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Metamorphosis: A Minority Professor's Life

Richard Delgado*

This article is a dark, semi-autobiographical takeoff on a famous novel by Franz Kafka. I use the predicament of Gregor, the central character in The Metamorphosis, as a thematic metaphor to explain a series of events in the life of an outwardly successful man of color teaching law. It proceeds in a series of 37 short vignettes told in the course of a bedside conversation in which my young firebrand Rodrigo turns tables on his usual foil and straight man, "the Professor," and asks him a few questions about his life and career. Until now, the two had focused on the young man's ideas and prospects. In an expansive mood, with nothing better to do, the Professor spills the beans. What emerges is a tragicomic description of a middle-aged academic who has come to realize, with a shock, that he is undergoing a jaw-dropping transformation.

For the analytically inclined, the story's prime lesson is that just as race is a social construction, the self-concept and even the soma of a person of color are functions of thousands of racially inflected interactions with fellow humans beginning at an early age. The arrow of social construction, in other words, works both ways, not one. Literature shows this as well.

Second, minorities who succeed by the standards of their profession face increasing pressure to revert to their rightful places on the evolutionary

* Copyright © 2019 Richard Delgado. John J. Sparkman Chair, Culverhouse School of Law at University of Alabama. Thanks to Jean Stefancic, David Hathcock, and Chisolm Allenlundy for incisive comments and suggestions.

scale. *Kafka's book shows how this can happen, and the Professor's tale does so as well in a modern setting.*

The moral for minorities is that the struggle to preserve one's personhood and self-regard must be valiant and unceasing. For well-meaning white allies, the effort on our behalf needs to be so as well.

INTRODUCTION

I had been waiting somewhat despondently in my room in the rehabilitation wing of the local hospital for the arrival of my surgeon for a routine post-operative visit when a knock on the door heralded the arrival of none other than my smiling friend Rodrigo.¹

“Professor, Teresa told me about your accident. How are you?”

“Better every day,” I said. “I’ve been waiting for my surgeon to make his usual forty-five second appearance, but I’m very glad to see you. How kind of you to come.”

“I had been meaning to visit and not just to see how you were doing. It struck me that most of our conversations have concerned me and my youthful career.² But I’ve long wished I knew more about you.³ I know

¹ See generally Richard Delgado, *Rodrigo's Chronicle*, 101 YALE L.J. 1357 (1992) [hereinafter *Chronicle*] (introducing Rodrigo). The son of an African American serviceman and an Italian mother, Rodrigo was born in the United States but raised in Italy, where his father served at a U.S. outpost. *Id.* at 1357-59. Rodrigo is the half-brother of famed civil rights super-lawyer Geneva Crenshaw, a heroine figure created by Derrick Bell. See DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE 18 (1987). Rodrigo graduated from the small base high school, then attended an Italian university (“the oldest in the world, Professor”) and law school, graduating fourth in his class. *Chronicle, supra*, at 1359-60, 1360 n.7. We met when he sought me out, on his sister’s recommendation, on a return trip to the States to explore LL.M. programs in preparation for a career in law teaching. *Id.* at 1359. Rodrigo and his friends are fictional characters, composites of persons I have known and not to be identified with any of them in particular.

² See Richard Delgado, *Rodrigo's Fifth Chronicle: Civitas, Civil Wrongs, and the Politics of Denial*, 45 STAN. L. REV. 1581, 1592-95 (1995) (describing his enrollment in an LL.M. program). For his subsequent adventures in that program, including winning a national competition for student writing, see Richard Delgado, *Rodrigo's Tenth Chronicle: Merit and Affirmative Action*, 83 GEO. L.J. 1711, 1719-21 (1995) [hereinafter *Tenth Chronicle*]; for his adventures on the job market and landing his first job, see *id.* at 1718-21. Rodrigo has wide interests. We discussed, for example, affirmative action, see *id.*; love, see Richard Delgado, *Rodrigo's Third Chronicle: Care, Competition, and the Redemptive Tragedy of Race*, 81 CALIF. L. REV. 387, 392-415 (1993); the economics of discrimination, see Richard Delgado, *Rodrigo's Second Chronicle: The Economics and Politics of Race*, 91 MICH. L. REV. 1183, 1195-98 (1993) [hereinafter *Second Chronicle*]; postcolonial theory, see Richard Delgado, *Rodrigo's Corrido: Race, Postcolonial Theory, and U.S. Civil Rights*, 60 VAND. L. REV. 1691, 1695-1718 (2007); intersectionality, see Richard Delgado, *Rodrigo's Reconsideration: Intersectionality and the Future of Critical Race Theory*, 96 IOWA L. REV. 1247, 1261-1265 (2011); the politics of coalition, see Richard Delgado, *Rodrigo's Sixth Chronicle: Intersections, Essences, and the Dilemma of Social Reform*, 68 N.Y.U. L. REV. 639, 648-52 (1993); capitalism, see Richard Delgado, *Rodrigo's Equation: Race, Capitalism, and the Search for Reform*, 49 WAKE FOREST L. REV. 87 (2014), and many other topics over the following years.

³ See *supra* notes 1-2 (discussing the two main characters and their histories). The actual incidents in this *Chronicle* are based on reality — that is, actually happened to the writer — although I adopt fictitious names of the places in which they occurred and

you've been a law professor for many years and are a prize-winning author and mentor of young talent like mine. I know that your background is Dominican, but you look African American, grew up speaking Spanish as well as English, and have an affinity for Mexico, where you spend many of your vacations. But other than that, I know very little. It seems you know a lot about me and my career. But I know very little about yours."

"I'm glad to oblige," I said. "Since I got in this place ten days ago, I've had a lot of time on my hands and have been thinking about putting down a few thoughts.⁴ Your visit will help me to organize and maybe put them down on paper."

"I hope you do, Professor. My generation can benefit from them. Your publishers might be interested, too."

"We'll see," I said. "But wait until you hear my hypothesis. My career has had many highs and a few lows. But I've recently reread Franz Kafka's *The Metamorphosis*⁵ and concluded that I've been turning into a cockroach. Three other books just strengthened this conviction."⁶

"Oh no, Professor, you can't be serious! You've won a string of awards. Your students love you. Your colleagues respect you, the ones I know at least."

"All that may be true. But in my inner life, I am Gregor.⁷ I wasn't always that way."

"When did you first notice this, er, change setting in?"

"In retrospect it started early and imperceptibly. At first it made its appearance — this conviction, I mean — in the occasional dream. Later I began to see actual physical changes."

for many of the secondary characters. Each of the incidents that follows is, of course, a function of the Professor's subjective interpretation upon reflecting on his life during a period in the post-surgery ward.

⁴ The incident that brought the Professor low is based on an actual experience of the author (that is, Delgado) at the time of writing.

⁵ FRANZ KAFKA, *THE METAMORPHOSIS* 5 (Ian Johnston trans. 2008) (1915).

⁶ See *infra* notes 31, 60–61, 78–79 and accompanying text for a discussion of OSCAR ZETA ACOSTA, *THE REVOLT OF THE COCKROACH PEOPLE* 48–49 (Vintage Books 1989) (1973) [hereinafter *REVOLT*] and STEPHANIE FETTA, *SHAMING INTO BROWN: SOMATIC TRANSACTIONS OF RACE IN LATINA/O LITERATURE* xv, 5 (2018) [hereinafter *SHAMING*]. See *infra* notes 65–66 and accompanying text (discussing JOEL KOVEL, *WHITE RACISM: A PSYCHOHISTORY* 80–92 (1970)). What I meant, of course, is that looking back on my life, I saw, more clearly now than ever before — even though I got many glimpses along the way — that I have been slowly turning into a cockroach.

⁷ Gregor Samsa, Kafka's main character, is a salesman with a sister and a few other relatives, some of whom flee on learning that he has turned into an insect. See generally KAFKA, *supra* note 5. Unlike the Professor, whose transformation is gradual, Gregor's occurs overnight. *Id.*

“Fascinating!” Rodrigo said. I motioned for him to have a seat. “It reminds me of some of Sigmund Freud’s or Karl Jung’s patients.⁸ I had no idea,” he said, looking at me closely but sympathetically.

“My first years were relatively normal, or so they seemed at the time. My parents were immigrants and poor, but I grew up in a loving household. We moved around a lot, for reasons I never learned. But with all the moves, I grew up to be a somewhat bookish child, with few friends. I hope that all this psychological stuff doesn’t bore you.”

“Not at all. I want to hear everything.”

Suddenly the nurse came in, hooked me up to an impressive-looking machine on wheels, and took my vitals, accompanied by a series of loud beeps. With a quick glance at Rodrigo, who was dressed in his customary snazzy Italian-style clothing and shoes, she departed without a word.

“Where were we? Oh yes, my youth. In high school, I was something of a nerd, mostly interested in writing and trying to stay out of trouble. Most of my grades were *Bs* with a few *As* in subjects I liked. I didn’t start running until graduate school. You did know about my short-lived career, didn’t you?”

“I think you mentioned it once.”

