



Alabama Law Scholarly Commons

Articles

Faculty Scholarship

2021

Groundhog Law

Richard Delgado

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



Part of the Law Commons

GROUNDHOG LAW

RICHARD DELGADO[†]

ABSTRACT.....	1
ZOOM! IN WHICH RODRIGO RETURNS IN AN ONLINE PERSONA.....	2
I. RODRIGO’S HYPOTHESIS: SPEECH AND ACTION IN THE AGE OF CORONAVIRUS.....	4
II. IN WHICH RODRIGO PONDERES WHETHER LAW IS AN ACADEMIC DISCIPLINE EVEN IF IT GENERATES LITTLE KNOWLEDGE AND AIMS AT NONE.....	6
A. <i>In Which Rodrigo Explains Law’s Recursive Quality, a Metaphor for Our Locked-in Times</i>	8
B. <i>Groundhog Day and One Hundred Years of Solitude</i>	9
III. IN WHICH RODRIGO CONSIDERS WHETHER LAW IS A SCIENCE AND BELONGS ON A UNIVERSITY CAMPUS.....	14
IV. IN WHICH RODRIGO OFFERS A FEW WAYS TO AVOID <i>GROUNDHOG-DAY</i> LAW.....	17
V. CONCLUSION.....	18

ABSTRACT

An unexpected question from a conference participant sends Rodrigo in search of the professor’s counsel. A young stranger from another discipline had asked him why law seems never to advance and posited that the reason may be that, lone among disciplines, law is uninterested in advancing human knowledge. The questioner even raised the possibility that law may not belong on a university campus along with departments such as Physics, English, and History, and might well consider relocating to community colleges where it would find a disciplinary home along with courses on welding, automobile mechanics, and high-speed cooking.

Rodrigo, who at the time had found himself able to muster only a feeble reply, seeks a better defense of his discipline. In particular, he was struck by the stranger’s observation that law is the only academic field where it is a positive attribute to say exactly what someone else said earlier.

[†] John J. Sparkman Chair of Law, University of Alabama. J.D., UC-Berkeley School of Law. Thanks to Jean Stefancic, Jonathan Weinberg, and the participants in a Gershenson faculty workshop at Wayne State School of Law for incisive comments and suggestions.

ZOOM! IN WHICH RODRIGO RETURNS IN AN ONLINE PERSONA

I had just finished teaching my last class of the year online—a new experience for me—and was stretching my legs after the 75-minute session, when a loud beep from my computer snapped me out of my reverie.

Thinking it must be a student trying to sign back on to ask a question—perhaps about the final examination—I pressed the “Zoom” command, hoping it would still work.

It did, but a nanosecond later, smiling at me in the center of the screen, was none other than my young friend and colleague, Rodrigo Crenshaw.¹

“Hi, professor,” he said. “Hope you don’t mind my barging in on you like this. Do you have a minute?”²

“I do,” I said. “I just got off from a meeting with my class. This is the first time you and I have hooked up online, is it not?”³

1. See Richard Delgado, *Rodrigo’s Chronicle*, 101 YALE L.J. 1357, 1358-59 (1992) [hereinafter *Chronicle*], introducing Rodrigo. The son of an African American serviceman and an Italian mother, Rodrigo was born in the United States but grew up in Italy, where his father, a sergeant in the Army, was serving at a U.S. outpost. He is the half-brother of civil rights super-lawyer Geneva Crenshaw, a heroine created by Derrick Bell. See generally DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987) (A collection of Geneva stories).

Rodrigo attended college in Italy after which he earned an Italian law degree, graduating fourth in his class. See *Chronicle*, supra note 1, at 1359. He and I met when he sought me out, at his sister’s suggestion, during a return trip to the United States to investigate LL.M. programs for foreign students with the aim of becoming a law professor. Both Rodrigo and the narrator, “the Professor,” his straight man and mentor, are fictional characters, composites of many people I have known and not to be identified with any one of them. For a sample of some of our discussions, see *infra* note 3.

2. See Richard Delgado, *Rodrigo’s Ninth Chronicle, Race, Legal Instrumentalism, and the Rule of Law*, 143 U. PA. L. REV. 379, 381 n.4 (1994) [hereinafter *Ninth Chronicle*] (describing “the Professor”). As I have drawn him, the professor is a senior man of color teaching law in the next state to Rodrigo’s. See also RICHARD DELGADO, THE RODRIGO CHRONICLES xix (1995).

3. Once or twice, my two characters communicated by email, but most of their conversations have proceeded in person. See, e.g., *Chronicle*, supra note 1; Richard Delgado, *Rodrigo’s Second Chronicle: The Economics and Politics of Race*, 91 MICH. L. REV. 118 (1993) (discussing law and economics); Richard Delgado, *Rodrigo’s Third Chronicle: Care, Competition, and the Redemptive Tragedy of Race*, 81 CAL. L. REV. 387 (1993) [hereinafter *Third Chronicle*] (discussing structural limitations on racial progress); Richard Delgado, *Rodrigo’s Sixth Chronicle: Intersections, Essences, and the Dilemma of Social Reform*, 68 N.Y.U. L. REV. 639 (1993) (discussing the plight of black women); Richard Delgado, *Rodrigo’s Eighth Chronicle: Black Crime, White Fears—On the Social Construction of Threat*, 80 VA. L. REV. 503 (1994) (discussing white and black crime); *Ninth Chronicle*, supra note 2 (discussing the rule of law); Richard Delgado, *Rodrigo’s Tenth Chronicle: Merit and Affirmative Action*, 83 GEO. L.J. 1711 (1995) (discussing the role of merit); Richard Delgado, *Rodrigo’s Eleventh Chronicle: Empathy and False*

“It is. I’ve always known you weren’t a fan of the Internet,⁴ so I considered dropping by in person. But my school has suspended all travel.”

“Mine, too. What do think of teaching by Zoom?”

“I don’t like it.”⁵

“I’m surprised. I’ve always thought of you as a whiz kid at computers, dating back to that demonstration you put on the first time we met, years ago.”⁶

“I’m OK at it, I guess,” he said with a self-effacing shrug. “But I don’t particularly like teaching that way. You can’t see the expressions on the students’ faces, since they’re reduced to rows of little squares on the screen. And even if they can see your face, they can’t really see those of their classmates. Sometimes the image breaks up into a series of pixels, and the words sound like they’re coming from underwater. If anyone forgets to unmute the button before speaking, you just see a silent figure moving its mouth.”

“The quality of the conversation is poor even when the technology is working fine,” I added. “Teresa thinks it’s structural.⁷ Is that what you were calling about?”

