REED, *Dirty Blvd.*, on NEW YORK (Sire Records 1989); LOU REED, *Endless Cycle*, on NEW YORK (Sire Records 1989); JAMES TAYLOR, *Sleep Come Free Me*, on FLAG (Columbia Records 1979); TOWNES VAN ZANDT, *Pancho & Lefty*, on REAR VIEW MIRROR (Sundow Records 1993); TOWNES VAN ZANDT, *Waitin' Round to Die*, on REAR VIEW MIRROR (Sundow Records 1993).

In the 1960s and 1970s, there were black pop, folk, and reggae artists who wrote and performed songs about crime, poverty, and police brutality. If Marvin Gaye, who died in 1984, were still writing and performing today, he might have continued to write songs about these issues. See MARVIN GAYE, *Inner City Blues (Make Me Wanna Holler)*, on WHAT'S GOING ON (Motown Records 1971); MARVIN GAYE, *Trouble Man*, on TROUBLE MAN (soundtrack album) (Motown 1972). For an insightful biography of Marvin Gaye and his times, see MICHAEL ERIC DYSON, *MERCY, MERCY ME: THE ART, LOVES, & DEMONS OF MARVIN GAYE* (2004). For other black artists of that era who sang about crime and poverty, see GIL SCOTT HERON, *The Bottle*, on THE FIRST MINUTE OF A NEW DAY (Arista Records 1975); BOB MARLEY AND THE WAILERS, *I Shot the Sheriff*, on BURNIN' (Island Records 1973); JIMMY CLIFF, *The Harder They Come*, on THE HARDER THEY COME (Hip-o Records 1972); BILL WITHERS, *Red Light, Green Light*, on BILL WITHERS LIVE AT CARNEGIE HALL (Sussex Records 1974).

Of course, the blues have always been full of crime, punishment, and hard times. See, e.g., B.B. KING, *LIVE AT THE REGAL/LIVE IN THE COOK COUNTY JAIL* (MCA 1972). See generally BRUCE JACKSON, *WAKE UP DEAD MAN: HARD LABOR AND SOUTHERN BLUES* (1972). The function of "worksongs" or prison songs—written by prisoners for prisoners—was to help supply a rhythm for the work, to help pass the time, and to provide an outlet for the inmates' tensions and frustrations. See JACKSON, *supra* at 29-30. For a discussion of prison songs by artists such as Leadbelly, Doc Reese, Po Lazarus, and others recorded by John and Alan Lomax beginning in the 1930s, see Milner Ball, *Doing Time and Doing It in Style* (manuscript on file with author). Hip-hop might be said to pick up where these artists left off. See David Hajdu, *Guns and Poses*, N.Y. TIMES, Mar. 11, 2005, at A23 (discussing bloodlust in the blues and hip-hop, and noting that both types of music "give voice to the discontent and anxiety of a subjugated, marginalized people").

There was also a strong early connection between crime and punishment and country music, which is sometimes called the white man's blues. See NICHOLAS DAWIDOFF, *IN THE COUNTRY OF COUNTRY 196* (1997). Merle Haggard, Willie Nelson, Waylon Jennings, George Jones, and Johnny Cash were identified as "outlaw country" as much for their resistance to the so-called Nashville Sound as for their heavy use of alcohol and drugs. See Ball, *supra*. Some of them also did time. As Nicholas Dawidoff writes, "It takes a dark side to sing about people whose lives are blasted by misery, gin, and faithlessness with the kind of pathos you hear in the voices of Johnny Cash, George Jones, and Merle Haggard." DAWIDOFF,

Springsteen's voice is unique.⁶¹ He captures something real about people who commit crime—even violent, terrible, senseless crime.⁶²

Springsteen did not have to champion these sorts of people; he could have just as easily chosen a more sympathetic group—such as the wrongly accused,⁶³ or victimized.⁶⁴ But, criminals are "his

supra at 196. Unfortunately, country music has rejected its working class roots and become increasingly right wing. *See id.* at 310; ALTERMAN, *supra* note 7, at 131.

The clear master of the craft, Johnny Cash, died in 2003. *See* DAWIDOFF, *supra* at 189-90 (discussing Cash's affinity for convicts and his prison concerts); *see also* JOHNNY CASH, *MURDER* (Columbia 2000) (originally released Sun Entertainment Corporation 1955); JOHNNY CASH, *AT FOLSOM PRISON* (Columbia Records 1968). In the liner notes accompanying the *Murder* album, Cash introduces this unique collection of songs: "Here is my personal selection of my recordings of songs of robbers, liars and murderers. These songs are just for listening and singing. Don't go out and do it."

⁶¹ As rock star John Mellencamp has acknowledged, other rock and pop singers who have covered similar territory as Springsteen are mere "footnotes to Springsteen" in terms of both the cultural impact and quality of the work. ALTERMAN, *supra* note 7, at 131.

⁶² *See* ALTERMAN, *supra* note 7, at 137 ("Springsteen does not falsely ennoble his . . . characters but humanizes them instead, demonstrating the complexity of their moral choices.").

⁶³ Bob Dylan's "Hurricane" is a classic example of this genre. *See* BOB DYLAN, *Hurricane, on DESIRE* (Columbia 1976) (recounting the tale of Ruben "Hurricane" Carter). Some people liken "Hurricane" and another Dylan song, "George Jackson," to Springsteen's and Steve Earle's songs about ordinary criminals. *See* BOB DYLAN, *George Jackson* (Columbia Records 1971) (single) (song about the killing of George Jackson at Soledad Prison). But, Dylan's songs—splendid though they are—are mostly protest songs, *see* Adam Gearey, *Outlaw Blues: Law in the Songs of Bob Dylan*, 20 CARDOZO L. REV. 1401, 1401 (1999), not "hurt songs." *See* Bryan K. Garman, *The Ghost of History: Bruce Springsteen, Woody Guthrie, and the Hurt Song*, in RACING IN THE STREET: THE BRUCE SPRINGSTEEN READER 221, 222 (June Skinner Sawyers ed., 2004) (reprinted from Bryan K. Garman, *The Ghost of History: Bruce Springsteen, Woody Guthrie, and the Hurt Song*, POPULAR MUSIC AND SOCIETY, Summer 1996) (noting that "hurt songs" are written in working-class language and express the "collective pain, suffering, and injustice working people have historically suffered").

⁶⁴ As Professor Paul Butler points out, even hip-hop artists, who often identify with the accused and are critical of the current criminal justice regime, acknowledge and express sympathy for victims of crime. *See* Butler, *supra* note 28, at 1000 n.100.

people."⁶⁵ He takes the least popular, least sympathetic among us, and offers up their stories to teach us something about ourselves.

Springsteen has something to teach all of us, but he offers something especially useful to prospective criminal and poverty lawyers. Many law students begin their legal careers professing an interest in social justice, or a desire to serve the needy, but they lose their way by the time they graduate.⁶⁶ One of the challenges in attracting young lawyers to indigent defense is getting them to see the poor accused as *people*, and not simply as reflections of the crime of which they are accused. When the accused comes with a story it is an easier leap to undertake his or her representation.⁶⁷ Springsteen is a master storyteller, letting us know the person behind the criminal in order to draw us in.

This essay is part of a fledgling body of scholarship on law and popular music.⁶⁸ I hope it prompts others to think about the

⁶⁵ See MARSH, *supra* note 8, at 371 (noting the deeply personal connection Springsteen feels to the criminals in the album *Nebraska*). As rock critic and Springsteen biographer Dave Marsh writes: "[T]hat's the final context in which *Nebraska* must be understood: as a deeply personal exploration of the private demons tormenting Bruce Springsteen. *Nebraska* is a study in crisis, and while a portion of that crisis was professional and a portion was political, another part was personal." *Id.*

⁶⁶ See John O. Calmore, "*Chasing the Wind*": Pursing Social Justice, Overcoming Legal Mis-Education, and Engaging in Professional Re-Socialization, 37 LOY. L.A. L. REV. 1167, 1172-86, 1205-07 (2004) (discussing the failure of legal education to produce social justice-oriented lawyers); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 3 (1994) (noting that a disproportionate number of women enter law school committed to public interest law but leave with corporate ambitions).

⁶⁷ As a clinical law teacher, I employ several devices to try to accomplish this. For students directly engaged in criminal practice, the clients themselves are often the best draw. See Abbe Smith, *Carrying On in Criminal Court: When Criminal Defense is Not So Sexy and Other Grievances*, 1 CLIN. L. REV. 723 (1995). Client stories are compelling. See Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathic, Heroic Public Defender*, 37 U.C. DAVIS L. REV. 1203 (2004) [hereinafter Smith, *Too Much Heart*] (discussing the power of client stories). In addition, I look to movies, books, and music with a strong narrative pull.

⁶⁸ See, e.g., Ball, *supra* note 60 (examining prison music); Butler, *supra* note 28 (offering a "hip-hop theory" of criminal law); John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129, 2129-1291 (1992) (discussing the

relationship between music and law, music and lawyering. Much has been written about the relationship between popular culture (movies, television, celebrity trials) and law;⁶⁹ music has been largely overlooked.

III. A BRIEF BIOGRAPHICAL SKETCH OF SPRINGSTEEN

As Springsteen clearly knows, you don't have to be a criminal to know the heart of a criminal. You just need a little imagination.⁷⁰ It helps if you have ever felt like an outsider—or as someone who doesn't quite fit in—as Springsteen has.⁷¹ It also helps to understand failure. As Springsteen has said, "When I was a kid, I really understood failure. In my family, you lived deep in its shadow."⁷²

artistry of Archie Shepp and critical race theory); Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 WIS. L. REV. 527, 559-563 (discussing popular music like Elvis Presley's "Jailhouse Rock" and Sonny Curtis' "I Fought the Law" in relation to legality and authority); Nicholas A. Gunia, *Half the Story Has Never Been Told: Popular Jamaican Music as Antisubordination Praxis*, 33 U.C. DAVIS L. REV. 1333, 1334 (2000) (discussing how popular Jamaican music "serves as a powerful form of antisubordination praxis"). See generally Michael L. Richmond, *Law and Popular Music: An Etude in Two Movements*, 22 LEGAL STUD. FORUM 79 (1998) (discussing divorce and separation in Paul Simon's songs and lawyers and the law in Jonathan Larson's musical *Rent*); Christopher A. Bracey, *Adjudication, Antisubordination, and the Jazz Connection*, 54 ALA. L. REV. 853 (2003) (comparing judicial adjudication in civil rights cases and free jazz); Gearey, *supra* note 63 (discussing law in Bob Dylan's songs).

