



Alabama Law Scholarly Commons

Essays, Reviews, and Shorter Works

Faculty Scholarship

2020

Love in the Time of Cholera

Richard Delgado

University of Alabama - School of Law, rdelgado@law.ua.edu

Jean Stefancic

University of Alabama - School of Law, jstefancic@law.ua.edu

Follow this and additional works at: https://scholarship.law.ua.edu/fac_essays

Recommended Citation

Richard Delgado & Jean Stefancic, *Love in the Time of Cholera*, 68 UCLA L. Rev. Discourse 176 (2020).

Available at: https://scholarship.law.ua.edu/fac_essays/205

This Article is brought to you for free and open access by the Faculty Scholarship at Alabama Law Scholarly Commons. It has been accepted for inclusion in Essays, Reviews, and Shorter Works by an authorized administrator of Alabama Law Scholarly Commons.

U.C.L.A. Law Review

Love in the Time of Cholera

Richard Delgado & Jean Stefancic

ABSTRACT

A famous novel by Gabriel García Márquez describes a love story among three actors that took place in a city in Colombia during the time of cholera. The interpersonal dynamics that unfold in this work by a Nobel Prize winning writer offer insight into events taking place today. We show how the urge to romanticize emotions during a time of great social stress, as well as the desire to cleave to a strong leader, explain events in García Márquez's mythical country, as well as in ours today. We draw conclusions about how citizens should respond to Donald J. Trump's unloving policies toward immigrants, bus drivers, and line workers in meat-packing plants, and suggest approaches for readers weighing their vote in the next election.

AUTHOR

Richard Delgado is John J. Sparkman Chair of Law, University of Alabama School of Law.
Jean Stefancic is Professor and Clement Research Affiliate, University of Alabama School of Law.
Thanks to Chisolm Allenlundy for stellar research and editing.



TABLE OF CONTENTS

INTRODUCTION: RACE IN THE TIME OF COVID-19	178
I. FEAR AND LOATHING IN THE TIME OF COVID.....	183
A. Actions Evoking or Performed Out of Fear.....	183
1. Inaction and Denial That Anything is Wrong.....	183
2. Evoking Fear in the Citizenry.....	184
3. Acting Out of Concern for Political Survival.....	185
4. Stop-and-Frisk: Fear of Black and Latino Men.....	186
5. “Who’s that Masked Man? Oh, I Never See People in Terms of Color”.....	186
B. Actions Arising From Deception or Self-Deception.....	187
1. “I’m doing This Because I Love My Constituents and the American People”	188
2. “My Motives are Pure”—Excuse, Pretext, and Distraction	188
C. Actions That Fall Unequally on the Poor.....	190
1. Crowded Subways.....	190
2. Why Don’t You Work or Study at Home?.....	190
3. “I Don’t Understand, They Keep Dying On Me”	191
4. “I’m so Heroic—I’m Learning to Teach by Computer”	191
5. “Those Minorities, They’re Not Social Distancing”.....	192
6. “Those Farmworkers, Prisoners, Illegals—Of Course They’re Getting Sick. Look How They Live, What Did They Expect?”	192
7. “Of Course, Joe Gets the Ventilator—He Has Such an Important Job”	193
8. “He Wasn’t Nice to Me Before”	193
II. NORTH THEORY: WHAT LIES BEHIND INJUSTICE IN A TIME OF COVID	194
III. REMEDYING INJUSTICE IN A TIME OF COVID.....	196
CONCLUSION	197

INTRODUCTION: RACE IN THE TIME OF COVID-19

We borrow the title of Gabriel García Márquez's novel¹ for this Essay on race, class, and national leadership during the time of the coronavirus, because the actions of the besotted lovers in García Márquez's novel and the behavior of President Donald J. Trump in response to the pandemic illustrate eerily many of the same evasions and missteps.² And, as with García Márquez's characters, the behavior of the current Administration calls for much the same solution, namely a bracing dose of realism coupled with old-fashioned courage from leaders and followers alike.³

In García Márquez's famous novel, the Nobel Prize-winning author recounts a decades-long love triangle between Florentino and Fermina, with the latter's husband, Juvenal Urbino, making occasional appearances.⁴ Their courtship begins when Florentino and Fermina are both teenagers from proper families—Fermina's slightly higher on the social scale than his—living in a major city in Colombia.⁵ Beginning with meaningful looks in the city park or while catching a glimpse of each other on the way to school,⁶ the lovers endure separations during long trips to distant regions engineered by worried families.⁷

Throughout all this time, they remain in contact through letters, mainly from Florentino, who writes fevered proclamations of eternal love for the beautiful Fermina.⁸ Her letters in return are brief, perfunctory, and just frequent enough to maintain his interest in pursuing a conquest that seems foredoomed from the start.⁹

-
1. GABRIEL GARCÍA MÁRQUEZ, *LOVE IN THE TIME OF CHOLERA* (Edith Grossman trans., Alfred A. Knopf 1988) (1985).
 2. See *infra* Parts I, II.
 3. By old-fashioned courage we mean confronting problems directly rather than through denial, evasion, or self-deception. We also mean voting in the next election. See *infra* Part III and Conclusion for additional clarification of this concept.
 4. GARCÍA MÁRQUEZ, *supra* note 1, at 3–45.
 5. *Id.* at 5, 18, 56, 66, 81.
 6. *Id.* at 56–58.
 7. See *id.* at 81–82 for a discussion of the trips and contrived separations necessary to fulfill a novelist's requirement of an obstacle to be conquered. Later, Florentino took a journey of his own to put Fermina out of his mind. *Id.* at 137–48.
 8. *E.g., id.* at 57, 69, 93 (describing his letters, one of which was sixty pages long). During Florentino and Fermina's early years of teenage courtship, the plague of cholera in the region was just beginning. *Id.* at 111.
 9. See *id.* at 100–02 (describing one of Fermina's crueler replies).

Fifty years later, Fermina's husband, a prosperous physician, dies in a fall from a ladder while attempting to rescue an escaped parrot.¹⁰ The two remaining lovers, now in their seventies, find themselves on a river cruise operated by Florentino's company.¹¹ To allow their relationship to take its course, after the last passengers disembark, Florentino orders the captain to fly the yellow flag of cholera, thus barring any new ones from boarding the vessel on its homeward journey.¹² Alone at last, the aging lovers fall into each other's arms in a voyage that can only end in their deaths, since no harbormaster would allow a ship flying such a flag to dock at his port.¹³

The intense tale of unrequited love offers a number of remarkable parallels to today's events, and not merely in the diseases that form their common background. Dreamy, poetic Florentino struggles with warring urges—chastity and carnal love—which he reconciles by self-deception, often comically, but in the end tragically.¹⁴

America struggles with similar conflicts and self-deceptions, including a ruling party that refuses to set reasonable rules for an upcoming election on the spurious ground that a handful of citizens, out of the many millions voting, might cast a ballot when they were not entitled to do so.¹⁵ In similar fashion, Black men report that they are being stopped and questioned even more frequently than usual, particularly if they are wearing face masks to guard against the disease.¹⁶ For the police officer carrying out the stop, the Black youth is a potential predator, not an innocent teenager out for an

10. *Id.* at 41–43 (describing the fatal accident in humorous detail). The parrot spoke French and Latin, and could sing. It also apparently had an anti-authority streak, which manifested itself during a visit by the President of the Republic. *Id.* at 20–21.

11. *Id.* at 324–28 (describing how Florentino and Fermina came to find themselves on the vessel at the same time).

12. By then, Florentino had risen from the rank of office worker to a position of leadership in the company. *Id.* at 168.

