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THE JUDGMENT OF THE BOSS ON BOSSING THE JUDGES: BRUCE SPRINGSTEEN, JUDICIAL INDEPENDENCE, AND THE RULE OF LAW

Charles Gardner Geyh*

Bruce Springsteen is among the greatest singer-songwriters of his age, and I am grateful to the organizers of this symposium for furnishing me with an excuse to write about his ideas. Mr. Springsteen's work, like that of every exceptional artist, has not remained static but has evolved over the course of his career. Of particular interest to me is the extent to which Mr. Springsteen's ideological journey, as chronicled in thirty years of song, tracks the ideological journey of American law in general, and the judicial role in particular, over the course of the Twentieth Century. Perhaps of even greater interest is that Mr. Springsteen's most recent work may inform the contemporary debate over which path to take for an American judiciary at the cross-roads.

In this piece, I begin by setting the political stage with a brief description of the theoretical foundation for the rule of law and an independent judiciary, before summarizing recent developments that have eroded that foundation. I then correlate the phases of Mr. Springsteen's work to three ideological movements spanning the Twentieth Century that have led us to our present state, in an effort to better understand the rising tide of opposition to judicial independence and the rule of law as it is traditionally conceived. I conclude with an analysis of Mr. Springsteen's most recent work and find that it offers alternative solutions to the current conundrum, one of which holds considerable promise.

* Professor of Law, Indiana University at Bloomington. Thanks to Lara Gose, Stephen Hodson, Gene Shreve and David White for their comments on an earlier draft. In addition, I would like to offer a generalized expression of gratitude to my friends on the faculty at Widener for their collegiality and support throughout my tenure there and special thanks to Randy Lee for inviting me to participate in this symposium.
JUDICIAL INDEPENDENCE AND THE RULE OF LAW

In a constitutional democracy in which the powers of government are separated, we assign judges the task of upholding the rule of law by deciding cases on the basis of the facts as they find them and the law as they construe it to be written. If judges are to uphold the rule of law, however, the stock argument has been that they need to be insulated from threats or intimidation that could impair their impartial, independent judgment.¹

Accordingly, state and federal judges have long enjoyed a significant measure of independence. The Constitution guarantees federal judges life tenure and a salary that cannot be cut²; moreover, they have been afforded even greater independence than the Constitution technically demands, by virtue of a congressional tradition of respect for the judiciary's autonomy that I have called "customary independence."³ State judges are somewhat less independent, insofar as most of them stand for periodic election, but even so, they tend to have longer terms of office than officials in the other branches and, as a practical matter, have historically been retained or reelected for as long as they wish to remain; in addition, state judiciaries are typically subject to fewer legislative controls than the federal courts.⁴

All of that, however, may be changing. In the past decade, there have been widespread efforts to constrain the independence of state and federal judges who made decisions that did not sit well with the public or the political branches. Some have proposed impeaching errant judges; others have introduced legislation to strip courts of subject-matter jurisdiction to hear particular kinds of

¹ See, e.g., AMERICAN BAR ASSOCIATION, JUSTICE IN JEOPARDY: REPORT OF THE COMMISSION ON THE 21ST CENTURY JUDICIARY 7-9 (2003) (describing the interrelationship between the rule of law, judicial independence and judicial impartiality, and underscoring their importance as "enduring principles").
² U.S. CONST. art. III, § 1.
cases or otherwise restrict their decision-making discretion; still others have taken steps to deprive judges of pay raises, cut their budgets, or change the way they are selected to make their removal easier. At the same time, the cost of judicial campaigns has skyrocketed as interest groups have challenged the retention or reelection of state judges as never before, while the federal appointments process has degenerated into a partisan struggle for ideological control of judicial decision-making.

A common view among those advocating greater political control of judges is that independent judges do not follow the law as we have long supposed. Rather, they argue, judges immunized from political pressure are liberated to disregard the law and follow their personal predilections—be they the product of the judge's politics, class, race or gender. For court critics, the first step down the road to reform is to shatter the myths that independent judges are impartial (because they are not) and uphold the law (because they do not).

The path that takes us from an optimistic model of judges who decide cases by isolating and applying clearly defined rules of law, to a nihilistic one of judges who decide cases by disregarding the law and following their ideological fancy, spans the length of the Twentieth Century and at least three ideological movements. It begins with the formalists, who gradually gave way to the realists beginning in the 1920s, whose views were subsequently challenged and qualified by several post-realist movements, beginning in the 1970s. Strangely enough—or perhaps, as I ultimately conclude, not so strangely at all—Mr. Springsteen's work has taken a similar path with comparable stages.


