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BOB DYLAN ON LENNY BRUCE: MORE OF AN OUTLAW THAN YOU EVER WERE

*Louise Harmon**

This Essay seeks to compare and contrast two contemporary performing artists: Bob Dylan and Lenny Bruce. An Essay that “compares and contrasts” is a traditional academic exercise. The genre may seem artificial, even corny, because it arbitrarily takes two subjects and analyzes how they are the same and how they are different. The exercise always yields insights about both, however. For me, comparing and contrasting still has value as a heuristic device. It is also the basis of metaphor.

To be “contemporaries” means to be two individuals who are, or were, coexistent in time.¹ Contemporaries in any given culture, depending upon their geographic location and choice of parents, share common history and social, economic, and political conditions. Bruce and Dylan both became artists in the middle of twentieth-century America—in the same stew of ideas, myths, and shared assumptions. Both experienced the same winds of change, albeit at different stages of life, in the 1950s and 1960s, the post-World War II Cold War period, the burgeoning civil rights movement, and the Vietnam War. Both responded to these winds of change, and in so doing, transcended and transformed their respective art forms. Both became cultural icons: Bruce as a fierce warrior against governmental censorship, and Dylan as a symbol of all the myriad meanings that have been laid upon him—the gravely-voiced folksinger, the artist as pro-

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1. *Contemporary Definition*, DICTIONARY.COM, <http://dictionary.reference.com/browse/contemporary> (last visited Aug. 8, 2011). Socrates, the Shakyamuni Buddha, Lao-Tzu, and Confucius, for example, were all contemporaries. Some scholars have alleged that Lao Tzu was a somewhat older contemporary of Confucius and that the two men were supposed to have met. See H.G. CREEL, *CHINESE THOUGHT: FROM CONFUCIUS TO MAO TSE-TUNG* 84 (1953). Others doubt that Lao Tzu, if there was such a person, lived as early as Confucius, and argue that the “celebrated encounter” has been shown to be fictitious. *Id.* With contemporaries, there is at least a possibility that one would influence the other or that they would enter into some kind of synergistic relationship.

testor against war and injustice, the rock-and-roll poet, and the hoary prophet on the road, peddling his songs and his wisdom.

Almost a generation apart, both Dylan and Bruce were born of Jewish families; both changed their last names, perhaps to make them more palatable to the mainstream.² Leonard Schneider was born on Long Island in 1926; the comedian Lenny Bruce died at his home in Hollywood Hills in 1966 from an overdose of morphine.³ Robert Zimmerman was born in Minnesota in 1941;⁴ the musician and songwriter, Bob Dylan, at the time of this writing, is about to celebrate his seventieth birthday. Their arrival on the planet's surface was staggered. The month before Bruce's death, Bob Dylan had wrecked his Triumph 500 motorcycle in Woodstock, New York, suffering a mysterious trauma to his body and spirit that caused him to go underground for a long time.⁵ Dylan was twenty-five years old at the time of that accident; it was the same summer that Bruce died at age forty.

Lenny Bruce began his career as a stand-up comic. Stand-up comedy derived from various popular modes of entertainment of the late nineteenth-century, such as vaudeville, music halls, minstrel shows, humorous monologists (e.g., Mark Twain), and even the antics of a circus clown.⁶ Comedians of this earlier era often assumed an ethnic

2. There is no agreed-upon explanation for why Robert Allen Zimmerman chose to adopt the pseudonym "Bob Dylan." See R. Clifton Spargo & Anne K. Ream, *Bob Dylan and Religion*, in *THE CAMBRIDGE COMPANION TO BOB DYLAN* 87, 90 (Kevin J.H. Dettmar ed., 2009) [hereinafter *CAMBRIDGE COMPANION*]. He seemed to first have chosen "Bob Dillon" in 1960, but by the end of the year, had changed the spelling to "Bob Dylan." *Id.* Another theory is that Dylan believed that a Jewish name might not make him acceptable as "part of old-time America," just as Ramblin' Jack Elliot changed his name from Elliot Adnopoz. *Id.* Bruce, who was born in New York, once said, "To me, if you live in New York or any other big city, you are Jewish It doesn't matter even if you're Catholic; if you live in New York you're Jewish. If you live in Butte, Montana, you are going to be goyish if you're Jewish." Petri Liukkonen, *LENNY BRUCE (1925-1966)—LEONARD ALFRED SCHNEIDER*, <http://kirjasto.sci.fi/lbruce.htm> (last visited Aug. 8, 2011). Bruce was raised by his relatives after his parents' divorce. *Id.* He served in the Navy and worked several odd jobs before he moved to Hollywood to study acting. *Id.* In 1947, he changed his name to Bruce because "Leonard Alfred Schneider sounded too Hollywood." *Id.*

3. Liukkonen, *supra* note 2.

4. SETH ROGOVOY, *BOB DYLAN: PROPHET, MYSTIC POET* 15 (2009).

5. Dylan appeared live just three times in the following seven-plus years: at a memorial concert for Woody Guthrie in 1968, at the 1969 Isle of Wight Festival, and at the 1971 Concert for Bangladesh. See Alan Light, *Bob Dylan as Performer*, in *CAMBRIDGE COMPANION*, *supra* note 2, at 55, 60.