“Yes, and I was pretty decent at it. But in retrospect, my running obsession was, I think, the first inkling that I was turning into a cockroach. As every entomologist knows, they have an instinct to scatter when threatened.”⁹

1. The First Inkling

“It came about this way. As mentioned, I grew up bookish, so that by the time I was in my early twenties, I found myself at grad school in Berkeley. A few months into the grind, feeling a need for some exercise after many late nights at the library reading ancient Greek texts, I started running around that beautiful campus after hours. As luck would have

⁸ See, e.g., *Case Studies of Sigmund Freud*, PSYCHOLOGIST WORLD, <https://www.psychologistworld.com/freud/case-studies-overview> (last visited May 27, 2019). See also Anthony Storr, *A Second Opinion*, N.Y. TIMES, May 16, 1982 at A1 (reanalyzing Karl Jung’s relationship with a famous patient through a rereading of diaries and correspondence); Kylie McFatrige, *Freud: Psychological History of Women*, UMW BLOGS, <http://psychistofwomen.umwblogs.org/sexuality/pre-kinsey/freud> (last visited May 27, 2019) (discussing his interest in the psychology of women’s development).

⁹ On the entomology of the species, see WILLIAM J. BELL ET AL., COCKROACHES: ECOLOGY, BEHAVIOR, AND NATURAL HISTORY 138 (describing cockroach behavior, including scattering in the face of danger) (2007) [hereinafter ENTOMOLOGY].

it, I ran across a few members of the varsity cross-country team, who gave me some pointers and encouraged me. My running improved somewhat faster than my philosophy did and I became a modestly good runner at the 5,000- and 10,000-meter events.”

“Gosh, professor, I had no idea. You’re a man of many talents.”

“If so, it was only for about ten years. During this time, I supported myself by teaching high school, having sensibly dropped out of graduate school, and competing at track events on weekends. I became a national class runner, but not for long.¹⁰ By the time I was closing in on my thirtieth birthday, my times stopped improving while those of my competitors got faster. Right around then, I decided I had better use my head and applied to law school. Four or five of them, in fact. I think I got into all of them and settled on Harvard.”

2. A Meeting with a Patrician Entomologist

“Thus it was that I showed up at that school’s Office of Admissions late one summer, full of pleasure at the prospect of joining such an elite club, but with a burning question. Harvard’s acceptance had come accompanied by an offer of financial aid that, while welcome, was far from sufficient. I had a wife and an infant child at the time, and despite having saved up some money from my teaching career, was hardly flush. So, my burning question to the admissions dean, a tall, dignified, patrician-looking gent, was: ‘Dean S., I am delighted to have been admitted here, don’t get me wrong. But I couldn’t help noticing that your aid package is considerably smaller than the ones that several other law schools were kind enough to offer. Indeed, theirs were all almost exactly the same amount, but a lot higher than yours.’

“I’ll never forget his answer. He drew himself up and said ‘Delgado, I want you to know that your counterparts have accepted our offers of admission this year at a slightly higher rate than usual. In short, our yield rate¹¹ is greater than expected. So much so that the faculty are grumbling at the prospect of larger than usual classes. They have let us know that if a few members of your incoming class were to decline our offer they would be perfectly content.’

“I told him that I very much wanted to go to Harvard and asked if he could please have his staff recalculate my grant in case they had made a

¹⁰ *Men’s U.S. 10,000 Rankings by Athlete*, TRACK & FIELD NEWS, <https://trackandfieldnews.com/mens-u-s-10000-rankings-by-athlete> (last visited May 27, 2019).

¹¹ In admissions lingo, yield rate means the percentage of admitted students who actually enroll at a school. Most schools consider 70 or 80 percent a stellar rate.

mistake. I pointed out that I wanted to be a movement lawyer advocating on behalf of the poor and disenfranchised and didn't want to leave school with a lot of debt.

"He gave me an imperious look and said, 'Delgado, I want you to know that my wife is a Latina like you — a Mexican American, in fact. So, I am fully acquainted with the problems of your people. If you really want a Harvard law degree, I suggest you talk to a loan officer at a bank of your choosing who will know the value of one, even if you seem not to.'

"He thanked me for my visit. A few hours later I was on the phone with UC Berkeley, which had admitted me earlier and which I had turned down, beseeching them to let me back in. They did, and I and my small family turned our car around, filled up the gas tank, and headed back West. I never got my deposit back from Harvard."

"That's quite a story," Rodrigo said. "Did you ever regret your decision?"

"Not really, except for a single incident that happened a few months later."

3. What Are You Doing Here? The Intruder and the Roach Disinfectant

"After a year at Berkeley, I found myself somehow on the law review, probably having clawed my way in with the lowest GPA average of any member on that elite institution. Thus it was that one late afternoon in the fall of my second year, I was working on a cite-checking assignment in the homey office of the review, right next to the coffee pot, when in would walk my former criminal law professor. A confident, bespectacled young man with a towering reputation in whose class I had earned a decent grade while never speaking a word during the entire semester, he looked around, probably to see if his favorite articles editor was there. Seeing only me, he fixed me with a skeptical look and said, 'What are you doing here?' I told him that I was doing some cite-checking. 'You?' he said with disbelief, turned on his heel, and walked out.

"It was then that I realized that something about me struck other people as off-putting. I wondered what it could be."

4. Early Tenure? What? For You?

"I gather the rest of your time there was better."

"It was. After graduating from Berkeley, with no honors, I might add, I found myself teaching, two years later, at the University of Cascadia

Law School in the far Northwest.¹² I had transferred there after a happy year at Saguaro State University in the arid Southwest,¹³ learning a great deal about teaching, and publishing my first law review article, which was eminently forgettable and of no great distinction. I also spent a short time at Yale Law School in a cushy program called The Commonwealth Program in Law, Science, and Medicine,¹⁴ learning a lot about that emerging field and rubbing elbows with some truly distinguished faculty members, all of whom treated me quite decently.

“You probably remember, Rodrigo, that I had been a nationally ranked middle-distance runner in my youth and was still trying to run every day for recreation and fitness. The temperatures in Saguaro were often over 110 degrees, however, and I would arrive home thoroughly dehydrated and nearly unconscious from heat exhaustion. Thus, it was with great joy that I received an invitation from the University of Cascadia Law School in the cool, green Northwest.

“I flourished there, grew stronger and more confident in my teaching, and wrote two or three articles, mostly in bioethics and medicine, one of which was actually fairly good. And so it was that after two years there, I went up for tenure at that staid law school, my committee having calculated that I was now in my fifth year of teaching and entitled to put myself up for it.

“I squeaked through, probably on a highly divided vote, and later learned that a number of my colleagues had torn my main article apart, finding errors of word usage, grammar, sentence construction, and lack of support for my principal claim, among other sins. Some thought I was trying to write two articles, not one. Afterward, hardly anyone congratulated me, and several subtly let me know that they thought I was not worthy of the honor bestowed upon me. I never understood why. I was sure that my writing was the equal of theirs, which I had read, and could not understand their scorn. I continued to turn the incident over in my mind. Later I would read Stephanie Fetta’s *Shaming into Brown*,¹⁵ and a lot of things fell into place for me.”

¹² Fictional name, real school.

¹³ Fictional name, like that of all other institutions mentioned *infra*.

¹⁴ Real name, real program.

¹⁵ SHAMING, *supra* note 6, at 28-65 (discussing neuroscience, literature, and the social construction of the brown race in an effort to determine how racists marginalize and “deanimate” their targets through hard looks, body language, a suspicious demeanor, and selective inattention). As luck would have it, we discussed Fetta’s book only moments later. See *infra* notes 60–61, 67, 88–89, 91–99 and accompanying text.

5. The Tight Smile

“Did you encounter other incidents in that vein?”

“Some. Years later, I found myself teaching at Rocky Mountain State Law School which was then riding high. I had a number of young, hotshot colleagues who were writing up a storm and making names for themselves, so that in one ranking of law faculties by publications in the top ten and twenty law reviews, we came out fifth in the nation — pretty good for a small, public law school in the middle of the sticks.¹⁶ Though most of us worked in different areas, we enjoyed and synergized each other.

“As luck would have it, I ranked number one in the nation in the individual count.¹⁷ When the dean announced our heady fortunes at a faculty meeting, a colleague I will call Wilson came up to me afterwards. ‘Willie’ was an idol at that school and much adored by his students. He taught and wrote in the area of environmental law, wore brown work shirts to the law school to emphasize his solidarity with environmentalists, students, and the working class, and took his students on field trips in the woods. We all adored and wanted to be like him. He was *el numero uno*, a perch that he wore lightly. But the dean’s announcement seemed to set his teeth on edge. He came up to me afterward with a forced smile on his handsome, sun-tanned face. With a bit of a stammer, he looked me over and said, ‘These things are really fun, aren’t they, Richard?’ making plain that he despised both the rankings and my newfound celebrity.

“Episodes like these reinforced that some of my colleagues saw something more than a little off-putting about me, even when to outward appearances I was doing well.”¹⁸

¹⁶ James Lindgren & Daniel Seltzer, *The Most Prolific Law Professors and Faculties*, 71 CHI.-KENT L. REV. 781, 793 (1996).

¹⁷ *Id.* at 798-99. A number of my colleagues ranked high as well. *Id.* at 795.