6 Id. at 51.

SPRINGSTEEN'S EARLY PERIOD AND THE 
AGE OF FORMALISM

The early Twentieth Century is widely identified as an age of formalism in which American law was understood to embody a series of clearly articulated rules that judges were expected to interpret and apply slavishly.8 The term "formalism" has been variously defined, but Professor Larry Alexander offers a succinct variation that serves nicely here: "By formalism I mean adherence to a norm's prescription without regard to the background reasons the norm is meant to serve (even when the norm's prescription fails to serve those background reasons in a particular case)."9

Throughout his career, Mr. Springsteen has exhibited little interest in laws per se but a profound interest in rules—the socially constructed rules that establish the ends and means for achieving success in American society in general and working class society in particular. As to the ends, he identifies two rules or norms: First, each of us should seek to acquire wealth with which to buy material goods, love, freedom, or respect; and second, each of us should seek to acquire power with which to escape the oppression of employers, parents, dead-end relationships, or a life devoid of opportunity.10 As to the means, the norm is equally clear: Get an honest job out of high school, and work that job until wealth and power are acquired.

Taken together, these norms articulate a textured version of the classic American dream. In his first hit, "Rosalita,"11 Mr. Springsteen depicts a man, quite possibly the songwriter's alter ego, who internalizes the rules comprising the dream, structures his life accordingly, and succeeds. At first, the young man's efforts to woo Rosalita have been thwarted by her mother, who dislikes him because he is a rock musician, and her father, who "says he knows

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9 Larry Alexander, With me, it's all er Nuthin': Formalism in Law and Morality, 66 U. CHI. L. REV. 530, 531 (1999).
10 Support for these propositions, drawn from Mr. Springsteen's lyrics, is developed below.
11 BRUCE SPRINGSTEEN, Rosalita, on GREETINGS FROM ASBURY PARK, N.J. (Columbia Records 1973).
that I don’t have any money." In the end, however, our protagonist acquires wealth and in so doing overcomes her parents’ objections, gets the girl, and achieves his dream, instructing Rosalita to tell her father that "this is his last chance to get his daughter in a fine romance / Because the record company, Rosie, just gave me a big advance." A similar view found its way into Mr. Springsteen’s lyrics as late as 1978, in "Badlands," where he writes: "Poor man wanna be rich / Rich man wanna be king / And a king ain’t satisfied / Till he rules everything / I wanna go out tonight / I wanna find out what I got," adding in the refrain that "We’ll keep pushin’ till it’s understood / And these badlands start treating us good." And again in "The Promised Land," Mr. Springsteen’s coming-of-age subject is "[w]orking all day in my daddy’s garage / Driving all night chasing some mirage / Pretty soon little girl I’m gonna take charge." The young man’s optimism is made that much clearer as he declares with absolute conviction: "Mister, I ain’t a boy, no, I’m a man / And I believe in a promised land." These are formalist sentiments in that they embrace the rules as the rules. One works hard by honorable means to acquire wealth and power, and the outcome determines success or failure. One does not question the legitimacy of the rules, nor does one look beyond the letter of the rules to achieve desirable results. Rather, the law is the law and good people, like good judges, simply find it and follow it.

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12 Id.
13 Id.
14 BRUCE SPRINGSTEEN, Badlands, on DARKNESS ON THE EDGE OF TOWN (Columbia Records 1978).
15 Id.
16 Id.
17 BRUCE SPRINGSTEEN, The Promised Land, on DARKNESS ON THE EDGE OF TOWN (Columbia Records 1978).
18 Id.
19 Id.
Beginning in the 1920s, formalism was challenged by a new wave of "legal realists"—judges and scholars such as Jerome Frank and Karl Llewellyn, who recognized that rules of law are not transcendental. Frank put the point bluntly in 1930: "We must stop telling stork fibs about how a law is born and cease even hinting that perhaps there is still some truth in Peter Pan legends of a juristic happy hunting ground in a land of legal absolutes."\(^{20}\)

One consequence of the "discovery" that laws are not found in nature but are made by people is that they can and should be interpreted flexibly to meet human needs. The rules remain relevant and meaningful but should not be followed to the letter if doing so fails to achieve their desired objectives. This realization liberates judges to "reach decisions based on what they think would be fair on the facts of the case, rather than on the basis of the applicable rules of law."\(^{21}\)

Mr. Springsteen's early work is replete with realist thinking. His characters continue to embrace the goals of getting ahead by acquiring wealth and power through honest work but appreciate that a rigid application of the traditional rule—that one achieves the American Dream by staying the course and working the same job from youth to retirement as their fathers did—is ill-suited to the task and must be bent to serve its purpose. Many of Mr. Springsteen's early songs thus feature characters who accept the traditional ends of achieving wealth and power by honest means yet circumvent the traditional rules for achieving those ends by escaping to make a fresh start on their own terms.

