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November 20, 2019

Lecture[†]

Bruning Lecture University of Nebraska College of Law
October 17, 2019

Senator Bob Kerrey

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[†] On October 17, 2019, former Nebraska Governor and United States Senator Bob Kerrey delivered a public address at the Nebraska College of Law as part of the Attorney General Jon Bruning Public Service Lecture Series. Senator Kerrey is sharing the original Lecture script with the Nebraska Law Review Bulletin so that law students and members of the public alike may be inspired by the lessons we may take from his observations of the important ways the law influences our society.

Thank you, Jon,¹ for the opportunity to speak here today. I was pleasantly surprised when the Executive Director of the Nebraska Republican Party did not demand you rescind your invitation.²

To the law students gathered here today allow me to acknowledge that when I was as old as you are now, I cannot remember listening to the advice of people who were as old as I am now. Even my parents were a generation younger.

I am not a lawyer. Everything I have learned about the law came from either experience or study.³ My most important lessons always occur right after I make a mistake or after learning something years after it might have been useful. As Kurt Vonnegut would say: “So it goes.”⁴

To be clear my most important reading on the law or politics are profound books or poems that have nothing to do with either politics or the law. On Monday Harold Bloom, one of America’s greatest thinkers and critics, died. I read something he said about this kind of reading: “To read in the service of any ideology is not, in my judgment, to read at all. The reception of aesthetic power enables us to learn how to talk to ourselves and how to endure ourselves. The true use of Shakespeare or of Cervantes, of Homer or of Dante, of Chaucer or of Rabelais, is to augment one’s own growing inner self.”⁵

As Americans, the freedom we are given as individuals to explore and decide for ourselves what we believe will be wasted if all we do is read about Tuesday’s Democratic debate or some intense essay or tweet written by a supporter or opponent of President Trump. We need to make the effort to understand ourselves and then we need the courage to say what we believe. Otherwise we become a ping pong ball being hit back and forth by Hannity and Rachel.⁶

When I speak of the law today, Federal law is my reference. Federal law is the law I understand best.

I have come to love the law not because of its perfection but because of its imperfections. Imperfect men and women write laws. They amend, alter, and sometimes intentionally obfuscate the intent of the language in order to reach an agreement. If you think it’s easy,

¹ Jon Bruning served on the Nebraska Legislature from 1997–2003, and as Nebraska’s Attorney General from 2003–2015.

² Jon Bruning is a member of the Republican party, and Bob Kerrey a Democrat.

³ Bob Kerrey graduated from the University of Nebraska–Lincoln in 1966. Before becoming Governor of Nebraska, Kerrey served in the Navy as a member of Seal Team One, for which he was awarded the Medal of Honor by President Nixon.

⁴ KURT VONNEGUT, *SLAUGHTERHOUSE FIVE, OR THE CHILDREN’S CRUSADE: A DUTY-DANCE WITH DEATH* 25–26 (1969).

⁵ HAROLD BLOOM, *THE WESTERN CANON: THE BOOKS AND SCHOOL OF THE AGES* (1994).

⁶ Sean Hannity and Rachel Maddow are, respectively, conservative and liberal talk show hosts on competing networks.

try a simple experiment. Gather fifty men and women. Ask them to agree on something simple like: “What movie are you going to see tonight.” Then try to imagine what it is like when you have 537 men and women elected to make much more complicated decisions about Federal law.

Perhaps you have heard a candidate for one of those offices say: “Washington is broken! I am going back there to fix it!” My advice: Don’t believe it. Washington is not a plate or glass that will shatter if we drop it on the floor. It cannot be broken. The 537 elected people who serve there and the tens of thousands who work directly for them are a reflection of us. We may not like what we see in part because what we see is us.

Washington is a place where laws are written, where laws are executed and where laws are interpreted. It is nothing more and nothing less. The only way Washington can be broken is if we surrender either in despair, boredom, anger or ignorance. If we give up on this experiment in Democracy, what will break will be the long-dead hearts of the dreamers who signed a Declaration of Independence pledging their lives, their fortune, and their sacred honor.

The best and most entertaining description of how Washington works is the single season of “Brain Dead.”⁷ Here’s the season in seven sentences.

A meteorite crashes into earth, explodes and releases a long chain of ants that march single file up into the cherry blossoms. At night they crawl down and into the homes of sleeping members of Congress. They enter their ears and destroy that part of their brains that make them reasonable. It is left to staff to resolve the conflicts that erupt between a completely unreasonable conservative Republican Senator and a completely unreasonable Democrat. The two staffers fall in love. The ants are banished, and sanity restored when the Senators experience pleasure. This would make Harold Bloom very happy.

