

The Justice Promise

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INTRODUCTION¹

"Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. . . ."

—James Madison (Federalist No. 51)²

A. *The Promise*

In the 1989 American movie about South African apartheid, *A Dry White Season*, Marlon Brando's character, the barrister Ian McKenzie, explains at one point, "Justice and law . . . are often just—well they're, I suppose they can be described as distant cousins. And here in South Africa, well, they're simply not on speaking terms at all."³ The line is so striking because, in the United States public imagination,⁴ law is the profession most tied to the pursuit of justice, just as the clergy is the profession most linked to spirituality and the incorporeal, and medicine to health and the corporeal.

Unlike the other two professions, law is a core function of government itself, integral to how state power is exercised.⁵ Most importantly here, as a

¹ This Article is the first of nine that comprise our larger series on justice. An overview of that larger project appears in our preface. See Jon Hanson & Dean A. Strang, *The Justice Series: A Preface*, 20 HARV. L. & POL'Y REV. 313 (2026) [hereinafter Hanson & Strang, *The Justice Series*]. In that preface, we gratefully acknowledge the colleagues, students, friends, and loved ones whose years of conversation and collaboration made this series possible.

Both this initial article and others in the series make unconventional use of epigraphs—placing them at the start of sections and subsections more frequently than is typical in legal scholarship. Because the legal system has long promised justice but often fails to deliver it, we hope the epigraphs will serve as persistent reminders to readers of the many ways in which that promise has been expressed and justice has been depicted as the paramount normative goal of law. Legal readers, trained to seek precedent and authority, may also appreciate the role of the epigraphs as a kind of reminder that our claims are not novel. The epigraphs confirm our position that the justice promise, as we're calling it, had long been taken for granted—that is, until it wasn't. In any event, our stylistic choices align with the series of articles' broader ambition: to reclaim for justice the central position in legal discourse by making it difficult to ignore.

² THE FEDERALIST NO. 51, at 122 (James Madison) (Michael A. Genovese ed., 2009); see also *id.* ("In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves. . . .").

³ A DRY WHITE SEASON, DVD (Davros Films & Sundance Productions 1989); see also Jeanne Cooper, "Dry White" Cracks a Whip, WASH. POST (Sept. 22, 1989) (reviewing *A Dry White Season* and quoting McKenzie's line: "justice and law could be described as distant cousins, and here in South Africa, they're not even on speaking terms"), <https://www.washingtonpost.com/archive/lifestyle/1989/09/22/dry-white-cracks-a-whip/abbfa9aa-ed36-4cd1-a6c7-3a963afdf91e/> [https://perma.cc/XW2H-BHJY].

⁴ Whatever our hunches about the universality of much of what we say here—after all, people are people—our experiential, academic, and cultural competence is confined to the United States. We mean our observations and arguments as focused domestically for that reason.

⁵ In countries with nationalized health care systems, like the United Kingdom, Canada, and others, medicine is a direct principal activity of government. See generally Lawrence D. Brown, *Comparing Health Systems in Four Countries: Lessons for the United States*, 93 AM. J. PUB. HEALTH 52 (2003), <https://pmc.ncbi.nlm.nih.gov/articles/PMC1447691/#sec5> [https://perma.cc/5E89-5HXY]. In the U.S., health care is an important but still indirect governmental function, with

matter of norms, justice is a promise that government makes through its principal legal institution, the judiciary. At the ideal level, as much as law is the principal function of government, justice is the principal end of law. Little wonder, then, that justice becomes the adopted promise of those who serve the judiciary: of lawyers and law people, from law school through the rest of their professional lives.

More specifically, for much of U.S. history, the judiciary has been the governmental branch to which Americans most look for justice and where they least anticipate the sort of bargaining, compromise, bluffing, and political deal-making common in the other two branches.⁶ People expect the judiciary to marshal both its own institutions and the correlated executive branch institutions or parliamentary ministries—including, the police, prosecutors, probation offices, and corrections departments—into an assemblage that works collaboratively as a functional system: a justice system. When every other government branch or office may fail them, people turn to courts in the end to render justice, or at very least to be committed sincerely to that objective.⁷ The judiciary, then, is more than another arm of the government; it's the most essential guardian of one of government's greatest aspirations, justice for all.