“In a way. Something came up at a conference the other day. Online, of course--they cancelled the physical event when the virus hit.⁸ Want to hear about it?”

“Sure,” I said.

Empathy, 84 CAL. L. REV. 61, 94-95 (1996) (discussing identification and fellow-feeling); Richard Delgado, *Rodrigo’s Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181 (1997) (discussing the structure of civil rights thought); Richard Delgado, *Rodrigo’s Roadmap: Is the Marketplace Theory for Eradicating Discrimination a Blind Alley?* 93 NW. U. L. REV. 215 (1998) (discussing whether the free market is likely to eliminate racial discrimination).

4. See, e.g., *Chronicle*, *supra* note 1, at 1370 (noting that the Professor is a product of the pre-online era, whereas Rodrigo, being much younger, is well-versed in computer technology).

5. See, e.g., Beckie Supiano, *Why is Zoom so Exhausting?*, CHRON. HIGHER ED. (Apr. 23, 2020), <https://www.chronicle.com/article/Why-Is-Zoom-So-Exhausting-/248619> (noting that Zoom is exhausting).

6. See *Chronicle*, *supra* note 1, at 1375-76, (describing Rodrigo’s lightning-fast display of virtuosity on my office computer).

7. See Jane E. Brody, *Jane Brody’s Guide to Life in Lockdown*, N.Y. TIMES (May 4, 2020), <https://www.nytimes.com/2020/05/04/well/live/coronavirus-lockdown-health-advice.html> (reflecting on the quality of life during a COVID-19 lockdown).

8. See Martha C. White, *For Conference Planners, Virus Means a “Huge Learning Curve,”* N.Y. TIMES (May 18, 2020), <https://www.nytimes.com/2020/05/18/business/coronavirus-business-travel-conferences.html> (describing the many conferences that have had to cancel or go online).

I. RODRIGO'S HYPOTHESIS: SPEECH AND ACTION
IN THE AGE OF CORONAVIRUS

"The conference was the MLA.⁹ I was on a panel on prison narratives¹⁰ and had just given a paper applying Duncan Kennedy's fundamental contradiction to immigration policy."¹¹

"Now that sounds interesting! How did you draw the connection?"

"Via immigrant detention and punishment.¹² I showed how Kennedy's thesis--that we both need and fear other people--can explain many of the twists and turns of immigration policy, lax in one era, harsh in another.¹³ I used Antonio Gramsci's prison narratives to explain punitive immigration policy over time, all the way up to the present."¹⁴

"Your family were immigrants, were they not?"

"They were. Your memory is good, Professor. But something interesting happened after the session ended. A tall, lanky guy who looked like a graduate student or a very young professor asked me if I had a minute. He congratulated me on the paper and asked how someone with my interests ended up teaching law. He gave me a meaningful look, so I got the impression he wasn't just making conversation."

"Maybe he was thinking of dropping out and going to law school. Lots of people in liberal arts do. The pay is better and the teaching load lower."

"That occurred to me, too, but something he said later made me think he was happy where he was, probably in an English department somewhere."

"Maybe he had heard that a lot of entering law faculty these days have Ph.D.'s in another discipline.¹⁵ You don't, but you've always had broad

9. See *About the MLA*, MODERN LANGUAGE ASS'N, <https://www.mla.org/> (last visited Dec. 27, 2020) (describing the organization and its agenda as scholarship, teaching, and service).

10. See generally *THE GRAMSCI READER: SELECTED WRITINGS 1916-1935* (David Forgacs ed. N.Y. Univ. Press, 2000).

11. See Duncan Kennedy, *The Structure of Blackstone's Commentaries*, 28 *BUFF. L. REV.* 209, 211-14 (1979) (discussing "the fundamental contradiction").

12. See, e.g., Richard Delgado & Jean Stefancic, *Lessons from Mexican Folklore: An Essay on Immigration Policy, Child Separation, and La Llorona*, 81 *U. PITT. L. REV.* 287 (2019) (discussing detention and family separation in the age of Donald Trump).

13. See David Nasaw, *Open and Shut*, *N.Y. TIMES*, May 24, 2020, at 16 (discussing the histories of Mexican and Asian immigration); JUAN PEREA, *IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE* (1997) (discussing shifting attitudes toward immigrants and immigration).

14. See, e.g., Delgado & Stefancic, *supra* note 12, at 287 (discussing the increasingly punitive nature of immigration enforcement).

15. See generally Brian Leiter, *When Does a Job Candidate Need to Finish the Ph.D. for Hiring Purposes*, *LEITER REPORTS: A PHILOSOPHY BLOG* (May 15, 2012, 6:15 PM),

interests going back to your training in Italy¹⁶ and your LL.M. studies here.”¹⁷

“I think it’s more likely that he thought that people like us are the ones who are misplaced, not he, since law--in his mind at least--is not an intellectual discipline.”

“Misplaced?” I said. “As I recall, Kennedy put forward his idea on page one of a highly complex article, full of political theory and cites to Continental philosophy.¹⁸ And you are certainly capable of talking and writing that way when the occasion demands. So, I’m not sure why your conference buddy would think people like you are anomalies. How did you answer him?”

“No too well, I’m afraid. I mumbled something about using law in the service of social justice. He looked a little skeptical. I think he doubted that a discipline that lacked a serious intellectual foundation could contribute much to creating a better society.”

“Ouch!” I said. “Incidentally, I hope you’re not planning to write about this. It could damage your career. For one thing, how do you know that the fellow at your conference was for real? All you know is that he popped up on your screen. Maybe he was an interloper, pranking you to pull your chain and see how you would react. Zoom has been having a lot of problems with Internet security, as you know.”¹⁹

“I’ll be careful. But I can’t stop thinking about his question. I’ve always realized that many of my colleagues, although very smart, don’t ground their work in history and social thought as deeply as they could. Most of them identify a problem such as immigration, federalism, or affirmative action, locate a case or two in the general area, analyze them for fifty pages, and let it go at that. I’ve always thought they could go further.”

“It occurs to me that the fellow’s provocation has a backstory. An early scholar, Christopher Columbus Langdell, finding himself on the defensive for some reason, offered a justification for why a law department, as they were called then, belonged on a university campus

<https://leiterreports.typepad.com/blog/2012/05/when-does-a-job-candidate-need-to-finish-the-phd-for-hiring-purposes.html>.

16. *Chronicle*, *supra* note 1, at 1359, discussing his early years.

17. See *Third Chronicle*, *supra* note 3, at 389 (discussing Rodrigo’s successful entry in a student writing competition in which he proposed a way to reconcile capitalism and socialism).

