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From the Author Rodrigo Chronicles Symposium: Response

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RESPONSE

FROM THE AUTHOR

Richard Delgado

At the end of the final chronicle of the Rodrigo trilogy, titled *Rodrigo's Notebook: Race, Resistance, and the End of Equality*, Rodrigo and his straight man, the Professor, discuss society's current wave of racial retrenchment and ponder the future of radical social thought. Their discussion is somber. The two of them agree that litigation is producing fewer and fewer gains. The judiciary is hostile; the public, tired of clamorous minorities. Their talk turns toward resistance. After a social evening where the Professor meets Laz (Rodrigo's best friend and colleague) and Laz's new partner, a film maker, the Professor receives a long letter from Rodrigo outlining his plans for a new think tank and litigation center that the young man and his wife, Giannina, have set up. The organization plans to put into effect, in practical, real-world fashion, some of the ideas the two friends have been discussing over the years with the hope of stemming the country's slide into racial indifference and setting it on a better, fairer course.

Shortly thereafter, Rodrigo disappears off the coast of Baja California, where he had gone for a vacation with Giannina, who is pregnant with their first child. Is he alive, or dead? Will he return, as he did once before after a similar mysterious disappearance? The Professor, who is taking no chances, comes out of semi-retirement and arranges to take over the center until Giannina's baby is born.

Which brings us back to Rodrigo and his fate. As author and his sometime creator and servant, I had thought to let things lie for a time. I've gone on to other matters, including writing some books I had long postponed. But Rodrigo has been nagging at me lately, tugging at the edges of my consciousness. Judging from this symposium, he has his fans. (I mean, six out of seven isn't bad, and not just in baseball). Maybe he'll be back. No promises.

Yet, after all, the Professor in the stories is pushing seventy. I certainly don't want to leave that tired old guy putting in ten-hour days at the litigation center, trying to manage a docket and a staff of scholars and researchers, indefinitely. Laz and Giannina are helping out, but even so, it's more than the three of them can really handle. They need Rodrigo's energy. Stay tuned – he may be back. But if not, as the Professor once said, the world is full of Rodrigos – talented, committed young lawyers of color, railing at injustice, clear-sighted, needing just a little encouragement, a little help to get started. If my generation can find a way to provide that help, the future will be in good hands.

But, in the meantime, there are those seven articles. What do they say about Rodrigo, his cast of characters, and the topics they have been discussing over the years?

I. MICHAEL A. OLIVAS, RODRIGO, RICHARD, AND
 REPATRIATION: THE "CHRONICLES" AND CITIZENSHIP

An article by Michael Olivas, professor of higher education and immigration law, leads off the symposium. After a warmly personal introduction that mentions the author's own role in encouraging me to write about Rodrigo, Michael, who is a first-rate immigration lawyer and scholar, examines a series of clues, comments, and asides I built into the *Chronicles* having to do with the status of Rodrigo and the Professor under immigration and nationality law. The other two principal characters, Giannina and Laz, are U.S. citizens. However, Rodrigo, who was born in the United States, spent his teen and young adult years in Italy, where his father, Lorenzo, a U.S. serviceman, had been sent to a U.S. outpost. Rodrigo graduates from an Italian university on government scholarships; then, in a move that gives him trouble later, decides to provide six months of military service in the Italian army as a way of paying back that nation for subsidizing his education at a fine university and law school. Because his mother is Italian, Rodrigo's service in a foreign army (as a noncommissioned officer) lands the young man in some difficulties with the U.S. immigration authorities – difficulties that

he is only able to surmount by some derring-do, a neat double play, and a little help from a famous U.S. senator.

Michael wonders if it could have happened that way, and after an impressive *tour de force* that includes examining superseded INS regulations dating back to Rodrigo's early years, concludes that it just might have. Olivas uses Rodrigo's travails to illustrate a point that the *Chronicles* were, indeed, intended to bring out: the insecure status of people of color in general, race reformers in particular, and Latina/os and other immigrants most of all. Olivas also points out, correctly, that under current law, the other character, the Professor, is probably on safe ground, notwithstanding his father's possible illegal entry into the United States years ago.

I did, however, add one detail whose importance may not have been fully appreciated: at the time of the Professor's voluntary departure from the United States, a new measure, along the lines of certain proposals from right-wing groups, had just gone into effect. The new measure denies citizenship to children of undocumented aliens, like the Professor. Thus, even though the elderly gent was born in the United States and spent a career teaching law at a major law school, the "citizenship audit" (a purely fanciful invention of my own) before which he is summoned to appear is not beyond the realm of possibility. Soon after receiving his notice, the Professor, in an uncharacteristic act of capitulation, retires from his law school job and returns to Mexico where he pursues his hobby of collecting art.