Perhaps it is because I have experienced the violent conflict of war that I enjoy the peaceful conflict of self-government. You can shout at me, protest my appearance, and disagree with everything I say or believe. I prefer those who will listen carefully for ways where we might find common ground. But it isn’t necessary. I love well-constructed arguments built and delivered to destroy my own. In fact, my most productive work always begins immediately after discovering something I have believed for a long time is not true.

Hatred provokes sympathy. I hated once and discovered that the object of my hatred was unaffected either by the beginning of my hatred or its demise. The person in question was President Richard

⁷ *BrainDead* (CBS television series 2016).

Nixon. I hated him because I thought he could have and should have ended the Vietnam War earlier. After my time as Governor I co-taught a class on the war at the University of California Santa Barbara with one of the most wonderful people I have known, Walter Capps.⁸ As I learned about the war and its causes, I realized that my hatred was misplaced. So, one night on the beach I screamed into my second favorite body of water, the Pacific Ocean: I forgive you President Nixon!

I am certain he felt nothing as he slept in his New York City apartment. But I felt relief. It was as if a great burden had been lifted from my heart. It was an important discovery: The person who hates suffers a whole lot more than the person who is hated.

I promise I do intend to talk about the law and why I love it. First an old joke with a lesson. A Russian, a Chinese and an American all die at the same moment. They find themselves standing before Saint Peter at the Pearly Gates. He asks one question to decide whether to admit them into heaven: What is two plus two? The Russian and the Chinese answer the same: Four. The American leans in and whispers to Saint Peter: What do you want it to be?

Full disclosure the original joke was about a doctor, a teacher and a lawyer. I modified it with three specific nationalities in order to make this point: In America we get to decide what we want the law to be. And quoting my favorite historical Justice of the Supreme Court, Louis Brandeis: “If we desire respect for the law, we must first make the law respectable.”⁹

Louis Brandeis is my ideal lawyer and Justice. He was disciplined and did the work of assembling and analyzing facts before reaching a decision. Before he was appointed in 1916 to be an associate Justice, he was active in social causes to improve the quality of life in Massachusetts, and across the nation. He spoke eloquently about lawyers being more than employees of a corporation.¹⁰

He was unafraid to advocate for change that his clients opposed. He was a devoted husband and a world class father. He took the entire month of August off because he believed in the power of leisure to rejuvenate. He was a passionate Zionist at a time when anti-Semitism was widespread in the United States.

⁸ Walter Capps was born in Omaha, Nebraska, and was a member of the United States House of Representatives from California's 22nd district.

⁹ CLEVELAND PLAIN DEALER (Oct. 15, 1912) (cited in A TREASURY OF JEWISH QUOTATIONS 269 (Joseph L. Baron et al., eds. (1996))).

¹⁰ Justice Brandeis was commonly known as “The People’s Lawyer.” See, e.g., Russell Fowler, *Louis Brandeis Pro Bono Lawyer*, 53-OCT TENN. B.J. 25 (2017).

During his confirmation he was opposed by J.P. Morgan because of a book he wrote, “Other People’s Money.”¹¹ Democrats are fond of this quote from Brandeis: “We may have democracy, or we may have wealth concentrated in the hands of a few, but we can’t have both.”¹² We are less fond of this: “Experience should teach us to be most on our guard to protect liberty when the government’s purposes are beneficent.”¹³ Republicans tend to do the opposite.

Brandeis believed that “greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.”¹⁴ I share that belief.

He believed that “most of the things worth doing in the world had been declared impossible before they were done,”¹⁵ and so do I.

He believed that the most important political office is that of the private citizen and I do as well.¹⁶ He believed that the use of reason to reach our conclusions required boldness and bravery.¹⁷ Me too.

You study case law in order to perform well in moot court. I study it, too, but my purpose is to understand the history of our country. In this effort I have come to the unremarkable conclusion that John Marshall was our finest Chief Justice, that his appointment was more luck than intent, and that our country would be far weaker and less just without him.

Just to demonstrate what a political junkie I am, last summer I read a four-volume biography of Marshall written by a former Indiana Senator who earned a Pulitzer Prize in History.¹⁸ Any alternative history that has anyone but Marshall as our third Chief Justice must describe a much different outcome. George Washington is called the father of our country on account of being the first to yield power voluntarily, but if he had not earned that title, I would nominate Marshall.