18. See generally Kennedy, *supra* note 11 (discussing the history of American legal thought from a left-critical perspective).

19. Brian X. Chen, *The Lesson We are Learning from Zoom*, N.Y. TIMES (Apr. 8, 2020), <https://www.nytimes.com/article/zoom-privacy-lessons.html> (discussing security failures in Zoom’s early program).

along with physics, English, and history. His answer was that law, properly understood, was really a science.”²⁰

“A science?”

“The idea was that in a well conducted legal classroom, students would read the assigned cases and attempt to discern what they have in common. When they did, that would be the law. Like finding something in a test tube, except that you find it in the case reporters or selections in the casebook. Duncan Kennedy takes issue with this idea in his ‘little red book.’”²¹

“Now I remember. He writes that Langdell’s defense, valiant though it was, doesn’t hold up. Few legal questions have one right answer.²² Much of law is indeterminate.²³ Another judge can emphasize certain facts and precedents, and end up with the opposite ruling. So, Langdell was teaching his students exactly the wrong thing.”²⁴

“Well, then,” I said. “If it’s not a science, what is it?”

II. IN WHICH RODRIGO PONDERES WHETHER LAW IS AN ACADEMIC DISCIPLINE EVEN IF IT GENERATES LITTLE KNOWLEDGE AND AIMS AT NONE

“On reflection, I think my interlocutor had a point,” he said. “Even if he articulated it more scathingly than necessary. It’s true that much of legal reasoning is indeterminate, in the sense that clear-cut answers are often

20. See CHRISTOPHER COLUMBUS LANGDELL, *A SELECTION OF CASES ON THE LAW OF CONTRACTS*, viii (2d ed. 1879) (discussing his approach). His innovation proved popular and drew a great deal of commentary. See, e.g., Walter Wheeler Cook, *Hohfeld’s Contributions to the Science of Law*, 28 YALE L.J. 721 (1919) (discussing the influence of Langdell’s school of thought); HANS KELSEN, *PURE THEORY OF LAW* (Max Knight trans., 1967); Richard Delgado, *Rodrigo’s Thirteenth Chronicle: Legal Formalism and Law’s Discontents*, 95 MICH. L. REV. 1105 (1997) [hereinafter *Thirteenth Chronicle*] (discussing Langdell’s contention that law is a science, and discussing legal realism’s answer). See generally Robert Gordon, *The Case for (and Against) Harvard*, 93 MICH. L. REV. 1231 (1995) (discussing Langdell’s tradition and influence at the school); Pierre Schlag, *My Dinner at Langdell’s*, 52 BUFF. L. REV. 851 (2004) (analyzing Langdell’s contention that law is a science, in light of the hypothetical responses of Oliver Wendell Holmes, Ronald Dworkin, Martha Minow, and a number of other prominent guests).

21. DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* (NYU Press 2004) (1983) (positing that the main goal of legal education is indoctrinating students in their future roles in corporate hierarchy). Sometimes called “the little red book,” the book was written in article form during Kennedy’s student days and was later self-published.

22. See generally Gordon, *supra* note 20.

23. Charles M. Yablon, *The Indeterminacy of the Law: Critical Legal Studies and the Problem of Legal Explanation*, 6 CARDOZO L. REV. 917 (1985).

24. Mark Tushnet, *Defending the Indeterminacy Thesis*, 16 QLR 339 (1996).

hard to find on a page somewhere. But my conference buddy seemed to be saying that the law doesn't even believe in looking for them, which makes it inherently anti-intellectual. With precedent and stare decisis among our main tools, he implied, we are among the least intellectually curious departments on campus.²⁵ No wonder many university provosts and presidents can't figure out why we are there at all."

Just then, a tall young woman with a young boy in tow entered the side of my screen, waved, and said, "Hello, you two. At it again, I see."²⁶

"As always," I said. "Good to see you. You, too, Gus. How was your trip?"

"Great," he said. "I actually met Greta.²⁷ She's awesome."

"Did we tell you he's considering going to law school?" his mother asked.

I said no but that I'd like to hear more about it sometime. With that, the two disappeared from the screen after a remark from Giannina about snack time and hoping to see us afterward.

"Where were we?" Rodrigo said. "Oh, yes--my hypothesis. Professor, you're my best mentor and foil. Little Gus likes you, too."

"Never mind the flattery. Please go on. If my department is about to be kicked off campus, I was about to retire anyway. Teresa has always loved travelling, as you know."²⁸

"Oh, no!" he said, looking stricken. "You need to stick around much longer. If my hypothesis is right, the world needs all our energies. Speaking of which, my argument proceeds in three parts. First, I show that

25. See Emily Bazelon, *We the People: The Originalists*, N.Y. TIMES, March 1, 2020, at 28-31 (noting that originalism aims to promote "Trump judges...[who] will 'interpret the plain meaning of our laws and our Constitution according to how they are written,'" and that "[e]arly on, the court recognized a principle called *stare decisis*...which allowed it to maintain the law's stability" and to appear to respect a court's past decisions). See also Eric Foner, *The Lost Promise of Reconstruction*, N.Y. TIMES (Sept. 7, 2019), <https://www.nytimes.com/2019/09/07/opinion/sunday/reconstruction-trump.html> (noting that early Supreme Court jurisprudence favored corporations and that recent decisions have generally embraced them, pronouncing them *stare decisis*).

26. See *Third Chronicle*, *supra* note 3, at 402, introducing Giannina, Rodrigo's wife and love of his life. A published playwright and legal-services lawyer, Giannina plays a role in several of the Chronicles. See, e.g., Richard Delgado, *Rodrigo's Riposte*, *The Mismatch Theory of Law School Admissions*, 57 SYR. L. REV. 637 (2007).

27. See Richard Delgado, *Children's Rights to a Livable Future*, 71 ALA. L. REV. 262, 263 (2019), introducing 13-year-old "Gus," Rodrigo and Giannina's son who is a budding environmental activist.

28. See Richard Delgado & Noah Markewich, *Rodrigo's Remonstrance--Love and Despair in an Age of Indifference: Should Humans Have Standing?*, 88 GEO. L.J. 263, 266-68 (2000), introducing Teresa, Giannina's widowed mother, and discussing the professor's and her late-life romance.

every branch of law has a recursive quality, some more than others.²⁹ Then, I illustrate recursiveness in ordinary life by means of two literary examples.³⁰ Then, I show how to break out of the stranglehold by means that should satisfy my conference questioner as well as the most demanding provost.³¹

“I’m all ears. What’s that recursive quality you mentioned?”