6. Vaudeville took its name from the Val de Vire, the French river valley that was known for its tradition of bawdy songs. See EDDIE TAFOYA, *THE LEGACY OF THE*

persona and drew on popular stereotypes. The early stand-up comics all started out in vaudeville: Jack Benny, Frank Fay, Bob Hope, Fred Allen, and Milton Berle.⁷ They stepped out alone onto the stage, often in front of the curtain, and spoke directly to a live audience.⁸ Bruce started out in this vaudevillian tradition—one that his mother had belonged to as a stage performer.⁹ In the late 1940s, Bruce’s act was “hokey. He was a living black-and-white Brylcreem ad: greased-down hair, bow-tie, wide lapels. His movements only slightly exaggerated the stock-in-trade gestures of comic impersonators For the most part, Lenny echoed his burlesque-comedian mother’s routine.”¹⁰

WISECRACK: STAND-UP COMEDY AS THE GREAT AMERICAN LITERARY FORM 110 (2009). Vaudeville was family entertainment that brought together a series of unrelated acts, sometimes as many as a dozen, on a single bill. *See id.* at 111. It was in vaudeville that stand-up comedy was born, sometime between 1880 and 1890, although Mark Twain had worked with direct-address entertainment since 1857. *See id.*

7. There was a tradition among those comics who started in vaudeville of changing their names to soften or mask the stamp of immigrant ethnicity. Frank Fay was born Francis Anthony Donner of an Irish Catholic family; Fred Allen was born John Florence Sullivan of an Irish Catholic family; Jack Benny was born Benjamin Kubelsky of a Jewish Polish family; Bob Hope was born Leslie Townes Hope of English and Welsh parents; Milton Berle was born Milton Berlinger to a Jewish family; Danny Thomas was named Amos Alphonsus Muzyad Yakoob of Lebanese parents; Alan King was born Irwin Alan Kniberg of Russian-Jewish immigrants; Don Rickles alone kept his name, being born Donald J. Rickles. *See List of Comedians*, WIKIPEDIA, http://en.wikipedia.org/wiki/List_of_comedians (last visited Aug. 24, 2011).

8. *See* TAFOYA, *supra* note 6, at 111.

9. *See* LAWRENCE J. EPSTEIN, *THE HAUNTED SMILE: THE STORY OF JEWISH COMEDIANS IN AMERICA 169-70* (2001). Bruce’s mother, born Sadie Kitchenberg, was known professionally as Sally Marr. *Id.* Divorced, and struggling to be a comic, Marr took Lenny to a burlesque house, let him read “sexually explicit magazines, and frequently left him on his own.” *Id.* at 169. Bruce began performing stand-up comedy in burlesque houses and strip clubs. *Id.* at 170. Strip clubs “were crucial for the creation of Lenny Bruce as a comedian, for in those clubs Bruce was expected to use sexually charged language and obscenities. He was hardly the only person to use foul language in these clubs, but he learned how best to use obscenity to get laughs.” *Id.*

10. RONALD K.L. COLLINS & DAVID M. SKOVER, *THE TRIALS OF LENNY BRUCE: THE FALL AND RISE OF AN AMERICAN ICON 15* (2002). Bruce had been one of many Jewish comedians who had played the Borscht Belt in its heyday, between the 1930s and 1950s. *Id.* at 125. During “The Season” which ran from Memorial Day to Labor Day weekend, Jewish families from New York City traveled to New York’s Ulster and Sullivan counties in the southern Catskill Mountains, where more than 500 hotels had sprung up, as well as boarding houses and bungalow communities. *Id.* at 123-24. Jerry Lewis (born Jerome Levitch) got his start in the Borscht Belt, as did Red Buttons (Aaron Chwatt), Danny Kaye (David Daniel Kaminsky), Joan Rivers (Joan Alexandra Molinsky), Milton Berle, Don Rickles, Jack Benny, Jackie Mason (Yacov Moshe Maza), Sid Caesar (Isaac Sidney Caesar), Mel Brooks (Melvin Kaminsky), Buddy Hackett (Leonard Hacker), Phyllis Diller (Phyllis Ada Driver), Shecky

But Bruce was a lover of jazz, and of the lives that jazz musicians led.¹¹ He began to take on the trappings of the beat generation, using drugs, wearing casual clothes and dark glasses on stage, and becoming radically anti-establishment.¹² From the jazz scene, Bruce borrowed the notion of spontaneous riffing, sometimes taking himself by surprise on stage by his free association of ideas.¹³ By the 1950s, Bruce's work had taken an edgier, confrontational, political, irreverent, and for some, vulgar, turn. In his own words, Bruce was "'chang[ing] the architecture' of comedy in America," claiming that "my humor is mostly indictment."¹⁴