In "Mary Queen of Arkansas,"\(^{22}\) the speaker declaims that "I know a place where we can go, Mary / Where I can get a good job and start out all over again,"\(^{23}\) adding that "The big top is for

\(^{21}\) Brian Leiter, Toward a Naturalized Jurisprudence, 76 TEX. L. REV. 267, 267, 275 (1997).
\(^{22}\) BRUCE SPRINGSTEEN, Mary Queen of Arkansas, on GREETINGS FROM ASBURY PARK, N.J. (Columbia Records 1973).
\(^{23}\) Id.
dreamers, we can take the circus all the way to the border." In "Thunder Road," Mr. Springsteen’s character declares "It’s a town full of losers / And I’m pulling out of here to win," enthusing that "I got this guitar / And I learned how to make it talk," which convinces him that he has the tools he needs to succeed, concluding that "Heaven’s waiting down on the tracks," and that he will "[ride] out tonight to case the promised land." The towering anthem "Born to Run," goes further still. It begins with the despairing observation that "we sweat it out on the streets of a runaway American dream," which Mr. Springsteen brands "a death trap" and a "suicide rap." The only solution is to "get out while we’re young." Like the characters in his other realist songwriting, then, the unhappy soul featured in "Born to Run" holds out hope for a new and better life elsewhere. But unlike his earlier characters, this one second-guesses the premise that any of the working class rules for success can achieve the goal of promoting human happiness. His protagonist is not leaving to find more money or a better job; he is leaving to pursue happiness by some other, as yet undefined, means: "Someday girl I don’t know when we’re gonna get to that place / Where we really want to go and we’ll walk in the sun / But till then tramps like us / Baby we were born to run." In other words, his hopes ride on abandoning the socially constructed rules for success altogether, not just tweaking them to meet his needs, which segues into the middle phase of Mr. Springsteen’s career.

24 Id.
25 BRUCE SPRINGSTEEN, Thunder Road, on BORN TO RUN (Columbia Records 1975).
26 Id.
27 Id.
28 Id.
29 BRUCE SPRINGSTEEN, Born to Run, on BORN TO RUN (Columbia Records 1975).
30 Id.
31 Id.
32 Id.
33 Id.
In the latter third of the Twentieth Century, legal realism began to mutate into several darker, more menacing, post-realist subspecies, two of which are particularly germane here—critical legal studies (CLS) in the field of law and the attitudinal model of judicial decision-making in political science. By the 1980s, any number of scholars recognized that we had all become legal realists "in the sense that virtually no legal scholar believes in the complete objectivity and the rationality of law." What distinguished the realists from the post-realists was, as Michael Dorf has explained, "largely a matter of degree." For the post-realists, judicial interpretations of law are not merely influenced by extralegal considerations—they are controlled by them to such an extent that the rules ultimately serve only to conceal interests that work to the detriment of the public that the rules putatively protected.

Early proponents of legal realism were a fairly optimistic lot. They embraced the notion that judges would be guided by their sense of fairness when interpreting the law. They did not worry that judicial interpretations of law would deviate markedly from the public good because, as far as early realists could tell, judges shared the same values as the public they served. As Max Radin observed:

Judges, we know, are people. I know a great many. Some were my schoolmates. . . . They eat the same foods, seem moved by the same emotions, and laugh at the same jokes. Apparently they are a good deal like ourselves. If, therefore, in a controversy in which we are engaged, we could rid ourselves of the personal interest in it, we might shrewdly guess that a great

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34 I do not discuss critical race and critical feminist theories here. Although they offer important post-realist perspectives germane to the subject of judicial independence, see, e.g., Sherrilyn Iffel, Racial Diversity on the Bench: Beyond Role Models and Public Confidence, 57 WASH. & LEE L. REV. 405 (2000), they do not intersect with the work of Mr. Springsteen in a way that advances the themes I develop here.