13. *Id.* at 348 (explaining that the yellow flag is a deception—there is no cholera aboard the boat). Their union is, at first, unsuccessful. In the bedroom of their cabin, Florentino's age gets the better of him. Unable to perform, the two lovers decide to take a break. He seeks to excuse his failure by professing to be still a virgin. Later, things go somewhat better. *See id.* at 338–39.

14. Florentino deceives himself that his courtship is making progress, letter by letter. *E.g., id.* at 75.

15. *See* Robert Farley, *Trump's Latest Voter Fraud Misinformation*, FACTCHECK.ORG (Apr. 10, 2020), <https://www.factcheck.org/2020/04/trumps-latest-voter-fraud-misinformation> [<https://perma.cc/38Z6-QW5X>]; *see also* Miles Parks, *Fact Check: Is Mail Ballot Fraud as Rampant as President Trump Says It Is?*, NPR (Apr. 7, 2020, 8:48 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/07/829323152/fact-check-is-mail-ballot-fraud-as-rampant-as-president-trump-says-it-is> [<https://perma.cc/QXC6-CWN7>].

16. *See infra* notes 57–62, 83.

evening stroll.¹⁷ In the time of the coronavirus, we find it easy to deem an authority figure strong when he is merely enacting a pattern of abuse,¹⁸ just as the patriarch Urbino did, perfectly unconsciously, with his wife many times during a loveless marriage full of bickering. And it is easy for a national leader to take action against a disliked enemy, such as Mexican immigrants, pretending that he is doing so in the service of public health.¹⁹

In the novel, Florentino's vows of chastity, if commendable, emerge as less than pure.²⁰ He professes eternal devotion to Fermina in dozens of letters spread over fifty years, while at the same time carrying out lurid affairs with other women.²¹ Today, many national leaders profess to adopting quarantines, national travel restrictions, and relaxation of environmental and workplace safety laws in order to safeguard the country's integrity and safety.²² Laborers deemed essential, however, are expected to continue working as usual, putting their health at risk in order to provide the citizenry with goods and services.²³ Measures like these—the consequences of which fall harshly on minorities, factory workers, women, and the poor²⁴—may advance their self-proclaimed goals somewhat, but the circumstances surrounding their enactment bespeak bad faith as well as racial animus.²⁵

-
17. See Damien Cave & Abdi Latif Dahir, *How Far Should Police Go in Enforcing Stay-Home Orders?*, SEATTLE TIMES, Apr. 3, 2020, at A4 (noting that some police officers interpret their mission as challenging anyone out on the streets who seems out of place).
 18. On the role of authoritarianism in social life, see, for example, Richard Delgado, *Authoritarianism: A Comment*, 13 RUTGERS RACE & L. REV. 65 (2012) (citing the contributions of Bruno Bettelheim and Theodore Adorno to this line of analysis).
 19. Salvador Rizzo, *Trump's Wobbly Claim that the Wall Could Stop the Coronavirus*, WASH. POST (Mar. 12, 2020, 3:00 AM), <https://www.washingtonpost.com/politics/2020/03/12/trumps-wobbly-claim-that-his-wall-could-stop-coronavirus> [<https://perma.cc/R9L4-GR5Q>].
 20. GARCÍA MÁRQUEZ, *supra* note 1, at 63.
 21. 622 of them, in fact. *Id.* at 152.
 22. See *infra* notes 72–74.
 23. See Adie Tomer & Joseph W. Kane, *How to Protect Essential Workers During COVID-19*, BROOKINGS INST. (Mar. 31, 2020), <https://www.brookings.edu/research/how-to-protect-essential-workers-during-covid-19> [<https://perma.cc/DV2D-2K65>].
 24. See Charles M. Blow, *Social Distancing is a Privilege*, N.Y. TIMES, Apr. 6, 2020, at A24 (noting that many working class people do not have the option to engage in social distancing); see also *infra* notes 33, 62, 85, 95 (noting how the two periods treated race and class as useful shields and pretexts).
 25. See *infra* notes 26, 31, 63, 66–70, 70–75, 114, 120. Indeed, when the elderly Florentino finally, more than half a century later, succeeds in seducing the haggard and cronelike Fermina aboard his company's riverboat, he rationalizes their behavior as understandable in view of the circumstances—the cholera—which justified extraordinary measures. GARCÍA MÁRQUEZ, *supra* note 1, at 343.

For his part, the character Urbino—the third person in the love triangle—professes to be a man of science and progress,²⁶ when in fact he is a narrowminded social climber of aristocratic parentage, and a weakling undeserving of Fermina’s favor.²⁷ A cold, bloodless, if upright, fellow, his initial meeting with Fermina came only as a result of clinical error—he thought she was a different medical patient.²⁸

Self-deception, too, lends itself in service of the powerful. Today’s national leaders maintain that they are protecting the nation’s safety and integrity with measures to exclude foreigners supposedly bent on spreading sickness and disorder.²⁹ Many immigrants, though, merely want to make a decent living in the new land, send remittances home to relatives in a poor village, and are, on average, younger, stronger, and healthier than longstanding citizens.³⁰ This act of self-deception thus serves as an ironic counterpart of the narrative of romanticized love that doomed three of García Márquez’s characters to lives of woe.³¹

Part I of this Article recounts the many features of current U.S. coronavirus policy, noting parallels to García Márquez’s novel in asides or footnotes (much as García Márquez does in his novel). Many of our examples will have to do with race and class and show a high degree of deception, self-deception, and bad faith, with governmental actions justified in the name of public health when their unstated goal lies elsewhere.

Part II posits a new tool in critical social science—“norm theory”—as a way to understand many of the contradictions we point out in the Administration’s antivirus-program.³² Part narrative analysis, part critical race theory in action, norm theory explains why people sometimes act in

26. GARCÍA MÁRQUEZ, *supra* note 1, at 21, 25, 37, 43–44, 53, 100, 110 (noting Urbino’s upper class manner and standing in the community).

27. *Id.* at 21, 25, 32, 43–44, 207.

28. *Id.* at 115 (noting how Urbino and Fermina met).

29. *See infra* notes 31, 66–70, 74, 114.

30. Jeffrey S. Passel, *Size and Characteristics of the Unauthorized Migrant Population in the U.S.*, PEW RES. CTR.: HISP. TRENDS (Mar. 7, 2006), <https://www.pewresearch.org/hispanic/2006/03/07/size-and-characteristics-of-the-unauthorized-migrant-population-in-the-us> [<https://perma.cc/L6PS-AMXY>]. We do not mean that immigrants need to prove themselves Eagle Scouts or possessors of unusual virtue to gain entrance to this country. We merely point out that national leaders’ narrative about them is very far off the mark.

31. That is, *fear* (today’s guiding emotion) is the counterpart of the inarticulate *rage* that swept across Colombian society, upsetting social arrangements and expectation in the time of García Márquez’s novel. Then, as now, people dealt with the uncertainty of their times via a romantic quest to retain the old values and ways of living—Trump, by limiting immigration, for example, and Florentino by clinging to a long-lost love.