⁶⁹ See, e.g., Paul Bergman, *The Movie Lawyers' Guide to Redemptive Legal Practice*, 48 UCLA L. REV. 1393, 1394-1402 (2001) (discussing sources of "redemption" for lawyers in popular films); Carrie Menkel-Meadow, *Can They Do That? Legal Ethics in Popular Culture: Of Characters and Acts*, 48 UCLA L. REV. 1305, 1315-1333 (2001) (discussing legal ethics in television, movies, popular fiction, and literature); William H. Simon, *Moral Pluck: Legal Ethics in Popular Culture*, 101 COLUM. L. REV. 421, 422, 425-428, 429-440 (2001) (noting that "popular culture is a source of evidence about popular moral understanding," and discussing legal ethics in the books of John Grisham and the television shows *L.A. Law* and *The Practice*).

⁷⁰ See Smith, *Too Much Heart*, *supra* note 67, at 1221 n.92 (suggesting that curiosity and imagination might be preferable to empathy in criminal defense lawyering).

⁷¹ See MARSH, *supra* note 8, at 21-25.

⁷² *Id.* at 293.

Springsteen grew up in the decaying factory town of Freehold, New Jersey.⁷³ His family had been in Freehold for several generations by the time Bruce was born on September 23, 1949.⁷⁴ By then, Freehold was already in decline, sadly passed over by the post-war prosperity that much of America was enjoying.⁷⁵

Springsteen spent his childhood on the wrong side of the tracks in Freehold's "Texas" neighborhood, whose run-down two-family houses were mostly occupied by immigrant Appalachian factory workers. Many had migrated from the South for jobs in Freehold's factories, the biggest of which was a Nescafe coffee plant.⁷⁶ Perhaps a measure of the marginal status of its inhabitants, "Texas" bordered Freehold's black ghetto.⁷⁷ While Springsteen never knew the kind of poverty his black neighbors faced, there was never much money.⁷⁸

Springsteen's father was a dark and brooding man of Irish descent, who drifted from job to job (prison guard, cab driver, bus driver, and rug mill worker) throughout Springsteen's childhood.⁷⁹ As Springsteen recounts, "My pop, sometimes he went to bed, sometimes he didn't. Sometimes he got up. Sometimes he didn't get up."⁸⁰ His mother compensated for her husband's lack of steady employment by rarely missing a day at her job as a legal secretary in downtown Freehold.⁸¹ Springsteen credits his mother with giving the family a sense of financial and emotional security.⁸²

Springsteen describes his family's grim dynamic:

I grew up in this dumpy two-story, two-family house, next door to this gas station. . . . [Pop] was a guard down at the jail for a while. I can remember when he worked down there, he used to always come home real pissed off, drunk, sit in the kitchen . . . about nine o'clock he used to shut off the lights, every light in the

⁷³ *Id.* at 21, 324. Asbury Park, the washed up beach town on the Jersey shore, is often mistakenly identified as Springsteen's hometown. *See id.* at 21.

⁷⁴ *Id.* at 324.

⁷⁵ *Id.* at 326.

⁷⁶ *Id.* at 21, 324.

⁷⁷ *Id.* at 278.

⁷⁸ *Id.* at 257.

⁷⁹ *Id.* at 325.

⁸⁰ *Id.* at 25.

⁸¹ *Id.* at 325.

⁸² *Id.*

house. And he used to get real pissed off if me and my sister turned any of 'em on. And he'd sit in the kitchen with a six-pack and a cigarette. My mom, she'd set her hair and she would come downstairs and just turn on the TV and sit in the chair and watch TV till she fell asleep. And she'd get up the next morning and go to work again.⁸³

Springsteen resented what he regarded as his father's self-indulgent isolation.⁸⁴ Social ostracization was something of a tradition to the Springsteen family. According to Springsteen, his father came from a family of outsiders, starting with a grandfather who made a living repairing old appliances and selling them to residents of the labor camps outside Freehold.⁸⁵

As a youngster, Springsteen seemed doomed to relive the sense of isolation he had inherited. "I lived half of my first thirteen years in a trance," Springsteen has said. "People thought I was weird because I always went around with this look on my face. I was thinking of things, but I was always on the outside looking in."⁸⁶ Not surprisingly, Springsteen did not have many friends growing up.⁸⁷ He was not popular in school, either with students or teachers.⁸⁸

Springsteen's parents scraped together the money to send him to Catholic school for the first eight years of his education.⁸⁹ Unfortunately, the expense did not particularly pay off.⁹⁰ The restrictive environment of parochial school only intensified Springsteen's alienation and unhappiness and was at odds with his rebellious spirit.⁹¹ When Springsteen was in third grade, a nun stuffed him into a garbage can under her desk because, she said, that was where he belonged.⁹² In sixth grade, a nun made another student slap

⁸³ *Id.* at 24 (quoting Springsteen's introduction to the Animals song "It's My Life").

⁸⁴ *Id.* at 25.

⁸⁵ *Id.* at 326.

⁸⁶ *Id.* at 23.

⁸⁷ *Id.* at 39.

⁸⁸ *Id.* at 23, 45, 327.

⁸⁹ *Id.* at 23, 327.

⁹⁰ *Id.* at 23 (Springsteen commenting, "I don't remember anything nice about it").

⁹¹ *Id.*

⁹² *Id.*

Springsteen across the face for misbehaving.⁹³ Springsteen had the distinction of "being the only altar boy knocked down by a priest on the steps of the altar during Mass."⁹⁴

Music became Springsteen's refuge. About the time his parents gave up on parochial school, Springsteen discovered that he could relieve some of his inner turmoil by playing the guitar.⁹⁵ Once Springsteen discovered the guitar, school lost what little significance it had held in his life: "I was dead until I was thirteen. . . . I didn't have any way of getting my feelings out When I got the guitar, I wasn't getting out of myself. I was already out of myself. I knew myself, and I did not dig me. I was getting into myself."⁹⁶

To his parents' dismay, Springsteen became obsessed with the guitar.⁹⁷ Ironically, Springsteen's mother had bought him his first guitar when he was nine years old—because Springsteen had been captivated by Elvis Presley's performance on the *Ed Sullivan Show*—but, Springsteen's hands were too small to play it.⁹⁸ Five years later, Springsteen bought a guitar for eighteen dollars at a local pawn shop.⁹⁹ It wasn't long before Springsteen joined some other teens in a band known as the "Castiles" (for the soap).¹⁰⁰ After making a name for themselves on the New Jersey surf bar circuit, the Castiles managed to get some gigs in New York's Greenwich Village.¹⁰¹

Despite his unhappiness in school, Springsteen managed to eke out enough credits to graduate from the local public high school¹⁰²—though he didn't bother to attend the graduation ceremony.¹⁰³ Motivated more by a desire to avoid the draft than to further his

⁹³ *Id.*

⁹⁴ Orth et al., *supra* note 59, at 57. Springsteen explains "The old priest got mad. My Mom wanted me to learn how to serve Mass but I didn't know what I was doin' so I was tryin' to fake it."

⁹⁵ MARSH, *supra* note 8, at 23.

⁹⁶ *Id.* at 27. As Springsteen once said, "Rock 'n' roll has been everything to me. The first day I can remember lookin' in the mirror and standin' what I was seein' was the day I had a guitar in my hand." Orth et al., *supra* note 59, at 57.

⁹⁷ MARSH, *supra* note 8, at 28.

⁹⁸ *Id.* at 27.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 29.

¹⁰¹ *Id.* at 40.

¹⁰² *Id.* at 41.

¹⁰³ *Id.*

education, Springsteen enrolled in community college for a brief period after high school.¹⁰⁴ Eventually, he was kicked out.¹⁰⁵

Music soothed Springsteen from a feeling of constant rejection.¹⁰⁶ It became the focus of his life, taking on an almost religious significance.¹⁰⁷ As Springsteen says, "It was never just a hobby, it was a reason to live."¹⁰⁸ He credits music with having freed him from a depressing upbringing:

[I]f you grow up in a home where the concept of art is like twenty minutes in school every day that you *hate*, the lift of rock is just incredible. . . . There's a little barrier that gets broken down, a consciousness barrier. Rock and roll reached down into all those homes where there was no music or books or anything. And it infiltrated the whole thing. That's what happened in my house.¹⁰⁹

Unfortunately for Springsteen, rock and roll did not touch off a similar transformation in his parents. They were not happy about his singular focus on music, and his refusal to hold a regular job.¹¹⁰ The fame and fortune that came with the 1975 release of his *Born to Run*¹¹¹ album may have helped Springsteen overcome his material and social disadvantages, but his inner turmoil about conforming to certain social conventions persisted.¹¹² Springsteen's choice not to own a house long after he became a multimillionaire¹¹³ suggests a persistent sense of not wanting to belong anywhere: "I always felt most at home when I was like in the car or on the road, which is, I

¹⁰⁴ *Id.* at 45.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 28 (Springsteen recalling that "[t]he first day I can remember looking in a mirror and being able to stand what I was seeing was the day I had a guitar in my hand").

¹⁰⁷ *Id.* at 23 (Springsteen observing that "[s]ome people pray, some people play music").

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 197.

¹¹⁰ *Id.* at 205-06.

¹¹¹ BRUCE SPRINGSTEEN, *BORN TO RUN* (Columbia Records 1975).

¹¹² MARSH, *supra* note 8, at 215-16.