That was an understatement. The scope of his indictment was broad. Bruce took on institutionalized religion, race relations, homophobia, violence, social conventions of speech, and almost any form of hypocrisy. Audiences flocked to hear him violate social taboos, and he delighted in using words that shocked and disturbed his audiences. "Are there any niggers here tonight?" he would growl at his audience who sat stunned, uncomfortable in shocked silence.¹⁵ But Bruce was always intentional; he wanted to say the "N" word out in the open. Bruce claimed, "It's the suppression of the word that gives it the power, the violence, the viciousness."¹⁶

Lenny Bruce was first arrested for obscenity for using the word "cocksucker," and for playing with the concept of "'to' is a preposition, and 'come' is a verb" during a stand-up performance at the Jazz Workshop in San Francisco in 1961.¹⁷ A jury acquitted him, but the

Greene (Fred Sheldon Greenfield), Henny Youngman (Henry Junggman), to name — and rename — only a few, and of course, Lenny Bruce. *Id.* at 125.

11. TAFOYA, *supra* note 6, at 141.

12. *Id.* Another comedian contemporary with Bruce, Mort Sahl, also did not shy away from political topics and claimed that jazz and improvisation were his chief inspirations too. *Id.*

13. *Id.* at 140. Bruce embraced the improvisational style from bebop. He once said, "I know a lot of things I want to say; I'm just not sure exactly when I will say them." *Id.*

14. COLLINS & SKOVER, *supra* note 10, at 18.

15. LENNY (United Artists 1974), available at <http://www.youtube.com/watch?v=SONkv76rNL4>.

16. *Id.* One of the police officers complained to Bruce when he was performing in a club about his use of the word "cocksucker": "'I'm offended because you broke the law. I mean it sincerely. I mean it. I can't see any right, any way you can break this word down, our society is not geared to it.'" With realist insight, Lenny rejoined, "'You break it down by talking about it . . .'" COLLINS & SKOVER, *supra* note 10, at 50-51.

17. At the end of the riff, Bruce says, "Now if anyone in this room or the world finds those two words decadent, obscene, immoral, amoral, asexual — the words 'to come' really make you feel uncomfortable — if you think I'm rank for saying it to you . . . you probably can't come." COLLINS & SKOVER, *supra* note 10, at 49.

case put Bruce on the radar of various law enforcement officials who began to monitor his appearances closely, resulting in frequent arrests on charges of obscenity.¹⁸ In April 1964, Lenny Bruce played the *Café Au Go Go* in Greenwich Village twice. A phalanx of undercover cops lined the wall of the room, waiting for Bruce to utter an obscenity. Both times, Bruce was arrested as soon as he left the stage, and he and the club owner, Howard Solomon, were prosecuted in a widely publicized six-month trial, presided over by a three-judge panel. Despite testimony in support of Bruce and the social value of his free-wheeling stand-up style, as well as petitions of support from luminaries such as Woody Allen, Jules Feiffer, Allen Ginsberg, Normal Mailer, William Styron, James Baldwin, sociologist Herbert Gans, and a young folksinger named Bob Dylan, both Solomon and Bruce were convicted.¹⁹ Lenny Bruce was sentenced to four months in the workhouse on Rikers Island for his crime and was set free on bail during the appeal process.

Bruce was in dire straits by then. He was bankrupt from mounting legal fees, and his prosecution had made it virtually impossible for him to get work.²⁰ On the day that he got the news that he had lost his Hollywood Hills home, Lenny Bruce died of a morphine overdose. The appeal of his conviction was never completed, although thirty-nine years later, Governor Pataki granted the state's first posthumous pardon of a criminal defendant, as a "declaration of New York's commitment to upholding the First Amendment."²¹ Depending on one's metaphysical views, Pataki's pardon came too late for Bruce to have derived any satisfaction from it. But it was important to Bruce's family that his name be cleared, and more importantly, the pardon sent a message that Bruce's work had value, that the comic had not been "sick," only the society that had prosecuted him.²² It was an unprecedented gesture that perhaps, in retrospect, the State of

18. Some of the arrests were for drug possession as well. *Id.* at 167, 336.

19. *Id.* at 310. Solomon was given a sentence of thirty days or a fine of \$500. *Id.*

20. After Lenny posted his bond in cash, he "told the press that he hadn't played a show for five months, was flat broke, and had to borrow the bail money from friends. He even claimed that, in order to appeal, he would have to ask the court for a free trial transcript." *Id.* at 311.

21. John Kifner, *No Joke! 37 Years After Death Lenny Bruce Receives Pardon*, N.Y. TIMES, Dec. 24, 2003, at A1. Pataki also said, "Freedom of speech is one of the greatest American liberties, and I hope this pardon serves as a reminder of the precious freedoms we are fighting to preserve as we continue to wage the war on terror." *Id.*

22. See Margalit Fox, *Honey Bruce Friedman, 78, Entertainer and "Lenny's Shady Lady"*, N.Y. TIMES, Sept. 20, 2005, at A27.

New York had been mistaken — that Lenny Bruce had indeed been a martyr for freedom of expression.