Relatedly, judges, the judiciary, and indeed law people more generally tell lay people all the time that the law and its institutions are devoted to serving justice. Even if justice is not paramount among shared social and political goals, it reigns supreme as a stated goal within the law. The judiciary asserts itself as our system's steward of justice. The fact that nobody defines justice

both federal and state governments carrying the costs of much health care delivery through taxation, but not its direct delivery outside the Veterans Administration and the Indian Health Service within the U.S. Department of Health & Human Services. See Roosa Tikkanen et al., *International Health Care System Profiles: United States*, THE COMMONWEALTH FUND (2020) <https://www.commonwealthfund.org/international-health-policy-center/countries/united-states> [https://perma.cc/XRW4-GM73].

⁶ THE FEDERALIST No. 78, at 236 (Alexander Hamilton) (Michael A. Genovese ed., 2009) (“[T]he judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them.”); see also Vanessa A. Baird & Amy Gangl, *Shattering the Myth of Legality: The Impact of the Media's Framing of Supreme Court Procedures on Perceptions of Fairness*, 27 POL. PSYCH. 597, 597–98 (2006) (surveying scholarly analyses which indicate the public believes the judiciary operates above the “ideological bargaining and compromise of everyday politics.”); but see Jon Hanson & Mara Kipnis, *Courting Injustice: The Roberts Court and the Justice Crisis*, 21 HARV. L. & POL'Y REV. (symposium issue, forthcoming 2027) [hereinafter Hanson & Kipnis, *Courting Injustice*] (assessing trends in public attitudes regarding the U.S. Supreme Court and, more specifically, the growing legitimacy crisis and sense that the Court is moved by political ideology).

⁷ Owen M. Fiss, *Out of Eden*, 94 YALE L.J. 1669, 1670 (1985) (“People turn to courts when they are at the end of the road.”). In his own way, Raoul van Canaegem, the important comparative legal historian (who also had a background in sociology), got at the same broad point in an even more universal way. In his work on the twelfth century origins of English common law, and specifically in comparing trials by ordeal, compurgation, and jury as modes of adjudication, he wrote that the study of that evolution:

[i]s a field that belongs to psychological as well as legal history. It demonstrates the true position of law in the general context of civilization: not as a marginal, abstruse technique of interest to specialists only, but part and parcel of the culture of any given period and one of its most important elements.

R.C. VAN CANAEGEM, *THE BIRTH OF THE ENGLISH COMMON LAW* 62 (2d ed. 1988).

concretely—nobody ever has been able to do that, at least with any broad consensus—gets overlooked.

Even undefined, and perhaps in part because it is undefined, justice is to law, and particularly to the judiciary, what hamburgers are to McDonald's, what basketball shoes are to Nike, and what online shopping is to Amazon, except that the law by design has no acknowledged competitors. "Justice for All" seems as much like a branding slogan as "I'm Lovin' It," "Just Do It," and "From A to Z" do. Based upon the design and decoration of its public-facing edifices, the legal system appears to be in the justice business.⁸ The scales of justice are as recognizable as the golden arches, the swoosh, or the smiling arrow. Each serves as an institutional signature with strong cultural associations.⁹

Indeed, the judiciary has more than one unmistakable and iconic symbol, including the gavel, the scales, and Lady Justice herself. Comparably well-known symbols don't exist for other branches of government.¹⁰ Yet it doesn't strike most people as peculiar that only the judiciary enjoys such specific and well-known symbols, or that only judges (unlike legislators and executives) don black robes, much like priests, when engaged in their public roles perched on throne-like benches above the disputants and their advocates. By outward appearances, then, the goal of justice in the judiciary is supreme. That nobody knows exactly what the judiciary, like the profession, means by justice makes it an even more convenient brand and marketing ploy: there is no metric for success, no means of objective accountability.

B. *The Injustice Framework*

This Article is part of a broader series examining justice in American law and legal institutions. An introductory preface to this series provides a complete overview of the project's scope, arc, key concepts, and methodology.¹¹

⁸ See *infra* text accompanying notes 36–57.