A. In Which Rodrigo Explains Law’s Recursive Quality, a Metaphor for Our Locked-in Times

“Let me explain by means of a metaphor. I’m sure you’ve noticed, Professor, how life these days under the lockdown has a certain sameness to it.”³²

“I have. Except for the people who are sick or in the hospital, or the medical staffs who work frantically to save them,³³ life is pretty predictable. Every day is pretty much like the previous one.³⁴ You get up, read the paper, give your class on the computer, take off your tie, and try to do a little work—on the computer, of course. Every two weeks, you put on a mask and go shopping for groceries.”³⁵

29. In this passage, Rodrigo provides the mandatory “map” of his argument.

30. See Part II.B. *infra*, discussing the film *Groundhog Day* and the novel, *One Hundred Years of Solitude* by Gabriel Garcia Márquez.

31. See note 67 *infra*, *passim*. For a defense of law teaching as an academic enterprise on a par with history, philosophy, nuclear physics and other traditional subjects, see Gene R. Shreve, *Is Law a Discipline? Forays into Academic Culture*, 68 CLEV. ST. L. REV. 217 (2020).

32. See Brody, *supra* note 7, discussing life in a locked-down world; Ross Douthat, *Waking Up in 2030*, N.Y. TIMES, June 28, 2020, at 9SR, noting that “there’s a feeling that the normal calendar has simply stopped . . . one homebound day passing much like another.” See also Sam Anderson, *The Truth About Cocoons*, N.Y. TIMES, May 24, 2020, at 12, noting that “The world can stop. This is not a small thing, nor is it easy . . . We find ourselves continually annoyed with our families. We sleep too long or not long enough. . . stop exercising and attend absurd virtual meetings meant to simulate work or school. We clap outside at 7 p.m.”

33. See Mike Baker, *A Rare Look Inside the Hospital Where 15 Coronavirus Patients Have Died*, N.Y. TIMES (Mar. 13, 2020), <https://www.nytimes.com/2020/03/11/us/corona-virus-kirkland-hospital-seattle.html> (discussing the stress-filled world of medical workers during the early days of the pandemic).

34. See Brody, *supra* note 7; Frank Bruni, *Quarantine Creates a Mental Fog as Our Days Become Borderless*, SEATTLE TIMES (May 28, 2020, 2:20 PM), <https://www.seattletimes.com/opinion/quarantine-creates-a-mental-fog-as-our-days-become-borderless/>.

35. See Olga Khazan, *Grocery Stores are the Coronavirus Tipping Point*, ATLANTIC (Mar. 24, 2020), <https://www.theatlantic.com/health/archive/2020/03/can-you-get-corona-virus-grocery-store/608659/> (discussing the perils of the bimonthly shopping trip).

“And I gather you see this as a metaphor for law school and why it isn’t an intellectual discipline, at least not on a par with English, physics, or anthropology?”

“I do, and I think the metaphor is equally apt for judging and law practice. They have always been that way—recursive and un-generative—but the coronavirus helps us notice this feature more clearly than ever. And the reason, as I mentioned, has to do with precedent and the role of authority.”³⁶

“Almost everything in life is recursive to some extent,” I quibbled. “Music, sports, buying a car, in which people usually buy the same model time after time when the old one starts wearing out.”³⁷

“I mean more than just force of habit,” he said. “Something deeper and harder to escape. A certain movie and a novel help capture the idea. Students in boxes on a computer screen do, too.”

B. *Groundhog Day* and *One Hundred Years of Solitude*

“Let me guess. The movie—is it *Groundhog Day*?”³⁸

“It is,” he said. “A number of columnists have been remarking how the film captures the quality of life today, with everyone staying at home much of the time and locked down.³⁹ Are you familiar with the movie, Professor?”

“I think I saw it when it first came out. But that was some time ago, was it not?”

“In 1993—I looked it up. Directed by Harold Ramis and starring Bill Murray and Andie MacDowell, the movie covers events in several days in the life of a jaded weather forecaster, his production manager, played by MacDowell, and his cameraman, played by Christopher Nash Elliott.”⁴⁰

“And the novel?”

“It’s *One Hundred Years of Solitude* by Gabriel Garcia Márquez.”⁴¹

“You’ve been reading him lately, I believe.”

36. See Tushnet, *supra* note 24 *passim*; Part II.B *infra*. See also Schlag, *supra* note 20, at 856-57, noting that very similar legal frames generate much the same result.

37. On preferences for familiar brands associated with different personality traits, see Wendy Wood & David T. Neal, *The Habitual Consumer*, 19 J. CONSUMER PSYCHOL. 579 (2009).

38. GROUNDHOG DAY (Columbia Pictures, 1993). Starring Bill Murray and Andie MacDowell, *Groundhog Day* aired to popular and critical acclaim and earned a prize for top screenplay.

39. See e.g., Brody, *supra* note 7; Douthat, *supra* note 32.

40. See GROUNDHOG DAY, *supra* note 38, noting that the film earned a prize for top script.

41. GABRIEL GARCIA MÁRQUEZ, ONE HUNDRED YEARS OF SOLITUDE (Gregory Rabassa trans. 2006) (1967) [hereinafter HUNDRED YEARS].

“Yes. Beginning with *Love in the Age of Cholera*,⁴² which you and I discussed recently.⁴³ It shows how a society—three lovers, actually—cope with life during a plague that is sweeping the country.”⁴⁴

“I remember our discussion. He’s a fine writer. But I’ve never read that other book.”

“You’d like it. It’s a great read and sort of an origin story of Latin American society.⁴⁵ Garcia Márquez uses Magic Realism and allegory to describe events going back to the founding of a frontier town in Colombia called Macondo.”⁴⁶

“That rings a bell. I gather you draw some lessons for life today in the age of the coronavirus?”

“Yes, and for the legal system, too. Both the movie and the book describe characters trapped in repetition and unable to break free.⁴⁷ Garcia Márquez shows how the founding patriarch of Macondo, a genius somewhat like our own founding fathers, established a little town on the banks of a river in the jungle.”⁴⁸

I nodded, and he continued: “Something of a planner, he laid out the streets so that each house was an equal distance from the river.⁴⁹ The novel traces events through seven generations, starting with his ten sons, all of whom bore the same name as the father.⁵⁰ Nothing unusual sets in aside

42. GABRIEL GARCIA MÁRQUEZ, *LOVE IN THE AGE OF CHOLERA* (Alfred A. Knopf trans. 1988) (1985) [hereinafter *AGE OF CHOLERA*].

43. See Richard Delgado & Jean Stefancic, *Love in the Time of Cholera*, 67 *UCLA L. REV. DISCOURSE* 176 (2020). See *supra* notes 1, 3, 26, 28 (listing some of the earlier chronicles).