Just as Lenny Bruce had started his performing career fitting squarely within a traditional category, so had Dylan first walked on the stage as a recognizable and predictable prototype — the denim-clad, suede-jacketed acoustic guitar-playing folk singer. Dylan dropped out of the University of Minnesota to come to New York to become part of the folk scene and to sit vigil by the bedside of his idol, Woody Guthrie. He slid right into the groove of folksinger, becoming a regular in the coffee houses and folk venues of Greenwich Village. For many years, the folk genre permeated his work. The music of *Masters of War* was appropriated from a traditional English folk song. His first album had only two original songs on it — the rest being covers from the folk and blues repertoire. His album *The Free Wheelin' Bob Dylan* had only two “folk” songs penned by Dylan.²³ The first is *Blowin' in the Wind*, a melody based on a spiritual.²⁴ And second was *A Hard Rain is Gonna Fall*,²⁵ a ballad that was “cribbed heavily” from *Lord Randall*, a song that “some speculate was written about the sixth Earl of Chester, who died in 1232.”²⁶

Like Lenny Bruce, Dylan broke out of the mold of the traditional category in which he first emerged. The moment in July 1965 when Bob Dylan plugged in his guitar at the Newport Folk Festival and was booed by those who had sworn fealty to “traditional” folk music, marked his departure into uncharted territories.²⁷ The albums that followed in the middle 1960s, *Highway 61 Revisited*²⁸ and *Blonde on Blonde*,²⁹ were an amalgam of poetry, music, narratives, anger, pulsing energy, and beauty — and I believe, some of Dylan’s most enduring works. But just as no one knew how to classify Lenny Bruce’s

23. Bob Dylan, *THE FREEWHEELIN' BOB DYLAN* (Columbia Records 1963).

24. Bob Dylan, *Blowin' in the Wind*, on *THE FREEWHEELIN' BOB DYLAN* (Columbia Records 1963).

25. Bob Dylan, *A Hard Rain is Gonna Fall*, on *THE FREEWHEELIN' BOB DYLAN* (Columbia Records 1963).

26. David Yaffe, *Bob Dylan and the Anglo-American Tradition*, in *CAMBRIDGE COMPANION*, *supra* note 2, at 18-19.

27. Sean Wilentz notes Dylan’s artistic defection from the

topical, folkie Left when he recorded *Another Side* in a single afternoon and evening on June 9, 1964, telling the journalist Nat Hentoff, “There aren’t any finger pointing songs in here From now on, I want to write from inside me . . . for it to come out the way I walk or talk.”

SEAN WILENTZ, *BOB DYLAN IN AMERICA* 79-80 (2010).

28. Bob Dylan, *HIGHWAY 61 REVISITED* (Columbia Records 1965).

29. Bob Dylan, *BLONDE ON BLONDE* (Columbia Records 1966).

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scathing monologues, many in the 1960s were stopped dead in their tracks trying to categorize the new work of Bob Dylan. For me, the most strangely shaped piece of the puzzle was the simple fact that to my untrained ear, this singer could not sing.³⁰ Later, when I understood better the folk tradition that he was emulating, I came to realize that it was a genre of vocal production to which I was unaccustomed. It was singing all right, and artful singing, but not the melodic sound I believed I should be hearing. I was willing to yield on my vision of the way things ought to sound, however, for the strange brilliance of what I heard. I was dazzled by the rush of his words, by the stories he told, by his razor-sharp edges, and dark, political point of view, and above all, by his passion—much like that of Lenny Bruce—for the truth.

Because Dylan was a musician and a songwriter, and Bruce a stand-up comedian, there was little opportunity for the older man to influence the younger. But we do know that Bob Dylan gave Lenny Bruce some thought over the years. Bruce is featured in *Guitars Kissing & the Contemporary Fix* in *Tarantula*, a collection of expulsive and self-indulgent (as only a precocious twenty-three-year-old can be) prose poems written by Dylan:

lenny can take the bad out of you & leave you all good & he can take the good out of you & leave you all bad/if you think you're smart & know things, lenny plays with your head & he contradicts everything you've been taught about people/he is not in the history books & he either makes you glad to be you or he makes you hate to be you . . . you know he's some kind of robber yet you trust him & you cannot ignore him³¹

Later, as we already know, Dylan supported Bruce when Allen Ginsberg formed the Emergency Committee Against the Harassment of Lenny Bruce, and circulated a petition, signed by over eighty entertainers, actors, writers, and intellectuals, protesting Bruce's prose-

30. Bruce Springsteen wrote about the first time he heard Dylan's voice on the radio:

I was in the car with my mother listening to WMCA, and on came that snare shot that sounded like somebody'd kicked open the door to your mind: Like a Rolling Stone. My mother—she was no stiff with rock 'n' roll, she liked the music—sat there for a minute, then looked at me and said, 'That guy can't sing.' But I knew she was wrong. I sat there and I didn't say nothing but I knew that I was listening to the toughest voice that I had ever heard. It was lean and it sounded somehow simultaneously young and adult.

MIKE MAROUSEE, WICKED MESSENGER 166 (2003).

