

The Sincerest Form of Flattery?

By RICHARD DELGADO*

Introduction

THEY SAY THAT IMITATION is the sincerest form of flattery. Professor Dan Subotnik’s “Are Law Schools Racist?: A “Talk” with Richard Delgado”¹ adopts my signature dialogue format and even some of my characters to make a number of points of his own.

I ought to feel complimented, but I confess I am not. Professor Subotnik’s article is littered with missteps of fact and of taste. A crude imitation of the original, it fails to get basic points about the Rodrigo series right. And its chief criticism—that I use the dialogue format to escape responsibility for my views—is demonstrably false. I have made practically every point that appears in the Rodrigo chronicles (“Chronicles”) elsewhere in straight, expository prose bearing my name alone.

More importantly, I detect a drift to Subotnik’s slips, all of which lie in a certain direction. Far from mere oversights or glitches, they offer a telling glimpse into the author’s mindset. I discuss some of these errors in Part I. In Part II, I show what they mean and what they indicate about Subotnik’s covert intentions.

I. Errors and Mischaracterizations

As mentioned, Subotnik’s article is replete with errors, oversights, and mischaracterizations. For example, on the very first page Subotnik draws Riccardo (Rodrigo)² as lusting after a “statuesque Italian clerk”—someone he previously dated—at a Starbucks coffee-house.³ Rodrigo dislikes chain stores as much as he does generic

* University Professor of Law, Seattle University School of Law; J.D., University of California at Berkeley, 1974.

1. Dan Subotnik, *Are Law Schools Racist?: A “Talk” with Richard Delgado About Race and Racism*, 43 U.S.F. L. REV. 227 (2008).

2. Subotnik’s Riccardo is, of course, a thinly veiled copy of Rodrigo, the central figure in my series of that name.

3. *Id.* at 227.

coffee.⁴ But more revealing is Subotnik's revision of Rodrigo's character. As I have drawn him, Rodrigo is a happily married black man and father of a young child. In one of the earliest Chronicles, the reader meets Giannina, a published poet and playwright and the love of Rodrigo's life.⁵ Later, they marry, and Rodrigo remains true to her throughout their marriage.⁶ In describing him as a middle-aged lecher,⁷ Subotnik introduces an unattractive element with little foundation in the character as I drew him.

A harmless slip? Perhaps, but notice that in recasting Rodrigo's character, Subotnik draws on a common stereotype of black men lusting after white women, an image long used to rally sentiment against men of color and to keep them in their place.⁸ Readers might be tempted to let this pass if Subotnik had created his own character, perhaps as a vehicle for discussing interracial sex. Instead, Subotnik superimposes gratuitously unappealing traits on an existing character while making unrelated points about the Duke rape case⁹ and pushy black people¹⁰ to boost his own book.¹¹ He also uses Riccardo to respond to my views on affirmative action.¹² In short, the revision seems to lack much of a point other than to make Riccardo conform to common beliefs of how minority men think and behave in the presence of white women.

Perhaps one tasteless gaffe is excusable. A paragraph later, however, Subotnik's Riccardo spies his colleague, Bianco (Laz),¹³ seated and reading at a nearby table in the coffeehouse and greets him with the street expression: "What's up?"¹⁴ Rodrigo's fans surely recognize

4. See, e.g., Richard Delgado, *Rodrigo's Second Chronicle: The Economics and Politics of Race*, 91 MICH. L. REV. 1183, 1184 (1993) (noting Rodrigo's love of fine espresso).

5. See, e.g., Richard Delgado, *Rodrigo's Sixth Chronicle: Intersections, Essences, and the Dilemma of Social Reforms*, 68 N.Y.U. L. REV. 639, 640 n.3 (1993); Richard Delgado, *Rodrigo's Third Chronicle: Care, Competition, and the Redemptive Tragedy of Race*, 81 CAL. L. REV. 387, 402 (1993).

6. See, e.g., Richard Delgado, *Rodrigo's Thirteenth Chronicle: Legal Formalism and Law's Discontents*, 95 MICH. L. REV. 1105, 1106 n.3, 1108 (1997) [hereinafter Delgado, *Thirteenth Chronicle*].

7. See Subotnik, *supra* note 1, at 227 (describing the clerk as someone he dated so recently that "the wound of loss was still raw").

8. On this and other stereotypes of black men, see 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, 1262-67 (1992).

9. Subotnik, *supra* note 1, at 229.

10. *Id.* at 229-233.