¹⁸ Later on, reading Fetta, a line leaped out at me: “[I]n stigmatization and social foreclosure . . . we believe we are merely responding to sense input in categorizing human variation, when in reality . . . we actively select sense data in determining social status.” SHAMING, *supra* note 6, at 30. Might “Willie,” who was otherwise an exemplary human being and colleague, have been merely responding to the dean’s announcement as a mistaken statement about the worth, which merited correction? *See id.* at 81 (noting how, with minorities, very often “individual achievement garners social diminishment”).

6. A Lesson from Ward Churchman

“I can see why this might trouble you. It seems that the better you did, the more your colleagues — some of them, at any rate — disliked you. But did this sort of thing go on for very long?”

“It did, and something happened a little later that made my blood run cold. A prominent Indian law scholar named Ward Churchman, who taught in another department, received an invitation to give a talk at a liberal arts college in the East. You may know this story. Someone at his host school discovered an old essay on Ward’s website describing his reaction to 9/11 subtitled ‘When the Chickens Come Home to Roost.’¹⁹ In it, he pointed out that America had been killing tens of thousands of women and children in Iraq and elsewhere in the Arab world through indiscriminate bombing and starvation.²⁰ Thus, those who died in the World Trade Towers that day were getting roughly what they should have expected for working in such an obvious target — which contained a CIA office and other legitimate wartime ground zeros — at least from the perspective of our enemies.²¹

“The revelation understandably outraged many of Churchman’s superiors back at Rocky, who conceded that he may have had a right under the First Amendment to make such an outrageous statement, but nevertheless proceeded to investigate every line of his scholarship, looking for errors.²² They found two, one having to do with an assertion that the U.S. Army had handed out smallpox-infested blankets to the Indians at Fort Clark as part of a campaign of extermination.”²³

“I heard that, too,” Rodrigo replied. “Every schoolboy has heard that story.”

“But his critics insisted that he had not substantiated it sufficiently. They fired Churchman, and a trial court later found against the

¹⁹ Ward Churchill, *Some People Push Back: On the Justice of Roosting Chickens*, CRYPTOME, <https://cryptome.org/ward-churchill.htm> (last visited May 27, 2019) [hereinafter *Some People Push Back*]. The author subsequently expanded the essay into a book. See WARD CHURCHILL, *ON THE JUSTICE OF ROOSTING CHICKENS: REFLECTIONS ON THE CONSEQUENCES OF U.S. IMPERIAL ARROGANCE AND CRIMINALITY* 5-38 (2003).

²⁰ See *Some People Push Back*, *supra* note 19.

²¹ *Report: CIA Lost Office in WTC*, CBS NEWS (Nov. 5, 2001), <https://www.cbsnews.com/news/report-cia-lost-office-in-wtc>.

²² See *University of Colorado at Boulder: Investigation of Professor for Controversial Essay*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (Feb. 9, 2011), <https://www.thefire.org/cases/university-of-colorado-at-boulder-investigation-of-professor-for-controversial-essay>.

²³ Dan Frosch, *Fired Colorado Professor Defends 9/11 Remarks*, N.Y. TIMES (Mar. 23, 2009), <https://www.nytimes.com/2009/03/24/us/24churchill.html>.

University but refused to order him reinstated.²⁴ Around this time, a number of other prominent leftist professors were getting kicked out of academia, some for siding too prominently with the Palestinians.²⁵ I had by this time read Franz Kafka's *The Metamorphosis*²⁶ and had a dawning suspicion that my life, and that of others as well, was beginning to exhibit common qualities with that of Kafka's main character. I drew the lesson that like Gregor, the man-turned-insect, I could easily get smashed underfoot. In the back of my mind, I thought I had better investigate how to scuttle and look for shadowy spots or sofas under which to hide."²⁷

7. "You Move Around a Lot"

"Around this time, some of my colleagues began asking me, with a sly smile, why I moved around so much. I had no good answer. Sometimes I said, a little defensively, that I had been recruited, other times that I was looking for better weather. In fact, I believe I was looking for a crevice or piece of furniture under which to conceal myself and feel safe. I reread *The Metamorphosis* with growing excitement and took comfort in it, identifying with the main character."

8. Upshot — Marginalized Precisely as My Fame Rose

"And so it was, Rodrigo, that precisely as my reputation grew, my treatment at the hands of colleagues and acquaintances deteriorated. They say that race is a social construction,²⁸ but I began to realize that the construction works both ways. Society, or rather how your fellows treat you, also helps create you.²⁹ Franz Kafka wrote an entire novel

²⁴ Dan Frosch, *Court Upholds Dismissal of Colorado Professor*, N.Y. TIMES (July 7, 2009), <https://www.nytimes.com/2009/07/08/us/08churchill.html>.

²⁵ See Patricia Cohen, *Outspoken Political Scientist Denied Tenure at DePaul*, N.Y. TIMES (June 11, 2007), <https://www.nytimes.com/2007/06/11/arts/11depa.html> (describing harsh treatment of Norman Finkelstein, professor of political science at DePaul University).

²⁶ See generally KAFKA, *supra* note 5.

²⁷ See ENTOMOLOGY, *supra* note 9, at 137 (describing cockroaches' propensity to hide upon the approach of danger); *id.* at 131 (describing behavior with others of their own species).

²⁸ See IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 7 (10th anniversary ed. 2006) (describing the law's role in the social construction of race).

²⁹ Through thousands of social interactions, looks, remarks, inclusions and exclusions, police surveillance and harassment, and administrative and other actions at workplaces, examples of which are described immediately *infra*. On the way that some speech (e.g., voodoo) can actually effect what it describes, so that the way others speak

about that, but without naming race as a mechanism. But I was sure that it was and that the famous author overlooked its role in creating man-insects.”

9. Ghettoization and *The Revolt of the Cockroach People*

“I don’t believe you’ve written about this before.”

“Only brief references in one or two places.³⁰ But my writing around this time did take a turn that I now see as a response to conditions around me. For one thing, I began feeling pressure, some of it no doubt well-meaning, from colleagues and administrators to write and teach only or mainly about entomology. I liked teaching civil procedure and even taught evidence once, which I enjoyed very much. But deans and administrators told me that I was really good at writing about insect life, by which they meant, in my new understanding, civil rights.

“Why didn’t I make that my main area and contribution, they urged. Right around then, I read Oscar Zeta Acosta’s *Revolt of the Cockroach People*,³¹ a biographical account of his early career as a radical people’s lawyer in San Francisco and Los Angeles during the ’70s. It was eye-opening and reinforced the idea, which had first dawned on me upon reading *The Metamorphosis*, that I was becoming a larger and larger cockroach.

“A kind dean once told me, by way of explanation, that I was simply too valuable teaching roach-rights and need not teach any other subjects. This made me feel a little better, but I missed teaching civil procedure and those wonderful cases about judicial power and authority.”³²

10. Developing a Hard Exoskeleton

“You mentioned physical changes.”

of you can actually turn you into what they see in you, see M.M. BAKHTIN, *THE DIALOGIC IMAGINATION: FOUR ESSAYS* 294 (Michael Holquist ed., Caryl Emerson & Michael Holquist, trans., 1981) (noting that “[l]anguage is not a neutral medium that passes freely and easily into the property of the speaker’s intentions; it is populated — overpopulated — with the intentions of others”).

³⁰ E.g., Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 *CORNELL L. REV.* 1258, 1283 n.180 (1992).

³¹ *REVOLT*, *supra* note 6, at 48-49.

³² E.g., *Pennoyer v. Neff*, 95 U.S. 714, 721 (1878) (defining and interpreting personal jurisdiction); *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) (defining the boundaries between state and federal power to declare the law).

“Yes. Right around this time, I noticed that I was developing a hard outer shell.³³ It was beginning to cover my body and glistened and gleamed in strong light, but was otherwise hard to see. It was useful to ward off hurtful remarks, slights, insults, kicks, and other blows. But it was also, I thought, attractive in its own right. If I could not be a great law professor, like those in the photographs on the law school walls,³⁴ I could at least be a proud insect.

“Until then, I had attended faculty meetings conscientiously, hardly missing a single one, but my colleagues had begun showing irritation when I raised my hand and spoke. They would give me a sharp look and say, *we have always done it this other way*. They made it plain to me, in short, that I was not part of their group, but a member of a lower order of nature, and should keep my mouth shut.”

11. Police Surveillance and Harassment

“Also around this time, I noticed that police were beginning to stop me when I was simply out for a walk or another ordinary errand.³⁵ I was invariably polite to them, considering that they were official fumigators who were merely performing their job. I look slightly Latino, as you know, although from all of my running, I am a tall, lean-looking one. The police probably wanted to know whether I was in the country legally,³⁶ and what accounted for my unusual looks, my length and body evoking for them the idea of a long, rapidly moving insect.”³⁷

³³ See ENTOMOLOGY, *supra* note 9, at 1 (describing external features such as exoskeletons — hard outer shells — in many insects, including cockroaches). See also ISA BETANCOURT, EXOSKELETONS: THE KEY TO INSECT SUCCESS 1 (2010), <https://cpb-us-e1.wpmucdn.com/blogs.cornell.edu/dist/7/3643/files/2013/09/Exoskeletons-1dvzmk6.pdf>.