31. BOB DYLAN, *Guitars Kissing & the Contemporary Fix*, TARANTULA 54 (1966).

cution. We also know that Bruce and Dylan once shared a cab for a mile and a half.³² This we know because Dylan mentioned it in his tribute to Bruce, named unremarkably, *Lenny Bruce*, written the night before it was recorded in 1981 on the *Shot of Love* album.³³ While not a terrible song—it has the virtue of being comprehensible—it is not one of Dylan’s better efforts. In an interview, Dylan confessed to having written it in one night, a claim that does not surprise me. But it seems heartfelt and honors Bruce’s struggle against censorship which put him in his grave:

Lenny Bruce is dead but his ghost lives on and on
 Never did get any Golden Globe award, never made it to Synanon
 He was an outlaw, that’s for sure
 More of an outlaw than you ever were
 Lenny Bruce is gone but his spirit’s livin’ on and on
 Maybe he had some problems, maybe some things that he couldn’t
 work out
 But he sure was funny and he sure told the truth and he knew what
 he was talkin’ about
 Never robbed any churches nor cut off any babies’ heads
 He just took the folks in high places and he shined a light in their
 beds
 He’s on some other shore, he didn’t wanna live anymore
 Lenny Bruce is dead but he didn’t commit any crime
 He just had the insight to rip off the lid before its time
 I rode with him in a taxi once
 Only for a mile and a half, seemed like it took a couple of months
 Lenny Bruce moved on and like the ones that killed him, gone
 They said that he was sick ‘cause he didn’t play by the rules
 He just showed the wise men of his day to be nothing more than
 fools
 They stamped him and they labeled him like they do with pants and
 shirts
 He found a war on a battlefield where every victory hurts
 Lenny Bruce was bad, he was the brother that you never had³⁴

When Dylan claims that Bruce was “more of an outlaw than you ever were,”³⁵ who is he singing to? I suspect that he was singing to himself. Dylan later in the song suggests a familial affinity with

32. BOB DYLAN, *Lenny Bruce*, on SHOT OF LOVE (Columbia Records 1981) (“I rode with him in a taxi once / Only for a mile and a half, seemed like it took a couple of months”).

33. *Id.*

34. *Id.*

35. *Id.*

Bruce, by naming him “the brother you never had,” again with an ambiguous “you” whose identity may merge with the “I” who once rode in a cab with Bruce.³⁶ We do know from other sources that Dylan values “outlawry,” and that he likes to consider himself something of an “outlaw.”³⁷ The definition of outlaw covers a wide range of aberrant, sometimes criminal, behavior. The most common definition is “a lawless person or habitual criminal, especially one who is a fugitive from the law.”³⁸ In that sense, Jesse James was an outlaw—a notorious bank and train robber, a murderer, and leader of other criminals who led lives outside the law. While Lenny Bruce may have engaged in criminal activity, namely buying and using controlled substances, these are not the “outlaw” qualities of Bruce’s life that Dylan was praising. Indeed Dylan himself, in those phases of his own life where he may have used drugs, could have qualified as this garden-variety type of “outlaw.”³⁹

If this is not what he meant, what other use of the term “outlaw” could Dylan have intended? “Outlaw” also means a person who refuses to be governed by the established rules or practices of any group, a rebel or nonconformist.⁴⁰ Dylan’s lyrics do identify Bruce as an “outlaw” in the rebel sense of the word. Bruce was called “sick ‘cause he didn’t play by the rules/He just showed the wise men of his day to be nothing more than fools.”⁴¹

But Dylan must have meant more than just nonconformity when he called Bruce “more of an outlaw than you ever were.”⁴² Lenny Bruce was a lawbreaker of a very particular kind: he broke the obscenity laws as a means of protesting and catalyzing a change in those laws. Bruce’s use of those unlawful words was a form of direct civil disobedience, one in which he broke the very law that he was protest-

36. *See id.*

37. *See* MAROUSEE, *supra* note 30, at 64 (“Dylan played and wrote songs about outlaws of all kinds, and frequently imagined himself as one.”).

38. *Outlaw Definition*, DICTIONARY.COM, <http://dictionary.reference.com/browse/outlaw> (last visited Aug. 8, 2011).

39. In 2009, Dylan was detained by police in Long Branch, New Jersey while taking a walk in the rain, when homeowners called the cops because an “eccentric-looking old man” was on their front lawn. Chris Francescani, *New Jersey Homeowner Calls Cops on Bob Dylan*, ABCNEWS.COM (Aug. 14, 2009), <http://abcnews.go.com/GMA/jersey-homeowner-calls-cops-bob-dylan/story?id=8331830>.

40. *Outlaw Definition*, DICTIONARY.COM, <http://dictionary.reference.com/browse/outlaw> (last visited Sept. 23, 2011).

41. DYLAN, *Lenny Bruce*, *supra* note 32.

42. *Id.*

ing.⁴³ Bruce's acts of direct civil disobedience are surely the type of outlawry that Dylan meant to honor and respect.