11. *Id.* at 228, 228 n.6, 241, 241 n.52.

12. *Id.* at 234-239.

13. Bianco is, of course, a thinly veiled take-off of my character Laz.

14. *Id.* at 228.

the second character. Rodrigo's conservative colleague Laz appears as a good-natured foil in many of the Chronicles, where he challenges the young firebrand to defend his ideas and keeps Rodrigo on his toes.¹⁵ Readers should also know that neither of the two highly educated young law professors is likely to use street slang, especially in a public place.

A small point? Maybe. But consider how Riccardo not only greets his friend with a meaningless question, but also interrupts him in the middle of his book.¹⁶ Would not an educated man familiar with academic convention be more likely to greet his colleague with, "Hi, Bianco, got a minute?" Or, "Hi, Bianco, want company?" Or, "Hi, Bianco, are you busy?" By having Riccardo burst in on his colleague's thoughts as he does, Subotnik presents a man of color who is, at best inconsiderate, and, at worst, uncouth.¹⁷

Consider, too, how a few lines later Riccardo confides to Bianco his true feelings about "the professor." The professor, who is absent from Subotnik's dialogue and thus in no position to defend himself, is Rodrigo's senior colleague, mentor, friend, and the principal narrator of the Rodrigo chronicles. Riccardo tells Bianco he considers the professor something of a fool with whom he plays along ("a harmless little game"¹⁸) for amusement. Riccardo then adds that the professor, who is nearing retirement age, is "no kid anymore," and, by implication, may be losing his faculties.¹⁹ This unflattering representation of the relationship between Rodrigo and the professor is far from the one I drew. Might it have escaped Subotnik that minority men can have caring relationships based on mutual respect? By giving Riccardo a cynical attitude toward his mentor, Subotnik, wittingly or not, gives us a glimpse into his own mindset.

A little later, Riccardo, by now deep in conversation with Bianco, notices what time it is and decides to be late to a class he is scheduled to teach. ("[T]he students will just have to wait."²⁰) Ultimately, he decides to skip the class entirely.²¹ How many professors would cancel a

15. See Richard Delgado, *Rodrigo's Tenth Chronicle: Merit and Affirmative Action*, 83 GEO. L.J. 1711, 1713–14 (1995) [hereinafter Delgado, *Tenth Chronicle*].

16. Subotnik, *supra* note 1, at 227–228 ("[Riccardo] . . . spied his old classmate, Bianco, . . . also a law professor, sitting in the corner absorbed in his reading.")

17. *Id.* at 228 (noting that Riccardo "plopped down [without being invited] opposite his pal").

18. *Id.* at 229.

19. *Id.* at 235.

20. *Id.* at 234.

21. See *id.* at 246.

class for such a flimsy reason? Not many at the school where I teach, especially not professors of color, if only out of fear of the terrible teaching evaluations that would follow at the end of the semester.

Subotnik also writes that Riccardo and Bianco were classmates in law school.²² They are, in fact, about the same age and good friends. But Rodrigo is a graduate of an Italian law school ("the oldest law school in the world"²³), who came to the United States to obtain an LL.M. degree in preparation for a career in teaching law.²⁴ He and Laz, thus, are unlikely to have been classmates, as any reader of the *Chronicles* would know. Rodrigo's international origins account for his cosmopolitan outlook and his ability to look at United States culture through a different lens. Subotnik's gaffe thus erases an essential feature of Rodrigo's persona.

What does it say about Professor Subotnik that each of these departures serves only to paint a man of color in unflattering terms? Notice, for example, that Subotnik does not mistakenly describe Riccardo or the professor as a member of Mensa, a former college swimming star, a Rhodes Scholar, or a Pulitzer Prize nominee. Instead, Riccardo comes across as a slang-speaking opportunist who interrupts his colleague in the middle of his reading, badmouths his own mentor, and cannot be bothered to show up for a scheduled class.

"Of what use are dialogue and free speech if truth-telling inclinations are stifled?" Subotnik asks.²⁵ He would do well to ask himself this question. Subotnik could have avoided raising questions of accuracy, good taste, and fair comment by creating his own characters and giving them their own names, histories, and qualities. But that would have defeated his purpose. As I show below, he needed to impose on my characters the off-putting traits he attributes to them.

