

Cat, Cause, and Kant

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Professor of Law, University of Massachusetts School of Law, and co-adviser to the UMass Law Review. I am grateful to my wife, attorney Misty Peltz-Steele, whose research and interest vitally supported this short work; to Kurt Hagstrom, Daryl Lovell, and Jamie Newlon of the UMass Law Review for their substantial commitment of research and editing support; and to the Editorial Board, which flattered me with the invitation to contribute this item. I hope I have provided an introduction worthy of a publication I fully expect will outlive us and more importantly will contribute constructively time and again to the rule of law in and beyond the Commonwealth. Finally, a further word of acknowledgment is essential: Attorney and Law Review co-adviser Thomas Cleary, the 2007 valedictorian of the Southern New England School of Law, founded this law review as the *Southern New England Roundtable Symposium Law Journal* in 2005 and served as its first Editor-in-Chief. See generally Thomas J. Cleary, *Trends and Issues in Terrorism and the Law: Foreword*, 5 U. MASS. ROUNDTABLE SYMP. L.J. 1 (2010). Tom has for these seven years poured his very being into this enterprise. As father, heart, and soul of the Law Review, he has shepherded this organization and publication to this auspicious point, the debut of the first general-interest issue. Everyone associated with the Law Review and the Law School will be forever in his debt.

“Imagine there’s a cat lying on the floor in the living room. A ball comes rolling into the room. What does the cat do?”

“I’ve tried that lots of times. The cat will run after the ball.”

“All right. Now imagine that you were sitting in that same room. If you suddenly see a ball come rolling in, would you also start running after it?”

“First, I would turn around to see where the ball came from.”

“Yes, because you are a human being, you will inevitably look for the cause of every event, because the law of causality is part of your makeup.”

“So Kant says.”¹

I. PITTING CAT AGAINST DOG

In 2011 Chief Justice John Roberts mocked law review literature, characterizing the typical article in the contemporary review as an analysis of “the influence of Immanuel Kant on evidentiary approaches in 18th Century Bulgaria, or something.”² He went for an easy laugh line, which paid off.³ Of course, the Chief was not speaking literally. But he was meaning to make a serious point about disconnect between the legal academy, as expressed through law reviews, and the legal practice, as experienced by lawyers and judges.⁴ The Chief meant to pick a fight.

The first volley came back in a since widely cited blog posting from Professor Sherrilyn Ifill.⁵ She did not have to look hard for

¹ JOSTEIN GAARDER, *SOPHIE’S WORLD* 324 (Paulette Miller trans., Farrar, Straus, Giroux, 2007).

² John Roberts, Chief Justice, Supreme Court of the United States, Remarks at the Annual Fourth Circuit Court of Appeals Judicial Conference 28:45–32:05 (June 25, 2011), available at <http://www.c-span.org/Events/Annual-Fourth-Circuit-Court-of-Appeals-Conference/10737422476-1/>.

³ *Id.*

⁴ Lee Petherbridge & David L. Schwartz, *An Empirical Assessment of the Supreme Court’s Use of Legal Scholarship*, 106 NW. U. L. REV. 995, 998 (2012).

⁵ Danielle Cintron, *Sherrilyn Ifill on What the Chief Justice Should Read on Summer Vacation*, CONCURRING OPINIONS (July 1, 2011, 4:06 PM) [hereinafter *Ifill*], <http://www.concurringopinions.com/archives/2011/07/sherrilyn-ifill-on-what-the-chief-justice-should-read-on-summer-vacation.html>.

examples of good scholarship with practical import, such as a 2007 article on the Fourth Amendment implications of GPS tracking⁶: highly relevant to and prescient of the Supreme Court's decision in the 2012 *Jones* GPS tracking case.⁷ To Ifill, Roberts' point was neither funny nor true.⁸