The philosopher John Rawls defines civil disobedience as "a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government."⁴⁴ Civil disobedience, for Rawls, takes place in post-revolutionary countries such as ours, against a background of acknowledged, just constitutions, democratic parliaments, and valid laws.⁴⁵ Rawls distinguishes mere deliberate infractions of the criminal law from civil disobedience. Jesse James may have been an outlaw in the "habitual criminal" sense, having been an inveterate murderer and thief, but he was not engaged in civil disobedience. Bruce was. For Rawls, it all comes down to a matter of intent. When Jesse James broke the law, by robbing a bank or shooting someone, he intended to steal money or cause bodily harm. When Lenny Bruce broke the law by uttering proscribed "obscene" words on stage in the presence of the police who were poised with handcuffs, waiting for him to sound those words, he intended to protest the law of censorship. His act was conscientious. His goal was to make us aware of the laws of censorship, and to persuade us, that those laws were unjust through his arrest and prosecution by the government.⁴⁶

Stand-up comedy lends itself to civil disobedience. Being a stand-up comedian results in a fusion of the individual and the artist. Unlike an actor who takes on the identity of another person, a stand-up comic comes onto the stage as an iteration of himself. Jack Benny played Jack Benny; Lenny Bruce played Lenny Bruce; George Carlin played George Carlin. A comedian may project a stage persona, a shtick that becomes his hallmark, but his identity as a comic and as a man are the same. Stand-up comedy was—and still is—an intensely personal art form, with little artifice, and few masks. The person is

43. This contrasts with indirect civil disobedience, where the individual breaks some other law (such as a trespass law) the reasonableness of which is not in question, in order to protest some other unjust law of governmental policy. See JOHN RAWLS, A THEORY OF JUSTICE 364-65 (1971). Burning a draft card during the Vietnam War was a form of indirect civil disobedience; the crime was destruction of governmental property, but the conduct was designed to protest the government's involvement in Vietnam.

44. *Id.* at 365.

45. *See id.* at 363.

46. Under Rawls' theory, while the law is broken, "fidelity to law is expressed by the public and nonviolent nature of the act, by the willingness to accept the legal consequences of one's conduct." *Id.* at 366.

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the artist; the artist is the person. In a sense, what you perform is what, or who, you are.

This was particularly true of Lenny Bruce. For whatever psychological reason, Lenny Bruce could not escape being himself. When he performed in a smoky nightclub, before an audience with a microphone in his hand and a spotlight on his face, he was Lenny Bruce. When he left the stage, he was still Lenny Bruce. As historian Barry Sanders put it:

Bruce never assumed the stage persona of an outlaw — an outspoken big mouth who joked the pants off the emperor. Rather, his life offstage perfectly matched his life onstage. He lived as a joker, a comic. Bruce did not become King of Carnival on prescribed holidays: He showed a new way to live by living it.⁴⁷

This fusion of the comedian and the man in Lenny Bruce made moral agency—and civil disobedience—possible during a performance. The words spoken on stage by Lenny Bruce the comedian were the words of Lenny Bruce the man; they were intentional, personal utterances that sought to make a direct communication in real time with individuals in the audience. The same could be said of all stand-up comedy. The thoughts that are generated in the heart and mind of the stand-up comedian find immediate expression through his or her voice. The performance does not take a permanent form, but is ephemeral—as ephemeral as the breath of the man who is thinking, feeling, and talking on stage.⁴⁸ The art form of stand-up comedy, like moral agency, requires that the person engaged in it must be alive. The same is true of ethical behavior and civil disobedience. Dead men cannot play either game.

Though still alive, Bob Dylan is unlikely to be civilly disobedient. First of all, his art form does not lend itself to moral agency. With a songwriter, we see a far more complex, and less direct, relationship of the artist to his words, and of the artist to his audience. Songs are more like poems. Like a poem, a song is written in solitude and once

47. BARRY SANDERS, *SUDDEN GLORY: LAUGHTER AS SUBVERSIVE HISTORY* 256 (1995).

48. Some stand-up comedy routines have become timeless and permanent through recordings, such as Abbott and Costello's *Who's on First?* See, e.g., *THE NAUGHTY NINETIES* (Universal Pictures 1945), available at <http://www.youtube.com/watch?v=sShMA85pv8M>. Similarly George Carlin's *Seven Words* is a classic, although it is difficult to imagine that these routines could be performed by someone other than their originators. GEORGE CARLIN, *Seven Words You Can Never Say on Television*, on *CLASS CLOWN* (Atlantic Records 1972), available at <http://www.funnyordie.com/videos/8fa6475547/george-carlin-seven-words-from-classicstandupfan>.

completed, forms a set pattern of words and melody that are repeated in the same order every time they are spoken or sung. Poems and songs are not ephemeral and are not reliant on the breath of their creators. Indeed, once captured, they stand at a distance from their creators and have their own autonomy.