36 Id.
many judges would like to see the same person win who appeals to us.37

Devotees of the CLS movement, such as Duncan Kennedy and Roberto Unger, were far more critical. For them, the role of law in judicial interpretation was worse than irrelevant: It was a means by which white, male elites could subjugate the underclass and perpetuate the status quo. As one author has described their position,

[A]ll law is nothing more than politics in a different form. Moreover, the legal structure, with its mystical language portraying the system's results in terms like justice and equality, is in reality an instrument of oppression, designed to create the illusion of fairness while really legitimizing and furthering the position of the upper class.38

In the political science community, studies of Supreme Court decision-making that began mid-century, gradually led to the development of a model which posited that judicial decision-making is controlled not by the law but by the political "attitudes" of the judge.39 Proponents of the "attitudinal" model, such as Jeffrey Segal and Harold Spaeth, do not lace their scholarship with the normative overtones that permeated CLS scholarship, but the message is similar: Available data demonstrate that the rule of law we have sworn by for so long is a fiction that independent judges have been allowed to perpetuate. As Professor Terri Peretti bluntly puts it: "The assumption that independent judges use their freedom to decide impartially according to law is contradicted by the empirical evidence."40

37 MAX RADIN, "The Theory of Judicial Decision: Or How Judges Think" (1925), in AMERICAN LEGAL REALISM, supra note 8, at 196.
In his middle-period, Mr. Springsteen sought to expose as fraudulent the socially constructed rules his earlier characters had embraced. One poignant example is the title track of his 1980 release, *The River*. The song tells the story of a man whose dreams never materialized and whose hopes gradually evaporated, leaving him with nothing but memories that "come back to haunt me / They haunt me like a curse / Is a dream a lie if it don’t come true / Or is it something worse / That sends me down to the river / Though I know the river is dry." This is more than a formalist story of someone who played by the rules and lost; it is someone who has realized that the game was rigged and unwinnable.

Songs of this period articulate a consistent message: The working class has been shackled by the unachievable American Dream. Many are stories of older people, now shells of their former selves, who have acquired the wisdom to appreciate that the socially-imposed rules for success they had once internalized were fabrications that served only to subjugate them. The veteran subject of the album title cut, *Born in the U.S.A.*, opens with painful resignation: "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." Gone is the realist’s hope of bending the rules and escaping to a better place: He cannot find work, cannot get help from the Veteran’s Administration, and has been "ten years burning down the road / Nowhere to run ain’t got nowhere to go." A similar sentiment of resignation is expressed in the 1980 song, "Jackson Cage": "You can try with all your might / But you’re reminded every night / That you’ve been judged and handed life / Down in Jackson Cage."
The theme of leaving for a better place is not altogether absent from songs of the middle period, but the contemplated escape is more of a palliative or a sedative than a solution. In "Independence Day," a young man tells his father of the darkness that "has got the best of us." Although he adds defiantly that "they can't touch me now / And you can't touch me now / They ain't gonna do to me / What I watched them do to you," the escape he plans is sung not in the explosive, upbeat style of "Thunder Road" or "Born to Run," but as a mournful ballad in which departure offers no genuine hope for the future. Rather, the son realizes that he is simply joining others who are leaving an impossible situation to "walk that dark and dusty highway all alone." In "This Hard Land" (recorded in 1982 but not released until 1995), Mr. Springsteen's character asks "can you tell me what happened to the seeds I've sown / Can you give me a reason sir as to why they've never grown[?]" Thus stymied, his initial idea is to "make a plan" and "ride until we fall," but this is an older and wiser man, who ultimately concludes: "Well if you can't make it / Stay hard, stay hungry, stay alive / If you can / And meet me in a dream of this hard land." Similarly, in "No Surrender," a rocker wistfully recalls his aging anthem: "No retreat, baby, no surrender." He recognizes that "[t]here's a war outside still raging" but concedes "it ain't ours anymore to win," and seeks solace in sleep "with a wide open country in my eyes and these romantic dreams in my head." And again in "Glory Days," different people retreat to their past—when their dreams were real and their ambitions ran high—as a