¹¹ LOUIS D. BRANDEIS, *OTHER PEOPLE’S MONEY AND HOW THE BANKERS USE IT* (1914).

¹² As quoted in RAYMOND LONERGAN, *MR. JUSTICE BRANDEIS, GREAT AMERICAN* 42 (1941).

¹³ *Olmstead v. United States*, 277 U.S. 438, 479, 48 S. Ct. 564, 572, 72 L. Ed. 944 (1928) (Brandeis, J., dissenting).

¹⁴ *Id.* at 479, 48 S. Ct. 573, 72 L. Ed. 944.

¹⁵ Louis D. Brandeis, *Arbitration Proceedings, N.Y. Cloak Industry*, (Oct. 13, 1913).

¹⁶ Louis D. Brandeis, *Statement to a reporter*, *Boston Record* (14 April 1903) (quoted in ALPHEUS T. MASON, *BRANDEIS: A FREE MAN’S LIFE* 122 (1946)).

¹⁷ *See, e.g., New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J. dissenting) (“If we would guide by the light of reason, we must let our minds be bold.”).

¹⁸ Ernest Taylor Pyle (August 3, 1900 – April 18, 1945) was a Pulitzer Prize-winning American journalist and war correspondent who is best known for his stories about ordinary American soldiers during World War II. *Ernie Pyle*, WIKIPEDIA, https://en.wikipedia.org/wiki/Ernie_Pyle (last visited Nov. 10, 2019).

Nominated just weeks before Thomas Jefferson became President, he is the only American to serve as Secretary of State and Chief Justice at the same time. In fact, his failure to deliver the appointment documents in time led to his first landmark decision, *Marbury v. Madison*.¹⁹

Jefferson hated Marshall even though they were cousins. He hated him because Marshall was a Federalist and Jefferson a Democratic Republican. He would like to have impeached him but was unable to secure the necessary votes. His dislike was such that after Marshall wrote an unremarkable biography of his mentor George Washington, Jefferson instructed his postmaster to refuse to allow the book to be distributed.

Marshall saved Jefferson from being remembered as the only President to have executed his number one political opponent. After Aaron Burr killed Alexander Hamilton in a duel, he continued as Jefferson's vice-president until March 1805. After he was out of office, he headed west with the intent of organizing an invasion of Mexico. An agent of the Spanish told Jefferson what he wanted to hear: That Burr was organizing an Army to overthrow the U.S. government. Jefferson charged him with treason and sent Federal forces to bring him back to Richmond to stand trial where he was certain to be convicted and hung.

His dislike of Marshall led President Jefferson to reduce funding for the Court, which led to Marshall to ride circuit in order to cover the business of the Court. The unanticipated result was that Marshall served as the judge in the Burr trial. Jefferson did everything possible to interfere with this case to make it impossible for Marshall to acquit. The mob—led by Jefferson—wanted Burr executed, but Marshall refused to ignore the clear language of the Constitution. He found Burr innocent and ordered him released.

I have selected eight of the Marshall Court's decisions to make my case that America would be a weaker and less just country without him. Further, I make this argument to those who object to the status of Federal judges: The elected members of Congress would not have enacted any of these. Most of these decisions were unpopular.

United States v. Peters.²⁰ State legislatures cannot overturn Federal court judgements.

Fletcher v. Peck.²¹ Sanctity of contracts; overturned Georgia's legislature.

¹⁹ *Marbury v. Madison*, 5 U.S. 137, 2 L. Ed. 60 (1803).

²⁰ *United States v. Peters*, 9 U.S. 115, 3 L. Ed. 53 (1809).

²¹ *Fletcher v. Peck*, 10 U.S. 87, 3 L. Ed. 162 (1810).

*Martin v. Hunter's Lessee.*²² Federal court is superior to state courts. He [Marshall, J.] recused himself to Joseph Story because of the appearance of a conflict.

*Dartmouth College v. Woodward.*²³ State legislatures cannot overturn the governance of a private corporation.

*M'Culloch v. Maryland.*²⁴ Congress has the constitutional authority to establish a national bank and a state legislature does not have the constitutional authority to tax it.

*Cohens v. Virginia.*²⁵ An individual can appeal to the Supreme Court if they believe a state court has violated their constitutional rights.

*Gibbons v. Ogden.*²⁶ Cited the Commerce Clause to overturn New York law granting a monopoly on the Hudson River.

*Worcester v. Georgia.*²⁷ Established tribal sovereignty but did not stop Jackson from carrying out the purpose of Indian removal.