⁹ Note that those cultural associations then get enacted in popular culture. Police procedurals or books, films, and shows about the legal system almost invariably depict cases as being resolved by trials, with all of the courtroom trappings featured. In reality, of course, almost no civil cases go to trial in the U.S. today, and fewer than five percent of criminal cases get tried. John Gramlich, *Fewer than 1% of Federal Criminal Defendants Were Acquitted in 2022*, PEW RESEARCH CENTER (June 14, 2023), <https://www.pewresearch.org/short-reads/2023/06/14/fewer-than-1-of-defendants-in-federal-criminal-cases-were-acquitted-in-2022/> [<https://perma.cc/RK6C-PQYK>] (about 2.3 percent of federal criminal defendants went to trial in the 2022 federal fiscal year). Civil trials were even rarer. Again, as to federal cases, from 2010–2019, only 1.3 percent of federal civil cases in which one party made a jury trial demand in fact ended with such a trial. Overall, during the same period only 0.7 percent of federal civil cases resulted in a jury trial. Kristin A. Garri & Emery G. Lee III, *Jury Trial Demands in Terminated Civil Cases, Fiscal Years 2010–2019*, 1–2 FEDERAL JUDICIAL CENTER (June 2022), <https://www.fjc.gov/sites/default/files/materials/07/Jury%20trial%20demand%20final.pdf> [<https://perma.cc/RZ2C-S3BH>]; Jeffrey Q. Smith & Grant R. MacQueen, *Going, Going, But Not Quite Gone: Trials Continue to Decline in Federal and State Courts. Does it Matter?*, 101 JUDICATURE 26, 28 (2017) (assessing federal and state civil case data to support the claim that civil trials are extremely rare).

¹⁰ Cf. James L. Gibson, Milton Lodge & Benjamin Woodson, *Losing, but Accepting: Legitimacy, Positivity Theory, and the Symbols of Judicial Authority*, 48 L. & SOC'Y REV. 837 (2014) (discussing the resonance of the judiciary's symbols in everyday citizens' opinions of the legitimacy of the courts).

¹¹ See Hanson & Strang, *The Justice Series*, *supra* note 1.

Here, we focus on establishing the foundation: documenting how legal institutions promise justice through symbols, language, and institutional design and how they systematically break that promise, starting in legal education.

In other work in this series, we describe and develop a widely shared and pragmatic way of assessing justice in law based on the “injustice framework.”¹² The challenge of defining justice has long stymied legal theorists and philosophers. From Plato to Rawls, a dominant approach has been “ideal theory”: the search for a blueprint of a perfectly just society, abstracted from our actual world.¹³ That search, to us, has proven a dead end for developing a usable normative metric for law.¹⁴

Our project pursues a different path. Drawing on non-ideal theory, we begin with the world as it is and pursue justice by identifying and addressing existing injustices. As detailed in other work,¹⁵ people’s sense of injustice is activated when they perceive three key factors in relation to a given causal agent and outcome: (1) the causal agent’s *power*¹⁶ produces (2) some *harm, suffering, or inequality*, and (3) either the power of the causal agent or the resultant inequality *lacks legitimacy*.¹⁷ More succinctly, people experience a sense of injustice when they perceive power producing harm without legitimacy.

Justice, we argue, then is best understood as the negation of injustice—and that conception captures what people commonly mean when they invoke justice in practical terms. Further, that is a process, not a terminus; a goal, not a present result. In other words, this conception understands fighting or rectifying injustice as pursuing or achieving justice. That mates with people’s ordinary narrative or storytelling mode of speech and writing that in everyday life makes injustice (and therefore justice) easy to see and understand.

¹² See Jon Hanson & Jacob Lipton, *Occupy Justice: Introducing the Injustice Framework*, 15 HARV. L. & POL’Y REV. 335, 342–48 (2021).

¹³ See, e.g., PLATO, THE REPUBLIC (G.R.F. Ferrari ed., Tom Griffith trans., Cambridge Univ. Press 2000) (c. 375 B.C.E.) (proposing an ideal, albeit fictional, political state); see also Leif Wenar, *John Rawls* § 2.3, in STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta & Uri Nodelman eds., 2025), <https://plato.stanford.edu/entries/rawls/> [<https://perma.cc/RD54-8ANU>] (evaluating Rawls’s “ideal theory,” which, when thoroughly plumbed, can provide lessons for reforming non-ideal environments like those in the real world).

¹⁴ This essentially is the premise for Charles W. Mills’ *The Racial Contract*, and for Carole Pateman’s *The Sexual Contract* before it. Mills explained our point in brief in CHARLES W. MILLS, THE RACIAL CONTRACT 4–7 (1997), referring to CAROLE PATEMAN, THE SEXUAL CONTRACT (1988).

¹⁵ See Hanson & Lipton, *supra* note 12, *passim*.