48 Id.
49 Id.
50 BRUCE SPRINGSTEEN, This Hard Land, on THE GHOST OF TOM JOAD (Columbia Records 1995).
51 Id.
52 Id.
54 Id.
55 Id.
56 BRUCE SPRINGSTEEN, Glory Days, on BORN IN THE U.S.A. (Columbia Records 1984).
means to escape a hopeless present that "leaves you with nothing, mister but boring stories of glory days."\textsuperscript{57} Rock bottom is reached in the 1982 title track from \textit{Nebraska}, in which the escape is a murder spree committed by the speaker and his girlfriend. In defense of their rampage, the death row inmate observes unapologetically that "At least for a little while sir me and her we had us some fun."\textsuperscript{58} And, as to their motivation, he states simply: "Well sir I guess there's just a meanness in this world."\textsuperscript{59}

The ideological songs of Mr. Springsteen’s middle period regard socially constructed rules for achieving the good life in much the same way as CLS scholars of the 1970s and 1980s viewed rules of law: as disingenuous myths that keep the underclass in its place. The analogy to attitudinal scholarship is less direct but nonetheless apt: Rules of law, like the rules for success, are fabrications that do not deliver what they promise.

\textbf{SPRINGSTEEN'S LATE PERIOD AND THE SEARCH FOR SOLUTIONS}

The parallel between the ideological journey of Mr. Springsteen’s attitude toward the American Dream and the evolution of the rule of law across the Twentieth Century may strike readers as contrived or accidental, but a case can be made that it is neither. Rather, one can argue that each follows the ordinary life cycle for policies or practices that become so entrenched as to achieve the status of tenets in a secular religion. Put another way, achieving the American Dream through hard work, like upholding the rule of law through the impartial decisions of independent judges, is a way of looking at how the world works that has become so engrained as to be accepted as an article of faith. The difficulty with defending a policy on faith alone, however, is that reasoned arguments for its perpetuation grow rusty and render it difficult to protect from escalating assaults by the agnostic.

\textsuperscript{57} \textit{Id.}
\textsuperscript{58} \textbf{BRUCE SPRINGSTEEN, Nebraska, on NEBRASKA} (Columbia Records 1982).
\textsuperscript{59} \textit{Id.}
One obvious possibility, then, is that the myths at issue will gradually weaken and collapse as the belief structure erodes. Collapse, however, is not the only option. Even if a view of the world is mythological in part, there may be tangible benefits to perpetuating the myth as a way to preserve productive relationships and belief systems that forestall descent into nihilism.

The natural course of a child's belief in Santa Claus, with parallels drawn to changing conceptions of the rule of law, illustrates the point. The toddler who is told the Santa story is the consummate formalist: There is one Santa, who lives in the North Pole; he comes down the chimney at Christmas and delivers presents to good children and coal to bad ones. Those are the rules. As the child ages, she becomes a realist and bends the rules to rationalize them. Belief in Santa is not abandoned altogether, but there are doubts that must be explained and qualified if the "rules" are to comport with experience: Maybe the part about the coal isn't right; all of those street Santas must be helpers; and what about kids without chimneys? Eventually, doubt gives way to a crushing, post-realist epiphany that Santa is a fiction or worse yet, a cruel hoax. And then, as the child matures to adulthood, she finds herself at a crossroads: She may reject the myth and favor its collapse, as did the mother (at least initially) in Miracle on 34th Street, or she may see independent value in the myth and participate in its perpetuation with her own children.

In his later work, Mr. Springsteen has found himself at a similar crossroads, where he is joined by the twenty-first century judiciary. Mr. Springsteen's middle period songwriting, like the CLS scholarship it emulates, can be criticized for offering no proposals for reform or hope for the future—only despair. In his later work, however, he has explored at least two possibilities.

The first possibility is to topple the myth of the American Dream and end the regime that has subjugated the working class—

60 Miracle on 34th Street (Twentieth Century Fox 1947).

61 See, e.g., Dorf, supra note 35, at 1250 ("Despite its respectability, critical legal studies must be judged a failure because of its inability to offer concrete alternatives"); Dana Neacșu, CLS Stands for Critical Legal Studies, if Anyone Remembers, J.L. & POL. 415, 419 (2000) (opining of Duncan Kennedy, a leading proponent of critical legal studies, that "unfortunately, he does not seek to employ solutions").
a quasi-Marxist alternative that Mr. Springsteen only hints at without directly advocating. Like CLS scholarship, Mr. Springsteen’s middle-period concern, that socially constructed rules subjugate the working class economically, lends itself easily to Marxist analysis. In his live album, released in 1985, Mr. Springsteen introduced his rendition of Woody Guthrie’s "This Land is Your Land" as "the most beautiful song ever written," but described it in decidedly political terms as an "angry song" intended to counter Irving Berlin’s "God Bless America." The song’s refrain, that "This land is your land, this land is my land," sounds innocuous until it is appreciated that Guthrie was communist—a point not lost on Mr. Springsteen, who told the audience that he had just finished reading Joe Klein’s biography of Guthrie. There, Klein reproduces two conveniently neglected verses from Guthrie’s classic:

Was a high wall there that tried to stop me
A sign was painted said: Private Property,
But on the back side, it didn’t say nothing—
That side was made for you and me
One bright sunny morning in the shadow of the steeple
By the Relief Office I saw my people—
As they stood hungry, I stood there wondering if
God blessed America for me.