The battle between the Chief Justice and Professor Ifill reflects an old but persistent conflict. Richard Brust, Assistant Managing Editor of the *ABA Journal*, filled in the history ably in an article for that magazine.⁹ Roberts' position can be traced in recent times to a 1992 missive by D.C. Circuit Judge Harry T. Edwards who, to much subsequent acclaim, lambasted "ivory-tower elitism."¹⁰ But Brust, moreover, traced the quarrel over law review efficacy "practically to the origin of the American law journal,"¹¹ marking its first citation in the high Court in 1897,¹² its subsequent proliferation, and its first notorious torment by a ruthless critic in 1936.¹³ So Roberts and Ifill demonstrate the journalistic maxim that nothing happens for the first time.¹⁴

This latest round of hostilities has been complemented by empirical research published in 2011 and 2012 by Professors Lee Petherbridge and David L. Schwartz.¹⁵ As summarized by Brust, the

⁶ *Id.* (citing Renee Hutchins, *Tied Up in Knots: GPS Technology and the Fourth Amendment*, 419 *UCLA L. REV.* 409 (2007)).

⁷ *See* *United States v. Jones*, 132 S. Ct. 945 (2012).

⁸ *Ifill*, *supra* note 5.

⁹ *See* Richard Brust, *The High Bench vs. the Ivory Tower*, *A.B.A. J.* (Feb. 1, 2012), http://www.abajournal.com/magazine/article/the_high_bench_vs_the_ivory_tower/.

¹⁰ *Id.* (quoting Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 *MICH. L. REV.* 34 (1992)).

¹¹ *Id.*

¹² *Id.* (citing *United States v. Trans-Mo. Freight Ass'n*, 166 U.S. 290, 350 n.1 (1897) (White, J., dissenting) (citing Amasa M. Eaton, *On Contracts in Restraint*, 4 *HARV. L. REV.* 128 (1890))).

¹³ *Id.* (quoting Fred Rodell, *Goodbye to Law Reviews*, 23 *VA. L. REV.* 38 (1937) ("The average law review writer is peculiarly able to say nothing with an air of great importance.")).

¹⁴ For my own first exposure to this maxim, I must credit Professors Hampden Smith, ret., and Brian Richardson, School of Journalism at Washington and Lee University.

¹⁵ Brust, *supra* note 9 (citing David L. Schwartz & Lee Petherbridge, *An Empirical Assessment of the Supreme Court's Use of Legal Scholarship*, 106 *Nw. U. L. REV.* 995 (2012); David L. Schwartz & Lee Petherbridge, *The Use of Legal*

pair's studies found increases in the use of legal scholarship by the federal courts with a thirty-two percent increase in the Supreme Court from 1949 to 2009.¹⁶ Especially interesting was a greater incidence of scholarly invocation amid divided courts with dissenting opinions.¹⁷ And, as observers have been keen to point out since the Roberts comment, the Chief himself is no stranger to reliance on scholarship when it suits his interests¹⁸—for example, his controversial conclusion that lay at the heart of the Court's 2012 healthcare decision in *NFIB v. Sebelius* was one espoused earlier by professors Robert Cooter and Neil Siegel.¹⁹

Yet there remains something appealing about Chief Justice Roberts' comment, something that resonates in our present collective perception of the law and legal education. Were Roberts' claim simply a fabrication from whole cloth, it would not stick in the craw so. In fact, conditions were ripe for Roberts to re-ignite the old conflict.²⁰ Whether or not what he said was an accurate portrayal of law review literature, his jab reflected a deeper anxiety that has been aggravated amid the ongoing economic crisis.²¹

Just five months after Roberts' 2011 comment, David Segal again rattled legal academics and refueled the blogosphere with an article in *The New York Times* that harshly criticized law schools for failing to teach practice skills.²² And therein lay the true contemporary

Scholarship by the Federal Courts of Appeals: An Empirical Study, 96 CORNELL L. REV. 1345 (2011).