But it was *Marbury* that gave the citizens of United States of America a place where they could appeal as unconstitutional an act by Congress or the President. He did all this in spite of the fact that he had less than two years of formal education. He did all of this in spite of the fact that Presidents of the opposing political party appointed all the associate justices during his three decades of service.

Here's the thing about history of our laws. It can lead us to discover that America has made some terrible mistakes. It can lead to having to face unpleasant truths about our past. Let me briefly describe the negative legacies of past generations that do not diminish in my mind the accomplishments of each.

The founders bequeathed us with slavery and Indian removal laws that none of us would defend today.

The generation who fought the Civil War gave up on reconstruction and left us with a race problem we are still working on today.

The generation that contributed to victory in the First World War stacked arms, withdrew from the world, enacted racist immigration laws, and tried to return to normalcy. Instead we returned to a war that was even worse than the First.

The one after that—my father's generation—survived the Great Depression, helped win the Second World War, and created a set of international institutions along with domestic investments that

²² *Martin v. Hunter's Lessee*, 14 U.S. 304, 4 L. Ed. 97 (1816).

²³ *Dartmouth Coll. v. Woodward*, 17 U.S. 518, 4 L. Ed. 629 (1819).

²⁴ *M'Culloch v. Maryland*, 17 U.S. 316, 4 L. Ed. 579 (1819).

²⁵ *Cohens v. Virginia*, 19 U.S. 264, 5 L. Ed. 257 (1821).

²⁶ *Gibbons v. Ogden*, 22 U.S. 1, 6 L. Ed. 23 (1824).

²⁷ *Worcester v. Georgia*, 31 U.S. 515, 8 L. Ed. 483 (1832).

contributed to the largest growth in the American middle class in our nation's history.

But not even the greatest generation was perfect. They struggled with civil rights, integration of our schools, and excessive Cold War zeal that led to my war in Vietnam.

My generation, the baby boomers, are just now beginning the largest transfer of income from future generations to pay for our health and retirement needs: Fifty trillion dollars of unfunded liabilities and bipartisan support for doing nothing to alter this reality other than perhaps to transfer even more from the future to pay for the past.

We do not need to whitewash the history of our laws in order to feel grateful to be a citizen of this great country. Heroes are capable of behaving badly. Of this I am certain. Hypocrisy is as commonplace as the common cold.

When I was President of the New School,²⁸ I was sometimes accused by students and faculty of being a hypocrite. At first, I thought the critique was unfair and would try to respond as politely as possible that they were wrong. And then it occurred to me that hypocrisy is only possible because I have underlying values that sometimes conflict with decisions I had made. So, I tried—with some success—to convince my critics that I was not a hypocrite but did sometimes behave hypocritically because I hold values that are themselves in conflict with each other. I cannot honor one without betraying the other.

I came to love the law through a very unusual route. I studied pharmacy at UNL in the 1960s and was doing research here on a very exciting topic: The impact of digitalis on rabbit myocardium, when the Government of the United States decided they had a higher and better use for my skills. They trained me to become a member of SEAL Team One and sent me to Vietnam.

Two years after I returned from the war I went into business with my brother-in-law. At various stages in the development of that business I had occasion to confront the law both as a limitation on what we could do and as an expander of available opportunities.

Among the laws restricting me were zoning ordinances, health regulations for restaurants, laws governing the service of alcoholic beverages, and Federal labor and trademark law among others. There were times it seemed like we needed a permit for everything.

²⁸ The New School is a private research university in New York City. It was founded in 1919 as The New School for Social Research with an original mission dedicated to academic freedom and intellectual inquiry and a home for progressive thinkers. *The New School*, WIKIPEDIA, https://en.wikipedia.org/wiki/The_New_School (last visited Nov. 10, 2019).

On the other hand, the freedom I had to start my business was and remains greater than any place on earth. I was free and I was safe to do whatever I wanted to do.

There were also laws that increased the opportunities I had. Most important there was a Federal law that made me eligible for government health care at the Veterans Hospital in Lincoln and Omaha. This was a life saver for me. And my disability meant the government sent me a check every month for doing nothing other than being alive. Under Federal law I have a claim on the income of everyone in this room who pays federal income taxes to purchase the prosthetic limbs I have been using and abusing for fifty years. These welfare benefits did not make me lazy. They made me grateful.