¹⁶ Different forms of power, ranging from overt and coercive force to subtle and systemic influence, are more or less salient and thus correspondingly more or less likely to activate a sense of injustice.

¹⁷ There are a variety of ways in which power and harm might be legitimized, such as, the consent of an individual harmed, the approval of some cultural authority, or consistency with some tradition, norm, precedent, sound reason, or fair process.

C. *The Broken Promise*

But under virtually any definition of justice,¹⁸ we can evaluate whether legal institutions make good on their elaborate promises of justice. They do not. To cut to the chase, the entire apparatus of legal education and the profession make a promise of justice—or at least its pursuit—both explicitly and implicitly. Then the apparatus in practice breaks that promise. Furthermore, that apparatus or system, as people like to call it, defeats performance and thus the promise itself. This is a system in which “[l]egalism rules concern for justice out of bounds,” and “justice becomes ‘not the worry’ of the law student or scholar.” It follows that justice will “not [be] the worry of the legally trained professional.”¹⁹

This leads to what we call *injustice dissonance*: a psychological discomfort experienced by law people to reconcile the gap between law and justice.²⁰ Certain subsets of legal actors suffer more from this psychological tension, especially those who make or shape decisions that profoundly affect the lives of litigants for the worse or, more broadly, inequitably alter power or material conditions for communities, groups, or interests in society. It is a discomfort made acute by the legal system’s promise of justice.²¹ Lawyers and judges display signs of that dissonance often: sometimes equating (and conflating) law rigidly with justice, for instance, and other times protesting that justice is ineffable and unattainable, or denying the utility of the concept of justice altogether.²² The dissonance in those who have been so socialized reveals itself in a variety of ways, including self-blaming humor. As Professor John Bliss, who studies “public interest drift,” describes, “You often hear it as a sort of gallows humor among lawyers: ‘I came to law school to save the world, and then I sold out to make money.’”²³ Did they sell out, or were they attracted to a bait-and-switch?

The problem with a legal system and legal profession failing to meet its obligations to advance justice is an old one. Deborah Rhode began her book

¹⁸ That is, so long as one is operating with a meaningful definition or framework for justice, rather than treating “justice” as a loose label for unspecified intuitions or emotional reactions.

¹⁹ ROBIN WEST, *TEACHING LAW: JUSTICE, POLITICS, AND THE DEMANDS OF PROFESSIONALISM* 66 (2013).

²⁰ The concept of injustice dissonance is employed and developed across this series. See Hanson & Strang, *The Justice Series*, *supra* note 1.

²¹ Judges feel both an internal urge and external pressure to perceive and portray themselves as advancing justice, regardless of the truth of the matter. Jon Hanson & Dean A. Strang, *The Justice Imperative*, 21 HARV. L. & POL’Y REV. (Issue 1, forthcoming 2026) [hereinafter Hanson & Strang, *The Justice Imperative*]; Jon Hanson, Mara Kipnis, Matt Kristoffersen, & Lica Porcile, *Inside the Justice Crisis*, 21 HARV. L. & POL’Y REV. (symposium issue, forthcoming 2027) [hereinafter Hanson, Kipnis, Kristoffersen, & Porcile, *Inside the Justice Crisis*]; Jon Hanson & Matt Kristoffersen, *Inside the Law Crisis: Deep Injustice Stories Driving the Law*, 21 HARV. L. & POL’Y REV. (symposium issue, forthcoming 2027) [hereinafter Hanson & Kristoffersen, *Inside the Law Crisis*].

²² See *infra* text accompanying notes 251–252.

²³ John Bliss, *Drifting Law Students: Public Interest Caught in the Law Firm Pipeline*, THE PRACTICE, May – June 2018, <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/finding-the-lawyer-identity/drifting-law-students/> [https://perma.cc/3YJU-APC5].

on the legal profession²⁴ by pointing out that “Over two thousand years ago, Seneca observed advocates acting as accessories to injustice, ‘smothered by their prosperity,’ and Plato condemned their ‘small and unrighteous souls.’”²⁵ She summarized the resultant dissonance of lawyers and the public as follows:

Many lawyers are, in Auden’s apt phrase, “trudging in tune to a tidy fortune,” but they have lost their connection to the values of social justice that sent them to law in the first place. These problems of professionalism are compounded by problems in the justice system. . . . [including] an increasing gap between rich and poor and a declining willingness to subsidize assistance for those who can least afford it. These inequalities in legal representation have magnified inequalities in adversarial processes. The result is aptly captured in a New Yorker cartoon picturing a well-heeled lawyer asking his client: “So, Mr. Pitikin, how much justice *can* you afford?”²⁶