¹⁶ *Id.* (citing Petherbridge & Schwartz, *supra* note 15).

¹⁷ *Id.* (citing Petherbridge & Schwartz, *supra* note 15).

¹⁸ See e.g., Orin Kerr, *Chief Justice Roberts Cites A Law Review Article (Not Written By Henry Friendly)*, THE VOLOKH CONSPIRACY (June 25, 2012, 3:14 PM), <http://www.volokh.com/2012/06/25/chief-justice-roberts-cites-a-law-review-article-not-written-by-henry-friendly/>.

¹⁹ Andrew Cohen, *Professors Provide Roadmap for Supreme Court Healthcare Ruling*, (July 18, 2012), <http://www.law.berkeley.edu/13778.htm>. (citing Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 567 U.S. __ (2012)).

²⁰ See Petherbridge & Schwartz, *supra* note 4.

²¹ See JULIE MARETTA MORGAN, CENTER FOR AM. PROGRESS, WHAT CAN WE LEARN FROM LAW SCHOOL? LEGAL EDUCATION REFLECTS ISSUES FOUND IN ALL OF HIGHER EDUCATION 5, 8–11 (2011), available at http://www.americanprogress.org/wp-content/uploads/issues/2011/12/pdf/legal_education.pdf.

²² David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 19, 2011, at A1, available at <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html>.

manifestation of the hornets' nest that the Chief Justice nettled. Today's handwringing over the efficacy of legal scholarship has less to do with the subject matters of the latest research and more to do with a broad-based reassessment of the very institutions of legal education and the legal profession.²³

Professor Frank Pasquale framed this bigger picture—in his words, “situat[ing Segal’s assault] as part of a neo-liberal ideology developing at the *Times* and other scribes for the powerful.”²⁴ To Pasquale, Roberts’ characterization of legal scholarship as “pure self-indulgence” was of the same ilk as Segal’s crusade on behalf of legal education reformers, and neither has the rule of law at heart.²⁵ Pasquale leveled the guns of realism at these critics and fired:

To ignore the political roots of the decline of both law and the rule of law in the US (and its obvious impact on attorney employment) is to fail to even begin a serious analysis of young lawyers’ problems. . . . [Segal] never considers how legal education works to prompt legal challenges to corporate wrongdoing. No one will have a job defending corporations if there aren’t well-trained attorneys applying old law to new corporate wrongdoing. That takes creative thought, a chance to learn the policy behind law, and engagement with current industry trends. It’s not something to be drilled into people by projecting bar prep rote back into law school.

. . . .

Segal never stops to ask: Why might a Justice like Roberts want to discredit the legal academy? . . . Perhaps it’s because Roberts, after long years in corporate practice, sees law profs’ efforts to reinterpret old statutes and doctrines in light of new harms . . . as one more nuisance for the clients who made him a rich and powerful man?²⁶

Roberts’ criticism of law review literature was, thus, a shot across only one front of a much broader conflict.

²³ See, e.g., Patrick G. Lee, *Law Schools Get Practical*, WALL ST. J., July 11, 2011, at B5, available at <http://online.wsj.com/article/SB10001424052702304793504576434074172649718.html>; MORGAN, *supra* note 21.

²⁴ Frank Pasquale, New York Times *Financial Advice: Be an Unpaid Intern Through Your 20s (Then Work till You’re 100)*, BALKINIZATION (Nov. 20, 2011, 1:41 PM), <http://balkin.blogspot.com/2011/11/new-york-times-financial-advice-be.html>.

²⁵ *Id.*

²⁶ *Id.*

And indeed, a war is on. The economic crisis has spawned unprecedented levels of student debt²⁷ and lawyer unemployment,²⁸ absurdly juxtaposed with unaffordable legal services and a crisis in unmet legal needs.²⁹ Plenty of pointing fingers place blame. The informal system of training lawyers through theoretical preparation in law school followed by skills education through practice-based mentoring has collapsed.³⁰ On the legal practice side, economically squeezed business models are no longer willing to allocate resources to training and expect newly minted lawyers to be “practice ready.” On the legal education side, law schools are expected to continue conferring theoretical foundation and professional acculturation, to teach more black-letter content, to qualify general practitioners across increasingly complex specializations, and moreover to assume responsibility for practical training, all while slashing costs and holding fast to a three-year time frame.