Two years after we opened for business our building was blown away by a tornado. Thanks to a property and casualty insurance salesman our loss was covered. No one can accuse you of starting a tornado. The opportunity moment came after President Ford said yes to Omaha Mayor Zorinsky's request that Omaha be declared a Federal disaster area. Under law this made us eligible for a direct loan from the Small Business Administration. The libertarians are right that we would have survived without this law, but we thrived with it.

After being elected by Nebraskans as their Governor, good and bad experiences with government informed many of my decisions. I also remembered those moments when elected officials were kept from doing the right thing by protests and public opinion, and I was determined to avoid doing the same. I cannot claim to have always succeeded.

Sometimes the choices are easy. While campaigning for Governor in 1982, I spoke at the state convention of the Nebraska Cattlemen. The president of the organization introduced me by saying: "This fella from Lincoln is campaigning against our good friend, Governor Thone, and I only have one question for him before he speaks: 'Which end of the cow gets up first?'"

Since the audience was not likely to vote for me and I had a 50-50 chance of getting it right, there was almost no negative consequence of my guess, which turned out to be right.²⁹ Such is not always the case in the public arena today. Rare is the decision that doesn't anger friend and foe alike.

An example of this occurred in my first year as Governor. The leader of a Christian school in Louisville refused to obey State law requiring him to only hire teachers who were certified by the State. He claimed this law violated his first amendment right to practice

²⁹ For curious readers, see *Example of cow getting up in pasture 1*, YOUTUBE, <https://www.youtube.com/watch?v=STI3EL6ebKY> (last visited Nov. 10, 2019).

his religion without the interference of the government.³⁰ He did so in such an offensive way that most elected officials including myself, media outlets, and public opinion opposed making any accommodation to him.

After I was elected, I asked my chief of staff how we would know if his claim was true. He suggested I ask a highly respected Omaha lawyer, Bob Spire, to lead a small task force that would examine the case and report their results to me. Their conclusion was that State law conflicted with his First Amendment right. Bob suggested that we ask the Legislature to change the State's law.³¹ At the time it was an unpopular decision. Opponents said correctly this was a reversal of a promise I had made in the campaign and incorrectly that this would be the end of public education.

It wasn't until Nebraskans elected me as their U.S. Senator that I began a more thoughtful examination of the law. After Vice-President George H.W. Bush swore me in, I was sufficiently self-aware to recognize that my lack of formal training as a lawyer was a weakness. As a result, I attended as many oral arguments of the U.S. Supreme Court as my schedule would allow. I have continued this practice since leaving the Senate in 2001.

These visits certainly wouldn't prepare me to pass the bar exam, but I did learn a lot about the Constitution and its relationship to the law, the impact of different judicial philosophies on the interpretation of the same set of facts and most of all the importance of critical thinking. This last may be most important. Arguments made by populists carry no weight before the Justices.

On my list of things to be grateful for is the opportunity to attend oral arguments at the Court. I have never left an oral argument disappointed. On occasion I disagree with the majority's interpretation of the Constitution, but I have always been impressed by the solemnity of the deliberations and the finality of their judgements.

From time to time when I was serving in the Senate a citizen who objected to a decision by the Court would ask me: "Who elected them?" Fortunately, the answer is: "No one." Our founders made certain that no one did. And thanks to John Marshall the Supreme Court has the final authority to decide whether a Federal or a State law violates our Constitution.

Let me cite two relatively recent decisions that illustrate why Madison was right to keep the Federal judiciary independent of

³⁰ See generally *State ex rel. Douglas v. Faith Baptist Church of Louisville*, 207 Neb. 802, 301 N.W.2d 571 (1981).

³¹ See generally Richard E. Shugrue, *An Approach to Mutual Respect: The Christian Schools Controversy*, 18 CREIGHTON L. REV. 219 (1984).

electoral politics, and why we should be grateful to John Marshall for the political brilliance of *Marbury v. Madison*.

The first is *Bush v. Gore*, the December 12, 2000, decision that settled a Florida recount dispute and set the stage for the Electoral College to vote in favor of George W. Bush becoming President of the United States.³² This ruling ended a State-wide recount that might have resulted in Al Gore becoming President. It was the first time the Court had settled a Presidential election and the only time the Court specifically said that its ruling could not be used as a precedent in future cases.

The second is *Obergefell v. Hodges*, a landmark civil rights case in which the Supreme Court ruled that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.³³ This ruling requires all fifty states, the District of Columbia, and the Insular Areas to perform and recognize the marriages of same-sex couples on the same terms and conditions as the marriages of opposite-sex couples, with all the accompanying rights and responsibilities.