44. MÁRQUEZ, *supra* note 42 (discussing life during this period).

45. See e.g., HUNDRED YEARS, *supra* note 41, at 1, 44, 421-22; DANIEL S. BURT, *THE NOVEL 100: A RANKING OF THE GREATEST NOVELS OF ALL TIME* 285 (2004).

46. See HUNDRED YEARS, *supra* note 41. Garcia Márquez tells how a group of intrepid settlers founded a town in the jungle of Colombia and quickly descended into complacency and routine, broken only by a few pointless wars (see, e.g., *id.* at 139), miracles and extraordinary events, like a stream of blood that turned right and left at the corner following an interfamilial murder (*id.* at 104, 135), all of which the inhabitants treat as matters of course (*id.* at 144 (describing a rain of yellow flowers that marked the death of the family’s patriarch); *id.* at 304 (describing a planned telepathic operation to treat a physical ailment)).

47. See also GROUNDHOG DAY, *supra* note 38; HUNDRED YEARS, *supra* note 41.

48. HUNDRED YEARS, *supra* note 41, at 1-2.

49. *Id.* at 9. He was also an amateur scientist who set up his own lab and was constantly tinkering. *Id.* at 7, passim. Compare with *supra* notes 20-24 and accompanying text (noting that Christopher Columbus Langdell also believed himself a scientist engaged in teaching his law students a form of scientific inquiry).

50. In fact, all the males in the town are named either Arcadio or Aureliano. See HUNDRED YEARS, *supra* note 41 at frontispiece (The 17 sons of Colonel Aureliano Buendia all have the same name.). See also *id.* at 186-88 (The two sides of the family, the Aurelianos and the Arcadios, are born with opposite personalities, each side identical—impulsive or withdrawn.); *id.* at 189 (Hereditary memory passes from generation to generation.); *id.* at

from much breeding and interbreeding, all of which is broken only by the occasional arrival of a band of gypsies, who introduce marvels such as magnets and ice.⁵¹ Later, a few revolutions break out, as is common in Latin America.”⁵²

“Exactly 32, someone told me.⁵³ Sometimes the liberals win, sometimes the conservatives. Nothing much seems to change, except the uniforms of the firing squads.⁵⁴ I gather that the sons marry and have families of their own?”

“They do. But the supply of women is so small that many of them end up marrying close relatives, which leads to a lot of trouble.”⁵⁵

“I can imagine. All the intermarriage seems to be a play on sameness and repetition.”

“Exactly. One of the sons even marries his sister.⁵⁶ And it’s not a mistake, as in Freud or Shakespeare. Another has seventeen children by seventeen different wives. Everything recurs, like the jungle. But the townspeople don’t notice the pattern because of a plague of insomnia--sleeping sickness, but in reverse--that sweeps over the village blotting out memories.”

After a pause to sip from a thermos that he fished out from his backpack, he continued: “In one of the early chapters, you learn about some of the consequences of interbreeding, including a few unfortunate infants who are born with a pig’s tail.⁵⁷ One of the sons, José, more perceptive than most, comes to believe that the same day is repeating over and over. He becomes insane and dies twenty years later.⁵⁸ Ursula, a practical, intelligent woman who is the wife of the founder, comes to believe the same thing, but goes on about her business and does not go

192-93, 258 (Women bed one brother one night, and his twin the next one, because of their very similar looks.); *id.* at 221 (One of the sons, Col. Aureliano Buendia has 17 sons, but loses track of them until they all show up, many years later, at a jubilee in his honor.).

51. *Id.* at 1-2, 10, 16-18, 31 (discussing how the gypsies brought magnets, telescopes, glass balls, ice, flying carpets, and many other marvels).

52. *Id.* at 104-06 (noting the many revolutions).

53. *Id.* at 106, 174.

54. *Id.* at 98-102, 104, 106, 108, 124 (discussing the cycle of victory, loss, and retribution—“merciless punishment for those who had started the rebellion”—for fighting for the wrong side, or speaking ill of ‘this liberal paradise’). *See also id.* at 132-33 (noting that new wars start almost as soon as another was over).

55. *Id.* at 56, 96, 152-53 (discussing romances and marriages among close family members).

56. *Id.* at 96.

57. *Id.* at 20-21, 376, 417 (discussing children born with the unfortunate condition).

58. *Id.* at 80-81 (discussing the case of Jose Arcadio Buendia who believes he is living the same day over and over). *See also id.*, ch. III (describing his decline into insanity and later death).

insane.⁵⁹ Macondo seems frozen, although to the occupants of the town life seems interesting with plenty of novelty. One of them makes tiny gold figures of fish all day long.⁶⁰ Another makes figures out of silver.⁶¹ This strikes everyone as radically different. At one point, a detachment set out to look for a path to the outside world. They get mired in a marsh and give up after a few days.⁶²

“What about all those revolutions?” I asked.

“They were unceasing and gave the men something to do. But all the shooting and marching became so repetitious that even the colonels and generals become bored.”⁶³

“Americans make an appearance at one point, I think.”

“Yes, as villains, but the novel was very popular in the United States, anyway. It even won a Nobel Prize for the author.”⁶⁴

“Remind me what the Yanks did.”

“García Márquez, who was a liberal and friend of Fidel Castro,⁶⁵ describes how the American Fruit Company⁶⁶ establishes a banana plantation on the outskirts of town. Many of the inhabitants find jobs there. But when they protest working conditions, the corporation dispatches guards to mow them down by machine-gun fire in the city square—3,000 of them.⁶⁷ Another metaphor, I’m afraid.”

“Not to mention an object lesson about the risk of challenging the routine,” I said, giving my young protégé a meaningful look. “But one also has to be careful that the new reality represents an improvement over the

59. *Id.* at 9, 13 (discussing how she goes on about her business, avoiding the “flightiness” of the men).

60. *Id.* at 66, 117, 119, 140, 175, 196, 249, 263, 272 (discussing the obsession of one son—Colonel Aureliano Buendía—with making tiny gold fish).

61. *Id.* at 51, 56, 74, 78 (discussing a second family member with a penchant for silver work).

62. *Id.* at 11-13 (discussing how the expedition became mired in a marsh and gave up). Much later, his practical wife Ursula discovers the way out. *Id.* at 37. The town subsequently enjoyed commercial relations with the outside world and better times. *Id.* at 40-41. See also *id.* at 108-09 (discussing Ursula’s practical streak).

63. *Id.* at 165-71. “[N]ormality was precisely the most fearful part of that infinite war: nothing ever happened.” *Id.* at 171.