Whether the conflict is between Segal and Pasquale, Roberts and Ifill, or the practice and the ivory tower, our fundamental legal institutions seem teetering on a precipice of transformation. Uncertainty over what that transformation will mean has everyone on edge.

II. MAKING COMMON CAUSE

These are precarious times in which to launch a new law school and a new law review. Yet here we are. The University of Massachusetts is now in its first year of operation with provisional ABA accreditation.³¹ This text is a foreword to the first general-interest issue of the *University of Massachusetts Law Review*. Now

²⁷ See MORGAN, *supra* note 21, at 8–11.

²⁸ *Id.* at 9–10, 12–14 figs. 4–6.

²⁹ See MIDDLE INCOME ACCESS TO JUSTICE 3–4 (Michael Trebilcock et al. eds., 2012).

³⁰ See Malcolm Richard Wilkey, *What Role for the Law School in American Legal Education? Purposefully Restructuring the Law School Curriculum*, 1981 BYU L. REV. 1, 3 (1981) (“There seems to be an emerging consensus that the third year as now constituted is virtually useless for all but law review students.”); Patrick J. Rohan, *Legal Education and Training for the Profession—An Overview*, 50 ST. JOHN’S L. REV. 494, 495–96 (1975).

³¹ Memorandum from American Bar Association, Provisional Approval of the University of Massachusetts School of Law–Dartmouth (June 12, 2012) (on file with the American Bar Association).

marks an appropriate time to take stock of what these institutions mean to accomplish in our unsettled legal world.

UMass is the first, and only, public law school in the Commonwealth of Massachusetts,³² and the mission of the school accords with that role.³³ The University Board of Trustees created UMass Law on December 10, 2009, and on February 2, 2009, the Massachusetts Board of Higher Education authorized awarding of the *juris doctor* degree.³⁴ The first UMass Law class graduated in 2011,³⁵ an inaugural alumni cohort inherited from the predecessor Southern New England School of Law.³⁶ The first 1L class to enroll in UMass Law now constitutes the Editorial Board of this Law Review and will join the alumni ranks in 2013.³⁷

The UMass Law mission accords with its uniquely public role and stands in congruence with the particular position of the University of Massachusetts-Dartmouth within the Commonwealth. The law school mission includes commitments to: (1) balanced incorporation of doctrinal, skills-and-values, and experiential learning; (2) access to legal education; (3) civic engagement, public service, and professionalism; and (4) preparation and motivation of graduates to contribute to their communities and to the profession.³⁸ Thus, the law school aims specially to meet public legal needs with a capable legal workforce.

That said, UMass Law is much more than a vocational training ground. The lawyer as compassionate counsel, as public servant, as

³² See Tracy Jan, *UMass Wins Approval for Public Law School*, BOS. GLOBE, Feb. 3, 2010, at A1, available at http://www.boston.com/news/local/massachusetts/articles/2010/02/03/umass_wins_approval_for_states_first_public_law_school/.

³³ *Mission Statement*, UMASS SCHOOL OF LAW (last visited Dec. 3, 2012), <http://www.umassd.edu/law/about/profile/missionstatement/>.

³⁴ See Minutes of the Meeting of the UMass Board of Trustees 5–6, 8–11 (Dec. 10, 2009) (on file with law review); see also *History*, UMASS SCHOOL OF LAW (last visited Dec. 3, 2012), <http://www.umassd.edu/law/about/profile/history/>.