³⁴ Usually some of the following: Christopher Columbus Langdell, Lon Fuller, Oliver Wendell Holmes, Roscoe Pound, Richard Posner, and Antonin Scalia.

³⁵ See Joseph Goldstein, *Judge Restricts Stop-and-Frisk Policy*, N.Y. TIMES (Aug. 13, 2013), <https://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html>.

³⁶ See *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (discussing the circumstances under which border police may conduct such a stop).

³⁷ See Gillian Fournier, *Encyclopedia of Psychology: Limbic System*, PSYCH CENT., <https://psychcentral.com/encyclopedia/limbic-system> (last visited May 28, 2019) (discussing the role of the limbic system (“reptile brain”) which governs primitive fight-or-flight behavior). See also SHAMING, *supra* note 6, at 36 (noting the role of the amygdala in arousing fear of racial affronts); Nick R. Martin, *Generals and Crooks: How Caravan Paranoia Tore the Border Militia Apart*, S. POVERTY L. CTR.: INTELLIGENCE REP., Spring 2019, at 62, 68, https://www.splcenter.org/sites/default/files/intelligence_report_166.pdf (noting how a prominent neo-Nazi border vigilante refers to migrants as “cockroaches”).

12. Finding Love in the Insect World

“Scary.”

“It was. But as I mentioned, there were not only lows, but highs. A smart, broadly educated subaltern woman with a foreign-sounding name caught my eye at a conference.³⁸ We felt an immediate kinship. A daughter of immigrants, she too was a colonial subject, working far beneath her station and ability level. We formed an immediate bond, married, and spent many happy years together. She didn’t mind my insect body and strange means of locomotion, rather liked them in fact. We even write and teach together. Her nickname is ‘Juanita.’”

13. Blondie at the Administration Building Line

“So you didn’t fare too badly in the love department?”

“No. Although an earlier incident had set me on my heels. I had been standing in line for undergraduate course sign-ups at the administration building at the University of Cascadia where many years later I was to start my law teaching career. I was a young undergraduate, away from home and somewhat lonely.

“Striking up a conversation with a young blonde woman in line, it turned out we had interests in common and liked each other. I immediately asked for a date, and she agreed. Later, she phoned to call it off, explaining that both she and her parents had long planned for her to marry a blond man with rugged Scandinavian looks, of which there were many in that region. Thus, although she found me attractive and a good conversationalist, she would have to pass on our date. I learned an early lesson about animal species, phyla, and orders of nature, but felt sad all the same.”

14. “It Must Have Been a Case of Affirmative Action”

“Ouch!” Another nurse, who had entered the room inconspicuously, had stuck a sharp needle in my arm and was withdrawing blood into a vial. “This will just take a second, Professor,” she said. “It’s for the lab. It hurts less if you make a fist next time.”

“Okay,” I said, rubbing my arm, and she left. Rodrigo muttered something about a metaphor for life and looked up. I continued as follows:

“Around the time of my first breakthrough, a couple of other minor distinctions came my way. In each case, many of my colleagues reacted

³⁸ See Jean Stefancic, UNIV. OF ALA., https://www.law.ua.edu/directory/People/view/Jean_Stefancic (last visited May 28, 2019) (describing Jean Stefancic).

not with pleasure, but with irritation. 'He may be a cockroach,' they seemed to be saying, 'but that is not a misfortune at all. He's lucky, they get to eat all the goodies, including plaster and wallboard.³⁹ How lucky to be a cockroach. The administration hands out all these favors to creatures like him.'⁴⁰

15. We Love It When You Talk Dirty

"An odd kind of luck!" Rodrigo commented, shaking his head sadly.

"Don't worry, though," I said. "I won't eat any of your food. Another incident was bittersweet. My fourth law school was a relative island of toleration and sanity, the University of California at an Undisclosed Location. The faculty there loved minorities, even ones who were starting to take on the appearance of insects. They loved it when I talked disparagingly of the bosses, corporate moguls, officialdom, The Man, white people, and other members of the establishment, especially ones who were mean to insects like me. They considered themselves open-minded and liberal. I was an exotic — the only real cockroach on the faculty. The more I behaved like one, the more excited they would become. They would sit there with their mouths open waiting for me to say something and wave my feelers menacingly."⁴¹

16. "You're Not Cockroach Enough"

"How did your fellow, er, cockroaches treat you?"

"Some of my younger fellow Latinos around this time castigated me for not being as much of a cockroach as they were,⁴² even though, by this time, you could readily see my exoskeleton, notice my many legs and new antennae, which, by the way, Rodrigo, are very useful devices for locating an impending danger."⁴³

³⁹ See ENTOMOLOGY, *supra* note 9, at 61-75 (discussing the eating habits of cockroaches); *Cockroach Food*, ORKIN, <https://www.orkin.com/cockroaches/cockroach-food/> (last visited May 28, 2019) (calling us omnivorous).

⁴⁰ See *Fisher v. Univ. of Tex.*, 136 S. Ct. 2198, 2202 (2016), brought by a white woman who alleged that her rejection by the University of Texas at Austin was unfair and a product of an affirmative action program that favored minorities.

⁴¹ See ENTOMOLOGY, *supra* note 9, at 19 (describing the use of feelers); see also *Cockroach Anatomy*, ORKIN, <https://www.orkin.com/cockroaches/cockroach-anatomy>.

⁴² See RUBEN NAVARETTE, JR., *A DARKER SHADE OF CRIMSON: ODYSSEY OF A HARVARD CHICANO* 103-04 (1993) (noting that he received similar treatment at the hands of campus radicals).

⁴³ See *infra* notes 49-53; see also ENTOMOLOGY, *supra* note 9, at 19.

17. Latino in the South

“A little later, I took a breather from life in Yankee-land to lend a hand to fellow Latinos (as I understood myself to be, despite my latest transformation) in the South. The State University of Dixie hired me and my beautiful subaltern wife to teach courses in race and entomology, something the region very much needed in light of its history.

“I readily agreed, for Latinos in that region had been reeling under a rain of burdensome laws⁴⁴ aimed at exterminating or driving them away. Juanita and I spent more than six years there, trying to lend a hand through our teaching, writing, and public speaking. I don’t know if we did much good. Many of the immigrants soon left for greener pastures, but we stayed and despite the excellent food and very good students I have never felt more like a cockroach in my life. The area contains very few foreign-born people — only around three percent — or even minorities, except of course for African Americans.⁴⁵ So almost everyone there immediately realized that we were not of their kind.⁴⁶ They invariably asked us where we were from and how we spelled our names, even though mine has only seven letters and is perfectly phonetic. One young boy, a neighbor, even asked me, ‘What language are you from?’

“We had gone there full of crusading enthusiasm — our own Alabama Fall, if you like. I’m sure you know about Mississippi Summer.⁴⁷ But almost everyone there immediately perceived that there was something peculiar about us, particularly me. I think their perception of outsiders and creatures from a different biological order stems from the Civil War.”

18. How to Make a List

We paused while the nurse’s aide came in to ask if I needed more ice water. I said no, and she left.

⁴⁴ See *Analysis of HB 56, “Alabama Safety and Protection Act”*, ACLU, <https://www.aclu.org/other/analysis-hb-56-alabama-taxpayer-and-citizen-protection-act> (last visited May 29, 2019).

⁴⁵ *QuickFacts: Alabama*, U.S. CENSUS BUREAU (July 1, 2018), <https://www.census.gov/quickfacts/al>.

⁴⁶ See SHAMING, *supra* note 6, at 16 (noting that “[n]eurocognitive studies evidence the role of racial categories in somatic mirroring that ‘modulat[es] . . . whether the other being observed is a member of a racial ingroup or outgroup’”).

⁴⁷ See *Freedom Summer*, HISTORY (Aug. 21, 2018), <https://www.history.com/topics/black-history/freedom-summer> (describing the Mississippi Freedom (sometimes called Mississippi Summer) Project).

“They’re always doing that,” I said. “Even in the middle of the night. They mean well, but it makes it hard to get a good night’s sleep.”

“Where were we? Oh, yes. During the middle years of my career, many law schools would ask me for help in hiring people like me. Flattered and eager to be of service, I invariably compiled lists of young people in law teaching whose work I considered promising. Sometimes, I would work on these for days.

“Later, I realized that none of the law schools for which I had performed this task hired anyone from my list. Many of them got jobs elsewhere — for they were very good people — just not at the schools that had asked me for suggestions. It seemed that these schools were just doing due diligence, not really trying to hire people I knew. For if they did, they would be indebted to a cockroach. Maybe the candidate would turn out to be one, too. They instinctively knew they would be better off doing it themselves.”

19. Mister Delgado

“Along those lines, I wonder if you’ve noticed this. In college towns, one often runs across people who teach at the local university. Nevertheless, ordinary people, such as realtors, bankers, doctors, or grocers, invariably call me ‘Mr. Delgado,’ not ‘Professor Delgado.’ I wondered why. I am not that much older than the average professor and dress and act like one, with the exception of a few appendages that you can see sticking out under my clothing if you look closely. I think that to their eyes I do not look like a real professor, certainly not like Kingsfield of *The Paper Chase*,⁴⁸ with his noble brow and haughty demeanor. I look, at best, like an ordinary fellow — a mister, not a professor, and in a certain light, like a cockroach.”