64. See *The Nobel Prize in Literature 1982*, THE NOBEL FOUND., <https://www.nobelprize.org/prizes/literature/1982/summary/> (last visited Jan. 4, 2020) (discussing the author’s award).

65. See Interview by Mariella Frostrup, BBC News with Joseph Knox, Writer (Mar. 18, 2018), at <https://www.bbc.co.uk/programmes/p061c9dh/p061c7kv>.

66. A thinly veiled reference to United Fruit Company, which notoriously manipulated Latin American politics to their favor and profit.

67. See HUNDRED YEARS, *supra* note 41, at 309-13, 354, 369. After this incident, it rains for nearly five years. *Id.* at 316-36. See generally, *id.* at chs. 14-15.

old one. The main character in *Groundhog Day*, if I remember, had to make many tries before he got things right.”⁶⁸

“That’s right. And when he does, the days stop being the same and he wins the heart of the pretty girl.⁶⁹ Macondo never escapes. After the mercenaries massacre the workers, the town stagnates.⁷⁰ The novel ends with many of the inhabitants dying or moving out. Prostitutes move in. The place turns into a ghost town.”⁷¹

“And so Márquez’s novel got you thinking about law and its place on a university campus? Is your theory that we’re like Macondo, trapped in our own mindset and disciplinary rituals?⁷² Or like the banana plantation, shooting down our students, one after another, if they give a wrong answer in class?⁷³ Or the weather reporter trapped in a time warp, doing the same thing, day after day.”⁷⁴

68. He first tried seducing the beautiful production manager by preening and self-importance. Then, when that failed, he pretended to be indifferent to her. Later, he tried honesty and sincere admiration, which worked much better. In *Time of Cholera*, the lovelorn Florentino first tried hundreds of flowery letters. When these drew fewer and fewer responses, he resolved to become rich and powerful and thereby worthy of her. See AGE OF CHOLERA, *supra* note 42 (discussing some of his strategies to gain her favor).

69. See GROUNDHOG DAY, *supra* note 38.

70. See AGE OF CHOLERA, *supra* note 42, at 345, 351 (noting that the tale ends with the town on hard times).

71. *Id.* at 345, 351, 390, 394, 409, 419. See generally chs. 14-15 (noting that Macondo practically turned into a ghost town).

72. That is, a town doomed by too little contact with the outside world and leaders who are complacent and self-satisfied. See HUNDRED YEARS, *supra* note 41, at chs. 14-15 (describing Ursula’s growing conviction that the town is repeating itself). *Id.* at 252, 303, chs. 12-13 (noting that the town seemed bound in a web of the past).

73. As many of us do in our classes: “Mr. Jones, how can you square the case of A with the case of B, which we covered yesterday?” “Hmmm. Ms. Smith, what do you think of Jones’ answer?” See SCOTT TUROW, ONE L: THE TURBULENT TRUE STORY OF A FIRST YEAR AT HARVARD LAW SCHOOL (Penguin Books 2010) (1977) (discussing Professor Kingsfield, a classic practitioner of the Socratic Method).

74. See GROUNDHOG DAY, *supra* note 38, describing a weather reporter at a Pittsburgh TV station who is assigned to cover the annual celebration marking Groundhog Day, in Punxsutawney, PA. Groundhog Day is an annual ceremony centering on the release of a pet groundhog, named Phil, from his cage to see whether he sees his shadow and goes back to his cage or not. Supposedly, his behavior predicts whether the arrival of spring is imminent or still far off.

III. IN WHICH RODRIGO CONSIDERS WHETHER LAW IS A SCIENCE AND BELONGS ON A UNIVERSITY CAMPUS

“It did--get me to thinking, I mean. For one thing, I wondered why law almost never advances, at least compared to, say, physics, economics, or chemistry.”⁷⁵

“And did you come up with a reason?”

“I think it has to do with the role of precedent⁷⁶ and *stare decisis*.⁷⁷ That’s what I mumbled to my conference interlocutor, but we didn’t have time to discuss it at any length. He just said something mildly sardonic and said he had to go. I think he was a T.A. and had to meet his class, online of course.”

“Out of curiosity, what was his parting sarcasm?”

“Oh, that law seemed to be the only discipline where saying something that somebody else had said before is considered good, not bad.”

“And saying something original is bad. Especially if you are a judge, in which case it is likely to get you reversed.”⁷⁸

“Right. The appellate court will call your opinion ‘unprecedented.’ And if you are a legal scholar, your editor is apt to pester you to find support for everything you say.⁷⁹ No affirmative declaration of fact or law without a footnote at the end of the sentence.”⁸⁰

“And the footnote has to be to a statement that says the exact same thing, as nearly as possible.”

“Otherwise, you have to use the dreaded ‘*cf*’ signal.”⁸¹

75. Consider, for example, Georges LeMaitre’s Big Bang theory of the origin of the universe, Albert Einstein’s theory of relativity, Neils Bohr’s discovery of the structure of the atom, Ronald Coase’s studies of the behavior of markets, or Charles Darwin’s theory of human evolution.

76. On the role of precedent, see Bazelon, *supra* note 25, and accompanying text.

77. Latin for “To stand by things decided,” meaning that the present case results from a former holding or rule of law. *Stare Decisis*, Black’s Law Dictionary (11th ed. 2019).

78. See, e.g., *Washington v. Davis*, 426 U.S. 229, 230-31 (1976) (reversing a lower court ruling that followed *Griggs v. Duke Power* on the ground that the lower court misread precedent concerning the constitutionality of employment tests that had a racially disproportionate impact).

79. See, e.g., *Student Writing: The Writing Process*, NYU LAW, <https://www.law.nyu.edu/students/studentwriting/writingprocess> (last visited Jan. 5, 2020) (discussing how to write a student note). The same rules apply to articles, except with slightly more latitude for prominent professors writing about conventional subjects such as federalism or judicial review.

80. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 1.1(a) (Columbia L. Rev. Ass’n et al. eds., 21st ed. 2020) [hereinafter BLUEBOOK 21st].

81. See *id.* at R. 1.2.

“Which, in turn, requires the even more dreaded parenthetical, explaining why your authority, even if it does not say exactly the same thing you said, at least comes close enough.”⁸²

“Looked at that way,” I said. “Legal scholarship actually does make a fetish of being uncreative. ‘Unprecedented’ is a term of opprobrium, not admiration.⁸³ In physics, it’s a great compliment to have other people speak of you as the author of paradigm-shifting work⁸⁴ or the proponent of audacious new theories.⁸⁵ In law, it’s risky to even try.”⁸⁶

“So, for someone like your conference friend, law doesn’t really belong on a university campus. Maybe at a community college, along with lines of work like riveting and automobile mechanics, that aim to keep everything running smoothly, without too many accidents or breakdowns.”⁸⁷

“With little change from day to day. Like *Groundhog Day*.”