³⁵ See Press Release, UMass School of Law, First UMass Law Class to Graduate (May 10, 2011), available at http://www1.umassd.edu/communications/articles/showarticles.cfm?a_key=2910.

³⁶ See Press Release, UMass School of Law, First 53 UMass Law Graduates Conferred Degrees (May 21, 2011), available at http://www1.umassd.edu/communications/articles/showarticles.cfm?a_key=2917.

³⁷ See Tracy Jan, *Strong Start for UMass Law*, BOS. GLOBE, July 6, 2010, A1, available at http://www.boston.com/news/local/massachusetts/articles/2010/07/06/strong_start_for_umass_law/.

³⁸ *Mission Statement*, *supra* note 33.

legislator or judge or councilperson, or otherwise as public policymaker must be fluent in the law so much more thoroughly and so much more intimately than the lawyer as mere client advocate. The lawyer of public conscience must know the *why* of law as well as the *what*: the history, rationale, and theoretical underpinning of the law as much as its issues, rules, and applications.³⁹ In pursuit of its mission, the law school—not only as educator of students, but as continuing educator of bar, bench, and public—faces a formidable task, yet aims to fulfill a function that is foundational and essential to perpetuating the rule of law in the Commonwealth and beyond.⁴⁰

Before us is a course both redoubtable and exhilarating. In its nascence, UMass Law will be subject to the push and pull of would-be reformers and their opponents, of critics and champions, of Robertses and Ifills, and of Segals and Pasquales.⁴¹ To make its way, the law school will itself have to plunge from the precipice. Hand-in-hand with bar, bench, and public, the people of UMass Law will discover the next great transformation and will redefine legal education for its role in a new economic order.

The UMass Law Review is the public face of UMass Law's leadership in this course. Contrary to the catcalls of the critics, the empirical record is now plain that law reviews do matter.⁴² In their pages can be found the ideas, the data, and the templates to tackle the challenges our society faces,⁴³ from the unmet needs for healthcare and legal services to the preservation of civil liberties and the rule of

³⁹ ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING HOW TO "THINK LIKE A LAWYER"* 1 (2007) (quoting CHRISTOPHER C. LANGDELL, *A SELECTION OF CASES ON THE LAW OF CONTRACTS*, at vi (1871)).

⁴⁰ See *Mission Statement*, *supra* note 33; see also Jerome M. Organ, *Legal Education and the Legal Profession: Convergence or Divergence?*, 38 OHIO N.U. L. REV. 885, 901 (2012) (relating legal education to the access to justice problem).

⁴¹ See *Ifill*, *supra* note 5; Segal, *supra* note 22; Pasquale, *supra* note 24.

⁴² See e.g., Timothy M. Tymkovich, *The Law Review and the Judiciary*, 75 U. COLO. L. REV. [i–vi] (2004) (concluding that law reviews do matter).

⁴³ See Daphna Hacker, *Law and Society Jurisprudence*, 96 CORNELL L. REV. 727, 728 (2010) ("I believe it is clear that the law and society community must maintain its flexible, open, and dynamic boundaries. It is this openness that allows one to challenge the positivistic perception of the law and of science and to produce reflective and complex knowledge."). See, e.g., Nelson Tebbe & Deborah A. Widiss, *Equal Access and the Right to Marry*, 158 U. PA. L. REV. 1375–83 (2009) (discussing the right to marry as an issue of equal access to government).

law.⁴⁴ If great effect is what we seek, the law review holds the potential of great cause. Accordingly, the *University of Massachusetts Law Review*, through its general-interest and symposia publications, will further the worthy mission of the Commonwealth's first and only public law school.

III. FINDING KANT

Will the reader find in the future pages of this law review a treatment of Kantian influence on eighteenth-century Bulgarian evidence law?

Maybe.