32. *See infra* Part II (explaining norm theory).

ways that are utterly racist and classist with little awareness that they are doing so, indeed, even believing that they are behaving from the purest of motives.³³ National leaders know this by a kind of instinct and exploit it with little compunction, trusting that gullible followers will hold fast to the illusions that brought the leaders to power.³⁴

Part III suggests ways we can surmount today's version of García Márquez's lovesickness—our readiness to oppress disempowered citizens while proclaiming that we are doing it for love of country. For García Márquez, “time of cholera” was a play on words. The Spanish word for cholera, “colera,” also means anger or ill-tempered fury of the type that the impatient Fermina vented on her ever-importuning suitor.³⁵ By the same token, “race in the time of COVID-19”³⁶ captures analogically the central point of both texts, García Márquez's and our own: Many of the measures put in place by the present Administration are enacted out of fear—fear of foreigners, fear of difference, fear of impurity, fear of losing an election, and fear of confronting the truth about oneself and one's motives.³⁷

They arise, in short, out of cowardice, riding the winds of a more powerful force without acknowledging or confronting it directly. The term “COVID,” then, connotes both a physical disease, something all persons naturally fear—and cowardice, the emotion that expresses itself in carrying out covertly and in an underhanded manner actions that one may later regret, especially if they become public knowledge.³⁸

In short, racial politics in a time of COVID. The nearest English-language phoneme to “COVID” is “coward.” Just as García Márquez saw a parallel between the Spanish language term for cholera and the one for anger,³⁹ Trump's administration capitalizes on both fear—on the part of the

33. E.g., Richard Delgado & Jean Stefancic, *Do Judges Cry? An Essay on Empathy and Fellow-Feeling*, 70 CASE W. RES. L. REV. 23, 27 (2019) (describing a motorist who rationalizes that another carload of Latino workers is sure to come along and help a stranded family standing by a broken-down car by the roadside).

34. See *supra* notes 11–12 and accompanying text; *infra* notes 45–50, 93, 105–107 and accompanying text; *infra* note 102, 107 (discussing some of those illusions, including the mistaken belief that a strong leader is best, that any heavy-handed actions will fall on someone else, and that foreigners and little people will readily acquiesce in what is asked of them).

35. GARCÍA MÁRQUEZ, *supra* note 1, at 101–02 (noting how, after reconnecting with him following a long absence, Fermina rejects Florentino on a whim).

36. Viz, the title of our Introduction.

37. See *infra* Subpart I.A.1.

38. See *infra* Part I; see also note 115 and accompanying text (explaining the role of fear and cowardice in the current crisis of leadership).

39. See *supra* note 31 (explaining the connection between fear and anger).

citizenry—and cowardice—on his own part—much as the youthful Trump sought a sympathetic doctor to help him avoid military service in the Vietnam war.⁴⁰ The doctor accomplished this by diagnosing him with bone spurs—medically spurious, perhaps, but highly effective.⁴¹ And as with the three characters in García Márquez’s novel, likely to end badly.⁴²

I. FEAR AND LOATHING IN THE TIME OF COVID

How are national leaders enacting many of the very tricks and self-deceptions of the Garcia Marquez novel? They fall into two large categories: actions performed out of fear, and ones performed out of self-deception. Sometimes these categories overlap.

A. Actions Evoking or Performed Out of Fear

1. Inaction and Denial That Anything is Wrong

During the critical first two months of coronavirus’s spread in the United States, Trump essentially did nothing. Even though his daily intelligence briefing and meetings with cabinet members told him that a great wave of disease was coming, he tried to put it out of mind.⁴³ Much as Florentino did when he ignored that Fermina just was not very much into him—thus wasting years of his life—Trump pretended that the disease would soon disappear, and that all would be well again.⁴⁴ Even later, he touted unproven drugs and ordered his aides to disregard scientific

40. See Leo Shane III, *Trump Made Up Injury to Dodge Vietnam Service, His Former Lawyer Testifies*, MILITARY TIMES (Feb. 27, 2019), <https://www.militarytimes.com/news/pentagon-congress/2019/02/27/trumps-lawyer-no-basis-for-presidents-medical-deferment-from-vietnam> [<https://perma.cc/T2JE-U8KA>]; see also Tom Sykes, *Bone Spur Doc’s Daughter: Dad Wrote Trump Diagnosis as a Favor*, DAILY BEAST (Dec. 26, 2018, 6:46 AM), <https://www.thedailybeast.com/bone-spur-docs-daughter-dad-wrote-trump-diagnosis-as-a-favor> [<https://perma.cc/Z8LC-Y65A>].

41. Shane III, *supra* note 40; Sykes, *supra* note 40.

42. Cf. *supra* notes 12–13 and accompanying text (noting the failure of the two lovers to consummate their union when they finally find themselves together and alone); text accompanying *infra* notes 116–121 (noting that Trump’s reign is apt to end badly).

43. See Lisa Friedman & Brad Plumer, *Trump’s Response to Virus Reflects a Long Disregard for Science*, N.Y. TIMES (Apr. 28, 2020), <https://www.nytimes.com/2020/04/28/climate/trump-coronavirus-climate-science.html> [<https://perma.cc/792Q-E7ME>] (noting Trump’s disregard for science).

44. See Dan Goldberg, *‘It’s Going to Disappear’: Trump’s Changing Tone on Coronavirus*, POLITICO (Mar. 17, 2020, 10:52 PM), <https://www.politico.com/news/2020/03/17/how-trump-shifted-his-tone-on-coronavirus-134246> [<https://perma.cc/D2VG-J79R>] (noting Trump’s casual dismissal of the impending epidemic).

warnings about the impending disaster and adopt a “more positive outlook.”⁴⁵

2. Evoking Fear in the Citizenry

Followers who fear for their lives are apt to rally around a strong leader who—although he may be in denial—promises to defend them from an uncertain future.⁴⁶ When the growing number of sick people became too large to ignore, the Administration blamed others for the misfortune: first the Mexicans who had been bringing crime and disease;⁴⁷ then, the Chinese who had supposedly been silently sowing a new pathogen;⁴⁸ and finally, medical experts and liberal Democrats out to damage the economy by shutting businesses and schools down with the goal of making Trump and his party look bad.⁴⁹ Social scientists know that authoritarian impulses increase during times of threat⁵⁰ and that followers feel safer if the leader promises security in the face of encroaching danger.⁵¹ Realizing this,

-
45. Philip Rucker et al., *34 Days of Pandemic: Inside Trump’s Desperate Attempts to Reopen America*, WASH. POST (May 3, 2020, 8:20 PM), https://www.washingtonpost.com/politics/34-days-of-pandemic-inside-trumps-desperate-attempts-to-reopen-america/2020/05/02/e99911f4-8b54-11ea-9dfd-990f9dcc71fc_story.html [https://perma.cc/SCJ4-YK5L].
46. See Aaron Blake, *The One Poll Number that Could Haunt Trump on Coronavirus*, WASH. POST (Apr. 20, 2020, 7:44 AM), <https://www.washingtonpost.com/politics/2020/04/20/one-poll-number-that-could-haunt-trump-coronavirus/> [https://perma.cc/834C-GL3R].
47. Trump and other Republicans touted this blame even before the 2016 election. See Gregory Korte & Alan Gomez, *Trump Ramps Up Rhetoric on Undocumented Immigrants: ‘These Aren’t People. These are Animals.’*, USA TODAY (May 17, 2018, 10:03 AM), <https://www.usatoday.com/story/news/politics/2018/05/16/trump-immigrants-animals-mexico-democrats-sanctuary-cities/617252002> [https://perma.cc/K4M7-8NE2].
48. See Daniel King, *We Shouldn’t Need to Explain Why Trump’s “Chinese Virus” Tweet Is Wrong. But Here We Are.*, MOTHER JONES (Mar. 16, 2020), <https://www.motherjones.com/media/2020/03/republican-racist-label-coronavirus> [https://perma.cc/ZPE9-VHA8].
49. For an example of this narrative, see Inae Oh, *Trump and His Allies Are Pushing an Outrageous Coronavirus Conspiracy Theory*, MOTHER JONES (Feb. 28, 2020), <https://www.motherjones.com/politics/2020/02/trump-coronavirus-conspiracy-theory> [https://perma.cc/D’TX4-FNFM]. On casting blame in this fashion, see Sudarsan Raghavan et al., *As Coronavirus Layoffs Surge in Richer Countries, Poorer Ones Lose Vital Remittance Payments*, WASH. POST (Apr. 6, 2020, 3:03 PM), https://www.washingtonpost.com/world/as-coronavirus-layoffs-surge-in-richer-countries-poorer-ones-lose-vital-remittance-payments/2020/04/06/cf4bb42e-72b7-11ea-ad9b-254ec99993bc_story.html [https://perma.cc/ESV6-3LR8].
50. See Delgado, *supra* note 18 (discussing the situational forces that heighten the authoritarian impulse).
51. Followers instinctively rally around a strong leader, in part for this reason. See *supra* note 18 and accompanying text (describing authoritarianism in social life); *supra* notes

consciously or unconsciously, many leaders build up feelings of endangerment and promise to mitigate them through powerful actions that “only I” can carry out.⁵²