20. Why Did You Go to That University?

“For them, you didn’t fit the part.”

“Not even for faculty members. Many law professors, on meeting me for the first time and learning that I am *that* Delgado, act puzzled. They know that I am a well-known author, but I don’t look or act like one, certainly not like the one they expected to see. My ‘habitus’ is lower class.⁴⁹ I laugh loudly, hesitate in my speech, and scuttle this way and

⁴⁸ See JOHN JAY OSBORN JR., *THE PAPER CHASE* 13 (Peninsula Rd. Press 2011) (1971)

⁴⁹ See *Habitus*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/social-sciences-and-law/sociology-and-social-reform/sociology-general-terms-and-concepts/habitus> (last visited May 29, 2019) (defining “habitus,” a person’s sum total of means of encountering the world); see also PIERRE BOURDIEU, *OUTLINE OF A THEORY OF PRACTICE*

that. My looks are not at all like those of Kingsfield, Cass Sunstein, or others of the Greats.

“Still others, upon learning that I did not go to Harvard or Yale as an undergraduate, ask me where I did go. Often, they know the answer — University of Cascadia. I actually received a very fine education there, at least by insect standards. And Seattle is a very nice city. By their question I believe they meant to remind me that I am on a lower evolutionary plane than they, even if they went to Harvard many years ago and have done little of note since.

21. Somatic Changes

“Right around this time, I developed some thin but quite visible antennae that grew from both sides of my head. They may have made me look strange, but they helped me sense danger, and I was grateful for them.”

22. Misery Loves Company

“Around this time, too, I joined Critter-Crit for mutual support. I read *Presumed Incompetent*,⁵⁰ a fine book about minority women in legal education, and earlier co-authored the Bell-Delgado survey titled, ‘Minority Cockroaches’ Lives,’⁵¹ which covered much the same thing.

“As you know, the Critter-Crit organization operates two Listservs about events and news of interest to members of the insect world.⁵² I perused them eagerly for news of promotions of fellow cockroaches, conferences, and the formation of new centers and institutes on equality and insect rights. I took comfort in the realization that others shared my predicament and that I was not the only one.”

“A natural feeling,” Rodrigo said. “Although my own faculty is unfailingly cordial, I’ve often lamented the small number of people like

78-87 (Ernest Gellner et al. eds., Richard Nice trans., Cambridge Univ. Press 2013) (1977) (developing and explaining the term).

⁵⁰ PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA I (Carmen Gonzales et al., eds., 2012).

⁵¹ See Richard Delgado & Derrick Bell, *Minority Law Professors’ Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L.L. REV. 349, 349 (1989).

⁵² See *Electronic Mailing Lists*, UNIV. OF CHI., <https://www2.lib.uchicago.edu/~llou/lawlists.txt> (last visited June 20, 2019) (providing the electronic mailing lists for the Association of American Law Schools Section on Minority Groups at aalsminl@ube.ubalt.edu and the Latino Law Professors Communication List at latino-law-profs@ucdavis.edu).

me. We have lots of law-and-economics types, like my friend Laz.⁵³ They go out to lunch together and laugh a lot. I wish I had something similar.”

23. Coping Strategies

Our conversation came to a halt when another nurse came in and announced, with a bright smile: “It’s time for your morning bowel movement, Professor. Are you ready, or do you want me to come back later?”

I waved her away.

“It’s funny. They keep you up all night, then expect all your functions to work regularly. It may illustrate that metaphor you mentioned.

“Where were we?”

“You were talking about law faculties.”

“Right. Around this time, I noticed that many of my fellow minorities had developed coping strategies. They fell into three groups, which I kept secret but watched out for out of my own interest. One, I call the fighters, exemplified by my friend Michael Barbero. A second, I called Dress for Success Minorities, wore expensive clothing to cover their many legs, exoskeleton, and antennae and aimed to get ahead by blending into their surroundings. A third group were like me, interested in hierarchy, species, and the social construction of reality.⁵⁴ I call this group the scientific entomologists, all of whom were interested, like the two of us, in understanding our situation with the aid of science and literature. I’ll mention a couple of the writers in a minute.”⁵⁵

24. The Cockroach Olympics

“Around this time, Brian Leiter began publishing periodic rankings of the citation counts of top legal scholars in a number of categories.⁵⁶ You

⁵³ “Laz” is Rodrigo’s best friend on the faculty of his school, which is located in the state next to mine. See *Tenth Chronicle*, *supra* note 2, at 1713-14 (1995) (introducing Laz, a conservative devotee of law-and-economics, but, like Rodrigo, a staunch antiracist).

⁵⁴ See PETER L. BERGER & THOMAS LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY* 170 (Anchor Books 1967) (1966); LÓPEZ, *supra* note 28, at 7.

⁵⁵ See *infra* notes 60–61, 78–79 and accompanying text for a discussion of REVOLT, *supra* note 6, at 48-49, and SHAMING, *supra* note 6, at xv, 5, 7. See *infra* notes 65–66 (discussing JOEL KOVEL, *WHITE RACISM: A PSYCHOHISTORY* 80-92 (1970)).

⁵⁶ Brian Leiter, *20 Most-Cited Critical Theories of Law (Feminist and Critical Race) Scholars in the U.S. for the Period 2013-2017 (1st draft)*, BRIAN LEITER’S LAW SCH. REPORTS (Oct. 12, 2018), <https://leiterlawschool.typepad.com/leiter/2018/10/20-most-cited->

will soon find yourself in one, Rodrigo; I have been checking your numbers, which are on the rise. But in recent years, Leiter has taken to including a critical theories and feminism category in which Martha Minow, former dean of Harvard Law School, always comes out number one.⁵⁷ My dear wife Juanita generally makes it into the top twenty, and I am often number two.⁵⁸ It's interesting to watch the consternation that the latest ranking produces as soon as it comes out. If you have ever seen cockroaches scramble for crumbs on the floor, you will know what I mean. This may well happen in other fields. But in race and civil rights, it's intense."

25. Advice to the Law-Lorn

"You said you did a bit of writing about these developments."

"Yes. A few years ago, some African American law professors who operated a blog called 'Blackprof.com' recruited me to offer an advice column entitled 'Dear Mom.'⁵⁹ I was 'Mom,' believe it or not. I answered questions about young law professors' anxieties about tenure, outside review, and how to survive colleagues who thought that work in the area of race and entomology was a waste of time. In retrospect, I taught them variations on a number of techniques: scatter, swarm, protective coloration, and other survival secrets of the insect world.

"Stephanie Fetta addresses many of the same topics, but on a high-toned level, in her book *Shaming into Brown*.⁶⁰ She says that many Latino writers and novelists are, consciously or not, creating characters and moods that are somber, even fatalistic.⁶¹ A few of my columns

critical-theories-of-law-feminist-and-critical-race-scholars-in-the-us-for-the-period.html.

⁵⁷ See *id.*

⁵⁸ See *id.*

⁵⁹ See Melissa Sachs, *JD Profiles: Richard Delgado, University Professor of Law, Seattle University, and Jean Stefancic, Research Professor of Law, Seattle University*, RECRUITERESQ (Mar. 10, 2011), <http://recruiteresq.com/2011/03/jd-profiles-richard-delgado-university-professor-of-law-seattle-university-and-jean-stefancic-research-professor-of-law-seattle-university>.

⁶⁰ SHAMING, *supra* note 6, at 5 (discussing a number of responses to shame and belittlement).

⁶¹ *Id.* at xv (noting that these themes characterized "text after text"); *id.* at 7 ("Literary texts illustrate that racialization operates through habituated, socially cued behaviors that are not readily subject to intentional control."); *id.* at 28-123. As Fetta puts it: "Oscar journeys across the country in an extended experience . . . where he negotiates a sense of self through suspicious *disgust*. He has internalized intersectional shaming to such a degree, he has become ill . . . [taking form in] bleeding ulcers, vomit, constipation, depression, addiction, and [a] sense of powerlessness that contradicts

survive on the Internet, even though the site of which they were a part has been taken down. Some of them were not at all downbeat, but wry or funny.”

26. Big Nurse

We paused while a loudspeaker blared “Doctor Brown, Code Blue” several times. When it finally fell silent, I continued as follows:

“One year in an otherwise happy semester at Steeltown Law School, where I taught for a few years after Rocky, my wife and I received calls from one of the assistant deans to come to her office after class. One of the advantages of a professor’s life at Steeltown was an expert typing pool of secretaries with very good word skills, who would take a manuscript, even a much marked-up one full of strike-overs, inserts, arrows, and corrections, and produce a pristine, error-free draft by the next day. If you asked them, they would even cite-check your footnotes, believe it or not.

“Since my wife and I were prodigious writers, we submitted quite a few manuscripts to this office, picking them up a day or two later and marveling at the fine work the typists produced. When we reached her office, the assistant dean, who had such a bossy manner that we referred to her as ‘Big Nurse,’ said something that made our blood run cold. It seemed that the word processors had filed a complaint against unknown members of the law faculty whose work was causing them to fall ill. They suspected it was the two of us. The papers we had turned in to them, they said, had an unusual smell. I am not making this up. The head processor showed Big Nurse a spreadsheet of the many manuscripts from the law faculty that they had worked on over the past many months, including ours.