To give Immanuel Kant his due, his thinking about perception and reality revolutionized philosophy.⁴⁵ He concluded that human understanding of reality would always be limited by the filter of perception.⁴⁶ Moreover, he situated the relationship between cause and effect as an inescapable artifact of perception.⁴⁷ These declarations, based on Kant's observations in the 1700s, turned out strangely coincident with quantum theory two centuries later.⁴⁸ Surely there is something here to be said about legal evidence, perhaps concerning the limits of eyewitness testimony, or about proof of causation as a jury question of fact.

And let's not be too quick to sell short eighteenth-century Bulgaria. The *Istoriya Slavyanobolgarskaya*, written in 1762 by Saint

⁴⁴ See Thom Ringer, Note, *Development, Reform, and the Rule of Law: Some Prescriptions for a Common Understanding of the "Rule of Law" and its Place in Development Theory and Practice*, 10 YALE HUM. RTS. & DEV. L.J. 178 (2007) (discussing scholarly focus on the rule of law). See, e.g., Peter J. Kalis & Judy Hlafcsak, *Healthcare Reform: Let's Act Locally*, 50 DUQ. L. REV. 253, 256–58 (2012) (noting the need for a change in the way we deliver healthcare).

⁴⁵ 2 NORMAN MELCHERT, THE GREAT CONVERSATION 435 (3d ed. 1999) (discussing Kant's "Copernican Revolution").

⁴⁶ See BERTRAND RUSSELL, A HISTORY OF WESTERN PHILOSOPHY 707–08 (19th prtg. 1945).

⁴⁷ *Id.*

⁴⁸ See EDWARD G. STEWART, QUANTUM MECHANICS: ITS EARLY DEVELOPMENT AND THE ROAD TO ENTANGLEMENT 181–82 (2008); see also Erwin Schrodinger, *The Present Situation in Quantum Mechanics: A Translation of Schrodinger's "Cat Paradox" Paper*, 124 PROC. OF THE AM. PHIL. SOC'Y 323, 328 (John D. Trimmer trans., 1980) (contemplating the fate of the infamous cat).

Paisius of Hilendar,⁴⁹ marked the beginning of the Bulgarian national revival and the beginning of the end for Ottoman rule.⁵⁰ As an embodiment of cultural pride, the *Istoriya* represents an important statement about the resilience of human identity and, in turn, the importance of self-determination to the democratic political enterprise.⁵¹

The experience of Bulgaria at that transformational point in its history was consistent with Kant's conclusions on politics.⁵² Kant propounded his theory on republicanism in his 1797 *Metaphysics of Morals*,⁵³ and he defined a state's legitimacy exclusively in terms of its united people.⁵⁴ Kant went so far as to challenge the propriety of majority rule over the free will of the individual dissenter, a line of thinking that very much animates modern civil libertarianism.⁵⁵

Today our U.S. Supreme Court struggles to adapt aged norms to modern circumstances: the freedom of expression pitted against corporatized politics,⁵⁶ or the freedom from unreasonable search and seizure pitted against GPS technology.⁵⁷ I refuse to rule out the possibility that even Chief Justice Roberts could mine something useful from Immanuel Kant⁵⁸ or the *Istoriya*.⁵⁹

⁴⁹ PAISIUS OF HILENDAR, *История славянобългарска*, [History of Slavonic Bulgaria] (1762), available at <http://www.istoriata.bg/> (Bulgarian).

⁵⁰ See R. J. CRAMPTON, *A CONCISE HISTORY OF BULGARIA* 45–46 (2d ed. 2005). But see DONALD QUATAERT, *THE OTTOMAN EMPIRE: 1700–1922*, at 176–77 (2d ed. 2005) (arguing that the impact of Saint Paisius and the Bulgarian national revival was exaggerated to discredit Ottoman rule).

⁵¹ See CRAMPTON, *supra* note 50, at 45–46; see also R. J. CRAMPTON, *BULGARIA* 18–95 (2007) (describing the origins of Bulgarian national identity and modern statehood).