While the contradiction between law’s facade and its interior has been observed by many scholars, law students, and lawyers, the legal profession has still failed to acknowledge that this contradiction matters, representing a broken or rigged social contract with profound implications for our laws and those subject to them.²⁷

At one level, that is puzzling. The law itself enforces contracts and assigns liability to those who breach promises. As Professor Charles Fried argued, contract law is fundamentally rooted in the moral principle of promise-keeping.²⁸ Indeed, the law also holds liable those who obtain the contractual assent of others by misrepresenting material facts or fraud in the inducement. Less commonly, but still with some doctrinal foundation, the law seeks to remedy abuse of gross disparities in bargaining power by declining to enforce a few contracts of adhesion that are flatly unconscionable,²⁹ or other contracts against public policy.³⁰

Legal doctrine goes further. For promises to be enforceable, they do not have to be perfect or based upon mutual consideration. Contract law will enforce contracts even when they lack “a manifestation of mutual assent to the exchange and a consideration.”³¹ In promissory estoppel cases, the law enforces such promises in order to protect reliance interests—and thus to promote justice or prevent injustice.³² For example, the Restatement (Second) of Contracts § 90 states that such a promise is binding if it is “reasonably

²⁴ DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* (2000).

²⁵ *Id.* at 1.

²⁶ *Id.* at 2.

²⁷ Cf. Hanson & Strang, *The Justice Imperative*, *supra* note 21, Section I.C. (describing the relationship of justice to ideal and non-ideal social contract theory).

²⁸ CHARLES FRIED, *CONTRACT AS PROMISE: A THEORY OF CONTRACTUAL OBLIGATION* 1 (2d ed. 2015).

²⁹ RESTATEMENT (SECOND) OF CONTRACTS § 208 (AM. L. INST. 1981).

³⁰ *Id.* at § 178.

³¹ *See id.* at § 17.

³² *See, e.g., Drennan v. Star Paving Co.*, 333 P.2d 757 (Cal. 1958) (applying the rule of promissory estoppel to require a contractor to perform paving work according to a bid he had submitted); *see generally* Orit Gan, *The Justice Element of Promissory Estoppel*, 89 ST. JOHN’S L.

expected to induce action or forbearance” and if “injustice can be avoided only by enforcement of the promise.”³³

Exploring that promise, and then thinking about how to enforce it, is our entire project here. To reiterate a point we mentioned above, this Article’s initial argument does not depend on embracing any particular theory of justice. Whatever justice means, the legal system and its most prominent spokespeople proclaim it as their paramount goal and repeatedly promise it as their end. Yet, they never define it and even more importantly, in practice they consistently and quietly abandon justice for mere law (or, when *gravitas* seems especially important, for “the rule of law”). Indeed, they seem to exploit the very ambiguity surrounding justice—the lack of any broadly accepted definition—to evade accountability for actually realizing that goal.³⁴

REV. 55 (2015) (discussing promissory estoppel’s capacity for promoting justice and its current shortcomings in doing so).

³³ RESTATEMENT (SECOND) OF CONTRACTS § 90 (AM. L. INST. 1981). In some cases, courts have even been willing to de-emphasize questions of reliance for certain kinds of public-serving promises, where justice is at stake, such as charitable subscriptions. Justice ranks with charity as a virtue worthy of procedural favor. *See, e.g., I. & I. Holding Corporation v. Gainsburg*, 12 N.E.2d 532 (N.Y. 1938) (finding an enforceable contract in a subscription made to assist a hospital in humanitarian work, and finding reliance in that hospital continuing that work); *cf. Nelson Mandela, Address for the “Make Poverty History” Concert* (Feb. 3, 2005), http://www.mandela.gov.za/mandela_speeches/2005/050203_poverty.htm [<https://perma.cc/8TCD-NXH5>] (“[O]vercoming poverty is not a gesture of charity. It is an act of justice.”); Martin Luther King, *Beyond Vietnam: A Time to Break Silence* (Apr. 4, 1967), <https://www2.hawaii.edu/~freeman/courses/phil100/17.%20MLK%20Beyond%20Vietnam.pdf> [<https://perma.cc/M7Y3-5MWM>] (“True compassion is more than flinging a coin to a beggar. It comes to see that an edifice which produces beggars needs restructuring.”). That is, if a donor who pledges money to a university is held accountable even absent reliance, then surely the legal system’s explicit and continuous promise to serve justice carries some weight. Accordingly, the justice pledge would seem to require an even higher standard. *See U.S. Oil Co. v. Midwest Auto Care Servs., Inc.*, 440 N.W.2d 825, 828 (Wis. Ct. App. 1989) (“In addition, the plaintiff must prove that enforcement of the promise is necessary to avoid an injustice. . . . [This] is a policy question to be decided by the court in the exercise of its discretion.” (citations omitted)).