“A recent article on rebellious lawyering points out that legal systems are by nature conservative.⁸⁸ Precedent, professional training, and rules of

82. *Id.* See also Schlag, *supra* note 20, at 856-57, 860.

83. See, e.g., Alan M. Dershowitz, *Dubious Arguments for Curbing the Free Speech of Nazis*, WASH. POST (Feb. 1, 2018, 12:00PM), https://www.washingtonpost.com/outlook/dubious-arguments-for-curbing-the-free-speech-of-nazis/2018/01/31/495cd256-fc96-11e7-8f66-2df0b94bb98a_story.html (book review noting that two authors’ arguments for hate-speech regulation are unprecedented).

84. See *Press Release: The Nobel Prize in Physics 2019*, THE NOBEL FOUND. (Oct. 8, 2019), <https://www.nobelprize.org/prizes/physics/2019/press-release/> [hereinafter *Press Release*] (explaining the award to James Peebles for contributions including the Big Bang theory of the origin of the universe and other discoveries that transformed the field and altered the paradigm of knowledge in cosmology and astronomy). See also Nigel Holmes, *What Is the Higgs?* N.Y. TIMES (Oct. 8, 2013), <https://archive.nytimes.com/www.nytimes.com/interactive/2013/10/08/science/the-higgs-boson.html#?g=true>; Dennis Overbye, *For Nobel, They Can Thank the ‘God Particle’*, N.Y. TIMES (Oct. 8, 2013), <https://www.nytimes.com/2013/10/09/science/englert-and-higgs-win-nobel-physics-prize.html> (noting the discovery of the “God particle” explaining the origin and predicting the death of the entire universe).

85. *Press Release*, *supra* note 84 (noting that Peebles’ lifetime of work “challenge[s] our preconceived ideas about planetary systems and [is] forcing scientists to revise their theories of the physical processes behind the origins of planets”).

86. As he spoke, it occurred to me that the worst opinions (e.g., *Plessy v. Ferguson*, 163 U.S. 537 (1896); *Korematsu v. United States*, 323 U.S. 214 (1944)) probably have the largest number of footnotes, perhaps because the judges writing them had bad consciences and unconsciously tried to show that they had no choice but to write as they did. Cases evincing moral breakthroughs, by contrast (e.g., *Brown v. Board of Educ. of Topeka*, 347 U.S. 483 (1954)), likely have a smaller number because the judge is appealing to an overarching moral principle, which he or she believes will strike most readers as self-evident.

87. See *Thirteenth Chronicle*, *supra* note 20, at 1145 (putting forward the riveter analogy).

88. Daniel Farbman, *Resistance Lawyering*, 107 CAL. L. REV. 1877, 1939 (2019).

ethics preserve stability and slow social change.⁸⁹ Maybe you have discovered why.”

“I think I saw that article. The author posits that legality inherently operates to preserve the status quo.⁹⁰ Lawyers know this, even if only subconsciously. As a result, ones who want to instigate change tend to explore remedies outside the legal system.⁹¹ He presents antislavery abolitionists as an example,⁹² but he suggests that immigration activists face the same predicament.⁹³ The law is almost entirely in their disfavor, so the mere act of entering a plea in court, or any other immigration tribunal, merely reinforces an unfair system.”⁹⁴

“A few cases, like *Brown v. Board of Education*,⁹⁵ usher in major changes and introduce new ways of looking at social practices, like pupil-assignment in public schools.⁹⁶ What do you think of that?”

“They do. But as Gerald Rosenberg⁹⁷ and Derrick Bell⁹⁸ point out, landmark cases like *Brown* are almost always cut back by administrative obstruction, foot-dragging, or delay.⁹⁹ Often, the families end up worse off, with their kids bused to hostile schools in white neighborhoods with few black teachers or principals.¹⁰⁰ Meanwhile, their antagonists, the conservatives, redouble their efforts, convinced that the Supreme Court has, once again, given away the store to those undeserving minorities.¹⁰¹ For their part, the liberals, believing that the problem is now solved, stop

89. *Id.* Physics, for example, has nothing like originalism, which exalts early writings, or precedent, which in turn favors earlier opinions.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 1950.

94. *Id.* at 1950-52.

95. 347 U.S. 483 (1954).

96. *Id.* at 494 (reasoning that forced segregation in school can damage the psyches of young black children in a manner unlikely to be undone).

97. GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (2d ed. 2008). See also Richard Delgado, *Rodrigo's Equation: Race, Capitalism, and the Search for Reform*, 49 WAKE FOREST L. REV. 87, 93 (2014) (positing that law cannot reform corporate capitalism because law and capitalism are the same thing, and a thing cannot reform itself).

98. See generally Derrick A. Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980) (positing that an interest-convergence analysis explains the landmark decision better than one based on neutral principles).

99. RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 4 (3d ed. 2001).

100. *Id.* at 29-30.

101. *Id.* at 30; Richard Delgado & Jean Stefancic, *The Social Construction of Brown v. Board of Education: Law Reform and The Reconstructive Paradox*, 36 WM. & MARY L. REV. 547, 567 (1995) (noting that conservatives often stiffen their resistance in the wake of groundbreaking liberal decisions).

paying attention and go on to a different problem, such as saving the whales.”¹⁰²

“I agree. But could not this be merely a form of high-paid insecurity on the lawyers’ part—wanting to base everything on known, familiar premises?”

“Maybe in some cases.¹⁰³ But I wonder if sometimes it is because the past is more appealing than we like to let on. Today, people can’t lead lives of luxury on the backs of slaves, but they can have regimes reminiscent of those in Jim Crow times or the ultra-conservative fifties merely by going back a few decades.”¹⁰⁴

“To a time when women were compliant housewives, Mexicans mowed the lawn, and blacks held the door open when you entered the restaurant.”¹⁰⁵

“These practices are coming under question, of course.¹⁰⁶ But if you can find a thirty- or fifty-year old decision upholding them, then you can shrug and say that nothing can be done--it’s the law. If First Amendment law says that hate speech is OK, then we have to defend Nazis.¹⁰⁷ Stare decisis. That’s how law works. If you want to change things, go to the legislature.”

IV. IN WHICH RODRIGO OFFERS A FEW WAYS TO AVOID *GROUNDHOG-DAY* LAW

“So, what’s the solution, Rodrigo? If law is at risk of being stuck in the past, what can we do about it? Accept the limitations? Teach law as a form of welding or riveting, maybe in the community college downtown?¹⁰⁸ Teach it as a pallid branch of idealistic philosophy, content with sketching ideal futures and doing little to get us closer to them?”