Although Mr. Springsteen likewise omitted these verses from his version of the song, their linkage to Marxist ideology is patent.

In 1995, Mr. Springsteen, like Guthrie before him, penned a song about Tom Joad—John Steinbeck’s protagonist in The Grapes of Wrath. In "The Ghost of Tom Joad," which appears in an album of the same name, a homeless man sitting by a campfire speaks of "the new world order," in which there is "[n]o

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62 The reference here can be heard in the introduction to the song on the album but does not appear in the song lyrics.
63 JOE KLEIN, WOODIE GUTHRIE: A LIFE (1980).
64 Id. at 144-45.
66 BRUCE SPRINGSTEEN, The Ghost of Tom Joad, on THE GHOST OF TOM JOAD (Columbia Records 1995).
home no job no peace no rest." Over the course of the song, he searches for, waits on and ultimately is visited by Tom Joad's ghost, who tells him: "Wherever there's somebody fightin' for a place to stand / Or decent job or a helpin' hand / Wherever somebody's struggling to be free / Look in their eyes Mom you'll see me." This accolade for struggle against oppression has a decidedly Marxist flavor to it that comes as close as Mr. Springsteen gets to radicalism.

As to the future of the judicial role, the parallel impulse is to topple the "rule of law" myth by exposing judges as naked policy-makers and depriving them of the power to interpret the law independently of popular control. Legislators—whose efforts to curb the courts were described at the outset of this piece—profess to support, rather than overturn, the rule of law by forcing judges to follow it. If, however, the "law" means whatever the political majority tells judges it means at any given moment in time, then the rule of law constrains neither judicial decision-making nor the political branches and is replaced by unvarnished power politics. In other words, the current campaign to control the courts (at least among its most extreme proponents) is ultimately a campaign to undo the rule of law as it has been conceptualized since the founding. Witness, for example, the recent Terri Schiavo case, in which Congress and the President disapproved of a state court's decision in a right-to-die case, created federal court jurisdiction for the explicit purpose of changing the case's outcome by handing it to a new judge, and reacted with outrage when the new judge did not reach the desired result.

As noted earlier, however, toppling the myth is not the only option. To the extent that entrenched myths enable social, cultural or political infrastructures to grow up around them that yield positive benefits—intended or unintended—those benefits should be acknowledged and weighed in the balance. A second resolution that Mr. Springsteen explores in his later work is to celebrate those benefits and seek solace, inspiration and peace in the human

67 Id.
68 Id.
virtues that emerge out of the shared struggle to pursue the mythological American Dream. Even during his middle period, when he was telling stories of failed dreams and dashed hopes, Mr. Springsteen still marveled at the resilience of the human spirit. In "Reason to Believe," he recited a litany of human disappointments across several verses, separated by a common refrain: "Lord won't you tell us / tell us what does it mean / Still at the end of every hard earned day people find some reason to believe." Paradoxically, then, it is the failed dream itself that reveals our underlying virtue: the irrepressible capacity to believe.

In the opening stanza of "My Hometown," likewise from the middle period in 1984, a father tells his son to "take a good look around" at their vibrant community of the 1950s and proudly declares "this is your hometown." The son then describes the race wars and economic failures that left the town ravaged twenty-five years later. While entertaining thoughts of moving elsewhere, the son—now an adult—takes his own boy out and, like his father before him, says, "[s]on take a good look around / This is your hometown." In one sense, this closing statement is a bitter epitaph for the unachievable American Dream, a theme that dominates Mr. Springsteen's middle-period writing. But it has a second edge, one suggesting that shared pursuit of the myth has created a sense of community and interconnectedness that troubled times and failed dreams cannot destroy.