3. Acting Out of Concern for Political Survival

Leaders like Trump enthusiastically embrace measures to continue their rule, justifying them as matters of national necessity. In a democracy like the United States, this can include gerrymandering election districts,⁵³ purging voting rolls,⁵⁴ or relocating polling places so as to make it difficult for members of the opposing party to cast a ballot.⁵⁵ In García Márquez’s novel, Fermina in similar fashion opted for marriage to the conventional admirer, Doctor Urbino, who offered a comfortable upper-middle class life and, of course, if she contracted cholera, free expert medical treatment close at hand.⁵⁶ She acted, in short, in the interest of survival. Life with the dreamy poet Florentino might have been more fulfilling, but would have undoubtedly been less secure.

38–40, 45–50 and accompanying text; *infra* note 112; *see also* Delgado, *supra* note 18 (discussing classic studies including those of Bettelheim and Adorno on the tendency to cleave to a powerful leader in desperate circumstances, such as prison camps).

52. *See* Ashley Parker, ‘How Do We Overcome Fear? Americans Need Confidence Before Live Can Return to Normal,’ WASH. POST (Apr. 19, 2020, 6:10 AM), https://www.washingtonpost.com/politics/how-do-we-overcome-fear-americans-need-confidence-before-life-can-return-to-normal/2020/04/18/0b6ed6b8-80b7-11ea-9040-68981f488eed_story.html?utm_campaign=wp_politics_am&utm_medium=email&utm_source=newsletter&wpisrc=nl_politics [<https://perma.cc/GHW5-CWM5>]. In Fermina’s case, might she have unconsciously attached herself to a doctor with a rising reputation, in a time of cholera, rather than an attractive and devoted—but impecunious—poet for this very reason?
53. This is especially so when the majority of U.S. Supreme Court justices and President are from the same party. *See* *Rucho v. Common Cause*, 139 S. Ct. 2484, 2508 (2019) (holding that partisan gerrymandering is a political question beyond the purview of the federal courts).
54. *See* Natasha Bach, *Millions of Americans Have Been Purged From Voter Rolls—And May Not Even Realize It*, FORTUNE (Jan. 14, 2020, 7:21 PM), <https://fortune.com/2020/01/14/am-i-registered-to-vote-voter-registration-deadlines-2020-how-to-check> [<https://perma.cc/HQP2-NCU3>] (noting the large number of statewide purges of voter rosters).
55. On barriers to voting, such as eliminating or relocating polling stations, *see*, for example, Richard Salame, *Texas Closes Hundreds of Polling Sites, Making it Harder for Minorities to Vote*, GUARDIAN (Mar. 2, 2020, 6:00 PM), <https://www.theguardian.com/us-news/2020/mar/02/texas-polling-sites-closures-voting> [<https://perma.cc/VY43-KJXW>].
56. On Fermina’s choice of Urbino, *see* GARCÍA MÁRQUEZ, *supra* note 1, at 105–37. *See also supra* notes 52–53 (positing an equally mundane motive for her marriage to Urbino).

4. Stop-and-Frisk: Fear of Black and Latino Men

Like their higher-ups,⁵⁷ lower-level authorities take advantage of a threat such as an epidemic to cast heightened suspicion on Black people and other minorities. They may stop and frisk them to ascertain whether they are engaged in forbidden conduct or demand an explanation for why they are out in the street or sidewalk.⁵⁸ They may do so, believing that these interventions are only what public safety demands.⁵⁹

5. “Who’s that Masked Man? Oh, I Never See People in Terms of Color”

During an epidemic of disease, most citizens will take self-protective measures, such as wearing a mask or scurrying quickly out of a grocery store or other place of business after completing their task there.⁶⁰ Measures like these, though, when carried out by minorities, can strike the police as suspicious, because they associate such actions with guilty behavior.⁶¹

57. Namely, presidents, cabinet officials, and state governors.

58. On increasing police suspicion, see Dominic Casciani, *Coronavirus: What Powers Do the Police Have?*, BBC NEWS: EXPLAINERS (June 1, 2020), <https://www.bbc.com/news/explainers-52106843> [<https://perma.cc/M3ZA-C26R>].

59. See Fernando Alfonso III, *Why Some People of Color Say They Won’t Wear Homemade Masks*, CNN (Apr. 7, 2020, 2:10 PM), <https://www.cnn.com/2020/04/07/us/face-masks-ethnicity-coronavirus-cdc-trnd/index.html> [<https://perma.cc/FU9F-S2NL>] (noting that the practice of wearing homemade masks is risky for people of color, since onlookers and the police may consider that the mask is a sign of a nefarious intent on the part of the wearer).

60. See *COVID-19: Safety Tips for You*, AM. RED CROSS (May 13, 2020), <https://www.redcross.org/about-us/news-and-events/news/2020/coronavirus-safety-and-readiness-tips-for-you.html> [<https://perma.cc/36Z6-Y5AV>] (describing hand-washing, social distancing, and other public-health measures one can take to minimize spread of the disease).

61. See Tracy Jan, *Two Black Men Say They Were Kicked Out of Walmart for Wearing Protective Masks. Others Worry it Will Happen to Them.*, WASH. POST (Apr. 9, 2020, 4:27 AM), <https://www.washingtonpost.com/business/2020/04/09/masks-racial-profiling-walmart-coronavirus/> [<https://perma.cc/8BHC-73L2>]; see also Marc Fisher et al., *Will Americans Wear Masks to Prevent Coronavirus Spread? Politics, History, Race and Crime Factor Into Tough Decision*, WASH. POST (Apr. 18, 2020, 9:21 AM), https://www.washingtonpost.com/national/coronavirus-masks-america/2020/04/18/dbd16bf2-7a85-11ea-a130-df573469f094_story.html?utm_campaign=wp_post_most&utm_medium=email&utm_source=newsletter&wpisrc=nl_most [<https://perma.cc/6LAW-KNJL>].

Many officers may strenuously deny that they acted out of racial animus or insist that they never notice another person's race.⁶²

B. Actions Arising From Deception or Self-Deception

During an emergency, a powerful leader can easily convince himself and his supporters that he is acting not out of self-interest but for the broader good.⁶³ In García Márquez' novel, for example, Doctor Urbino warned his wife, Fermina, not to get too friendly with her childhood suitor, Florentino, who, unknown to her, might have been leading a dissolute life.⁶⁴ Fermina was a strong-willed woman, but remained with the doctor in a loveless marriage full of bickering, perhaps yielding to social convention or the fear that she could do no better, given the times.⁶⁵ By the same token, Trump and his inner circle pretend that suspending immigration to the United States will make the country safer, when in fact it will compound the nation's economic troubles and imperil the food chain.⁶⁶

62. The young Fermina, although attracted to the soulful Florentino, nevertheless cast her lot with the prosperous and rising doctor. Her decision, although not made on racial grounds, seems powerfully influenced by the class position of the two suitors.