102. DELGADO & STEFANCIC, *supra* note 99, at 30.

103. As he spoke, I recalled how many law schools like to hire Supreme Court clerks, if at all possible. Might it be because in doing so, they assure that the new hire will evince the “right attitude” toward the law—reverential, if at all possible?

104. *See, e.g., Bradwell v. Illinois*, 83 U.S. 130 (1872) (a time when women could not be lawyers); *Plessy v. Ferguson*, 163 U.S. 537 (1896) (a time when Black individuals could not ride in railroad cars with white individuals); *Terrace v. Thompson*, 263 U.S. 197 (1923) (a time when Japanese individuals could not own land for farming).

105. *See supra* notes 101-02 and accompanying text.

106. *See* LYNN HUNT, *INVENTING HUMAN RIGHTS: A HISTORY* (2007) (using literary examples to show how social change arrives).

107. *See* Dershowitz, *supra* note 83.

108. *See, e.g., Thirteenth Chronicle*, *supra* note 20, at 1105 (discussing how some consider law a species of riveting).

“I don’t think so. Doctrinal law and teaching might need to take a back-seat occasionally to law and society,¹⁰⁹ critical theory,¹¹⁰ radical sociology,¹¹¹ and other disciplines that dispassionately and rigorously examine how law actually works. We should stop pretending that all the laws line up in some transcendent fashion that is merely hard to discern—like the way out of Macondo--and search instead for broad patterns of power and influence that underlie current practice.¹¹² Then, if they seem unjust, we can try to change them.”

“Intellectual property law knows how to value change,” I observed. “There, we insist that the new invention, song, or product be novel—that is, unprecedented. The law of inventions considers it a mark against an invention if it turns out that an earlier one was the same. An inventor, unlike a lawyer writing a brief, gets no brownie points for citing the same thing. Imagine an inventor arguing to a patent examiner that her invention is the same as Smith’s, ten years ago, and therefore is an excellent invention deserving a patent.”

“It seems that the law knows how to reward novelty when it wants to.”

“Hi, we’re back,” said a youthful voice. Holding a peanut butter sandwich in one hand and a notebook in another, my 13-year-old godchild said. “Talk to me about law school. Okay?”

V. CONCLUSION

Young Gus and I talked for a few minutes about law as a career. I gave him the advice I usually give on such occasions: Take a broad selection of courses, including liberal arts and English. Make sure to take a lot of classes that require writing. Don’t get your heart set on a career like that of the flashy lawyer you saw in a tv show. As the time gets closer, talk to

109. See, e.g. the Law and Society Association. *Law and Society Association*, JSTOR, <https://www.jstor.org/publisher/lawsa> (last visited Jan. 17, 2021).

110. See DELGADO & STEFANCIC, *supra* note 99 (setting out the main tenets of this field). See also LEGAL INFO. INST., *Critical Legal Theory*, CORNELL L SCH., https://www.law.cornell.edu/wex/critical_legal_theory (noting that critical legal studies (CLS) considers that “the law supports a power dynamic which favors the historically privileged and disadvantages the historically underprivileged. CLS finds that the wealthy and the powerful use the law as an instrument for oppression in order to maintain their place in hierarchy. Many in the CLS movement want to overturn the hierarchical structures of modern society and they focus on the law as a tool in achieving this goal.”) See also, *About ClassCrits*, CLASSCRITS https://www.classcrits.org/content.aspx?page_id=22&club_id=459418&module_id=275558.

111. See, e.g., EDUARDO BONILLA SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA* (5th ed. 2018).

112. See, e.g., Kennedy, *supra* note 11.

your dad about the merits of different law schools, including ones overseas like the one he went to.

Later, it occurred to me that my advice to him had echoed, in many respects, the conversation I had just had with his father. Rodrigo and I had agreed that legal scholarship grounded in history and social science was apt to prove more productive than the strictly doctrinal kind. I had urged young Gus to pursue a broad, humanistic curriculum for much the same reason. Rodrigo and I had agreed that in literature as well as law, one should shun sameness and monotony; Gus needed little lecturing in that respect in light of his precocious travels and study at the foot of a teen-age prophet.¹¹³

And Rodrigo and I had agreed that law was in need of new ideas from disciplines such as critical theory and law and society. From what I knew of Gus's youthful interests, he was apt to grow up with an appetite for change and invention. I hoped I lived long enough to follow his path through teenage years and early adulthood.

I had similar thoughts toward his father, whose ideas on the legal profession struck me as astute (if a little dangerous), and I made a note to remind him to send me his paper on Gramsci and immigration law. And I very much looked forward to his critique of lawyers and scholars who spend their talents on repetitive exercises producing fewer and fewer gains.

After all, the Buendias in Garcia Márquez's novel admire themselves and each other so much that they keep repeating the same mistakes over and over. Yet the weather forecaster in *Groundhog Day* was able to break out of his rut through the power of love, coupled with some clear-eyed introspection.¹¹⁴ A federal judge recently called for his colleagues to cast off their disciplinary fetters in order to address the recurring problem of police violence.¹¹⁵ What prevents legal scholars, even less bound by tradition than judges, from doing much the same?

113. See Delgado, *supra* note 27, in which young Gus resolved to travel to Europe in hopes of meeting Greta Thunberg.

114. See *supra* note 38 and accompanying text, discussing *Groundhog Day*.

115. See James A. Wynn, Jr., *As A Judge, I Have to Follow the Supreme Court. It Should Fix This Mistake*, WASH. POST (June 12, 2020, 8:00 AM), https://www.washingtonpost.com/opinions/2020/06/12/judge-i-have-follow-supreme-court-it-should-fix-this-mistake/?utm_campaign=wp_week_in_ideas&utm_medium=email&utm_source=newsletter&wpisrc=nl_ideas (lamenting that the judiciary slavishly apply an excessively stringent test to cases of police misconduct). See also Ruth Marcus, *The Supreme Court Invented Qualified Immunity. Now a Judge's Blistering Opinion Shows Why It Must Go*, WASH. POST (Aug. 5, 2020, 6:22 PM), https://www.washingtonpost.com/opinions/the-supreme-court-invented-qualified-immunity-now-a-judges-blistering-opinion-shows-why-it-must-go/2020/08/05/f72778e6-d74a-11ea-930e-d88518c57dcc_story.html?utm_campaign=wp_post_most&utm_medium=email&utm_source=newsletter&wpisrc=nl_most.