In fact, the first clause of § 90, which makes clear the provision’s goal of “avoid[ing]” “injustice . . . by enforcement of the promise,” should render self-enforcing the law’s promise to deliver justice. RESTATEMENT (SECOND) OF CONTRACTS § 90 (AM. L. INST. 1981). Regarding that justice pledge, it seems definitionally true that the “injustice can be avoided only by enforcement of the promise.” *Id.*

³⁴ The legal system does sometimes articulate other goals alongside justice. The Federal Rules of Civil Procedure, for instance, state that they “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” FED. R. CIV. P. 1. One might argue that justice is simply one value among many to be optimized or traded off against competing concerns like efficiency and cost.

Several problems undermine that defense. First, while goals like speed and economy matter to any functioning system, they appear secondary to and interwoven with justice rather than in tension with it. “Efficiency” is not a word one will find chiseled on courthouse facades or courtroom walls. Indeed, speediness matters precisely *because* it matters to justice: undue delay or cost in addressing injustices are themselves elements of that injustice, captured by concerns about “access to justice.” Judges themselves understand this relationship. When surveyed about their priorities, judges emphasized that “justice for litigants makes everything else pale in comparison” and that justice must supersede other goals lest there be merely a “uniformity of bad results.” *See infra* text accompanying notes 232–246 (discussing judicial survey findings). Some judges who initially ranked values like clarity or uniformity over justice were careful to describe those qualities as a “means to justice.” *Id.* In short, when judges articulate multiple goals, they typically view justice as paramount and treat efficiency and related values as instrumental to it rather than as competing concerns requiring tradeoffs.

Our project is premised on the belief that this evasion is untenable. If law and its spokespeople consistently promise justice as their guiding ideal, they have an obligation to do the hard work of giving the term enough content to render the legal system accountable. This larger project attempts both to describe and meet that challenge. In short, as we begin to demonstrate in this Article, one cannot simply dismiss the promise of justice as empty rhetoric, or useful only on ceremonial occasions, and move on. If the law insists on promising justice, it must take seriously the work of giving meaning to, and making good on, that promise.

D. Article Preview

Part I of this Article explores the variety of ways the legal system signals its commitment to justice, revealing how even physical spaces reinforce the notion that the judiciary is committed first and foremost to advancing justice. That Part also examines how the promise of justice manifests in legal language—from official titles to judicial rhetoric—and considers how such rhetorical choices shape public perceptions.

Part II examines the role of prominent legal-institutional actors in articulating, reinforcing, and repeating the justice promise. It traces the justice promise across the echelons of the legal profession, working downward from the benches of the highest courts and the courts below them, to the practicing attorneys who advocate for their clients within those courts, and finally to the law schools where lay people endure the three-year challenge to become law people. Regarding the judges, it considers their oaths, written opinions, and public statements on justice, supplemented by polling data on their self-perceived role. Part II then examines the role of lawyers and bar associations, tracing the professional and ethical commitments to justice, with special attention to prosecutors, whose outsized discretion is paired with an elevated duty to pursue justice. Part II finally considers the important role of law schools in marketing law and lawyering as justice-centered.