63. See Ishaan Tharoor, *Trump Uses the Pandemic to Push Far-Right Agenda*, WASH. POST (Apr. 21, 2020, 9:00 PM), <https://www.washingtonpost.com/world/2020/04/22/trump-uses-pandemic-push-far-right-agenda> [<https://perma.cc/SA25-J5NU>] (noting the pretextual nature of many of Trump's actions in the midst of the coronavirus pandemic).

64. GARCÍA MÁRQUEZ, *supra* note 1, at 122–24.

65. *Id.* at 28–29, 208–12.

66. Immigrants, of course, are essential to harvesting crops and operating meat-production plants. See Maria Sacchetti, *What You Need to Know About Trump's Coronavirus Immigration Order*, WASH. POST (Apr. 23, 2020), <https://www.msn.com/en-us/news/politics/what-you-need-to-know-about-trumps-coronavirus-immigration-order/ar-BB133UKB> [<https://perma.cc/ZAN7-EUTW>] (discussing the potential impact and consequences of a broad suspension of immigration into the United States); see also Hal Bernton, *In French Fry Heartland, Spring Turns Bitter as Coronavirus Cuts Into Global Demand*, SEATTLE TIMES (May 6, 2020, 1:33 AM), <https://www.seattletimes.com/seattle-news/in-french-fry-heartland-spring-turns-bitter-as-coronavirus-cuts-into-global-demand> [<https://perma.cc/M6QF-A4MA>]; Francis Wilkinson, *An Outbreak Among Farmworkers Would Be Catastrophic*, SEATTLE TIMES (Apr. 3, 2020, 11:16 AM), <https://www.seattletimes.com/opinion/an-outbreak-among-farmworkers-would-be-catastrophic> [<https://perma.cc/9865-4NKE>]. Trump's panicky decision may well be a product of insecurity, much like Fermina's choice of husband.

1. “I’m doing This Because I Love My Constituents and the American People”

An unscrupulous leader may pass off harsh measures as unfortunate necessities and actually convince himself that they are.⁶⁷ Trump, for example, told Americans that, with the pandemic, they were engaged in a war for national survival.⁶⁸ During wartime, of course, people are expected to rally around the leader and accept new duties, such as making do without luxuries or even schools for their children.⁶⁹ But a pandemic is not a war, but a natural disaster, and if the citizenry disapprove of the leader’s responses to it, they are perfectly free—as they are not in wartime—to replace him. Trump’s over-the-top responses to Black Lives Matter organizers and their supporters’ protests over police shooting evince much the same panic.

2. “My Motives are Pure”—Excuse, Pretext, and Distraction

During times of crisis, a leader can get away with many dictates they would not be able to issue in normal times.⁷⁰ Followers may overlook

-
67. Joanna Slater et al, *Under the Cover of Coronavirus, Governments Punish Adversaries and Reward Friends*, WASH. POST (Apr. 30 2020, at <https://www.washingtonpost.com/world/under-the-cover-of-coronavirus-governments-punish-enemies-and-reward-friends> (noting that oligarchs around the world are using the pandemic as an excuse to crack down on dissent and curtail civil liberties); Editorial Board, *This Crisis Requires Political Courage to Respect Our Values. Trump Isn’t Doing That.*, WASH. POST (Apr. 12, 2020, 10:02 AM), https://www.washingtonpost.com/opinions/at-the-us-mexico-border-trump-weaponizes-the-pandemic/2020/04/12/d49056c2-7b6a-11ea-b6ff-597f170df8f8_story.html [https://perma.cc/F878-3NE7] (noting that Trump is “weaponizing” the coronavirus emergency to accomplish long-awaited immigration rollbacks).
68. Yasmeen Serhan, *The Case Against Waging ‘War’ on the Coronavirus*, ATLANTIC (Mar. 31, 2020), <https://www.theatlantic.com/international/archive/2020/03/war-metaphor-coronavirus/609049> [https://perma.cc/K9SM-5HEK] (suggesting the ineffectiveness of leaders using “battle” terminology in reference to the coronavirus pandemic).
69. *Map: Coronavirus and School Closures*, EDUC. WEEK (May 15, 2020), <https://www.edweek.org/ew/section/multimedia/map-coronavirus-and-school-closures.html> [https://perma.cc/5SKH-4NTA] (tracking the distribution and large number of school closures during the coronavirus pandemic).
70. See Jeremy W. Peters, *How Abortions, Guns and Church Closings Made Coronavirus a Culture War*, N.Y. TIMES (June 29, 2020), <https://www.nytimes.com/2020/04/20/us/politics/coronavirus-protests-democrats-republicans.html?searchResultPosition=4> [https://perma.cc/2Q7H-84LW] (venturing that some governors used the coronavirus as a pretext for advancing a political agenda); see also Nick Miroff et al., *Trump Administration Working Out Details of Suspending Immigration During Coronavirus Crisis, Plans to Close Off the United States to a New Extreme*, WASH. POST (Apr. 21, 2020, 9:12 AM), <https://www.washingtonpost.com/immigration/coronavirus-trump->

incursions on liberties⁷¹ such as the right to obtain an abortion.⁷² Those leaders may loosen environmental and workplace safety precautions, or enact rules that make it difficult for the media to do their jobs.⁷³ None of these efforts is calculated to combat the epidemic or mitigate its consequences, yet to an uncritical observer, they can seem justifiable. After all, abortions require at least a few medical personnel, do they not? If the southern border were more open, at least one person sick with coronavirus would sneak across—is this not self-evidently true?⁷⁴ After all, eliminating environmental regulations would please business leaders, whose corporations are reeling, would it not?

-
- immigration/2020/04/21/a2a465aa-837a-11ea-9728-c74380d9d410_story.html?utm_campaign=wp_post_most&utm_medium=email&utm_source=newsletter&wpisrc=nl_most [https://perma.cc/GCP2-Q8XJ] (noting that Trump had long coveted the opportunity to reduce immigration to the lowest possible level in order to placate his supporters). Elsewhere, other national leaders are taking advantage of the virus to roll back democracy by, for example, reducing citizen's rights to participate in their own governance. See Michael Birnbaum & Terrence McCoy, *As Leaders Seize Powers to Fight Coronavirus, Fear Grows for Democracy*, WASH. POST (Apr. 13, 2020), https://www.washingtonpost.com/world/the_americas/coronavirus-democracy-orban-hungary-surveillance-israel/2020/04/12/ecdff214-729b-11ea-ad9b-254ec99993bc_story.html [https://perma.cc/7ACN-C9E8]; Steven Erlanger, *Poland and Hungary Use Coronavirus to Punish Opposition*, N.Y. TIMES (Apr. 22, 2020), <https://www.nytimes.com/2020/04/22/world/europe/poland-hungary-coronavirus.html> [https://perma.cc/H2HE-FNJ9].
71. See Selam Gebrekidan, *For Autocrats, and Others, Coronavirus Is a Chance to Grab Even More Power*, N.Y. TIMES (Apr. 14, 2020), <https://www.nytimes.com/2020/03/30/world/europe/coronavirus-governments-power.html> [https://perma.cc/RZP3-GVN5] (noting the pretextual nature of some of the recent power grabs).
72. See Michelle Goldberg, *Red States Are Exploiting Coronavirus to Ban Abortion*, N.Y. TIMES (Apr. 6, 2020), <https://www.nytimes.com/2020/04/06/opinion/abortion-covid.html> [https://perma.cc/J7C8-BU7F].
73. See Paul Fahri, *The White House Tried to Move a Reporter to the Back of the Press Room, But She Refused. Then Trump Walked Out.*, WASH. POST (Apr. 25, 2020, 2:30 PM), https://www.washingtonpost.com/lifestyle/media/the-white-house-tried-to-move-a-reporter-to-the-back-of-the-press-room-but-she-refused-then-trump-walked-out/2020/04/25/a5d16cc6-8714-11ea-ae26-989cfce1c7c7_story.html [https://perma.cc/GVG5-CH4M]; see also Steven Mufson, *Ten Years After Gulf of Mexico Oil Spill, Trump Administration Weakens Regulations*, WASH. POST (Apr. 19, 2020, 1:30 PM), https://www.washingtonpost.com/climate-environment/ten-years-after-gulf-of-mexico-oil-spill-trump-administration-weakens-reforms/2020/04/19/f935ec1c-7ffc-11ea-8013-1b6da0e4a2b7_story.html#:~:text=Ten%20years%20after%20Gulf%20of%20Mexico%20oil%20spill%2C%20Trump%20administration%20weakens%20regulations&text=Since%20coming%20into%20office%2C%20however,the%20need%20for%20independent%20inspectors [https://perma.cc/4JBY-3XJK].
74. See Aaron Blake, *Facing Coronavirus Criticism, Trump Reaches for His Favorite Remedy: An Immigration Ban*, WASH. POST (Apr. 21, 2020, 7:31 AM), <https://www.washingtonpost.com/politics/2020/04/21/facing-coronavirus-criticism-trump-reaches-his-favorite-remedy-an-immigration-ban/> [https://perma.cc/V843-QTC7].