¹¹³ *Id.* at 322.

guess, why I always wrote about it. . . . Independence always meant a lot to me. I had to feel I could go anywhere, anytime."¹¹⁴

A passion for the open road was yet another trait Springsteen inherited from his father.¹¹⁵ Springsteen's love-hate relationship with his father and the ways in which Springsteen identified with his father turned out to be rich fodder for his songwriting.¹¹⁶ Springsteen's talent with words and music, however, seemed to win over just about everyone but his father.¹¹⁷ One day, Springsteen's parents cornered him in his bedroom and begged him to "get serious" with his life.¹¹⁸ Springsteen's father told him, "You should be a lawyer."¹¹⁹ "Lawyers . . . run the world."¹²⁰

Although Springsteen did not follow his father's advice and become a lawyer, he might have been a good one. Trial lawyers are, after all, storytellers.¹²¹ But Springsteen, the Poet Advocate,¹²² plays to a much larger audience; his jury is the public. He uses his own understanding of life on the outskirts to teach us about others at the margins, no matter how much they deviate from social norms and convention. He wants us to understand them. He wants us to see them as they are: as people with a story, not as just an accused or convicted criminal.

IV. SPRINGSTEEN'S CRIMINALS

Springsteen has produced two albums devoted to criminals and others at the margins, *Nebraska*¹²³ and *The Ghost of Tom Joad*.¹²⁴

¹¹⁴ *Id.* at 323.

¹¹⁵ *Id.* at 22-23.

¹¹⁶ *Id.* at 196-97 (observing that in the song "Adam Raised a Cain," Springsteen "sees himself not only as a product of a specific social situation, but literally his father's heir").

¹¹⁷ *Id.* at 205.

¹¹⁸ *Id.* at 205-06.

¹¹⁹ *Id.* Springsteen's mother thought Springsteen should be a writer. *See id.*

¹²⁰ *Id.*

¹²¹ *See* DAVID BALL, THEATER TIPS AND STRATEGIES FOR JURY TRIALS 101-135 (2d ed. 1997).

¹²² *See* Randy Lee, *Bruce Springsteen's Hope and the Lawyer as Poet Advocate*, 14 WIDENER L.J. 867 (2005).

¹²³ SPRINGSTEEN, *NEBRASKA*, *supra* note 11.

¹²⁴ SPRINGSTEEN, *THE GHOST OF TOM JOAD*, *supra* note 12.

Springsteen recorded *Nebraska* in 1981 in his bedroom in Colts Neck, New Jersey, as a reaction to spending so much time in "sterile and isolating" professional recording studios.¹²⁵ The album, with its spare music and lyrics was deeply personal to Springsteen.¹²⁶ He has said that the songs on *Nebraska* were connected to his childhood more than any other record he had made, and the tone of the music was directly linked to what he remembered of his early youth, living with his grandparents. He recalls that time as bleak:

There was something about the walls, the lack of decoration, the almost painful plainness.

Our house was heated by a single kerosene stove in the living room. One of my earliest childhood memories was the smell of kerosene and my grandfather standing there filling the spout in the rear of the stove. All of our cooking was done on a coal stove in the kitchen. As a child, I'd shoot my watergun at its hot, iron surface and watch the steam rise.

The centerpiece of our living room was a single photo of my father's older sister who died at the age of five in a bicycle accident around the corner by the local gas station. Her ethereal presence from this 1920s portrait gave the room a feeling of being lost in time.¹²⁷

Springsteen acknowledges other influences on *Nebraska*: the dark spirituality of writer Flannery O'Connor, the grim feel of Terrence Malick's film *Badlands*,¹²⁸ and Ulu Grosbard's film *True Confessions*.¹²⁹ Springsteen was moved by the "stillness on the surface of those pictures" underneath which was "a world of moral

¹²⁵ SPRINGSTEEN, SONGS, *supra* note 5, at 135.

¹²⁶ MARSH, *supra* note 8, at 371 ("*Nebraska* must be understood . . . as a deeply personal exploration of the private demons tormenting Bruce Springsteen. *Nebraska* is a study in crisis, and while a portion of that crisis was professional and a portion was political, another part was personal.>").

¹²⁷ *Id.* at 136.

¹²⁸ BADLANDS (Warner Bros. 1973) (telling the story of the Charles Starkweather-Caril Fugate killing spree in the Dakota badlands in 1958).

¹²⁹ TRUE CONFESSIONS (United Artists 1981) (film about the relationship between two brothers, one a Catholic priest, and the other a homicide detective, who come together after many years apart in the aftermath of the murder of a young prostitute).

ambiguity and violence."¹³⁰ As Springsteen has said, "I wanted the music in *Nebraska* to feel like a waking dream and the record to move like poetry. I wanted the blood on it to feel destined and fateful."¹³¹

Springsteen recorded *Nebraska* on a four-track Teac tape machine. After completing the demo tape, he assembled his band and tried to turn the songs into a rock and roll album. But it didn't feel right. The ease of Springsteen's unselfconscious voice was being overshadowed by the formality of the presentation. The essential nature of what he had been trying to accomplish in his bedroom was lost. The songs needed what Springsteen called "that austere, echoey sound, just the one guitar—one guy kinda telling his story."¹³² Band member Steve Van Zandt encouraged Springsteen to issue the demo itself, because "[a]n artist could never get closer to his audience than this. Not because it was done with an acoustic guitar, but because he was literally singing for himself. It's the most direct, personal, accomplished artistic statement that you can make."¹³³

The music on *Nebraska* is minimal, melancholy, and mournful—sometimes even dirge-like.¹³⁴ It has more in common with folk tradition than classic rock and roll.¹³⁵ *Nebraska's* songs and ballads are simple and stark; they are accompanied only by Springsteen's acoustic guitar and the aching sound of his harmonica. Springsteen's voice is very much at the center of the songs; his guitar sets the mood and provides a beat, but never gets in the way of Springsteen's gravelly voice, which is full of pathos and yearning.

The album feels lost in time, as if it were written before rock and roll.¹³⁶ The music is often in minor keys, and sometimes there is very

¹³⁰ MARSH, *supra* note 8, at 136.

¹³¹ *Id.*

¹³² ALTERMAN, *supra* note 7, at 129.

¹³³ *Id.* The executives at Columbia Records were not thrilled to receive a record they described as "made in [Springsteen's] garage." But Springsteen gave them no choice. *Id.*

¹³⁴ See Mikal Gilmore, *Bruce Springsteen's America*, in RACING IN THE STREET: THE BRUCE SPRINGSTEEN READER, *supra* note 63, at 266, 272, reprinted in MIKAL GILMORE, NIGHT BEAT: A SHADOW HISTORY OF ROCK & ROLL (2000) (noting the "mournful textures" of the songs in *Nebraska*).

¹³⁵ See *id.* at 271 (noting the "timeless, folkish feel to *Nebraska's* music").

¹³⁶ *Id.* at 130.

little tune at all, as in "State Trooper,"¹³⁷ which feels more like a whispered chant or prayer.¹³⁸ On the other hand, some songs on *Nebraska* have melodies you can't get out of your head, such as "Highway Patrolman"¹³⁹ and "Johnny 99."¹⁴⁰ The live version of "Johnny 99" is more rocking and more emotional than the studio version, but it is still just Springsteen, his guitar, and harmonica.¹⁴¹

It has been argued that the release of *Nebraska* was a groundbreaking moment in American cultural history, a return to class consciousness.¹⁴² When *Nebraska* came out, very little artistic attention was being paid to working people:

Virtually alone in the mass culture of the period, [*Nebraska*] provides stark human testimony to the destruction of all forms of communal, psychological, and political support for working people in Ronald Reagan's America In the realm of popular art, to find blue-collar men speaking in a blue-collar language about blue-collar concerns, you had to go over to the turntable and put on a record by Bruce Springsteen.¹⁴³

Fourteen years later, when Springsteen was a well-established rock and roll superstar, he produced *The Ghost of Tom Joad*. This was another spare solo album,¹⁴⁴ the closest thing he had done to *Nebraska*. He knew that *The Ghost of Tom Joad* would not attract his

¹³⁷ BRUCE SPRINGSTEEN, *State Trooper*, on NEBRASKA (Columbia Records 1982).

¹³⁸ *Id.* The song's refrain is basically a prayer: "Mister state trooper, please don't stop me."

¹³⁹ BRUCE SPRINGSTEEN, *Highway Patrolman*, on NEBRASKA (Columbia Records 1982).

¹⁴⁰ BRUCE SPRINGSTEEN, *Johnny 99*, on NEBRASKA (Columbia Records 1982).

¹⁴¹ BRUCE SPRINGSTEEN AND THE E STREET BAND, *Johnny 99*, on BRUCE SPRINGSTEEN & THE E STREET BAND LIVE/1975-85 (Columbia Records 1986). Los Lobos covers the song with a Cajun flavor on BADLANDS: A TRIBUTE TO BRUCE SPRINGSTEEN'S NEBRASKA (Sub Pop Records 2000).

¹⁴² ALTERMAN, *supra* note 7, at 137 (noting that Springsteen "forc[ed] the subject of class into the mainstream cultural discourse").

¹⁴³ *Id.* at 136.

¹⁴⁴ Both *Nebraska* and *The Ghost of Tom Joad* were made without the E Street Band.

largest audience,¹⁴⁵ but he saw the album as "a reaffirmation of the best of what I do . . . [and] a reference point to the things I tried to stand for and be about as a songwriter."¹⁴⁶ Springsteen acknowledges the connection between *Nebraska* and *The Ghost of Tom Joad*: "As with *Nebraska* . . . the music was minimal; the melodies were uncomplicated, yet played an important role in the storytelling process. The simplicity and plainness, the austere rhythms defined who these characters were and how they expressed themselves."¹⁴⁷

The music in *Tom Joad* features some haunting, beautiful songs. Springsteen's voice aches with feeling when he sings the chorus to the title track on *The Ghost of Tom Joad*: "The highway is alive tonight / But nobody's kiddin' nobody about where it goes / I'm sittin' down here in the campfire light / Searchin' for the ghost of Tom Joad."¹⁴⁸ It's a stirring song, especially when the harmonica comes in at the end. "Straight Time" is another song you can't help but play over and over, the tune lingering in your mind, especially the verse, "Eight years in, it feels like you're gonna die / But you get used to anything / Sooner or later it just becomes your life."¹⁴⁹

Although there is more accompaniment on *Tom Joad* than on *Nebraska*—keyboard, drums, pedal steel guitar, bass, violin, accordion—several songs are just Springsteen's voice and guitar, with faint background keyboard. Still, others are full of music, such as "Youngstown," with its beautiful violin, pedal steel guitar, and catchy percussive beat.¹⁵⁰ "Dry Lightning" has a clear

¹⁴⁵ MARSH, *supra* note 8, at 277; *see also* ALTERMAN, *supra* note 7, at 257 (noting that some people referred to the concert that accompanied the release of *Tom Joad* the "Shut the F*** Up" tour, because Springsteen gave a short "sermon" at the beginning of each show, telling the audience they needed to be "very still, not just for the quiet's sake, but . . . because the characters are still," and because he told the audience, "If you like singing and clapping along, please don't").