Part III begins an argument that will continue in other work: the law doesn't keep this fundamental promise, raising questions about whether the legal system genuinely values justice or merely deploys it as a justifying

Second, while the legal profession routinely teaches practitioners how to balance competing values in other contexts, it offers no robust attention to—much less training in—how to balance justice against other goals. Learned Hand's famous "B < PL" formula for ascertaining negligence liability, for example, epitomizes cost-benefit balancing and is a staple of legal education. Yet without a working definition of justice, which the legal system declines to provide, it is impossible even to identify what would be traded off in any balancing exercise involving justice, much less how to optimize among competing values. This asymmetry suggests that justice occupies a different status altogether—one that resists the kind of commensuration that balancing requires. Indeed, Judge Hand himself arguably recognized this distinction: "If we are to keep our democracy there must be one commandment: Thou shalt not ration justice." Whitney North Seymour, *Tribute to the 'Old Chief' of the Bench; Learned Hand Has Set a Record of Fifty Years as a Federal Judge, but the Breadth of his Career Is Even More Noteworthy than its Length*, N.Y. TIMES (Apr. 5, 1959), <https://www.nytimes.com/1959/04/05/archives/tribute-to-the-old-chief-of-the-bench-learned-hand-has-set-a-record.html> [<https://perma.cc/XS9C-ZZJC>].

narrative. This Part looks specifically at the special role of legal education, in what amounts to a bait-and-switch for law students promised justice but taught only law, and how that enculturation process, in turn, shapes legal professionals and the law. Part III also begins to consider the consequences of a breached promise, asking how the legal system's authority might be reconsidered if its justice claims prove insincere.

Finally, the conclusion begins to sketch some of the possible reasons why our legal system goes to so much trouble making a promise to which, behind the scenes, it ignores and often even disparages. It begins to explore why, and how, the system, and the people in it, break the promise of justice.

I. THE JUSTICE PROMISE

We turn initially to examining some evidence of the justice promise, in both its implicit and explicit forms. Section A begins by considering the message communicated by legal buildings—that is, by their architecture, statuary, and inscriptions. Section B then looks at how justice and the justice promise become manifest in the language of law itself.

A. Architecture

"[I]f you want justice, you go to a courthouse."

—State Supreme Court Justice³⁵

As federal courthouses go, Boston's is a new one. It opened in 1998. Facing and welcoming the city's waterfront, the courthouse is home to the U.S. Court of Appeals for the First Circuit and to the U.S. District Court for the District of Massachusetts.

Outside and throughout the courthouse, more than thirty granite engravings on tablets with raised stone letters set the tone. All speak to high aspirations. At least seven proclaim something explicit about justice. The following quotations—a sample of the engravings—nicely illustrate the diversity and breadth of those messages and authors.³⁶ They include this 1776 gem from John Adams: "The dignity and stability of government in all its branches, the morals of the people, and every blessing of society depend upon an upright and skillful administration of justice."³⁷ This aphorism from Louis Brandeis:

³⁵ Rick A. Swanson, *Judicial Roles in State High Courts*, 94 JUDICATURE 169, 172 (2011) (survey of state court judges on appropriate judicial roles); see *infra* text accompanying notes 232–246.

³⁶ See JAMES D. ST. CLAIR COURT PUB. EDUC. PROJECT OF THE BOSTON BAR FOUND., *THE ART AND CRAFT OF JUSTICE: A GUIDE TO THE STONE CARVINGS AND INSCRIPTIONS OF THE JOHN JOSEPH MOAKLEY UNITED STATES COURTHOUSE, BOSTON, MASSACHUSETTS* (2nd ed. 2002), <https://www.mad.uscourts.gov/history/pdf/Inscriptions.brochure.2E.pdf> [<https://perma.cc/5JSU-8V8E>] (depicting photographs of and describing the inscriptions of the Courthouse).

³⁷ *Id.* at 6. The quotation in the engraving deviates slightly from the quotation in other sources. See, e.g., John Adams, *III. Thoughts on Government, April 1776*, FOUNDERS ONLINE, <https://founders.archives.gov/documents/Adams/06-04-02-0026-0004> [<https://perma.cc/2DHB-5KMB>] ("The dignity and stability of government in all its branches, the morals of

“Justice Is But Truth in Action.”³⁸ This tribute to diversity and inclusion from the first woman to be admitted to the Massachusetts bar, Lelia Josephine Robinson³⁹: “the best administration of justice may be most safely secured by allowing the representation of all classes of the people in courts of justice.”⁴⁰ And this sobering warning, from Frederick Douglass: “Where justice is denied and any one class is made to feel that society is an organized conspiracy to oppress, rob, and degrade them, neither persons nor property will be safe.”⁴¹

Images of blind justice, holding aloft balanced scales, also share space in the courthouse—just as those images or statuary of Lady Justice appear in almost every federal, state, and local courthouse in the country.⁴²

At the Suffolk County Courthouse, also in Boston, this “JUSTICE FOR ALL” relief stands, complete with swords and scales, just above the main door (Figure A).