While in Mexico, the Professor researches his own origins, discovering that his forebears were Chichimec Indians, some of whom ranged as far afield as areas that are now the southeastern part of the United States. The Professor, in other words, is not an illegal alien, after all. Restless in Mexico and perhaps missing his young friends and his own role in racial struggles, the Professor writes to the INS, pointing all this out. The agency informs him that his file is considered inactive, and he is free to return to the United States, which he does.

I must admit I breathed a sigh of relief on reading Olivas's conclusion that Rodrigo and the Professor's struggles might have

played out as they did. What if he had concluded otherwise? I would have probably confessed error – although I suppose I might have argued a version of poetic license: I made up the *Chronicles*, so, as author, had the power to place their characters in a setting whose immigration law, while perhaps as harsh as ours in some respects, nevertheless found a way to let these two engaging characters stay in the United States awhile. After all, that's what immigration lawyers – and Michael is a very good one – do.

At any rate, Olivas writes that a student visa holder may hold the long-term intent to remain in the United States – Rodrigo and the Professor mistakenly thought that the answer was to the contrary – and that one planning to enter the United States indefinitely may begin his or her stay in that capacity. The doctrine of dual intent holds that one may enter the United States for a short period (such as a student) and later apply for permission to stay for a longer one.

Olivas also points out that private relief bills, of the type Rodrigo obtained, although procedurally easy, in fact require a showing of substantial hardship and are generally a last resort for aliens threatened with deportation. Aside from those quibbles, the account that Rodrigo and the Professor provide of themselves under immigration law seems to square with current reality.

II. GEORGE A. MARTÍNEZ, DELGADO, HEGEL AND THE RODRIGO CHRONICLES

Unlike Olivas, who subjects the *Chronicles* to a fine-tooth comb examination under the particulars of a very specific body of law, George Martínez analyzes them in terms of their philosophical underpinnings, particularly the influence of Hegel. While not focusing exclusively on the parallels between Hegel's ideas and those of the Professor and Rodrigo, Martínez draws out nicely some broader issues relevant to Critical Race Theory ("CRT") and my interpretation of it in the *Chronicles*. Martínez does an especially insightful job of showing how Hegel enables readers to understand the evolution of American antidiscrimination law and

theory over time, and the difficulty of the contemporary writer who tries to predict and usher in a better future for minorities.

Martínez goes outside the *Chronicles* to show how my *Imperial Scholar: Reflections on a Review of Civil Rights Literature* article echoes Hegel in the weight given the human need for recognition, an idea put forward in modern times by Charles Taylor. Martínez also points out that my use of the owl of Minerva metaphor casts light on the difficulty of the present-day commentator in ascertaining the meaning of events before they are fully played out on the pages of history. He also notes the critical insight of “multiple consciousness” and how it parallels nicely with Hegel’s master-slave discussion, and explains why outsiders are frequently the generators of social change – an idea Rodrigo would heartily second.

Toward the conclusion of his essay, Martínez notes how the *Chronicles* end by taking a practical turn. If outsiders see the flaws of a system before those immersed in it do, it behooves the former to instigate concrete real-world action to build the necessary creative tension that will enable society to reach a new racial synthesis. Without this constant source of agitation, mainstream society may be unable to understand and act on even reasonable explanations for its current failings. After pointing all of this out, Martínez still wonders whether this practical turn may not turn out, after all, to be little more than recycled liberalism. Is it? I’ll let readers of the last Chronicle look over its set of practical measures and decide for themselves.

III. JUAN R. PEREA, APPRECIATING RODRIGO (AND RICHARD DELGADO)

It is always nice to be appreciated, especially when the one writing the encomium is someone like Juan Perea, a scholar of towering accomplishment. Perea focuses primarily on the economic arguments in the final book of the cycle, *When Equality Ends: Stories of Race and Resistance*. Perea especially appreciates the way Rodrigo turns accepted arguments concerning race and equality on their heads. Rodrigo's idea of "surplus equality" – a counterpart of Marx's notion of surplus value – struck Perea as particularly provocative, explaining as it does the inherent contradiction between capitalism and America's professed commitment to equality. What could bridge the gap between these two collision-course forces but historically racist justifications such as eugenics and genetic differences in race-IQ? Perea also lauds Rodrigo's rejection of the free market as a vehicle for economic equality, and goes on to give further examples to support Rodrigo's theory. In particular, he lauds the norm-theory argument that mild remedies for civil rights abuses may be worse than none at all because they perpetuate society's racist expectations. The market will not only fail to cure racism, Perea and Rodrigo argue, but it is likely to make matters worse.