“In the margin, she had written notes such as ‘Marlene got sick,’ or ‘Henrietta threw up.’ It seemed that the assistant dean and the secretaries had formed the unanimous opinion that we were the source of a contagion of some kind, and were making them ill — an occupational safety concern. You of course, know, Rodrigo, about the phrase ‘dirty Mexican.’”⁶²

Oscar’s public presentation of arrogance, callousness, recklessness, self-aggrandizement but also self-pity. However far he travels, Oscar cannot get away from his troubled viscera as the world relentlessly racially shames him.” *Id.* at 25.

⁶² See *id.* at 51, 54 (noting the role of olfactory perception — bad smells — in racial assignment and shaming and how “natural body odors [signified] a lack of personal hygiene and . . . [were] a sign of moral laxity, a physiological quality guised as social threat Current neurobiology studies report humans can identify millions of smells”).

“I do, but how shocking, not to mention preposterous. And Juanita isn’t even a Latina.”

“We were quite taken aback, even more so when Big Nurse ordered us to bring papers from our home for the occupational safety officers at the main campus to test in their lab. She also asked for Juanita’s bookbag, an ancient one that she had acquired from a friend many years ago, and of which she was very fond. The inspectors, who wore yellow hazmat suits, returned the papers and the bookbag a few days later with a report saying that they could not determine definitively whether we were the source of the secretaries’ maladies. The bookbag came back with a small hole cut out of it. Juanita kept it a day or two and threw it away.

“We later learned from a friendly secretary that the university’s paper supply had suffered flooding damage from an unusually wet winter and had a slight odor. She had learned this from a copy machine technician who had had to make many calls at different departments because the machines were jamming from the damp paper. When we told Big Nurse about our alibi, she fired the secretary for tipping us off, placed us under a gag order, and insisted that we were not in the clear. Until that point, we had thought of ourselves as relatively clean, but being cockroaches (Juanita an honorary one), had realized that not everyone saw us that way.”

“I can see how you must have found the accusation galling. Your career seems to have been going well around this time. What was it that Acosta called himself? He had a slang term for it.”

“*El mas chingón*. Don’t mention the term in polite company. I did allow myself to think, for a moment or two, that I was on top of the world. Big Nurse injected a dose of reality.”

27. Waving My Feet in the Air

“Another time, I fell over outside my apartment and couldn’t get up. The stairs were hard and I thought I had injured my exoskeleton, which proved true. Like a roach waving its legs futilely in the air, I was completely helpless, and, realizing that something was wrong with my legs, shouted for help. No rescuer came, and I lay there stranded on the landing, wondering about my fate. Fortunately my dear wife came to my rescue, and here I am full of life, social analysis, and thoughts about entomology, lying on my hospital bed with my leg straight out in a brace, and talking with you.”

28. Studying My Own Predicament

“As mentioned, I studied theories of race and social construction, the closest explanations of my own condition that I could find.⁶³ You and I discussed some of these earlier, Rodrigo, even before you learned of my metamorphosis.⁶⁴ After reflection, the one I found most useful was Joel Kovel’s aversive racism.⁶⁵ Based on fears of dirt, filth, and excrement, this psychoanalytically-oriented scholar posited that some racist people cannot bear the thought of close contact with members of dark-skinned races because, in the back of their minds, they associate them with loathsome objects.”⁶⁶

“Such as insects?” Rodrigo asked.

“Yes, particularly maggots, cockroaches, and other crawling creatures that they associate with filth and decay. Stephanie Fetta writes about this, too.⁶⁷ And Vladimir Nabokov wrote that Kafka’s translator improperly rendered the author’s term for Gregor, namely ‘cockroach.’ Nabokov, who was actually an accomplished amateur entomologist, thought that Gregor was really a dung beetle.”⁶⁸

29. University of the Far North

“A dung beetle!” Rodrigo exclaimed. “That brings things around full cycle. You know, at first I was a little skeptical, not of your condition — who could doubt that? — but of your interpretation of it and the way you drew on *The Metamorphosis*, Kovel, and those other two scholars. But now I’m half convinced. If you have time, I’d like to hear more about those somatic changes that you mentioned and Fetta’s take on them.”

“Okay, in a minute. But to complete the timeline, did I ever tell you that before Juanita and I got together, I spent two years at the law school at the University of the Far North?”

⁶³ See LÓPEZ, *supra* note 28, at 7.

⁶⁴ Richard Delgado, *Rodrigo’s Eighth Chronicle: Black Crime, White Fears—On the Social Construction of Threat*, 80 VA. L. REV. 503, 508-29 (1994).

⁶⁵ See JOEL KOVEL, *WHITE RACISM: A PSYCHOHISTORY* 80-92 (1970).

⁶⁶ *Id.*

⁶⁷ SHAMING, *supra* note 6, at 7 (burping, stomach rumbles); *id.* at 10 (flawed and dirty); *id.* at 17 (noxious fumes, smell, rotten substances); *id.* at 25 (vomit). As Fetta puts it: “We use the somatic protocol of socially thwarted desire for interpersonal connection, expressing contempt, disgust, and dissmell to isolate and then marginalize the offending source, the one shamed Brown.” *Id.* at 17.

⁶⁸ *Lecture on The Metamorphosis by Vladimir Nabokov*, THE KAFKA PROJECT (Jan. 8, 2011), <http://www.kafka.org/index.php?id=191,209,0,0,1,0>.

“I don’t think so. That must have been before we met. I have a few friends there. How did you find it? And please don’t forget those somatic changes.”

“I enjoyed it, in part because it was one of the centers of the law and society movement, which even then I was hoping might explain what was starting to happen to me. My going there was part of a large-scale social experiment. A new chancellor, Danielle Shalalalalala had devised an ambitious plan to recruit nearly 100 minority professors to join the faculty, which at that time was almost entirely white.⁶⁹ Leaping at the opportunity, the law school had made offers to four such professors, including me. We all accepted.”

“Was the experiment successful?”

“I’m afraid not. Most of the new professors soon left for warmer climes. Three of the four new law professors did, too, including me for University of the Rockies.”

“Did you suffer racism at the hands of your white colleagues there?”

“Not particularly — the law faculty are pretty open-minded. Rather, I think that insects and minorities tend to flourish in particular conditions of light, darkness, and warmth. Those of us whom Far North hired ended up spread among dozens of departments, so we lacked each other’s company. And the weather was very unlike what we had been used to. Most of us were tropical creatures. The extreme cold stiffened our limbs, depriving us of one of our main defenses, the ability to scurry away from danger at first sight.”

30. Speed Reading

“I understand, Professor, that you are considered a triple pioneer, as one of your reviewers put it. Those areas are critical race theory — which you call critter race theory, for some reason — narrative theory and scholarship; and writing about hate speech. How did you manage all of that?”

“Ahem, insects, having many eyes, can take in large sweeps of text at once.⁷⁰ Which of course is one of those somatic changes you are so eager to hear about. And with our many legs, we are very fast typists. Also, those three genres that I am said to have developed overlap in ways that

⁶⁹ See *Wisconsin Uses Madison Plan to Enhance Diversity*, SALT EQUALIZER (Soc’y of Am. Law Teachers), Oct. 1988, at 1, <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1058&context=salt>.

⁷⁰ See ENTOMOLOGY, *supra* note 9, at 13-14. Cockroaches enjoy compound eyes, which provide them with considerable advantage, especially in dark areas. See Kyösti Heimonen et al., *Large Functional Variability in Cockroach Receptors: Optimization to Low Light Levels*, 26 J. NEUROSCIENCE 13454, 13454 (2006).

may not be obvious, thus simplifying the work. They are all genres of the lowly. Consider the word 'spic,' for example, a prime illustration of hate speech.⁷¹ And one popular form of narrative jurisprudence is 'agony tales,' for example a story of how the writer felt on not being buzzed into an exclusive clothing store where she wanted to buy a present for her mother.⁷² And critical race theory contains, as a main element, the idea that fumigators and other hazards are everywhere, and that this is the natural condition of society."⁷³

31. A Chair but No Tenure

"But weren't you tenured at an early age? Even if the vote was not unanimous, at least it was in your favor.⁷⁴ Some of your readers might wonder whether you could not have simply ignored some of these incidents and gone about your work."

"I did receive early tenure.⁷⁵ But social construction is powerful and omnipresent, as those three books and my own experience show. One's treatment by peers over time produces somatic changes so obvious that every sharp-eyed observer notices them. Almost as obvious as that leg of mine strapped in a brace and sticking out in front of me on the bed. You must have noticed that immediately when you first came into this hospital room. The other changes are more subtle, especially at first. But close observers don't miss them.⁷⁶

"They are the product of many experiences, small and large. For example, when Juanita and I came to the University of Dixie, I received a chair, which they probably felt compelled to offer to match the very fine one I occupied at Steeltown. But in light of my age and somewhat unusual medical condition, the new school declined to offer me tenure, even though I had enjoyed it for many decades."