C. Actions That Fall Unequally on the Poor

In addition to the measures mentioned earlier, many governmental actions increase the burden that minority groups or the poor must shoulder during a national crisis.⁷⁵

1. Crowded Subways

For example, media reports mention that the subways in major cities are crowded, thus exposing the passengers—often blue collar workers needed to perform essential jobs in office towers or on garbage trucks—to risk of contamination by dangerous pathogens.⁷⁶ Of course, a high-level executive riding the same train would suffer the same risk—except that most high-paid, high-level workers work from home.⁷⁷ This attitude toward public travel evokes Anatole France’s ironic observation about the majestic equality of the law, which forbids the rich and the poor alike from sleeping under bridges.⁷⁸

2. Why Don’t You Work or Study at Home?

When the nation’s colleges and universities closed in favor of online instruction, many administrators overlooked that the new mode of instruction affected students and instructors with large families or of modest means unequally.⁷⁹ A university president earning a six- or seven-figure salary may have a small number of children.⁸⁰ She may be in a position to

75. See Raghavan et al., *supra* note 49; see also Margaret Newkirk & Michelle Fay Cortez, *The South, Sickest Part of a Sick America, Falls Prey to Virus*, BLOOMBERG (Apr. 1, 2020, 3:06 PM), <https://www.bloomberg.com/news/articles/2020-04-01/the-south-sickest-part-of-a-sick-america-falls-prey-to-virus> [<https://perma.cc/VW2A-BPE8>].

76. See Christina Goldbaum, *Worried About Coronavirus on the Subway? Here’s What We Know*, N.Y. TIMES (Mar. 8, 2020), <https://www.nytimes.com/2020/03/03/nyregion/mta-subways-covid-19-virus.html> [<https://perma.cc/5DJA-ZKQR>].

77. See Christian Davenport et al., *Working From Home Reveals Another Fault Line in America’s Racial and Educational Divide*, WASH. POST (Mar. 22, 2020, 11:00 AM), <https://www.washingtonpost.com/business/2020/03/22/working-home-reveals-another-fault-line-americas-racial-educational-divide/> [<https://perma.cc/QR3W-Y3S5>] (explaining that one’s ability to work from home is divided upon racial, educational, and socioeconomic lines).

78. “The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread.” *Anatole France*, QUOTES.NET, <https://www.quotes.net/quote/34945> [<https://perma.cc/3AJZ-8DZV>] (last visited June 1, 2020).

79. See Blow, *supra* note 24.

80. *Id.*

hire a child care worker to entertain the children while she works at her computer.⁸¹ He may have a separate study, with the young children off in another part of the house.⁸² A low-paid instructor, teaching assistant, or assistant professor sharing a small apartment with other people cannot easily work in this fashion, and students on a tight budget may be at even greater disadvantage. A large number of children live in homes that lack computers, face food insecurity, or have little or no Internet access.

3. “I Don’t Understand, They Keep Dying On Me”

Often, authority figures blame minorities and the poor for the high rate at which they succumb to COVID-19, often masking an uncaring attitude by professing incomprehension for what it is happening.⁸³ Of course, the high rate of infection and deaths in this group is a function of crowded quarters, inability to engage in social distancing while on a demanding job, or lack of sick leave, and eminently predictable.⁸⁴ When Florentino and Fermina, well into their late seventies, found themselves inadvertently on a belated honeymoon voyage on a river boat, they both noted the many bodies floating in the river, but quickly averted their gaze and attention.⁸⁵

4. “I’m so Heroic—I’m Learning to Teach by Computer”

When colleges and universities converted to distance education, many faculty members complained of the hardship of having to learn a new technology.⁸⁶ Of course, that was a requirement of their job and inherent in

81. *Id.*

82. *Id.*

83. See Jeffery C. Mays & Andy Newman, *Virus Is Twice as Deadly for Black and Latino People Than Whites in N.Y.C.*, N.Y. TIMES (May 7, 2020), <https://www.nytimes.com/2020/04/08/nyregion/coronavirus-race-deaths.html> [<https://perma.cc/F2FF-9QVZ>].

84. See Audra D. S. Burch, *Why the Virus Is a Civil Rights Issue: ‘The Pain Will Not Be Shared Equally’*, N.Y. TIMES (Apr. 19, 2020), <https://www.nytimes.com/2020/04/19/us/coronavirus-civil-rights.html> [<https://perma.cc/CK8H-XXHN>].

85. GARCÍA MÁRQUEZ, *supra* note 1, at 332, 336; see also Newkirk & Cortez, *supra* note 75; Raghavan et al., *supra* note 49. In García Márquez’s novel one sees the same inequity—namely in the way Florentino treated all women, including the fourteen-year-old America Vicuna—in the same way, as amusing playthings to distract him from his self-pitying predicament arising from his romantic fixation on the untouchable Fermina. García Márquez’s character, then, deploys class where a contemporary tyrant uses race.

86. See, e.g., Michael Gonchar & Shannon Doyne, *Has Your School Switched to Remote Learning? How Is It Going So Far?*, N.Y. TIMES (Mar. 30, 2020), <https://www.nytimes.com/2020/03/30/learning/has-your-school-switched-to-remote->

the new situation faced by students and teachers alike. But the new regime struck some as unreasonable and burdensome and they pined for the old days, much as Florentino lamented that innumerable letters were the only way he could communicate with the married Fermina.⁸⁷ The sorrowing actors in García Márquez's novel performed against a background of a savage illness sweeping their land, of which they barely took notice, blinded by their own melodramas.

5. “Those Minorities, They’re Not Social Distancing”

Many police officers, teachers, and other officials are quick to point out minor violations of the six-foot rule when they see Black or Latinx youth walk, stand, or talk too close to each other.⁸⁸ Of course, many of these folks come to police attention because they lack a car and must walk to their destination, perhaps a small neighborhood store. And when they are out with a group, it often consists of close friends or family members who live in the same household and do not need to maintain distance from each other.

6. “Those Farmworkers, Prisoners, Illegals—Of Course They’re Getting Sick. Look How They Live, What Did They Expect?”

By the same token, many opinionmakers profess astonishment over the high rate of infection of farmworkers or meat-processing line workers, who work in close proximity to each other.⁸⁹ We deem their labor essential and look the other way when they sicken and die. When Florentino, by then a prosperous man of business, abandoned the latest of a long string of mistresses—a fourteen-year-old girl in a boarding school who fell head over heels in love with him—she died by suicide.⁹⁰ By this time, however, he was beginning to receive encouraging signals from the newly-widowed Fermina.

learning-how-is-it-going-so-far.html [https://perma.cc/P5C6-MQ67] (noting that the same faculty members were unhappy with the new technology or found it burdensome).