¹⁴⁶ *Id.* *Tom Joad* was critically acclaimed and won a Grammy award for Best Contemporary Folk Album. ALTERMAN, *supra* note 7, at 256.

¹⁴⁷ MARSH, *supra* note 8, at 274.

¹⁴⁸ BRUCE SPRINGSTEEN, *The Ghost of Tom Joad*, on *THE GHOST OF TOM JOAD* (Columbia Records 1995).

¹⁴⁹ BRUCE SPRINGSTEEN, *Straight Time*, on *THE GHOST OF TOM JOAD* (Columbia Records 1995).

¹⁵⁰ BRUCE SPRINGSTEEN, *Youngstown*, on *THE GHOST OF TOM JOAD* (Columbia Records 1995). As Eric Alterman points out, "Like 'Johnny 99,' its direct precursor, 'Youngstown' offers a glimpse of the damage done to a workingman's identity by

southwest/Mexican influence that can be heard in the guitar playing and the violin, and Springsteen's vocals are especially strong in this song.¹⁵¹ The *Tom Joad* album has been criticized for its "static musical atmosphere," and its over-reliance on words over music.¹⁵² But one commentator explains that the music was "intentionally minimal," and calls *Tom Joad* Springsteen's bravest and "most uncompromising album":

It demands that we meditate, however briefly, on the lives of people most of us attempt to keep out of sight: male hustlers, homeless people sleeping on grates, Mexican migrants cooking methamphetamine in the California desert. These characters are the lost souls of *Nebraska* a decade later, with what remained of their hopes destroyed and their future behind them. The songs raise uncomfortable questions about the illusions we share and the lies we embrace in order to get through the day believing in our fundamental decency. It is written and sung, in other words, in the tradition of moral prophecy.¹⁵³

Springsteen understood himself to be a storyteller when he wrote the songs in these albums, and he was very deliberate about his craft. He wanted to get it right, to accurately depict the hardscrabble lives of the characters whose stories he would tell:

the vagaries of an economic system that respects neither history nor community. While Ralph in 'Johnny 99' snaps, here the narrator merely sinks." ALTERMAN, *supra* note 7, at 253. The chorus says it all "in Youngstown / In Youngstown/ My sweet Jenny, I'm sinkin' down/ Here, darlin', in Youngstown."

¹⁵¹ BRUCE SPRINGSTEEN, *Dry Lightning, on THE GHOST OF TOM JOAD* (Columbia Records 1995).

¹⁵² MARSH, *supra* note 8, at 662-63. Marsh calls "Across the Border" the album's finest song: "Springsteen pays the melody of across the Border' on an acoustic guitar, the band coming in quietly as a fog around a campfire. . . . [his] voice . . . full of the hopeless hope it takes to leave your home and enter America illegally." *Id.* at 663.

¹⁵³ ALTERMAN, *supra* note 7, at 250, 251. Another commentator says the music in *Tom Joad* is in sync with the stories told: "You could almost say that the music gets caught in meandering motions, or drifts into circles that never break. The effect is brilliant and lovely—there's something almost lulling in the music's blend of acoustic arpeggios and moody keyboard textures, something that lures you into the melodies' dark dreaminess . . ." Gilmore, *supra* note 134, at 281.

The precision of the storytelling in these types of songs is very important. The correct detail can speak volumes about who your character is, while the wrong one can shred the credibility of your story. When you get the music and lyrics right in these songs, your voice disappears into the voices of those you've chosen to write about. Basically, I find the characters and listen to them. That always leads to a series of questions about their behavior: What would they do? What would they never do? You try to locate the rhythm of their speech and the nature of their expression.

But the songs would not work if they were only descriptive and lacked heart:

But all the telling detail in the world doesn't matter if the song lacks an emotional center. That's something you have to pull out of yourself from the commonality you feel with the man or woman you're writing about. By pulling these elements together as well as you can, you shed light on their lives and respect their experiences.¹⁵⁴

The same sort of dead-on storytelling is also present in Springsteen's title song on the soundtrack to the 1995 film *Dead Man Walking*.¹⁵⁵ In the song "Dead Man Walkin'," Springsteen writes in the voice of the film's central character, Patrick Sonier, a Louisiana man facing execution for brutally killing two teenagers. The words of the soon-to-be dead man are simple but profound: "Once I had a job, I had a girl / But between our dreams and actions / Lies this world."¹⁵⁶ The music in "Dead Man Walkin'" is very much like the music in both *Nebraska* and *Tom Joad*.

It is important to note that, unlike some songwriters before him,¹⁵⁷ and so-called "gangsta rappers," Springsteen "gets" criminals

¹⁵⁴ *Id.*

¹⁵⁵ DEAD MAN WALKING, *supra* note 14.

¹⁵⁶ BRUCE SPRINGSTEEN, *Dead Man Walkin'*, *supra* note 13.

¹⁵⁷ See, e.g., WOODY GUTHRIE, *Pretty Boy Floyd, on BUFFALO SKINNERS* (Smithsonian Folkways 1999):

Yes, as through this world I've wandered
I've seen lots of funny men;
Some will rob you with a six-gun,
And some with a fountain pen.

without glorifying or glamorizing them.¹⁵⁸ There is a politics to Springsteen's view of criminals, but it is not as overt as in some hip-hop music, and not nearly as connected to theory.¹⁵⁹ Springsteen is not especially interested in theories of crime and punishment—individual agency versus social and economic determinism, rehabilitation versus retribution—nor is he interested in symbolism or ideology.¹⁶⁰ He is interested in stories of crime and punishment. Instead of railing against the current reality—the growing divide between rich and poor in this country, the inevitability of crime for those with nothing else, the turn to mass incarceration over every other social intervention—he tells stories about those caught up in it.

If there is a "theory" to Springsteen's criminals, it is that they are not so different from you and me, or there but for the grace of God go us all. One legal scholar gives this a fancy name, calling it the

And as through your life you travel,
 Yes, as through your life you roam
 You won't never see an outlaw
 Drive a family from their home.

¹⁵⁸ See, e.g., Sean Daly, *Guns & Lovers: Two Sides of 50 Cent*, WASH. POST, Mar. 3, 2005, at C1 (reviewing the release of hip-hop artist 50 Cent's album *The Massacre*, which includes plenty of songs about "wicked ganga[s] . . . back-alley shootouts and related Scarfacery"); Kelefa Sanneh, *A Timeout From Hip-Hop Tough Talk to Purr Come-Ons*, N.Y. TIMES, Mar. 3, 2005, at B1 (noting a real life shooting that occurred outside a New York radio station involving proteges of 50 Cent and a rival group).

¹⁵⁹ See generally Butler, *supra* note 28 (arguing that hip-hop has much to offer as a theory on crime and punishment). In an intriguing article on hip-hop and criminal law, Professor Paul Butler compares hip-hop culture with retributive philosophy:

Hip-hop culture, like retributive philosophy, emphasizes the importance of moral autonomy and free agency. Both posit that people who freely choose to do wrong should be punished. Where hip-hop theorists and traditional retributivists diverge, however, is on how to determine responsibility for individual acts. Hip-hop culture emphasizes the role of environment in determining conduct, whereas classic retributivist theory focuses on individual choice OutKast, for example, asserts "knowing each and every nigger sellin', but can you blame / The fact the only way a brother can survive the game."

Id. at 1004-05.

¹⁶⁰ See *id.* at 998 (citing hip-hop scholar Tricia Rose: "[A] large and significant element in rap's discursive territory is engaged in symbolic and ideological warfare with institutions and groups that symbolically, ideologically, and materially oppress African Americans.").

"Contingent Fate Model" of criminal justice,¹⁶¹ and points to the music of 1960s folk singer Phil Ochs as capturing the essence of the model:

Show me a prison
 Show me a jail
 Show me a prisoner whose life has gone pale.
 And I'll show you a young man
 With so many reasons why
 And there but for fortune
 May go you or I¹⁶²

But, while there is a lesson in the stories, there is little of the "protest-song instruction-manual mentality"¹⁶³ that was so much a part of 1960s folk music. As Springsteen has said, "You can't tell people what to think. You can show them something by saying, "Put these shoes on, walk in these shoes."¹⁶⁴ Through stories—by walking in someone else's shoes—Springsteen thinks hard about fortune and misfortune and offers some of the reasons why.

A. Who Springsteen's Criminals Are

Springsteen's criminals are generally working men—or men struggling to find work.¹⁶⁵ The characters in Springsteen's songs are literally a paycheck away from dislocation, disruption, and crime. *Nebraska* and *Tom Joad* are full of young men longing for escape into a better life. The same could be said of *Dead Man Walkin'*. No one speaks college-educated English. The songs all take place in factories, mines, mills, convenience stores, kitchens, front porches, union halls, decayed urban streets, migrant farm-worker shacks, and

¹⁶¹ See Louis Michael Seidman, *Left Out*, 67 LAW & CONTEMP. PROBS. 23, 30 (2004).

¹⁶² PHIL OCHS, *There But for Fortune*, on PHIL OCHS IN CONCERT (Rhino Records 1966).

¹⁶³ ALTERMAN, *supra* note 7, at 251-52.

¹⁶⁴ *Id.* at 252.