Some purists would argue that Bob Dylan singing a Bob Dylan song represents the only authentic way to experience his art form. This stance makes Dylan's art form more akin to that of the stand-up comedian — he has got to be alive and performing in order for the art to take form. But I think Dylan's art has more endurance than he does; his songs will last longer than his singing. Even when he was around to sing them, Dylan's songs often became popular when someone else sang them: Joan Baez, Peter, Paul and Mary, the Byrds, Pearl Jam, the list goes on and on. He will stop singing someday — of that I am certain — and when he does, I see no reason why the set pattern of words and melody that constitutes a Dylan song could not be performed in the future by a singer who has not yet been born. More than likely, Dylan's art will be perpetuated after Dylan is gone. Unlike stand-up comedy, a poem or song is not a direct, intentional personal utterance that seeks to communicate directly and in real time with a reader or listener. Once completed and sealed off from its author, a poem or a song just hangs in the ether, ready at another time and place to be read or listened to — or not.

And if intercepted by another human being, the language in both poems and songs is often so full of metaphor and imagery that its meaning is veiled and subject to an infinite number of interpretations. This allows the poet or songwriter to avoid moral agency in his art. A song written by Bob Dylan might represent a deposit of some feeling or thought that the man, Bob Dylan, might have had — or it might not. A song written by Bob Dylan might be a dream that the man, Bob Dylan, may have had — or it might not. The art forms of song writing or poetry anticipate the artist's abandonment of the art, and what is left behind is purposefully mysterious and unclear. No one really knows what Bob Dylan meant by his songs, not even Bob Dylan himself. This uncertainty does not mean that Bob Dylan's songs lack meaning — far from it. They have meaning, but it is a meaning that we give to them; it will not be unearthed by a futile excavation of Bob Dylan, the man's, intent. Poems and songs are not suitable vehicles for civil disobedience. As permanent art forms of indeterminate meaning, they exist independently from the author and are not infused with authorial intent.

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Another reason why Bob Dylan is unlikely to be civilly disobedient: he does not seem to have the right psychological profile. When describing an individual who is civilly disobedient, praise-worthy adjectives usually come to mind: passionate; courageous; committed to the point of obsession; willing to accept the wrath of the law in order to right a wrong. But there could be a darker side to that passion and commitment: narcissism. The civil disobedient might unconsciously be saying: I am going to stand in the spotlight and break the law so that you will see how unjust the law is—but also so that you will see *me*. True, that spotlight illuminates the injustice, but it also shines on the person, on Mohandas Gandhi, Martin Luther King, or Lenny Bruce. A less cynical account would argue that Mohandas Gandhi, Martin Luther King and Lenny Bruce actually *lost* themselves in their struggles against injustice. They merged with their cause and tolerated the spotlight because of what it could do. Either way, they were psychologically prepared to not only stand up for the cause, but to stand still for the cause and to withstand public scrutiny.

Of course, I have never met either Lenny Bruce or Bob Dylan. Nor would I presume to say that I “know” them, but I have studied their respective histories, their art, and what the media and scholars have told us about them. To me, Lenny Bruce presented the classic profile of a civil disobedient, the good and the bad: passionate; driven to be the center of attention; tormented by his struggles against government censorship; and consumed by defending the various lawsuits against him. Lenny Bruce displayed a single-minded purity of obsession. Bob Dylan does not fit that psychological profile. Dylan is mercurial by nature: difficult to pin down; a reptile of a man who sheds skin after skin; repudiating the labels that others attach to him; rejecting the expectations that others have of him. Intensely private and iconoclastic, he was a reluctant spokesperson for the anti-war movement, a reluctant political activist, a reluctant symbol for his generation, and a reluctant prophet. Standing up or standing still for a cause, letting a spotlight shine on him—none of this strikes me as Bob Dylan’s *modus operandi*. Ironically, even though Dylan has spent a lifetime singing songs under a real spotlight, he shuns this metaphorical spotlight. Bob Dylan knows that he does not have the heart and soul to be civilly disobedient, and honors the fact that Lenny Bruce did, which is why Lenny Bruce was more of an outlaw than you ever were.⁴⁹

49. I do not mean to suggest that Bob Dylan lacks courage, only that it will manifest in another, less confrontational, form. In 1963, Dylan had an opportunity to

The penultimate “compare and contrast” item on my list has to do with their deaths. Dylan has not yet died, but I am willing to go out on a limb and prophesize that Bob Dylan will die a middle-class death. He will succumb to an old person’s disease or to normal wear and tear – a clogged filter or a tired heart. He will utter his last words in a comfortable bed between clean sheets, under excellent medical care, with the people he holds dear gathered around his bedside. He will have written a will, and his considerable property will be probated and transferred to the members of his family. His obituary in the *New York Times* will take up a page, and journalists, academics, and other court jesters will write tomes about his legacy. He will be mourned by those who knew and loved him, and by those of us who did not know him, but loved his work. I do not mean to suggest that Bob Dylan does not deserve this middle-class death. He does; I hope to have one much like it myself, minus the public adulation.