87. GARCÍA MÁRQUEZ, *supra* note 1, at 60–62.

88. See Blow, *supra* note 24.

89. See Luke Runyon et al., *Meatpacking Plant Working Conditions Stoke Spread of Coronavirus*, NPR (Apr. 19, 2020, 5:06 PM), <https://www.npr.org/2020/04/19/838195049/meatpacking-plant-working-conditions-stoke-coronavirus-spread> [https://perma.cc/SK67-H368]; see also Kirk Semple & Caitlin Dickerson, *U.S. Deported Thousands Amid COVID-19 Outbreak; Some Turned Out to Be Sick*, SEATTLE TIMES (Apr. 18, 2020, 6:58 PM), <https://www.seattletimes.com/nation-world/u-s-deported-thousands-amid-covid-19-outbreak-some-turned-out-to-be-sick> [https://perma.cc/P7UX-BZRK].

90. GARCÍA MÁRQUEZ, *supra* note 1, at 336, 342.

So, he hardly took notice of the young girl's death and eagerly plotted his next move on Fermina.

7. "Of Course, Joe Gets the Ventilator—He Has Such an Important Job"

Under the guise of *triage*, a long-accepted medical practice, physicians may treat a patient who is deemed likely to make a full recovery and return to a valuable social role or job, over one who he is unlikely to recover quickly or, even if he or she did, would be deemed of little use to society.⁹¹ Often, this process takes the form of barely concealed racial profiling, in which a physician deems a person of color a poor medical risk or return on investment.⁹² It can also serve as an excuse for caretakers' failure to treat the elderly or holders of blue collar jobs as zealously as they might younger ones living lifestyles more like those of a typical doctor or nurse.⁹³

8. "He Wasn't Nice to Me Before"

Finally, a leader engaged in withholding aid from a rival group can seek to excuse his action as merely reprisal for an earlier affront. Trump, for example, has defended his refusal to provide emergency medical supplies to

91. See Louise Aronson, 'Covid-19 Kills Only Old People.' *Only?*, N.Y. TIMES (Mar. 22, 2020), <https://www.nytimes.com/2020/03/22/opinion/coronavirus-elderly.html> [<https://perma.cc/RDK8-UBB9>] (noting that some believe the elderly should not take up scarce medical resources); see also Katie Engelhart & Dominic Smith, *Who Gets a Ventilator?*, N.Y. TIMES (Apr. 14, 2020), <https://www.nytimes.com/2020/04/14/opinion/coronavirus-ventilator-rationing.html> [<https://perma.cc/MF3P-7RT2>]; Jennifer Senior, *The One Kind of Distancing We Can't Afford*, N.Y. TIMES (Apr. 12, 2020), <https://www.nytimes.com/2020/04/12/opinion/coronavirus-distancing.html> [<https://perma.cc/LD55-4Q6H>] (noting that attitudes toward poor or elderly patients limit their treatment options).

92. That is, medical workers may, consciously or not, place a higher value on desperately ill patients who are white, able-bodied, and college educated than they do on ones who are elderly, nonwhite, disabled, or lack a college degree. See Senior, *supra* note 91; see also Jan, *supra* note 61. Many physicians also discount Black pain. See Melissa Healy, *Does a White Doctor Understand a Black Patient's Pain?*, L.A. TIMES (Apr. 4, 2016, 2:05 PM), <https://www.latimes.com/science/sciencenow/la-sci-sn-race-pain-perception-treatment-20160403-story.html> [<https://perma.cc/2YRZ-AG7S>].

93. See, e.g., Aronson, *supra* note 91. In García Márquez's novel, one encounters the same unconcern for those of lower station on many occasions, not least of which is the Captain's acquiescence in Florentino's request that he continue the voyage without stopping for more passengers, to placate the now highly-placed executive in the steamboat company. See GARCÍA MÁRQUEZ, *supra* note 1, at 343.

states or regions whose leaders have criticized him.⁹⁴ Isn't it natural to punch back? Trump thus treated blackmail and favoritism as acts of masculine bravado, when they were, in fact, the opposite—securing acquiescence by, in effect, buying it. Harsh measures that fall heavily on minorities or the poor can also be passed off as neutral and evenly applied across the board—imposing burdens that any loyal citizen should shoulder willingly.⁹⁵

II. NORM THEORY: WHAT LIES BEHIND INJUSTICE IN A TIME OF COVID

A relatively recent development in law and social science, norm theory holds that our response to another person in distress is a function of how normal or abnormal that person's predicament strikes us *for that person*.⁹⁶ A spectator seeing TV images of starving people in Sudan may remain unmoved since he or she believes that famines are common in that part of the world, and those people must be used to it by now.⁹⁷ Perhaps they have even made provision for it in some fashion, such as by putting up grain in a community shelter or storehouse.⁹⁸

But if one day, our next door neighbor in an affluent neighborhood shows up at our door, famished because her husband walked out on her and she and her children have not eaten in two days, we are shocked. That is not supposed to happen in nice neighborhoods like this. We fix her a sandwich

94. See David Atkins, *Is Trump Using Critical Medical Supplies to Blackmail Blue State Governors?*, WASH. MONTHLY (Mar. 28, 2020), <https://washingtonmonthly.com/2020/03/28/is-trump-using-critical-medical-supplies-to-blackmail-blue-state-governors> [https://perma.cc/ZV9G-35JN] (noting that the President uses blackmail over petty grievances to pressure political enemies into compliance).

95. On the acts of a weakling masquerading as a strong man, see Ashley Parker & Anne Gearan, *Coronavirus Crisis Highlights Trump's Resistance to Criticism—And His Desire for Fervent Praise*, WASH. POST (Apr. 8, 2020, 3:37 PM), https://www.washingtonpost.com/politics/coronavirus-crisis-highlights-trumps-resistance-to-criticism--and-his-desire-for-fervent-praise/2020/04/08/8efe3176-7901-11ea-9bee-c5bf9d2e3288_story.html [https://perma.cc/C4NS-QNSV]. See also Newkirk & Cortez, *supra* note 75; Raghavan et al., *supra* note 49. As noted, Florentino treated most women—even including the very young America Vicuna—in much the same way, as amusing toys to distract him from his pitiful fixation on the untouchable Fermina. See *supra* note 85. Marquez's character, then, deploys class where a contemporary tyrant uses race.

96. See Richard Delgado, *Rodrigo's Eleventh Chronicle: Empathy and False Empathy*, 84 CALIF. L. REV. 61, 76–77 (1996) (discussing the various types of empathy and their operation); see also Daniel Kahneman & Dale T. Miller, *Norm Theory: Comparing Reality to Its Alternatives*, 93 PSYCHOL. REV. 136 (1986) (outlining an early version of norm theory).

97. Delgado, *supra* note 96, at 76.

98. *Id.*

and look up the number of a social service agency she can call for help. That kind of situation is abnormal for people in our part of town.