¹⁶⁵ Women are largely secondary characters in *Nebraska*, *The Ghost of Tom Joad*, and *Dead Man Walkin'*. Often women are a trigger—or a foil—for the men who end up committing crime or straying from the law as in "Nebraska," "Highway 29," and "The Line."

prisons.¹⁶⁶ The surroundings are not pretty, whether it's a stretch of highway beneath the "refinery's glow,"¹⁶⁷ a road filled with "broken glass and gasoline,"¹⁶⁸ or a part of town "where when you hit a red light you don't stop."¹⁶⁹

No one has much say over his life in *Nebraska*, *Tom Joad*, and *Dead Man Walkin'*; the characters in the songs are at the mercy of others with power or means. In *Nebraska*, virtually every song is addressed to the impersonal, unapproachable authority of a "mister," a "sir," a "judge," a "Mister State Trooper," or some combination.¹⁷⁰ The narrator in "Dead Man Walkin'" tells an unknown "Mister" that there's no need for him to listen to the soon-to-be-dead-man's story.¹⁷¹

Except in the songs about Mexican migrants in *Tom Joad*, the ethnicity or race of Springsteen's characters is not mentioned. This is probably intentional on Springsteen's part; the stories he tells are universal. The courtroom scene in "Johnny 99"—the fight breaking out, court staff dragging the defendant's girlfriend from the room, the defendant's mother weeping and begging the judge not to lock up her son, the dim prospect that the accused's final statement will make a difference—could happen in any courtroom, no matter the race of the parties. I have witnessed this scene more times than I like to remember:

A fistfight broke out in the courtroom
 they had to drag Johnny's girl away
 His mama stood up and shouted
 "Judge don't take my boy this way"
 Well son you got a statement
 you'd like to make
 Before the bailiff comes
 to forever take you away¹⁷²

¹⁶⁶ See ALTERMAN, *supra* note 7, at 136.

¹⁶⁷ SPRINGSTEEN, *State Trooper*, *supra* note 137.

¹⁶⁸ BRUCE SPRINGSTEEN, *Highway 29*, on *THE GHOST OF TOM JOAD* (Columbia Records 1995).

¹⁶⁹ SPRINGSTEEN, *Johnny 99*, *supra* note 1.

¹⁷⁰ *Id.*

¹⁷¹ SPRINGSTEEN, *Dead Man Walkin'*, *supra* note 13.

¹⁷² SPRINGSTEEN, *Johnny 99*, *supra* note 1.

As Springsteen has said about the "edgy, alienated types" who populate *Nebraska*, and the "cast of immigrants, drifters and damaged veterans" in *Tom Joad*¹⁷³:

Today it's just different people with different skin color. But there's the same sense that people have been abandoned in some fashion. They're not rebels. They're on the outside trying to find their way in, and the forces that are keeping that from happening are social forces or their own internal psychology. These things all overlap.¹⁷⁴

Springsteen is clearly conscious of race.¹⁷⁵ He does not think of himself as a "white rocker"; he had one of the first integrated bands in rock music.¹⁷⁶ Springsteen has expressed disappointment that the audience at his concerts is overwhelmingly white because the community about which he writes and sings is not exclusively white.¹⁷⁷ On the other hand, the demographic of those who attend his concerts might not necessarily reflect those who buy his albums.¹⁷⁸

Still, it's probably fair to say that Springsteen writes songs mostly from the perspective of people he knows best—the people

¹⁷³ Nicholas Dawidoff, *The Pop Populist*, N.Y. TIMES, Jan. 26, 1997, (Magazine), at 27.

¹⁷⁴ *Id.* at 28.

¹⁷⁵ See ALTERMAN, *supra* note 7, at 219-221 (discussing Springsteen and the question of race). At a press conference in Zimbabwe, Springsteen compared South African apartheid to the "economic apartheid of my own country—where we . . . segregate our underclass in ghettos of all the major cities." *Id.* at 221. Springsteen was given a humanitarian award from the NAACP for "contributions to the community." He received the award after the release of his song "American Skin," based on the police shooting of 22-year-old Amadou Diallo in New York in 1999. The song contains the line: "you can get killed just for living in your American skin." See *Springsteen Out of Tune With Police*, BBC NEWS, June 13, 2000, at <http://news.bbc.co.uk/1/hi/world/americas/788663.stm>.

¹⁷⁶ ALTERMAN, *supra* note 7, at 220.

¹⁷⁷ See *id.* at 221.

¹⁷⁸ I conducted some informal research with an admittedly skewed group of African American law students in Georgetown's criminal defense clinic. All considered themselves Springsteen fans and owned his albums, though none had ever attended a concert.

whose voice he seems to have captured like no one else—and these are white, working-class people:

Look . . . I don't see myself as the voice of whatever. I think a lot of the motivation for the music I've written comes from my own background. I understand joblessness like I do because I grew up in a house with a sense of dispossession. That sort of results in frustration and anger. I didn't start out with a specific political point of view. I don't sit down and write with political intentions. It's much more internal. The things I've written about best over my entire career are things I know about. The idea of the wasted life.¹⁷⁹

Springsteen's ability to accurately portray the lives of these working—and not working—people is an important contribution. Springsteen makes people grapple with class in America. As one commentator has noted, "outside of the music of Bruce Springsteen and perhaps a few other[s] . . . class remained the great unspoken subject of American life."¹⁸⁰ Springsteen also reminds us that the face of crime in America is not just black and male. There are plenty of white and brown people—almost all of them poor, working people¹⁸¹—who find themselves on the wrong side of the law as well.

B. WHAT SPRINGSTEEN'S CRIMINALS DO

Springsteen's criminals commit all sorts of crimes, especially murder.¹⁸² His characters go on killing sprees.¹⁸³ They get drunk and

¹⁷⁹ DAWIDOFF, *supra* note 60, at 127.

¹⁸⁰ ALTERMAN, *supra* note 7, at 131.

¹⁸¹ To quote a Steve Earle song about death row: "But there's twenty-seven men here / Mostly black, brown and poor / Most of em are guilty / Who are you to say for sure?" EARLE, *Billy Austin*, *supra* note 14.

¹⁸² There is a fascination with murder in both popular and high culture; it is regarded as unlike any other crime. *See, e.g.*, PHILIP ROTH, *I MARRIED A COMMUNIST* 300 (1998):

You just did something ineradicable, Ira—evil and maniacal and forever rooted in your life. You've done something tonight that can never be made right. You cannot publicly apologize for murder and make everything all right, Ira. *Nothing* can make murder all right. Ever! Murder doesn't just end one life—it ends *two*. Murder ends the human life of the murderer as well! You will never

shoot store clerks.¹⁸⁴ They get drunk and high and rape and murder a couple of teenagers.¹⁸⁵ They "gamble" and "rumble" and kill.¹⁸⁶ They get into barroom fights and shoot a guy.¹⁸⁷ They commit robberies that become murders.¹⁸⁸

Occasionally, they commit lesser crimes. They steal cars.¹⁸⁹ They trespass and carry guns.¹⁹⁰ They enter the country illegally and cook drugs.¹⁹¹ They snort and smuggle drugs, sell their bodies, and do "what [they had] to do for the money."¹⁹² They commit unnamed crimes that get them locked up for eight years.¹⁹³

get rid of this secret. You will go to the cemetery with this secret. You will have it with you forever!

¹⁸³ BRUCE SPRINGSTEEN, *Nebraska, on NEBRASKA* (Columbia Records 1982) ("Me and her went for a ride, sir, and ten innocent people died.").

¹⁸⁴ SPRINGSTEEN, *Johnny 99, supra* note 1 ("He came home too drunk from mixin' Tangueray and wine / He got a gun, shot a night clerk, now they call 'm Johnny 99.").

¹⁸⁵ SPRINGSTEEN, *Dead Man Walkin', supra* note 13 ("In the deep forest / Their blood and tears rushed over me / All I could feel was the drugs and shotgun / And my fear up inside me").

¹⁸⁶ BRUCE SPRINGSTEEN, *Atlantic City, on NEBRASKA* (Columbia Records 1982) ("Down here it's just winners and losers and don't get caught on the wrong side of that line / Well I'm tired of comin' out on the losin' end / So honey last night I met this guy and I'm gonna do a little favor for him").

¹⁸⁷ SPRINGSTEEN, *Highway Patrolman, supra* note 139 ("There was trouble in a roadhouse out on the Michigan line / There was a kid lyin' on the floor lookin' bad bleedin' hard from his head / There was a girl cryin' at a table, and it was Frank, they said").

¹⁸⁸ SPRINGSTEEN, *Highway 29, supra* note 168 ("It was a small-town bank, it was a mess / Well I had a gun, you know the rest").

¹⁸⁹ SPRINGSTEEN, *State Trooper, supra* note 137 ("License, registration, I ain't got none / But I got a clear conscience bout the things that I done").

¹⁹⁰ SPRINGSTEEN, *The Ghost of Tom Joad, supra* note 57 ("Got a one-way ticket to the promised land / You got a hole in your belly and gun in your hand").

¹⁹¹ BRUCE SPRINGSTEEN, *Sinaloa Cowboys, on THE GHOST OF TOM JOAD* (Columbia Records 1995) ("Word was out some men in from Sinaloa were looking for some hands / Well, deep in Fresno county there was a deserted chicken ranch / And there in a small tin shack on the edge of a ravine / Miguel and Louis stood cooking methamphetamine").

¹⁹² BRUCE SPRINGSTEEN, *Balboa Park, on THE GHOST OF TOM JOAD* (Columbia Records 1995) ("He grew up near the Zona Norte / With the hustlers and smugglers he hung out with / He swallowed their balloons of cocaine / Brought 'em across to the Twelfth Street strip").

¹⁹³ SPRINGSTEEN, *Straight Time, supra* note 149.

No matter what they do—no matter how serious the crime—Springsteen's criminals have their dignity. Whether their crimes are wily or witless, careful or reckless, deliberate or desperate, they are always much more than their crimes. They assert themselves. They account for themselves. Springsteen's criminals take responsibility for what they've done without complaining about the sorry circumstances—the "death and personal destruction" that preceded their crimes.¹⁹⁴ They accept their own blameworthiness: "I told myself it was all something in her / But as we drove I knew it was something in me / Something had been comin' for a long long time / And something that was here with me now / On Highway 29."¹⁹⁵ They don't deny their guilt: "Now, I ain't sayin' that makes me an innocent man."¹⁹⁶

No matter how senseless the crime—"[s]omebody kill[ing] . . . just to kill"¹⁹⁷ —Springsteen's criminals also maintain their humanity. They have a story, whether or not anyone wants to hear it: "In St. James Parish / I was born and christened / Now I've got my story / Mister no need for you to listen."¹⁹⁸ Springsteen's criminals draw you in and make you stand in their shoes for awhile—without ever asking for pity. Instead there is resignation: What happened has happened, and cannot be undone:

Well your honor I do believe
I'd be better off dead
And if you can take a man's life
for the thoughts that's in his head
Then won't you sit back in that chair
and think it over judge one more time
And let 'em shave off my hair

¹⁹⁴ SPRINGSTEEN, *SONGS*, *supra* note 5, at 276; MARSH, *supra* note 8, at 632 (quoting Springsteen: "There are guys who come home from the factory, sit in front of that TV with a sixpack of beer, that are as isolated as the *Nebraska* record, if not more so.").