Perea could be read to express reservations, similar to those of Martínez, about Rodrigo's suggestion that groups of color seek formal remedies for their problems. In light of institutional racism, Perea seems to say, legislation and law-reform litigation are apt to have a symbolic, rather than pragmatic effect. "Rodrigo's proposals . . . may stand little chance of enactment soon, [but] that does not render them wrong . . . ," he writes. Rodrigo would probably agree.

IV. KEVIN R. JOHNSON, THE RODRIGO CHRONICLES,
LATINA/OS, AND RACIAL OPPRESSION:
A BLUEPRINT FOR THE NEXT GENERATION

Johnson, himself a distinguished author and central figure in Latino-critical jurisprudence, offers several examples of Critical Race Theory that are being created through the dialogues between the Professor and Rodrigo. The shifting discourse on race, he writes, is in great part the result of ideas presented in the *Chronicles*. As one example, Johnson mentions, as does Olivas, how Rodrigo, himself a multiracial person with cosmopolitan interests, symbolizes the fluidity and complexity of race. Now that civil rights discourse has moved beyond its earlier essentialist, nationalist stage, critical theorists highlight how a person's racial identity is, to a large extent, situational and a product of choice and context. Thus, Rodrigo, whose father is a black-looking Latino of Caribbean heritage, and whose mother is Italian, identifies with several ethnic categories at once. His *Chronicles* with the Professor are wide-ranging. At times, they consider the problems of blacks; sometimes, those of Latina/os; at other times those afflicting all groups of color; and at yet other times, the troubled relationship between some of these groups. Johnson applauds the *Chronicles*' dedication to issues affecting the Latina/o community, particularly the community of indigent settlers in the Texas *colonias*. He also provides an exposition of how a black-white binary paradigm of racial thought marginalizes Latina/os, interferes with possibilities for cross-ethnic coalitions, and limits the range of racial analysis.

Johnson traces the roots of certain key theories in the CRT movement, such as revisionist history, the social construction of race, the impact of that variable on immigration, intersectionality, and coalition building, back to the *Chronicles*. Johnson perhaps gives me too much credit – many of these themes were already in the critical corpus before Rodrigo came along. It is possible that Rodrigo gave them a little push, however.

V. ROBERT HAMAN, JR., AND NANCY LEVIT, THINKING
CRITICALLY ABOUT EQUALITY: GOVERNMENT CAN MAKE
US EQUAL

Hayman and Levit offer not so much a critique of the *Chronicles* as an overview of Critical Race Theory and its key ideas. Taking as their point of departure a quote from Clarence Thomas disparaging the idea that the government can make citizens equal, Hayman and Levit argue not only that it can, but that it should. They further show that critical thinking, as taught in courses of Western analytical philosophy, supports the CRT project. Moreover, they contend that nothing in U.S. history should stand in the way of governmental programs aimed at ameliorating poverty, abating racism, and bringing marginalized groups into the mainstream. Critical thinking, as developed in philosophy and logic, includes an examination of premises, careful scrutiny of what one takes as fact, and close reasoning from premises to conclusion – practices that CRT brings to bear in advocating for racial equality.

At the same time, Hayman and Levit write, some of the critics of CRT play fast and loose with logical rigor and critical thinking. Some of these critics resort to devices such as selecting a passage from a CRT author out of context and holding it up for ridicule. Others are quick to dismiss the other-voices hypothesis, when they would be better to regard what the outsider scholars are saying as data, in the manner of scientists. When critics charge CRT with disdaining truth, they overlook that it is instead on the lookout for true, universal propositions that square with everyone's experience, including that of minorities. Hayman and Levit also point to CRT's challenge to the black-white paradigm of civil rights thought, noting its parallel to Kuhn's notions on the way in which scientific knowledge changes.

They also draw from Rodrigo's conversations with the Professor to show how the *Chronicles* elucidate and support a number of classic CRT themes, including the critique of liberalism, the shortcomings of Critical Legal Studies for minorities, the critique of rights, interest convergence, and the distinction between

equal opportunity and substantive equality. Toward the end of their article, Hayman and Levit show how Rodrigo's analysis of the Texas *colonias* – dirt-poor settlements along the Texas border with Mexico – stands as a counterexample to Justice Thomas's dismissal of government's role in correcting poverty and injustice. They review several possible interpretations of Thomas's statement and then refute the reasoning behind it, showing the hollowness of its implicit public-private dichotomy, illustrating the self-perpetuating quality of racism in the free market and debunking the idea that government has historically played little part in promoting fairness and equality in the private sector.