Readers unfamiliar with norm theory may find that the abovementioned description rings a bell. Earlier studies of “helping behavior” explored a related behavior. In one, a Black woman spills a bag of groceries and no one offers help; a white woman does and everyone rushes to her aid.⁹⁹ Experiments with stranded motorists show much the same response.¹⁰⁰ And in yet others, a Black man in a subway station trying to buy a ticket from a machine asks bystanders for change for a five-dollar bill and is refused; a white man does the same and they quickly reach into their pockets.¹⁰¹

Norm theory helps explain why political leaders and ordinary people alike are sometimes able to get away with actions—closing the border on one occasion,¹⁰² raising a false yellow flag of disease on another¹⁰³—that would bring sharp reproach at other times. Emergencies call for strong action, we think.¹⁰⁴ And those who find themselves on the receiving end, well, what did they expect?¹⁰⁵ Trump’s followers readily acquiesced in most of his edicts, believing that their burden would fall on people unlike them.¹⁰⁶ And Florentino and Fermina must have thought that the ship captain would readily agree to Florentino’s request to fly the yellow flag of contagion in order to give the two lovers the long awaited privacy they needed to consummate their rekindled passion, while the passengers who had counted on boarding the vessel would merely wait a day or two for the next boat.¹⁰⁷

Norm theory explains many such responses. If the consequences of Trump’s measures fell on members of his base, surely they would win much

99. See Richard Delgado, *Rodrigo’s Ninth Chronicle: Race, Legal Instrumentalism, and the Rule of Law*, 143 U. PA. L. REV. 379, 401 (1994). The shoppers in these experiments were undisclosed confederates of the researcher.

100. *Id.*

101. See Kahneman & Miller, *supra* note 96.

102. See *supra* notes 65–66 and accompanying text.

103. See *supra* notes 11–12 and accompanying text; see also Olivia B. Waxman, *The Grand Princess Has Docked in California. Here’s What to Know About the History of Quarantine on Ships*, TIME (Mar. 9, 2020, 5:26 PM), <https://time.com/5799525/coronavirus-covid19-quarantine-ships-history/> [<https://perma.cc/XZY9-N52G>] (noting that the measure has been popular over much of history, but is of little use with ships).

104. See *supra* notes 45–50 and accompanying text.

105. See *supra* note 93 and accompanying text.

106. See text accompanying *infra* note 107.

107. See *supra* notes 11–12; *supra* note 93 and accompanying text.

less support than they do.¹⁰⁸ And the two aristocratic lovers in García Márquez's novel must have thought that the disappointed passengers would accede to their plan to gain exclusive travel rights on the riverboat. After all, they are just peasants, and another boat will come along tomorrow.¹⁰⁹

Trump's measures in response to the COVID-19 crisis similarly take place against a background that invites public acquiescence. His administration paints them as necessary responses to a public crisis.¹¹⁰ They burden and disadvantage individuals who the public sees as already disadvantaged and who undoubtedly expect only more of the same.¹¹¹ They emanate from a powerful authority who speaks in a loud voice, thus evoking instinctive responses to do what an authority figure demands.¹¹² And they play upon public fears of disease, dirt, crime, and job loss associated with foreigners and immigrants.¹¹³

III. REMEDYING INJUSTICE IN A TIME OF COVID

If, as we have seen, times of crisis enable leaders to enact an agenda that would ordinarily generate strong resistance, what can ordinary people and legal professionals do? Lay citizens and lawyers alike can begin by pointing out that not all harsh measures are calculated to make things better. For example, restricting immigration is apt to worsen conditions in the origin countries while impairing the ability of this nation's farms and meat supply plants to put food on the country's tables.¹¹⁴

Opponents can also show how leaders have been duping the citizenry into tolerating edicts that are apt to last far longer than the current

108. For example, imagine an emergency measure to reduce gun ownership or to expand voting rights in minority areas to increase national solidarity in a time of crisis.

109. See Kahneman & Miller, *supra* note 96.

110. See *supra* notes 19, 31–32, 59 and accompanying text; text accompanying *infra* note 111.

111. See text accompanying *supra* notes 94–112.

112. See *supra* note 18 and accompanying text (describing authoritarianism in social life).

113. See *supra* notes 38–40 and accompanying text (describing the paralyzing effect of fear). On the way some people associate dark skin with dirt and disease, see Richard Delgado, *J'Accuse: An Essay on Animus*, 52 U.C. DAVIS L. REV. ONLINE 119, 123–24 (2018) (discussing the work of social scientist Joel Kovel positing an unconscious connection in the mind of some racists between dark skin and dirt). A prominent social scientist, Kovel is a principal originator of the theory of aversive racism. See *id.*

114. See *supra* notes 66–67 and accompanying text (explaining how recent restrictions on immigration in the midst of the pandemic could potentially imperil the food supply chain in the United States).

emergency and make it harder for ordinary people to vote,¹¹⁵ travel,¹¹⁶ protect privacy,¹¹⁷ or make a living.¹¹⁸

In short, the opposition may show that nothing is normal about the reality that the nation's leaders are creating and that nothing requires that citizens tolerate it.¹¹⁹ They may show that many of the measures that the authorities are enacting under the guise of emergency imperatives are driven by fear. They are not only pretextual but underhanded, thinly disguised efforts to accomplish what the leaders could not bring about were they to declare their intentions openly.¹²⁰ In short, these are actions driven by cowardice.

Just as García Márquez's main character, Florentino, deceived himself into believing he had devoted fifty years of his life to a grand love, to the chagrin and ultimate downfall of both him and his beloved, the American people need to realize that their government is pursuing illusory goals by means that will sentence them to spend years on a voyage, trapped with a mad leader, that is going nowhere, and with very few travel companions in the world community.¹²¹

CONCLUSION

A reader might ask why we chose this story to make our point. The reason is that we find the parallels between the events and characters in García Márquez's novel and the behavior of Trump striking, even more than meets the eye. They both take place against the background of a terrible plague sweeping the land. The times thus led both sets of characters to choose desperate actions out of heightened, even romanticized, emotions. The threats were, and are, terrifying, requiring courage, not denial or

115. See *supra* notes 15, 55 and accompanying text.

116. See *supra* notes 65-66 and accompanying text.

117. See Ben Casselman & Patricia Cohen, *A Widening Toll on Jobs: 'This Thing Is Going to Come for Us All'*, N.Y. TIMES (Apr. 16, 2020), <https://www.nytimes.com/2020/04/02/business/economy/coronavirus-unemployment-claims.html> [<https://perma.cc/V88E-TLEA>].

118. *Id.*

119. See *supra* Part II.

120. See *supra* note 70 and accompanying text.

121. Ishaan Tharoor, *The Pandemic and the Waning of American Prestige*, WASH. POST (Apr. 27, 2020, 12:00 PM), <https://www.washingtonpost.com/world/2020/04/27/pandemic-waning-american-prestige/> [<https://perma.cc/UTE5-48JZ>]; see also Katrin Bennhold, 'Sadness' and Disbelief From a World Missing American Leadership, N.Y. TIMES (Apr. 23, 2020), <https://www.nytimes.com/2020/04/23/world/europe/coronavirus-american-exceptionalism.html> [<https://perma.cc/4PW3-FXG8>].

evasion, to confront them. Any weakness of character—Trump’s or Florentino’s—was magnified by the desperation that they induced.

Both sets of actors displayed behavior that is not hard to understand: cowardice and shrinking from an enormous challenge; deception and self-deception in explaining one’s actions to others; and romanticization—the tendency to see oneself as a hero, when one is merely an ordinary person trying to cope with a daunting task—or, in Trump’s case, trying to restore America to a mythical time when everyone was white and did what they were told.

Florentino failed at most of life’s challenges. Trump is at risk of doing much the same. The difference is that Florentino merely harmed a few hundred women along the way and reduced his own chances of finding happiness by obsessively pursuing a hopeless dream. By denying the lethality of the coronavirus, then deeming it only a mild threat that he and his followers could easily overcome—not by science, but by pretense and blustering—Trump may kill many more Americans and further damage the country’s reputation on the world stage. Fermina had the good sense to fend off her feckless pursuer for fifty years. Ordinary citizens must muster the courage to resist Donald J. Trump until November 2020—and maybe beyond.