¹⁹⁵ SPRINGSTEEN, *Highway 29*, *supra* note 168.

¹⁹⁶ SPRINGSTEEN, *Johnny 99*, *supra* note 1.

¹⁹⁷ BRUCE SPRINGSTEEN, *The New Timer*, on *THE GHOST OF TOM JOAD* (Columbia Records 1995).

¹⁹⁸ SPRINGSTEEN, *Dead Man Walkin'*, *supra* note 13.

and put me on that execution line¹⁹⁹

C. *Why They Do It*

1. The Struggle to Make a Living

Money is a constant worry for Springsteen's criminals. They struggle with unemployment and debt and try hard to cope with the burdens of the working poor.²⁰⁰ There are two songs that make reference to debt as a backdrop for criminal behavior, using the same phrase: "debts no honest man could pay." In "Atlantic City," the central character had tried hard to make it lawfully: "Well I got a job and tried to put my money away / But I got debts that no honest man can pay / So I drew what I had from the Central Trust / And I bought us two tickets on that Coast City bus."²⁰¹ In "Johnny 99," the central character tells the judge that it was the pressure of those debts that drove him to kill—debt along with "the thoughts that's in his head"²⁰²:

Now judge judge I had debts
 no honest man could pay
 The bank was holdin' my mortgage
 and they was takin' my house away
 Now I ain't sayin' that makes
 me an innocent man
 But it was more 'n all this
 that put that gun in my hand²⁰³

The narrator in "The Ghost of Tom Joad" offers a lament to the wandering life of the jobless: "No home no job no peace no rest."²⁰⁴

¹⁹⁹ SPRINGSTEEN, *Johnny 99*, *supra* note 1.

²⁰⁰ See generally DAVID K. SHIPLER, *THE WORKING POOR: INVISIBLE IN AMERICA* (Alfred A. Knopf ed., 2004) (examining the lives of the working poor in America, including store clerks, factory workers, farm laborers, sweatshop seamstresses, and illegal immigrants in menial jobs).

²⁰¹ SPRINGSTEEN, *Atlantic City*, *supra* note 186.

²⁰² SPRINGSTEEN, *Johnny 99*, *supra* note 1.

²⁰³ *Id.* The character had tried to pay his debts the "honest" way. He "went out lookin' for a job but he couldn't find none." *Id.*

In "Balboa Park," the central character has no regular job except to service the sexual desires of the rich men who frequent the park:

He laid his blanket underneath the freeway
 As the evening sky grew dark
 Took a sniff of *toncho* from his coke can
 And headed through Balboa Park
 Where the men in their Mercedes
 Come nightly to employ
 In the cool San Diego evening
 The services of the border boys²⁰⁵

It is hard to make a living no matter how hard some people work. As the parolee who is trying to stay "straight" says in "Straight Time": "Got a job at the rendering factory, it ain't gonna make me rich / In the darkness before dinner comes / Sometimes I can feel the itch."²⁰⁶ Even those who have never gotten in trouble, who have served their country and have lived an upright life, could go either way:

Well my daddy worked the furnaces
 Kept 'em hotter than hell
 I came home from 'Nam, worked my way to scarfer
 A job that'd suit the devil as well
 Taconite, coke and limestone
 Fed my children and made my pay
 Them smokestacks reachin' like the arms of God
 Into a beautiful sky of soot and clay

Here in Youngstown
 Here in Youngstown
 Sweet Jenny I'm sinkin' down
 Here darlin' in Youngstown²⁰⁷

Still, having a job serves as an anchor for the characters who populate Springsteen's songs. When they "closed down the auto plant

²⁰⁴ SPRINGSTEEN, *The Ghost of Tom Joad*, *supra* note 57.

²⁰⁵ SPRINGSTEEN, *Balboa Park*, *supra* note 192.

²⁰⁶ SPRINGSTEEN, *Straight Time*, *supra* note 149.

²⁰⁷ SPRINGSTEEN, *Youngstown*, *supra* note 150.

in Mahwah" in "Johnny 99," the unemployed central character eventually comes undone. It may not be a great job, but at least a person can make his way in the world when he has a job and can "make ends meet."²⁰⁸ Work provides a place, membership, a measure of respectability. As the central character in "Dead Man Walkin'" says, "Once I had a job, I had a girl."²⁰⁹ Once he had something in his life; he was tied in. When this goes there is no telling what will happen.

2. Poverty, Homelessness, and Hunger

Poverty can make for a level of desperation that is simply a fact of life for those living it. Increasingly in America, poverty leads to homelessness, rootlessness, dislocation. In the song "The Ghost of Tom Joad," the narrator talks about the hardships of homelessness and migrant work: "Got a one-way ticket to the promised land / You got a hole in your belly and a gun in your hand / Sleeping on a pillow of solid rock / Bathin' in the city aqueduct." In "The New Timer," the migrant farm worker rides the rails looking for work, and when he finds it he is bunked "in a barn just like animals / Me and a hundred others just like me."²¹⁰ In "Balboa Park," a homeless migrant laid "his blanket underneath the freeway / As the evening sky grew dark."²¹¹

²⁰⁸ SPRINGSTEEN, *Dry Lightning*, *supra* note 151.

²⁰⁹ SPRINGSTEEN, *Dead Man Walkin'*, *supra* note 13.

²¹⁰ SPRINGSTEEN, *The New Timer*, *supra* note 197.

²¹¹ SPRINGSTEEN, *Balboa Park*, *supra* note 192. The song continues:

He grew up near the Zona Norte
 With the hustlers and smugglers he hung out with
 He swallowed their balloons of cocaine
 Brought 'em across to the Twelfth Street strip
 Sleeping in a shelter
 If the night got too cold
 Runnin' from the *migra*
 Of the border patrol

Id.

Several songs on the *Tom Joad* album, including "Balboa Park," are about the Mexican migrant experience. As Springsteen writes, "These songs completed a circle, bringing me back to . . . the inspiration I'd gotten from Steinbeck's *The Grapes of Wrath*. Their skin was darker and their language had changed, but these were people trapped by the same brutal circumstances." SPRINGSTEEN, SONGS, *supra* note 5, at 276.

Hunger is a constant companion of poverty—and a motivator for all kinds of dangerous behavior. In "The Line," a former military man becomes a border patrolman for the INS. He soon learns what motivates illegal immigrants to risk arrest and worse:

Bobby Ramirez was a ten-year veteran
 We became friends
 his family was from Guanajuato
 so the job it was different for him
 He said "They risk death in the deserts and mountains"
 pay all they got to the smugglers rings
 we send 'em home and they come right back again
 Carl, hunger is a powerful thing²¹²

In "Sinaloa Cowboys," two brothers left the poverty of their small Mexican town to find work and a better life in California: "They worked side by side in the orchards / From morning till the day was through / Doing the work the hueros wouldn't do."²¹³ When they heard they could make half a year's wages cooking methamphetamine instead of picking fruit, they didn't think twice even though "if you slipped the hydriodic acid / Could burn right through your skin / They'd leave you spittin' up blood in the desert / If you breathed those fumes in."²¹⁴ Though the work is clearly criminal, the danger is a greater concern. In the end, the shack where the brothers are cooking drugs explodes, killing one of them:

Miguel lifted Louis's body into his truck
 and then he drove
 To where the morning sunlight fell
 on a eucalyptus grove
 There in the dirt he dug up ten-thousand dollars,
 all that they'd saved
 Kissed his brother's lips
 and placed him in his grave²¹⁵

²¹² BRUCE SPRINGSTEEN, *The Line*, on THE GHOST OF TOM JOAD (Columbia Records 1995).

²¹³ SPRINGSTEEN, *Sinaloa Cowboys*, *supra* note 191.

²¹⁴ *Id.*

²¹⁵ *Id.*

People will do things out of poverty and need that they would not otherwise do. It is not a matter of character, but conditions. Spider, the central character in "Balboa Park," was not born to be a prostitute or a drug smuggler. He has become these things out of need.²¹⁶ In "Across the Border," the impoverished Mexican family risks everything to leave behind "[t]he pain and sadness" for a better life.²¹⁷ In "Dry Lightning," the woman for whom the narrator pines makes extra money by being an exotic dancer at a strip club. She doesn't seem happy about it.²¹⁸

3. Loneliness, Isolation, and Dislocation

Sometimes Springsteen's criminals are driven by loneliness and isolation, and a sense of dislocation. Springsteen describes the characters in *Nebraska* as "isolated from their jobs, from their friends, from their family, from their fathers, mothers, not being connected to anything that's going on. . . . When you lose that sense of community there's some spiritual sense of breakdown that occurs. You just get shot off somewhere where nothing really matters."²¹⁹ As Dave Marsh writes, "*Nebraska's* songs are about the utter inability to communicate and the isolation that results."²²⁰

In "Atlantic City," the central character has given up on having anything better than his luckless, loveless life: "Now our luck may have died and our love may be cold but with you forever I'll stay."²²¹ In "State Trooper," the Turnpike driver "on a wet night 'neath the refinery's glow" has nothing in his life: "Maybe you got a kid, maybe you got a pretty wife the only thing that I got's been both'rin' me my whole life."²²² He yearns for something, anything: "Hey somebody

²¹⁶ SPRINGSTEEN, *Balboa Park*, *supra* note 192.

²¹⁷ BRUCE SPRINGSTEEN, *Across the Border*, *on* THE GHOST OF TOM JOAD (Columbia Records 1995).

²¹⁸ *See* SPRINGSTEEN, *Dry Lightning*, *supra* note 151 ("She said 'ain't nobody can give nobody / What they really need anyway").

²¹⁹ ALTERMAN, *supra* note 7, at 129; *see also* MARSH, *supra* note 8, at 384 (Springsteen describing *Nebraska* as "a record about the basic things that keep people functioning in society, in a community, or in their families or in their jobs. The idea is that they all break down.").