⁷¹ See RICHARD DELGADO & JEAN STEFANCIC, UNDERSTANDING WORDS THAT WOUND 47-92 (2004).

⁷² See PATRICIA WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A MAD PROFESSOR 45-46 (1991) (recounting the "Benetton story").

⁷³ See RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION 8-9 (3d ed. 2017) (discussing the ubiquity of racism and its role as the normal state of affairs).

⁷⁴ See *supra* notes 12-15 and accompanying text.

⁷⁵ *Id.*

⁷⁶ See SHAMING, *supra* note 6, at 66-124, 160 (offering a reading of several texts by leading Latino figures). "Creative texts illustrate shame, a critical tool in many Latin@/x texts across literary genres, and inculcate 'race' onto others *through scenes of racialization*, key narrative events presenting an interaction in which one party assumes the position of racializer who shames the other into believing him or herself different and unworthy." *Id.* at 7 (emphasis added).

“Why not? You’re a fine teacher and a distinguished scholar. Your works are read around the world.”

“It didn’t bother me greatly, and because Juanita and I wanted very much to work on behalf of Latinos in that region, I accepted. I assumed that the faculty simply didn’t want me, being the sort of creature that I am, to attend faculty meetings. I had found them fairly unpleasant, so didn’t mind the deprivation. At Steeltown, you remember, I had learned that it was better not to open my mouth during a faculty meeting.⁷⁷ There were steel insect traps everywhere, and they were hard to see and avoid. You never knew when they might spring open and seize you.”⁷⁸

32. *Revolt of the Cockroach People*, by Oscar Zeta Acosta

“You mentioned a few other books that reinforced your interpretation of your situation. One was by Oscar Zeta Acosta, I think you said.”

“Yes, *The Revolt of the Cockroach People*.⁷⁹ As you may know, Acosta was a famous radical lawyer who represented Chicano schoolchildren and their leaders after the Los Angeles school blowouts.⁸⁰ Later, he made a name for himself in a series of cases challenging the makeup of grand juries in California.⁸¹ Local courts had made a practice of selecting members of the jury pool by asking their fellow judges for the names of citizens whom they knew to be models of rectitude and good citizenship.⁸² Of course, these turned out to be nearly one hundred percent white.⁸³ Acosta got this method struck down, after which the composition of juries became much more mixed.⁸⁴ His book is full of complaints about trial strategy, his digestion, bragging, and exhortations to his *compadres* to rise up against the oppressing class.⁸⁵

⁷⁷ See *supra* notes 34–35 and accompanying text.

⁷⁸ *Id.* See SHAMING, *supra* note 6, at 7 (noting the power of shaming, especially hate speech, in creating somatic changes, some of them long-lasting, and all contributing to racialized oppression).

⁷⁹ REVOLT, *supra* note 6, at 48-49.

⁸⁰ See Michael A. Olivas, “Breaking the Law” on Principle: An Essay on Lawyers’ Dilemmas, Unpopular causes, and Legal Regimes, in *LATINOS & THE LAW: CASES AND MATERIALS* 813, 817-18 (2008).

⁸¹ *Id.* at 819-20; see Oscar “Zeta” Acosta, *Autobiographical Essay*, in *LATINOS & THE LAW: CASES AND MATERIALS* 832, 838 (2008) [hereinafter *Autobiographical Essay*].

⁸² See *Autobiographical Essay*, *supra* note 81, at 838.

⁸³ See *id.*

⁸⁴ *Montez v. Superior Court*, 88 Cal. Rptr. 736, 743 (Ct. App. 1970).

⁸⁵ *Autobiographical Essay*, *supra* note 81, at 838; Olivas, *supra* note 80, at 817-18, 833-34; see also SHAMING, *supra* note 6, at 66 (discussing Oscar Zeta Acosta); Stephanie Fetta, *A Bad Attitude and a Bad Stomach: The Soma in Oscar “Zeta” Acosta’s The Autobiography of a Brown Buffalo*, 6 *TRANSMODERNITY* 88, 90-96 (2016).

“He never took a cent for his services. The community saw to it that he had what he needed so that he never went hungry. He said he was in court every day.”⁸⁶

“Do you think that approach would work today?”

“Very few lawyers seem to be trying it, although I mention it to my students from time to time.⁸⁷ Acosta wrote that subalterns need to name and publicize their own reality.⁸⁸ Those of us who can write should do so. That’s one reason why I’m glad to be talking to you now.”

We paused for a moment while someone, I presumed a physician, dressed in a white coat with a stethoscope hanging from her neck, came in briskly, told me to take several deep breaths, listened, wrote something down, and left without a word.

Rodrigo asked, “Did those books make you more militant?”

“Maybe a little. I think I was always somewhat that way. But they helped me crystalize my thoughts. Stephanie Fetta’s book helped, too.”⁸⁹

33. I Can See Much Better Now

After a pause, I said: “Earlier, you said that you were interested in some of my somatic changes. One that might interest you was better eyesight. As my changes progressed, I found that my vision was improving. Until then, it had been declining to the point that I needed glasses, even for reading. But suddenly I could see much better. When I looked at myself in the mirror, I noticed that my eyes were now positioned on the sides of my head and were bulging somewhat. I thought they looked very nice that way, but some of my friends seemed

⁸⁶ See Acosta, *supra* note 81, at 838-39.

⁸⁷ See Syllabus, Professors Richard Delgado & Jean Stefancic, *Lawyers and Social Change Practicum* (2018) (on file with author).

⁸⁸ SHAMING, *supra* note 6, at 81 (citing the erroneous conclusion of Acosta’s psychiatrist placing “the onus on the individual to prevail over strident social practices, sidestepping the critical societal change to dismantle and decognitize oppressive ideologies” and continuing to note how Acosta’s subsequent politicization enabled him to see the world in radically different terms); see also Bryan Parras, *Wet Books: Smuggling Banned Literature Back Into Arizona* (Jan. 17, 2012), <https://www.youtube.com/watch?v=l-n3tvPz5ak> (exemplifying this approach).

⁸⁹ See SHAMING, *supra* note 6, at xiv (“These experiences have emotionally carved me out of the imagined collective through a deep psychological whittling, setting me apart and away . . . and leaving me in a state I would later tenderly reframe and reclaim under the term Chicana, a politicized woman with Mexican roots Contrary to what one might expect, these unwelcome encounters have occurred not only with strangers but even with people I know well.”).

taken aback. But they said nothing, perhaps being too diplomatic to mention it.”

34. Bellagio? It Must Have Been a Case of Affirmative Action

“One consequence of good eyesight is that I’m able to write applications for grants and fellowships very fast, sometimes successfully. Once I mentioned to a new dean, whom I was just getting to know, that Juanita and I had been to Bellagio.”

“You mean the Rockefeller study center located in a villa overlooking Lake Como in Italy?”⁹⁰

“Yes,” I said. “For a five-week residency to write our first book. These residencies, I knew, are highly competitive, so I quickly told the dean, ‘I’m sure we didn’t deserve it.’ You see, the breakthrough had come very early in our careers, and we weren’t very well known yet. But I had taken my application seriously and gotten good letters of recommendation from people who thought well of us.”

“What was his reaction?”

“He sniffed and averted his glance, giving the impression that he believed that residencies in that lap of luxury were fit only for scholars of his rank, station, and probably color, not rough-hewn newcomers like us.”⁹¹

35. Body Shape and Posture

“But back to the soma. I’m sure you’ve heard that birds of a feather like to flock together. The Fetta book explains how this can happen. Incessant shaming, she says, changes a person’s affect, posture, and glance, and actually produces a group of people that are readily recognizable.⁹² Over time, a group that is demonized and shamed a lot will look down much of the time.⁹³ Their expression and gait will

⁹⁰ *About the Bellagio Center*, ROCKEFELLER FOUND., <https://www.rockefellerfoundation.org/our-work/bellagio-center> (last visited June 1, 2019).

⁹¹ See SHAMING, *supra* note 6, at 32-33 (noting how unconscious “bodily . . . gestures and paralinguistic sounds . . . transact race onto another and . . . create the affective logic for racist acts” and how “[s]kin temperature [and] . . . polygraph tests . . . [are often] more reliable communicators of truth than our words”).

⁹² *Id.* at 45.

⁹³ *Id.* at 9 (noting how racial shame creates, over time, a downward glance, eyes downcast); *id.* at 5 (a “somatic countenance” and an immediately recognizable body posture); see also *id.* at 34 (noting how an embarrassed job candidate may behave in similar fashion after a single incident).

change.⁹⁴ They will speak in a monotone and wear drab clothing.⁹⁵ They will avoid other people's glances.⁹⁶ They will adopt a wary expression.⁹⁷ Others will notice these signs, which are subtle at first, and behave toward them in a way that accelerates these changes.⁹⁸ They become morose, change their tastes in movies, music, and entertainment. If they are writers, they may write Gothic novels;⁹⁹ if readers, they will be drawn to novels like *The Metamorphosis*,¹⁰⁰ *Wuthering Heights*,¹⁰¹ or the work of Alice Walker¹⁰² or Oscar Zeta Acosta.¹⁰³

"Even my body shape changed, too, as I told you. Even before my accident," I said a little ruefully, looking at my leg stretched out in front of me on the hospital bed.