Americans were angry about both decisions, but that anger did not result in protests or impeachment efforts. Even in Nebraska, where fifteen years earlier 70% of Nebraskans voted to amend our constitution to make same sex marriage illegal, it is now possible for gay couples to be issued marriage licenses in all 93 of our counties.

I have gone on enough. Before I thank Jon Bruning one more time and then answer questions from you, if you have them, let me briefly tell the story of one of my heroes on the Court: John Marshall Harlan. He grew up in Kentucky. His family owned slaves. He opposed secession and formed a Kentucky regiment to fight for the Union. He opposed the emancipation proclamation and the 14th and 15th amendments. In a campaign for state-wide office he was criticized for having had dinner with Frederick Douglas. His answer was that it was the best dinner of his life.

He was appointed to the Court by President Hayes, became a passionate advocate for a strong national government and the reconstruction amendments he had opposed. He was known as the great dissenter on account of powerful dissents in the Civil Rights cases and *Plessy*,³⁴ which he predicted accurately would have a more negative impact than *Dred Scott*.³⁵

³² *Bush v. Gore*, 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388 (2000).

³³ *Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

³⁴ *Plessy v. Ferguson*, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896) (overruled by *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954)).

³⁵ *Dred Scott v. Sandford*, 60 U.S. 393, 15 L. Ed. 691 (1857) (superseded by Constitutional Amendment, January 1, 1868).

Dissents are vital in our democracy. They sometimes predict the future. They always define who we are: People with strong opinions prepared to anger our friends by writing or speaking what we think.

Writing laws and interpreting our Constitution is not a mathematical exercise. We cannot train an algorithm to do the work of deciding what we believe is right and wrong. The law is a living, breathing body of rules written by imperfect human beings hoping the laws they write will make our country stronger, fairer, and more likely to survive the test of time.

Debates over our laws and the rulings of our courts are not for the faint of heart. These debates can become heated, angry, and difficult. Arguments in favor of a particular law or rule tend to exaggerate the impact of its benefits in the same way that opponents of that law exaggerate the damage the law will do to our society. Fights sometimes break out. Demonstrations turn ugly. In the moment it can feel like Armageddon has arrived.

Worse, sometimes we just get it wrong. Our ideals and our actions simply do not match up. Slavery was our worst mistake, but our treatment of Native Americans is not too far behind. We fell for the pseudo-science of eugenics and enacted a racist immigration law in 1924.³⁶ We continue to dither in the face of evidence that we are changing the climate of the only planet we know of that can sustain life.

Today, if you spend an hour on Twitter in the crossfire of angry, sometimes hateful messages about President Trump, Joe Biden, or Nancy Pelosi, you'll want to escape from all things political. In spite of this, my feelings about the law are comparable to the words of General George Patton in the 1970 movie starring George C. Scott.³⁷ Following a battle in Africa he surveys the scene of burning hulks of tanks and men dead and dying all around and says: "God help me, but I love it. I do love it so."

Loving it isn't easy. If you have read "24th and Glory," the series of sports stories written by Dirk Chatelain in the Omaha World Herald, you'll know what I mean.³⁸ The damage done by imperfect housing, transportation, education and other laws to a group of Nebraskans living in North Omaha has been substantial.

The ideas that lay beneath those laws were not admirable. Those of us who are white believed we were racially superior to blacks and we saw nothing wrong in laws that restricted what black Nebraskans could do and where they could live. We were wrong. We reluctantly

³⁶ Immigration Act 1924, 43 Stat. 153, Pub. L. No. 68-139 (1924) (popularly known as the Johnson-Reed Act).

³⁷ PATTON (20th Century Fox 1970).

³⁸ DIRK CHATELAIN, 24TH & GLORY – THE INTERSECTION OF CIVIL RIGHTS AND OMAHA'S GREATEST GENERATION OF ATHLETES (2019).

but eventually changed our laws. We are better people because we changed but the damage we did was real, lasting, and persists to this day.

I intended to talk about books that have helped me understand the history of our laws. Unfortunately, I have gone on longer than I expected already. No doubt you can assemble a good list on your own. Instead I remind you to consider following Harold Bloom's advice. He is right. If we are to benefit from the power our laws give us as individuals, we must find a way to talk to and endure ourselves.

My love of the law has developed as I have learned more of its history including our terrible mistakes. The fact that we sometimes do not live up to our high ideals does not diminish the great principles of this country. The fact that we are able to face our mistakes squarely increases the chances we will not make the same mistakes again. We can love the law, lament our failures, and agree to fight on to make our country better. This is the advice I give myself and the advice I leave with you.