²²⁰ MARSH, *supra* note 8, at 367.

²²¹ SPRINGSTEEN, *Atlantic City*, *supra* note 186.

²²² SPRINGSTEEN, *State Trooper*, *supra* note 137.

out there, listen to my last prayer / Hiho silver-o, deliver me from nowhere."²²³ In "Open All Night," that refrain is repeated by a late night truck driver: "Hey, mister deejay, woncha hear my last prayer hey, ho, rock'n'roll, deliver me from nowhere."²²⁴

The songs in *The Ghost of Tom Joad* are no different. Relationships are fragile and fleeting, and hardly anyone is really connected to anyone else. In "Highway 29," even the initial seduction scene between the shoe salesman and his customer seems lonely: "We made some small talk, that's where it should have stopped / She slipped me a number, I put it in my pocket / My hand slipped up her skirt, everything slipped my mind."²²⁵ When they take off together and pull a bank robbery that turns deadly, they become quickly estranged: "It was a smalltown bank, it was a mess / Well I had a gun, you know the rest / Money on the floorboards, shirt was covered in blood / And she was cryin', her and me we headed south."²²⁶ It gets lonelier still as they live their life on the run:

In a little desert motel, the air was hot and clean
 I slept the sleep of the dead, I didn't dream
 I woke in the morning washed my face in the sink
 . . .
 The road was filled with broken glass and gasoline
 She wasn't sayin' nothin', it was just a dream
 The wind come silent through the windshield
 All I could see was snow and sky and pines
 I closed my eyes and I was runnin'
 I was runnin' then I was flyin'²²⁷

Springsteen's characters can't really count on anyone else. In "Straight Time," the parolee has managed to find a job and a wife, but nothing feels sure or safe. "In the darkness before dinner comes / Sometimes I can feel the itch / I got a cold mind to go tripping 'cross

²²³ *Id.*

²²⁴ BRUCE SPRINGSTEEN, *Open All Night, on NEBRASKA* (Columbia Records 1982).

²²⁵ SPRINGSTEEN, *Highway 29*, *supra* note 168.

²²⁶ *Id.*

²²⁷ *Id.*

that thin line."²²⁸ He knows his wife doesn't quite trust him: "Mary's smilin', but she watches me out of the corner of her eye."²²⁹ In "The Line," the border patrolman falls hard for Louisa, and helps her illegally enter the United States only to be set up. Still, he keeps looking for Louisa: "at night I searched the local bars / and the migrant towns / Lookin' for my Louisa / With the black hair fallin' down."²³⁰ There is a theme to these relationships: everybody wants something, but nobody gets what they need.²³¹

The feeling of isolation and dislocation in many of the songs is palpable. As the man who left his family in Pennsylvania "[s]earchin' for work" says:

Late that summer I was rollin' through the plains of Texas
A vision passed before my eyes
A small house sittin' trackside
With the glow of the saviours beautiful light

A woman stood cookin' in the kitchen
Kid sat at the table with his old man
Now I wonder does my son miss me
Does he wonder where I am²³²

The parolee in "Straight Time" tries to fight his continuing state of unease and dislocation by thinking about his wife and family, and the evenings he spends on the "[k]itchen floor . . . tossin' my little babies high." Still, he finds himself in his basement:

In the basement, huntin' gun and a hacksaw
Sip a beer and thirteen inches of barrel drop to the floor
Come home in the evening, can't get the smell from my hands
Lay my head down on the pillow
And, go driftin' off into foreign lands²³³

²²⁸ SPRINGSTEEN, *Straight Time*, *supra* note 149.

²²⁹ *Id.*

²³⁰ SPRINGSTEEN, *The Line*, *supra* note 212.

²³¹ SPRINGSTEEN, *Dry Lightning*, *supra* note 151.

²³² SPRINGSTEEN, *The New Timer*, *supra* note 197.

²³³ SPRINGSTEEN, *Straight Time*, *supra* note 149.

4. Drugs, Alcohol, and Guns

No matter what Springsteen's characters are struggling with—whether it is joblessness, poverty, or a feeling of deep disruption—when you add to the mix alcohol or drugs, or worse, a gun, things happen that cannot be undone. Had the central character in "Johnny 99" gone home to bed after getting "too drunk from mixin' Tangueray and wine," his life might have still been difficult—but it wouldn't be over. Once he "got a gun" it was inevitable that he would use it.²³⁴ The real tragedy was that he used it on a shop clerk instead of "blow[ing] his [own] top."²³⁵

In "Nebraska," the Starkweather and Fugate characters might have gotten into all kinds of trouble, but there might not have been all that killing—Starkweather would not have been able to "kill everything in [his] path . . . [f]rom the town of Lincoln Nebraska . . . [t]hrough the badlands of Wyoming" if he hadn't had "a sawed off .410" shotgun with him.²³⁶ The gun is as much a part of the monstrous crime as the seemingly heartless killers. The same is true in "Highway 29": "Well I had a gun, you know the rest."²³⁷

In "Dead Man Walkin'," the brutal crime was committed in a fog of booze and drugs that might not have happened without the assistance of a shotgun. As the central character recounts: "In the deep forest / Their blood and tears rushed over me / All I could feel was the drugs and the shotgun / And my fear up inside me / Like a dead man talkin'."²³⁸

In "The Ghost of Tom Joad," there is poverty, joblessness, and guns.²³⁹ And where there's a gun there's trouble, or at least the threat of it.²⁴⁰ In "Straight Time," there is an ominous suggestion about the "huntin' gun and a hacksaw" in the basement.²⁴¹ In "Highway Patrolman," Frankie has likely been drinking at the roadhouse where

²³⁴ SPRINGSTEEN, *Johnny 99*, *supra* note 1.

²³⁵ *Id.*

²³⁶ SPRINGSTEEN, *Nebraska*, *supra* note 183.

²³⁷ SPRINGSTEEN, *Highway 29*, *supra* note 168.

²³⁸ SPRINGSTEEN, *Dead Man Walkin'*, *supra* note 13.

²³⁹ See SPRINGSTEEN, *The Ghost of Tom Joad*, *supra* note 149.

²⁴⁰ See *id.* ("You got a hole in your belly and gun in your hand").

²⁴¹ SPRINGSTEEN, *Straight Time*, *supra* note 149.

there was "trouble" and "a kid [is] lyin' on the floor lookin' bad bleedin' hard from his head."²⁴²

Of course, Springsteen has it right. Crime and violence are often accompanied by alcohol or drug abuse, and nothing turns a fight into a homicide quicker than a gun. Springsteen understands that the difference between one guy losing it and exploding in anger and another guy losing it and committing a homicide is at least as much about circumstance as "character."²⁴³

5. A Meanness in the World

Sometimes there is no good answer for why people do the things they do.²⁴⁴ Even the people involved don't know why they did it. Sometimes it's a momentary impulse, an "it,"²⁴⁵ or something inside just seems to explode,²⁴⁶ or things get carried away beyond all sense or reason.²⁴⁷

But, sometimes there is something at the core of seemingly incomprehensible conduct, something that needs to be put into words. Springsteen sees this as connected to "[t]he idea of the pure

²⁴² SPRINGSTEEN, *Highway Patrolman*, *supra* note 139. It is not clear that Frankie shot the man, but it sounds that way. *See id.* With or without violence or killing, alcohol is a frequent companion of Springsteen's characters. The narrator in "Dry Lightning" refers obliquely to some past "fightin'" and drowns his sorrow by "spend[ing] the night over [his] gin." SPRINGSTEEN, *Dry Lightning*, *supra* note 151.

²⁴³ To borrow a verse from a Steve Earle song, one that seems to pay homage to Springsteen:

So when the preacher comes to get me
And they shave off all my hair
Could you take that long walk with me
Knowing hell is waitin' there
Could you pull that switch yourself sir
With a sure and steady hand
Could you still tell yourself
That you're better than I am

EARLE, *Billy Austin*, *supra* note 14.

²⁴⁴ *See* Samuel J. Levine, *Portraits of Criminals on Bruce Springsteen's Nebraska: The Enigmatic Criminal, the Sympathetic Criminal, and the Criminal as Brother*, 14 WIDENER L.J. 767 (2005) (discussing the "enigmatic criminal").

²⁴⁵ SPRINGSTEEN, *Straight Time*, *supra* note 149.

²⁴⁶ *See* SPRINGSTEEN, *Johnny 99*, *supra* note 1.

²⁴⁷ *See* SPRINGSTEEN, *Nebraska*, *supra* note 183; SPRINGSTEEN, *Highway 29*, *supra* note 168. Both songs involve ill-fated road trips.

unkindness of the world."²⁴⁸ Unkindness breeds unkindness. The central character in "Born in the U.S.A." was kicked from the moment he "hit the ground."²⁴⁹ He says you can't help but "end up like a dog that's been beat."²⁵⁰ Some of those "dogs" are broken down and defeated. Others repeat what was done to them.

The song "Nebraska" offers a terse yet powerful explanation for the thrill killings committed by the central character who has been convicted and sentenced to death for the crimes:

They declared me unfit to live said into
that great void my soul'd be hurled
They wanted to know
why I did what I did,
Well sir I guess there's just
a meanness in this world²⁵¹

Although the speaker is cocky and unrepentant—he says about the killings, "[a]t least for a little while sir me and her we had us some fun,"²⁵² and about his death sentence, "Sheriff, when the man pulls that switch sir and snaps my poor head back / You make sure my pretty baby is sittin' right there on my lap"²⁵³—his explanation for the crime seems genuine. He knows that what he did was "mean." And he knows his actions are a reflection of the "meanness in the world."²⁵⁴

²⁴⁸ DAWIDOFF, *supra* note 60, at 13.

²⁴⁹ SPRINGSTEEN, *Born in the U.S.A.*, *supra* note 4.

²⁵⁰ *Id.*

²⁵¹ SPRINGSTEEN, *Nebraska*, *supra* note 183.