VI. BERTA ESPERANZA HERNÁNDEZ-TRUYOL, BUILDING
BRIDGES IV: OF CULTURE, COLORS, AND CLASHES –
CAPTURING THE INTERNATIONAL IN DELGADO'S
CHRONICLES

Herself a cosmopolitan individual, Professor Hernández-Truyol appreciates Rodrigo's pan-ethnic internationalism, using it to bolster her own – and Critical Race Theory's – conception of race as fluid and changing, as well as her conviction that international and domestic issues at many points converge.

For Hernández, CRT can enrich international human rights law and vice versa. For example, international law limits sovereignty when the sovereign commits what this body of law considers a human or civil rights abuse. This approach may be useful when U.S. civil rights scholars confront doctrinal obstacles, such as the plenary power doctrine, that seemingly deprive the courts of any role in redressing grievances. At the same time, CRT's constant search for latent favoritism can reveal Eurocentrism in premises of international human rights law. Moreover, even third-world countries are apt to have their own underclasses – marginalized groups whose situation can sometimes be addressed by an application of CRT principles. While Hernández-Truyol does not make the link directly, her discussion of the entrenchment of oppression resulting from failed programs designed to aid third-world countries is reminiscent of Rodrigo's

“norm theory” argument – also noted by Perea. That argument maintains that mild remedies for civil rights abuses may make matters worse by perpetuating society’s racist expectations. Furthermore, in showing the link between global and domestic issues, she hints that domestic progress for minorities can be frustrated when corporations faced by taxation, regulation, or unions threaten to take factories or capital to third-world countries where workers are willing to work for low wages and under oppressive conditions. The fortunes of domestic and foreign workers are thus linked.

Hernández-Truyol argues that CRT analysis itself can benefit from international human rights discourse by recognizing rights as indivisible and interdependent, by gaining a further body of support for measures such as multilingualism, and by recognizing the value of multidimensional coalition building.

VII. ALFREDO MIRANDÉ, “REVENGE OF THE NERDS,” OR
POSTMODERN “COLORED FOLK”? CRITICAL RACE THEORY
AND THE CHRONICLES OF RODRIGO

As mentioned in the introduction to this article, six out of seven is not bad. Yet, Mirandé’s generally downbeat assessment warrants at least a brief reply.

He begins his provocatively titled essay with a review of Critical Legal Studies and the birth of Critical Race Theory. This material, at least, is fairly accurate. But his criticisms of Rodrigo, which appear in the second part of his article, are out of keeping with the boilerplate CRT teachings he sets out in the first part. For example, he finds fault with the first chronicle for not dealing sufficiently with the plight of Chicanos, even though it is full of references to Latina/o culture and tradition. In doing so, Mirandé first ignores later chronicles that deal squarely with Chicano issues, such as the twelfth, which concerns the Texas *colonias*, or the fifteenth, which addresses the black-white binary. Mirandé then echoes the error, pointed out by Hayman and Levit, that mainstream authors commit when they take individual snippets from the CRT discourse and criticize them for not solving every

problem, including the author's favorite one. In doing so, Mirandé falls prey to the very danger CRT warns against: a majoritarian evaluation of legal discourse on a piecemeal basis and the master narrative at its destructive worst.

He also doubts the value of narrative scholarship, presumably preferring the traditional linear kind. Critical Race theorists introduced narrative into legal discourse, however, to counter the very invisibility of the minority voices that the first part of his article points out. It also supplies a means by which, through counter-narrative, embedded oppression can be brought to the surface and challenged.

Mirandé also seems to have a problem with Rodrigo's ethnicity as a mixed-race person with Latino and black roots. Yet, his own proposed hero, Zorro, is a member of the landed gentry played by Anglo actors Douglas Fairbanks and Tyrone Power, while his other hero, the Cisco Kid, is a cartoon figure.

At times, his language about Rodrigo is downright chilling. "Eunuch" and "hybrid" are terms redolent of the new eugenics and theories of racial purity and superiority. Mirandé also overlooks that the very ethnic group he professes to champion contains a large majority of mixed-race people. Most Chicanos, including myself, are *mestizos*, with both Indian and European blood. Finally, his introduction endeavors to educate the reader about postmodernism and its relation to new legal movements. Yet, a postmodernist would question Mirandé's insistence on blood purity. Why should not mixture, rather than purity, be considered the prototypical state of affairs and placed at the center of analysis?

In short, I created Rodrigo as I did because Derrick Bell's Geneva needed a brother; because LatCrit scholarship values mixture and sees it as a fruitful subject of discussion; because I, as author, wanted a character with broad enough interests so that I could use him as a springboard for discussing a variety of topics; and because I wanted someone a broad audience could identify with and see themselves in.

Perhaps one day, Rodrigo himself will want to address some of these issues. We will see what the future brings.