In his later period, Mr. Springsteen turned inward. The album, Tunnel of Love, was followed by Lucky Town and Human Touch, both in 1992. These projects abandoned ideological themes in favor of personal relationships, many of them romantic. The songs lack the anger, anguish and urgency of his earlier work

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70 BRUCE SPRINGSTEEN, Reason to Believe, on NEBRASKA (Columbia Records 1982).
71 Id.
72 BRUCE SPRINGSTEEN, My Hometown, on BORN IN THE U.S.A. (Columbia Records 1984).
73 Id.
74 Id.
75 BRUCE SPRINGSTEEN, TUNNEL OF LOVE (Columbia Records 1987).
76 BRUCE SPRINGSTEEN, LUCKY TOWN (Columbia Records 1992).
77 BRUCE SPRINGSTEEN, HUMAN TOUCH (Columbia Records 1992).
and are, for the most part, less relevant for purposes here. They do, however, embody Mr. Springsteen’s late-period efforts to mine the human condition in search of its saving graces. Several songs speak of positive relationships forged by hard-luck characters in the shadow of—and as a haven from—broken dreams and failed ambitions. Thus, for example, in "Leap of Faith," the speaker declares, "All over the world the rain was pourin’" and that "heartbreak and despair got nothing but boring / So I grabbed you baby like a wild pitch." The title song from Human Touch delivered a similar message: "Tell me, in a world without pity / Do you think what I’m askin’s too much? / I just want something to hold on to / And a little of that human touch."

Mr. Springsteen does not imply that the positive relationships we form to alleviate the misery that the mythological American Dream has wrought make the myth worth preserving. But his later period writing nonetheless acknowledges and pays homage to the human virtues that adversity brings to the fore—virtues so powerful and enduring that they save us from ourselves. In his latest album, The Rising, Mr. Springsteen explores perspectives on the disaster of our generation—the World Trade Center attacks of September 11, 2001, where the American Dream of working class people ended not with disappointment but oblivion. His emphasis, however, remains on the ability of interconnected human beings to find strength in the shared faith, hope and suffering of those who survived and those who lost everything. In "Countin’ on a Miracle," a man who has lost a loved one declares, "[O]ur happily ever after Darlin’ / Forever come and gone," adding "If I’m gonna believe / I’ll put my faith / Darlin’ in you," because "Now all I have is this .... your strength, your

78 Bruce Springsteen, Leap of Faith, on Human Touch (Columbia Records 1992).
79 Id.
80 Bruce Springsteen, Human Touch (Columbia Records 1992).
81 Bruce Springsteen, Human Touch, on Human Touch (Columbia Records 1992).
82 Bruce Springsteen, The Rising (Columbia Records 2002).
83 Bruce Springsteen, Countin’ on a Miracle, on The Rising (Columbia Records 2002).
strength / Your hope, your hope / your faith, your faith . . ."\(^{84}\)
Similarly, in "Into the Fire,"\(^{85}\) he eulogizes the rescue workers who "disappeared into dust / Up the stairs, into the fire," with the mantra: "May your strength give us strength / May your faith give us faith / May your hope give us hope / May your love bring us love."\(^{86}\) In "Worlds Apart,"\(^{87}\) a survivor implores the "living [to] let us in before the dead tear us apart" and proposes to "let blood build a bridge"\(^{88}\) between them; and again, in "The Rising,"\(^{89}\) he says of the dead, "May their precious blood forever bind me."\(^{90}\)

In his later writings, then, Mr. Springsteen remains mindful of the failures in our professional, personal and corporeal lives but reorients his focus toward our irrepressible capacity to confront and transcend them through sheer force of shared will, faith, love and commitment. Similarly, one can acknowledge the failures of formalism but still conclude that a shared faith in and commitment to the rule of law, despite its defects and mythological components, yields important ancillary benefits that must be acknowledged and weighed in the balance.

Put another way, our Constitution works because we believe it works. Writers often attribute the stability of America's government to the Constitution itself, and the checks and balances embedded in its structure, which prevent any one branch of government from monopolizing power. In reality, however, each branch of government possesses the means to usurp power from the others and provoke constitutional crises from which the nation might not recover: The President could silence the other branches by military force; Congress could starve the other branches by exploiting its power of the purse; and the Supreme Court could de-legitimize the political branches by systematically declaring their

\(^{84}\) Id.  
\(^{85}\) BRUCE SPRINGSTEEN, Into the Fire, on THE RISING (Columbia Records 2002).  
\(^{86}\) Id.  
\(^{87}\) BRUCE SPRINGSTEEN, Worlds Apart, on THE RISING (Columbia Records 2002).  
\(^{88}\) Id.  
\(^{89}\) BRUCE SPRINGSTEEN, The Rising, on THE RISING (Columbia Records 2002).  
\(^{90}\) Id.
actions unconstitutional. Constitutional crises on this order of magnitude do not occur, however, because we have collectively internalized constitutional norms that render such tactics so outrageous as to be virtually inconceivable.