⁵² Compare FREDERICK B. CHARY, *HISTORY OF BULGARIA* 26–29 (2011), with IMMANUEL KANT, *THE METAPHYSICS OF MORALS* 112–13 (Mary Gregor ed., trans., Cambridge Univ. Press 1996) (1797).

⁵³ KANT, *supra* note 52.

⁵⁴ *Id.* at 112–13.

⁵⁵ See James R. Otteson, *Kantian Individualism and Political Libertarianism*, 13 *INDEP. REV.* 389, 395 (2009).

⁵⁶ See, e.g., *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

⁵⁷ See *United States v. Jones*, 132 S. Ct. 945 (2012).

⁵⁸ KANT *supra* note 52; see also *Grant Timber & Mfg. Co. v. Gray*, 236 U.S. 133, 134 (1915) (Holmes, J.) (mentioning Kant); *Poe v. Ullman*, 367 U.S. 497, 514 (1961) (Douglas, J., dissenting) (citing IMMANUEL KANT, *THE CRITIQUE OF PURE REASON*, in 42 *GREAT BOOKS* 221(1952)); *Baker v. Carr*, 369 U.S. 186, 261 (1962) (Clark, J., concurring) (citing generally IMMANUEL KANT,

What, then, will the reader find in the future pages of this law review?

I cannot say whether the *Law Review* and its future leaders will choose to take up Kant, or Bulgaria, or evidence law in the 1700s. I can say that in the pages of this review, authors will explore the education, practice, and profession of law, governance, and civic engagement. The editors of this law review will always seek the betterment of the bar, the bench, and the public. This law review will be dedicated to the mission of UMass Law, to the people of the Commonwealth of Massachusetts and the society of which it is a part, and to the rule of law in human civilization.

I invite you to turn the page and to join our enterprise. This is the *University of Massachusetts Law Review*.

“Yes, the material of our knowledge comes to us through the senses, but this material must conform to the attributes of reason. For example, one of the attributes of reason is to seek the cause of an event.”

“Like the ball rolling across the floor.”

“If you like. But when we wonder where the world came from—and then discuss possible answers—reason is in a sense ‘on hold.’ For it has no sensory material to process, no experience to make use of, because we have never experienced the whole of the great reality that we are a tiny part of.”

PERPETUAL PEACE); *Lindsey v. Normet*, 405 U.S. 56, 68 n.14 (1972) (White, J.) (citing *Grant Timber*, 236 U.S. at 134); *Bell v. Wolfish*, 441 U.S. 520, 581 n.10 (1979) (citing IMMANUEL KANT, *THE PHILOSOPHY OF LAW* 195–198 (W. Hastie transl. 1887)); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 665 n.41 (1985) (Stevens, J., dissenting) (citing Immanuel Kant, *Perpetual Peace, A Philosophical Sketch*, in *KANT’S POLITICAL WRITINGS* 93 (H. Reiss, ed. 1971)); *Delaware v. Van Arsdall*, 475 U.S. 673, 698 n.9 (1986) (Stevens, J., dissenting) (citing RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 198–199 (1977) (mentioning Kant)).

⁵⁹ HILENDAR *supra* note 49. Certainly, the Chief Justice—who majored in history at Harvard College and graduated with highest honors, who aspired to be a historian, and who once said, “In studying world history, I was very wide-eyed. I was a kid from a small town learning about a much bigger world. It was exciting”—could find something of value in a nation’s defining historical account. See LISA TUCKER MCELROY, JOHN G. ROBERTS, JR: CHIEF JUSTICE 14–15 (2006).

“We are—in a way—a tiny part of the ball that comes rolling across the floor. So we can’t know where it came from.”

“But it will always be an attribute of human reason to ask where the ball comes from. That’s why we ask and ask, we exert ourselves to the fullest to find answers to all the deepest questions.”⁶⁰

⁶⁰ GAARDER, *supra* note 1, at 326.