II. *Hiding Behind Rodrigo?*

A. Explaining Subotnik's Missteps: A Necessary Re-characterization

One possibility for the numerous false notes in Subotnik's redrawing of Rodrigo, as suggested earlier, is that Subotnik is uncomfortable with the way I have drawn Rodrigo and his mentor, the professor. Perhaps they are too intellectual for him, too well versed in

22. *Id.* at 227.

23. Delgado, *Rodrigo's Chronicle*, 101 *YALE L.J.* 1357, 1359 (1992); Delgado, *Tenth Chronicle*, *supra* note 15, at 1720.

24. See Delgado, *Rodrigo's Chronicle*, *supra* note 23, at 1359.

25. Subotnik, *supra* note 1, at 230.

world literature and history. Subotnik needed characters who were earthier, not as intellectually sharp, and more interested in white women than ideas. As a result, he created them more in line with familiar cultural stereotypes.

Subotnik also needed a radically different Rodrigo and an ad-dled, over-the-hill mentor in order to make the points he wanted to make. Rodrigo, an educated man of humane social instincts, simply would not exhibit, for example, the cavalier attitude toward affirmative action that Subotnik attributes to him.²⁶ For this, Subotnik needed a coarser, jive-talking black man, superficially cocky but quick to concede to the better prepared, more facile Bianco. So he created such a character.

In short, without Subotnik's radical revision, his anti-minority syllogism simply would not "go through." Subotnik needed an intellectually flabby foil for Bianco's neoconservative ideas. Subotnik accordingly constructs Rodrigo as a stereotypical black man: raunchy, boisterous, and cynical about his friends and social ideals. Subotnik's Riccardo is sympathetic toward privileged white lacrosse players who hire black strippers for entertainment and is indifferent toward affirmative action.²⁷ Both Riccardo and Bianco, then, are proxies for a type of "tough love" neoconservative who takes seriously the proposition that it is white males who are getting pushed around. Riccardo, in short, is Subotnik in drag.

B. Avoiding Responsibility

Subotnik's next major point is that I employ the chronicle format to avoid taking responsibility for my views.²⁸ Instead of asserting my views forthrightly, Subotnik argues I deliver them from the mouth of a fictional character. I thus get to scandalize my readers while placing myself beyond criticism.

This charge is without foundation. From Plato on down, authors have used dialogues to analyze ideas from two or more directions and to make points about the human condition. If Subotnik believes that dialogues are a way of avoiding responsibility, Socrates or another well-known writer would have been a better target. In reality, Subotnik disagrees with the views my characters and I espouse, rather than with

26. *Id.* at 234 (discussing the mismatch critique of affirmative action).

27. *Id.* at 229 (depicting Riccardo's feeble resistance to Bianco's attack on Duke University for not coming to the aid of the athletes).

28. *Id.* at 250-251.

my choice of format. As such, he ought to address those views and not pretend that he merely objects to my vehicle for presenting them.

From this perspective, the accusation that I make statements out of the mouths of fictional characters in order to avoid responsibility is implausible. Even a brief examination of my publishing record will show that I have made practically every statement that Rodrigo and his alter ego make elsewhere, in straight, expository prose.²⁹ In fact, well over half of my writing does not take dialogue or narrative form, but is utterly conventional, consisting of standard law review articles (like this one) parsing cases, arguments, and policies.

In fact, it is Subotnik who employs the dialogue format to advance his own views. His minority characters strut and pontificate just as conservative talk show hosts portray them as doing. Subotnik first creates an unattractive, impulsive character and then has the character go through a conversation illustrating many of the evils that right-wing demagogues attribute to black and brown people.

So, who is really the one hiding behind fictional characters?

Conclusion

Professor Subotnik takes me to task for hiding behind my characters, which I do not. He misappropriates my chosen format and characters, while recasting two of the latter in a fashion rife with stereotypes. Subotnik needed to do this because only a crude, intellectually superficial character would speak and act that way. Subotnik's arguments, like those against affirmative action for example, simply would not succeed if a sophisticated, well-prepared African American or Latino were on hand. All this raises serious questions about the ethics of fiction writing and about Subotnik's approach to argument in his initial foray into that genre. Perhaps next time Professor Subotnik will treat another's work product with a bit more accuracy and care.

29. See, e.g., Richard Delgado, *Ten Arguments Against Affirmative Action: How Valid?*, 50 ALA. L. REV. 135 (1998) (noting my views on affirmative action in standard expository prose); Delgado, *Tenth Chronicle*, *supra* note 15 (noting my views in dialogue form).