Similarly, the rule of law is a critical component of our constitutional structure that works because we believe it works. We believe that the courts uphold the rule of law—that they arbitrate disputes between the three branches of government by exercising judicial power and delineating the constitutional authority of each with reference to the text of the constitution, the original intent of the drafters, and interpretive precedent. If we lose that shared faith in the rule of law—if instead we truly believe that independent judges systematically disregard the law and implement their personal preferences—then we have lost the only means that the Constitution provides to preserve the government’s fidelity to its own charter.

If, as attitudinal and CLS scholars have argued, the rule of law is indeed an empty shell, then so too is constitutionalism, and arguments that we should pretend otherwise simply to preserve public confidence in our constitutional order ring equally hollow. Mr. Springsteen may have reached a similar conclusion about the socially constructed rules for realizing the American Dream: They are a fiction that oppresses the working class, and while the shared commitment to seeking the unattainable may create opportunities for true believers to rise above themselves and manifest extraordinary virtues in the face of adversity, the human costs of preserving so cruel a fiction outweigh the side-benefits.

Or maybe not. Mr. Springsteen ultimately abandoned his campaign against the unreachable American Dream. He had, after all, realized that dream for himself, which compromised his credibility to claim that it could not be done—a point he concedes in "Better Days" when he says "it’s a funny sad ending to find yourself pretending / A rich man in a poor man’s shirt." And in "My Beautiful Reward," he describes a man whose "beautiful

91 Bruce Springsteen, Better Days, on Lucky Town (Columbia Records 1992).
92 Id.
93 Bruce Springsteen, My Beautiful Reward, on Lucky Town (Columbia Records 1992).
reward" eluded him and who continued to search for fulfillment "along the river's silent edge,"94 despite having achieved wealth, embraced organized religion, and found romance. In other words, searching for and finding wealth, power, God and companionship may be very real components of life's river, but are insufficient by themselves to achieve inner peace. Those subjects who found that peace in Mr. Springsteen's later work, found it in the secular faith-based structures built up along the banks of the river—in the shared hope, belief, love and strength that binds communities of people together in the common enterprise of living.

I am equally convinced that the rule of law remains a very real component of the jurisprudential river and am skeptical of post-realist claims that it is nothing more than a fabrication—a point that I develop elsewhere.95 One can reject formalism, as the realists do, without abandoning the view that the rule of law continues to matter in judicial decision-making. The notion that law students undergo years of training to "think like lawyers," followed by years of practice devoted to legal argumentation, only to shed their commitment to the law like a ratty sports jacket the moment they don judicial robes and take an oath to uphold the law, strains credulity. The interface between law and politics is enormously complicated, and simplistic claims by rabid formalists (an increasingly endangered species) or equally rabid attitudinalists, that judges are slaves to one and allergic to the other, simply defy common sense.96

In short, I suspect that the realists got it right: Law continues to exert an important influence on judicial decision-making, but judicial interpretations of law are influenced by politics and other

94 Id.
95 CHARLES GARDNER GEYH, WHEN COURTS AND CONGRESS COLLIDE: THE STRUGGLE FOR CONTROL OF AMERICA'S JUDICIAL SYSTEM (forthcoming 2006).
96 This is not to suggest that the post-realists have done a disservice to judicial independence or the rule of law by questioning their legitimacy. To the contrary, post-realist challenges to judicial independence and rule of law norms are critically important to the ultimate survival of those norms, because such challenges create opportunities to reexamine and reaffirm our shared faith in the secular religion of constitutionalism. This requires that post-realist claims (particularly those of attitudinal scholars whose views dominate a significant segment of the political science world) be taken seriously.
considerations. If that suspicion can be confirmed in the teeth of post-realist claims to the contrary, then the rule of law story is true in part but retains an aspect of the mythological, in that judges are not completely impartial, completely independent, or wedded to the law alone. Insofar as it is a myth, however, it may be a myth worth perpetuating, for it has given life to the secular faith-based institutions that line the banks of the river—organizations that protect and preserve constitutionalism, public confidence in the courts, and the substantial kernel of truth that lies at the myth's core by furnishing us with an all-important "reason to believe."