"You became long and lean," he said.

"Yes, even more so than during my running days. Juanita likes the way I look. But others react negatively. I probably strike them as inhumanly shaped, like an insect. Many Latinos are short and stocky. I'm not. I probably strike the police as neither fish nor fowl."

36. *Numero Ocho*

"So, you're saying, Professor, that one's social construction — how others see you and treat you — changes who you are and even how you look. It's a bit like a construction worker who, over time, develops thick muscles and callused hands. The better the worker, the faster these changes will set in."

⁹⁴ *Id.* at 32; *id.* at 14 (noting changes in gait, outturned feet, "the waddle stance of the disempowered"); *see also id.* at 47.

⁹⁵ *Id.* at 25 (an impression of powerlessness); *see also id.* at xv (shoulders slightly slouched); *id.* at 10 (may feel themselves "dirty").

⁹⁶ *Id.* (noting that at other times such a person may adopt a defiant, chip-on-the-shoulder expression).

⁹⁷ *Id.* at 1-2, 7.

⁹⁸ *Id.* at xv; *id.* at 7 (discussing the power of racialization to produce somatic changes in its targets, including changes in organ function, including stomach and bladder, and giving the example of contact with the police); *id.* at 11 ("[I]t is not guilt but shame that structures and maintains U.S. race relations [and creates] hegemonic identity [R]acists may recognize that they are guilty of racism, and so elect to change. The racialized, on the other hand, are irrevocably shamed into social stigma and cannot simply choose to change. [They] can only hope for alterations in the color line that will bring them into the fold (as in the case of Germans, Jews, Irish, and Italians.)").

⁹⁹ *E.g., id.* at 67 (discussing novels, including *REVOLT*).

¹⁰⁰ *See generally* KAFKA, *supra* note 5.

¹⁰¹ EMILY BRONTË, *WUTHERING HEIGHTS* 7 (Oldcastle Books 2013) (1847).

¹⁰² *See, e.g.,* ALICE WALKER, *THE COLOR PURPLE* (1982).

¹⁰³ *See generally* *REVOLT*, *supra* note 6.

“Exactly,” I said. “The other day I learned that I rank high on a list of legal scholars for lifetime citations. HeinOnline, which operates a large database of all the law reviews going back to prehistory, computed the citation count for the top 100 or so professors, including the Greats who taught a long time ago like Lon Fuller and, of course, recent ones like Laurence Tribe and Cass Sunstein. To make a long story short, I ended up number eight.”¹⁰⁴

“Wow, not bad!”

“But the thing for you to bear in mind as a young scholar, Rodrigo, is that I made the mistake of mentioning it to the dean of a law school with which I had been having a mutual flirtation. We can call it the University of California at a Second Undisclosed Location. The dean had until then seemed quite interested in recruiting Juanita and me, and it would have put us close to our families, a useful thing when you have to go to the hospital, as I have.”

“It certainly is,” he replied. “I often wish that the two of us lived closer to each other.”

“Me, too. Especially at times like this. Anyway, when the dean seemed surprised, I added that I fell just one spot ahead of Roscoe Pound and one behind John Coffee, the business law scholar from Columbia.”¹⁰⁵

“But Roscoe Pound has his name on a hall at Harvard, she pointed out. And, of course, I didn’t. She and I never spoke again, the mutual flirtation having ended once I mentioned my position just above her hero Roscoe Pound.”

“In her mind, it just didn’t compute,” Rodrigo observed. “So she was upset at you for having pointed it out.”

“It probably struck her as ridiculous. Insects’ names don’t belong on sacrosanct places, like university buildings. That would be like naming the student union Fly Commons, or the campus infirmary Praying Mantis Tower.”

“Or the law building Cockroach Hall,” he added with a smile. “In a way, it’s ironic. Toward the end of his life, Roscoe Pound was something of a bad actor. He befriended Chiang Kai Shek, helping him and his beaten army escape to Formosa and set up shop there, having been defeated by the Communist forces in the mainland.”¹⁰⁶

¹⁰⁴ Miranda Rosati, *Most-Cited Authors — 2013 Edition*, HEINONLINE (Nov. 19, 2013), <https://home.heinonline.org/blog/2013/11/most-cited-authors-2013-edition>.

¹⁰⁵ *Id.*

¹⁰⁶ See *Roscoe Pound Dies; Headed Law School Twenty Years; His ‘Social Interests’ Theory Influenced the New Deal—Scholar in Many Fields*, N.Y. TIMES (July 2, 1964), <https://www.nytimes.com/1964/07/02/archives/roscoe-pound-of-harvard-dies-headed-law-school-20-years-his-social.html>.

“I guess the Harvard naming committee overlooked that episode.”

“Or maybe they liked and agreed with it. If I’m not mistaken, the university built the building during the Cold War with the Soviet Union, when communism was a bad word.”¹⁰⁷

37. The Men’s Room is Dirty

“Even when, toward the end of my career, I became somewhat eminent, I was still occasionally the recipient of treatment capable of knocking me back on my hind feet.

“As you must know, Rodrigo, men’s bathrooms in public buildings are often none too clean, particularly the floors directly in front of and around the urinals.”

“I’ve noticed that, too. They get a lot of overspray. The janitors in my school clean up these areas overnight, but they reappear the next day. Many of our fellow males’ aim is none too good, Professor.”¹⁰⁸

“True. One day I had gone in there to do my business, only to find myself standing next to a middle-aged colleague of mine who teaches tax. He looked up at me accusingly and said, ‘This place is always dirty.’ I told him it wasn’t me and that this was my first visit there that day. But the incident set me back on my hind legs. Later, he and I were on cordial terms, as though nothing had happened. He seemed to have forgotten the incident, although as you can see, it was burned in my memory.”

CONCLUSION

Rodrigo’s cell phone rang, and I learned he had to catch a train back home in time for a late afternoon seminar. After a few fond words, he left.

I later learned that he had found our talk unsettling. In an email that arrived the next day, he told me that he believed all of the events I had recounted had taken place. They had the ring of truth, and he even remembered that I had mentioned a couple of them before and that he had heard about a third from a friend. He also said he had read two of the books I had mentioned and planned to read the third as soon as it came out.

¹⁰⁷ BAINBRIDGE BUNTING, *HARVARD: AN ARCHITECTURAL HISTORY* 246 (Margaret Henderson Floyd ed. 1985) (reporting that the building was completed in 1968).

¹⁰⁸ See *Cleaning a Public Washroom*, BAY PAPER CO., <http://www.baypaper.com/washroom.html> (last visited June 2, 2019). I wondered whether my colleague with a penchant for cleanliness may have felt virtuous for having contributed to cleaning up a mess, an infestation, that is, of critters.

He said he agreed with the first two and expected to agree with Fetta's as well. But he wondered if I was giving the right interpretation to the events I described and whether a different, less gloomy one were just as possible.¹⁰⁹ He wondered if my dark mood might have been the product of my hospital surroundings, sleep deprivation, or even whether the lingering effects of the powerful anesthetic I had received just before my surgery might have had something to do with it. He wondered if I knew about the trope of the opium dream in Western literature and art.¹¹⁰

After asking my African-American doctor about this possibility, I started drafting my reply, admitting my own ambivalence, but insisting that only I knew what had been happening to me over the years. I wondered how to tell him that one could believe that the world was a vale of tears, but nevertheless that it was worth struggling to make it better.¹¹¹ I planned to tell him that to make it better, we first had to understand it, which meant coming to terms with our own experience and lives.

I pondered a subject line for what I knew would be a long message. I first tried out: "All the world's a stage, and all the men and woman merely players. They have their exits and their entrances. And one man in his time plays many parts."¹¹² But it turned out to be too long to fit in the subject line. So, I deleted it and substituted instead the classic Socratic question: "What do you think?"

¹⁰⁹ He might have recalled SHAMING, *supra* note 6, at 11 ("Normalizing shame as an experience internal to the individual rather than an oppressive social practice relieves hegemonic subjects from the responsibility of examining shame as a socially inflicted harm.").

¹¹⁰ E.g., THOMAS DE QUINCEY, CONFESSIONS OF AN ENGLISH OPIUM-EATER 3 (Grevel Lindop ed., Oxford Univ. Press 1998) (1821); Christopher Partridge, *Opium Dreams*, OXFORD SCHOLARSHIP ONLINE, <http://www.oxfordscholarship.com/view/10.1093/oso/9780190459116.001.0001/oso-9780190459116-chapter-3> (last visited June 2, 2019); see also Treva Bedinghaus, *La Bayadère: The Temple Dancer*, LIVEABOUT (May 8, 2019), <https://www.thoughtco.com/la-bayadere-ballet-review-1007228> (offering a plot summary of this classical ballet).

¹¹¹ See DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 195 (1992) (putting forward his racial-realist view of black history); see also Linda Greenhouse, *The End of Racism, and Other Fables*, N.Y. TIMES (Sept. 20, 1992), <https://www.nytimes.com/1992/09/20/books/the-end-of-racism-and-other-fables.html>.

¹¹² WILLIAM SHAKESPEARE, *AS YOU LIKE IT*, act 2, sc. 7 (Lerner Publishing Group 2015) (1623).