Compare this to the death of Lenny Bruce. It was the death of a drug addict, an ignoble death, in the bathroom of a house about to be taken away from him. He died utterly alone, and suffered the indignity of being photographed by the same police who had hounded him in life, sprawled on the bathroom floor, surrounded by narcotics para-

appear on *The Ed Sullivan Show*, the television show that had catapulted Elvis Presley to fame seven years earlier. CBS had censored Presley, forcing him to agree to be shown performing only from the waist up. Dylan was slated to sing the satirical *Talkin’ John Birch Society Blues*. Right before airtime, a CBS executive, over Sullivan’s objections, ordered Dylan to sing another, less controversial song. Unlike Presley, Dylan would not allow himself to be censored, and he refused to appear on the show. See WILENTZ, *supra* note 27, at 92-93. Here was an opportunity for Dylan to be civilly disobedient in just the fashion that Lenny Bruce had been – by publicly uttering the censored material – but instead, Dylan opted not to perform at all. His failure to perform was a protest, but of a different kind from an overt act of direct civil disobedience. Lenny Bruce never appeared on *The Ed Sullivan Show*. On November 26, 1958, Ed Sullivan wrote a letter to Frankie Ray Perilli, a companion of Lenny Bruce who occasionally tried to act as Bruce’s manager:

Dear Frank,

In sounding out opinion along Broadway, they say that Lenny, once he is on stage, will do and say whatever he damn pleases to be spectacular, so what assurance have I from him that this will not come to pass? Our show does not go in for the Oscar Levant type of pyrotechnics.

I’m sure that you understand my position, so why not have Lenny prepare a script of exactly what he would do on our show and rush it along to me. Jack Carter has told me that Lenny is an amazingly amusing guy, and I’d love to use him if we had built-in safeguards.

Sincerely,

Ed Sullivan

Letter from Ed Sullivan to Frankie Ray Perilli (Nov. 26, 1958), available at <http://www.dareland.com/disinfotainmenttoday/issue101.htm>.

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phernalia, his genitals exposed for the world to see. That is how the younger generation has come to know that a man named Lenny Bruce ever lived.

When I asked my law students this past semester if they knew who Bob Dylan was, sixty-five hands went up in the air. I followed up with, “Who knows who Lenny Bruce was?” Only one hand was raised. When I asked her how she knew Lenny Bruce, she answered, “He was on the top ten list of most famous celebrity corpses, along with Mother Theresa and Elvis.”⁵⁰ I was devastated to learn that this ground breaking, most serious of comics, who had tackled racism, homophobia, militarism, organized religion, and every form of hypocrisy, who had paved the path for other radical stand-up comedians, such as Richard Pryor and George Carlin, who had sacrificed his life for the First Amendment—that was how Lenny Bruce was remembered by a young person who was *not* his contemporary: for being a memorable corpse.

My last “compare and contrast” item is related. Lenny Bruce left the planet at age forty. He burned hot and bright for a brief arc of time, and then snuffed himself out. The intensity with which he lived, and fought his battles over censorship, ensured that Bruce would be but a shooting star—a fleeting streak of light across the dark sky of history. But Bob Dylan is about to enter his eighth decade of life. He is not only still with us, but he is still on tour, still singing, still writing songs. Bob Dylan has aged unabashedly in our presence. He has become haggard and grizzled before our eyes. Despite his age—perhaps because of his age—he has also allowed himself to grow and change as an artist. Many critics question whether Dylan’s later work measures up to the earlier work of that frenetic period in the 1960s, but my own intuition is that much of it does. Time will tell. Those of us who are contemporaries of the artist are unqualified to judge whether the artist has enduring value. We are too much *of* his time; future generations will decide. But Bob Dylan’s seemingly infinite capacity for creative regeneration and self-invention, and the good grace with which he has yielded to the years—to me, all this is evidence, not so much of a great genius, but of a great spirit. I won’t attach that label to Dylan, however. I know that he would just shudder, shake it off, and slither away.

50. *Ten Celebrity Corpses*, HIDDEN UNSEEN (May 16, 2010), <http://hiddenunseen.blogspot.com/2010/05/10-celebrity-corpses.html>.

A POSTSCRIPT

A final observation about my traditional academic exercise of “compare and contrast”: Lenny Bruce haunted me during the writing of this Essay. An urgent, insistent spook, he would not leave me alone. At my desk, he leaned over my shoulder, witnessing the appearance of my words on the screen. On the morning of the *Bob Dylan and the Law Conference*, he rode into New York City with me on the train. Once at Fordham, he sat down next to me in the back row, and kept rasping audibly in my ear: “Why would they want to sponsor a conference on *Bob Dylan and the Law*? Couldn’t they have sponsored a conference on *Lenny Bruce and the Law*?” I had no satisfactory answer to give him, and eventually he gave up lobbying for himself. Lenny Bruce — a most dominating and demanding phantom — fell silent and returned to wherever it was he came from.

Bob Dylan, on the other hand, did not haunt me at all during the writing of this Essay. Some might argue that he failed to do so because he is not dead. Some might, but I would not. I have never considered death a prerequisite to haunting; some of the most vital ghosts in my life are still breathing. The truth is Bob Dylan lacks the fixed energy it requires to be a successful ghost, dead or alive. His songs may rattle around in my head until I am no longer anyone’s contemporary, but the presence of the man named Bob Dylan was imperceptible to me. That man is a pale silver wisp of a cloud. He chooses his own canyons to descend.