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.* For an examination of an equally unsympathetic central character, see NORMAN MAILER, *THE EXECUTIONER'S SONG* (1979) ("nonfiction novel" about convicted capital murderer Gary Gilmore). *The Executioner's Song* follows in the tradition of Truman Capote's masterful *In Cold Blood*, which tells the true story of the murder of a Kansas family in 1950. TRUMAN CAPOTE, *IN COLD BLOOD* (1965). For another interesting perspective on Gary Gilmore, see MIKAL GILMORE, *SHOT IN THE HEART* (1995) (memoir by Gilmore's youngest brother about Gilmore and the history of violence in the Gilmore family). Mikal Gilmore has also written about Springsteen's music. *See supra* note 134.

Likewise, in "Highway 29," the central character does something he can't explain, something he never thought he would do. He was a shoe salesman, and now suddenly he's a murderer. It feels like "a dream."²⁵⁵ Still, he acknowledges that there was "something in me" that made him rob and kill.²⁵⁶ If not "meanness," then *something*.

Even when Springsteen's characters do senseless, seemingly evil things for no apparent reason—killing "innocent people" in "Nebraska," a bank teller in "Highway 29," a store clerk in "Johnny 99"—Springsteen recognizes the humanity of the characters whose stories he tells. They are people. He might not like the things they've done but he sees why things might have gone that way.

No matter what has driven them to commit crime, Springsteen's characters are portrayed with honesty, not judgment. Springsteen takes an honest look at who they are and what they've done and calls it what it is. He tries hard not to simplify things; he knows that things happen for a range of often complex reasons. Sometimes, there is no answer at all to why people do what they do. In "My Best Was Never Good Enough," he takes a parting shot "at the way pop culture trivializes complicated moral issues, how the nightly news 'sound bytes' and packages life to strip away the dignity of human events."²⁵⁷ This song, which concludes the album *The Ghost of Tom Joad*, was inspired by the "cliche-popping sheriff in noir writer Jim Thompson's book *The Killer Inside Me*." It consists of cliche after cliche, with the haunting chorus, "But for you my best was never good enough":

Every cloud has a silver lining, every dog has his day
 She said "Now don't say nothin'
 If you don't have something nice to say"
 The tough now they get going when the going gets tough
 But for you my best was never good enough²⁵⁸

There is respect in Springsteen's acknowledgment of complexity.

²⁵⁵ SPRINGSTEEN, *Highway 29*, *supra* note 168.

²⁵⁶ *Id.*

²⁵⁷ SPRINGSTEEN, SONGS, *supra* note 5, at 277.

²⁵⁸ BRUCE SPRINGSTEEN, *My Best Was Never Good Enough*, on *THE GHOST OF TOM JOAD* (Columbia Records 1995).

*D. How They Live With the Consequences
of Their Actions*

Once a crime is committed it cannot be undone. The aftermath remains. Springsteen's characters struggle to live with themselves and the consequences of their acts in a number of different ways, but always with dignity.

The most vivid examples are the death penalty songs. When Springsteen's characters are facing the death penalty they manage to make an uneasy peace with it. In "Nebraska," the central character sounds brash, unshaken, and defiant when he says he'd like his "pretty baby" to be on his lap when they put him in the electric chair,²⁵⁹ but he also describes his fate in an appropriately somber way. He will be executed at "[m]idnight in a prison storeroom with leather straps across my chest" with a man "pull[ing] that switch . . . and snap[ping] [his] poor head back."²⁶⁰ In "Dead Man Walkin'," the central character knows the "pale horse" of death is coming and he has no choice but to let it carry him off. He is resolute: "There's a pale horse comin' / I'm gonna ride it / I'll rise in the morning / With my fate decided / I'm a dead man walkin' . . ."²⁶¹ He seems to think he might have another chance one day, in another life, or at least he can dream about it: "Now the clouds above my prison / Move slowly across the sky / There's a new day comin' / And my dreams are full tonight."²⁶² Still, the character faces a terrible aloneness at the prospect of death, conveyed in the title of the song, and the refrain: "I'm a dead man walkin'."²⁶³ The character declines to ask for forgiveness not out of unrepentance but because in that final eery hour he has nothing left but his sins: "'Neath the summer sky my eyes went black / Sister I won't ask for forgiveness / My sins are all I have."²⁶⁴

In "Johnny 99," the central character is sentenced to what amounts to "natural life" in prison. Faced with what he regards as a living death, the character asks the judge to reconsider his sentence

²⁵⁹ SPRINGSTEEN, *Nebraska*, *supra* note 183.

²⁶⁰ *Id.*

²⁶¹ SPRINGSTEEN, *Dead Man Walkin'*, *supra* note 13.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

and give him the death penalty instead: "[W]on't you sit back in that chair / and think it over judge one more time / And let 'em shave off my hair and put me on that execution line."²⁶⁵ In doing so, the character tries to hold on to his dignity and autonomy by having some say in his destiny. Because there is no "reason to believe"²⁶⁶—no reason to hope—the character believes it would be better to end his life now.²⁶⁷

In the less dramatic setting of an "ordinary" prison sentence, Springsteen's criminals do what they can to cope. Doing time is not easy. As Springsteen knows, prison takes much more than years from a person: it takes everything.²⁶⁸ And yet, people adapt and manage to make a life behind bars: "Eight years in, it feels like you're gonna die / But you get used to anything / Sooner or later it becomes your life."²⁶⁹

After prison, life can be almost as confining. Charlie, the parolee in "Straight Time" knows that he is walking a "thin line."²⁷⁰ He is being watched by everyone—even his wife²⁷¹—to see on which side of the line he will end up. He struggles with temptation—he is "sick of doin' straight time" and his uncle's car theft business beckons²⁷²—but so far he resists. Still, it's not easy: "In the darkness before dinner comes / Sometimes I can feel the itch / I got a cold mind to go

²⁶⁵ SPRINGSTEEN, *Johnny 99*, *supra* note 1. In the live version of the song, Springsteen sings, "[L]et 'em shave off my hair and put me on that killin' line." SPRINGSTEEN AND THE E STREET BAND, *Johnny 99*, *supra* note 141.

²⁶⁶ See BRUCE SPRINGSTEEN, *Reason to Believe*, on NEBRASKA (Columbia Records 1982). "Reason to Believe" includes a verse about a man standing over a dead dog by the highway. The man is "lookin' down kinda puzzled" and is "pokin' that dog with a stick . . . [I]ike if he stood there long enough that dog'd get up and run." *Id.* The central character in "Johnny 99" knows that no amount of poking can undo the crime he has committed or the consequences. All he wants is to end his life with dignity. See SPRINGSTEEN, *Johnny 99*, *supra* note 1.

²⁶⁷ *See id.*

²⁶⁸ *See id.* (central character saying he'd be "better off dead" than in prison for ninety-nine years).

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.* ("Mary's smilin', but she watches me").

²⁷² *Id.* ("My uncles at the evenin' table, makes his living runnin' hot cars / Slips me a hundred dollar bill, says 'Charlie, you best remember who your friends are'").

tripping across that thin line." And yet, he walks "the clean and narrow" in order to "stay out and stay alive."²⁷³

V. CONCLUSION

It is now more than thirty years since Bruce Springsteen began his career as a recording artist. Notwithstanding his status as a rock and roll superstar, Springsteen has never strayed far from his roots. More than any other singer of his generation, Springsteen is devoted to songs about ordinary Americans. No matter how far he has come from his humble beginnings in Freehold, New Jersey, Springsteen continues to care about the ordinary people he grew up with—working people struggling to make a living, raise a family, and find some kind of meaning.²⁷⁴

Yet, instead of offering an empty accolade to the American Dream, Springsteen explores the myth of the Dream. He sings of Americans (and those drawn to America) who fail to make it no matter how hard they try. They can't pay their bills, can't keep their families together, and fail to find any meaning at all. What is remarkable about Springsteen's "criminals" is that they are often not criminals at all. They could be anyone who has ever straddled that "thin line between stability and that moment when time stops and everything goes to black."²⁷⁵

Springsteen's criminals are vivid, lifelike characters, not readily reduced to type,²⁷⁶ and not easy to dismiss no matter what they have done. They are people who may have broken the law, but their lives are much more than their crimes. Springsteen tells the stories behind the crimes: unemployed because of a plant closing, unable to find another job, and facing foreclosure on his house, a man snaps, shoots a clerk, and is charged with murder²⁷⁷; lonely and in a dead-end job, a shoe salesman takes up with a woman he barely knows and robs a

²⁷³ *Id.*

²⁷⁴ Springsteen's class consciousness is unique in an America profoundly confused about class. See Janny Scott & David Leonhardt, *Class in America: Shadowy Lines That Still Divide*, N.Y. TIMES, May 15, 2005, at 1.

²⁷⁵ MARSH, *supra* note 8, at 43.

²⁷⁶ There are even law enforcement criminals—a police officer and border patrol officer who break or skirt the law in "Highway Patrolman" and "The Line."

²⁷⁷ See SPRINGSTEEN, *Johnny 99*, *supra* note 1.

bank, killing the teller²⁷⁸; in a fog of drugs, fear, and rage, a man commits a heinous crime that lands him on death row²⁷⁹; for seemingly no reason, but reflecting the "meanness in the world," a man takes up with a girl and together they commit a series of random killings.²⁸⁰

By getting into his characters' hearts and minds, Springsteen provides depth and complexity to people largely depicted as one-dimensional in this culture—as criminals and nothing more. He has also done what the popular media does poorly, and rock and roll does well: he has given voice to people who are typically denied expression.²⁸¹

Springsteen has created a body of work that says something important about America at the end of one century and the start of another. In this punitive time—and these thirty years have been very harsh for criminal defendants—Springsteen's songs call for understanding instead of judgment, compassion instead of blame. Though Springsteen's songs are full of pain and sorrow, they also contain idealism. Springsteen believes in people—in their strength and resilience, their humanity and dignity. The odds may be against many of these people, but they have a story. As Springsteen reminds us, they are part of America, and part of all of us.

²⁷⁸ See SPRINGSTEEN, *Highway 29*, *supra* note 168.

²⁷⁹ See SPRINGSTEEN, *Dead Man Walkin'*, *supra* note 13.

²⁸⁰ See SPRINGSTEEN, *Nebraska*, *supra* note 183.

²⁸¹ See Gilmore, *supra* note 134, at 282. As Gilmore has written, "In the midst of confusing and complex times, Bruce Springsteen has written more honestly, more intelligently, and more compassionately about America than any other writer of the last generation." *Id.*