FIGURE A.⁴³



the people and every blessing of society, depends so much upon an upright and skillful administration of justice.”).

³⁸ ST. CLAIR, *supra* note 36, at 44.

³⁹ *Id.* at 7; JILL NORGREN, *REBELS AT THE BAR: THE FASCINATING, FORGOTTEN STORIES OF AMERICA'S FIRST WOMEN LAWYERS 156–84* (2013).

⁴⁰ ST. CLAIR, *supra* note 36, at 7.

⁴¹ *Id.* at 10.

⁴² Equality, liberty, and law get prominent billing, too. But justice is the central theme. See *id.* at 6–41; see generally MARTHA J. McNAMARA, *FROM TAVERN TO COURTHOUSE: ARCHITECTURE AND RITUAL IN AMERICAN LAW 1658–1860* (2004) (exploring how purpose-built colonial courthouses in Massachusetts not only professionalized the legal system but also visually and spatially conveyed judicial authority, civic order, and the administration of public justice).

⁴³ Daderot, *Justice for All Relief—Suffolk County Courthouse, Boston, Massachusetts, USA*, WIKIMEDIA COMMONS (Jan. 1, 2013), https://commons.wikimedia.org/wiki/File:Justice_for_All_-_Suffolk_County_Courthouse_-_Boston,_MA_-_DSC04713.JPG [https://perma.cc/J9JB-3XHB].

Courtrooms and courthouses throughout the United States (and elsewhere) echo the justice motif through architecture, statues, monuments, inscriptions, and hagiography.⁴⁴ Consider finally the United States Supreme Court Building, which stands as the law's great cathedral or temple,⁴⁵ an architectural symbol, with its edificial statuary and inscriptions rendering legible the legal system's deepest and most abiding commitments and promises.

On either side of the forty-four steps leading to the main entrance of the building, atop "nearly fifty-ton marble blocks" are two immense statues, chiseled by James Earle Fraser.⁴⁶ One he titled "Authority of Law," and the other, "Contemplation of Justice."⁴⁷ As Fraser explained, the latter represents "a realistic conception of what I consider a heroic type of person with a head and body expressive of the beauty and intelligence of justice."⁴⁸ Beneath her left arm is a book of laws, and she holds in her right hand a figure of blind-folded Justice.⁴⁹ (See Figure B below.)

FIGURE B. "CONTEMPLATION OF JUSTICE" BY JAMES EARLE FRASER⁵⁰



⁴⁴ See generally Judith Resnick & Dennis Curtis, REPRESENTING JUSTICE: INVENTION, CONTROVERSY, AND RIGHTS IN CITY-STATES AND DEMOCRATIC COURTROOMS (2011) (tracing the history of and development of icons and public spaces related to justice).

⁴⁵ See *infra* note 55.

⁴⁶ OFFICE OF THE CURATOR, SUPREME COURT OF THE UNITED STATES, STATUES OF CONTEMPLATION OF JUSTICE AND AUTHORITY OF LAW: INFORMATION SHEET (2010), <https://www.supremecourt.gov/about/FraserStatuesInfoSheet.pdf> [<https://perma.cc/ANQ4-ZMHT>].

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Daderot, *File: Contemplation of Justice by James Earle Fraser, US Supreme Court.jpg*, WIKIMEDIA COMMONS (July 4, 2008), https://commons.wikimedia.org/wiki/File:Contemplation_ofJustice_by_James_Earle_Fraser_US_Supreme_Court.jpg [<https://perma.cc/KMR4-Y2XV>].

In what is probably the most famous phrase describing the U.S. legal system, the words “Equal Justice Under Law” are inscribed on the front portico of that building.⁵¹ Chief Justice Charles Evans Hughes in the end was responsible for that wording on the pediment. Much as a biased umpire applying fair rules will produce unfair outcomes, Hughes observed that both the law and those who apply it must be just.⁵² Thus understood, the commitment to justice in the phrase “equal justice under law” capaciously includes the letter or substance of the law, the spirit of those who apply it, and the process through which it is applied.⁵³

⁵¹ See Barrett McGurn, *Slogans to Fit the Occasion*, in YEARBOOK 1982, 104, 104 (Supreme Court Historical Society 1982) (“Few legal phrases are better known than the four words engraved above the front portico of the Supreme Court Building.”). An interesting and somewhat revealing history underlies the use of that phrase. At the time of its selection, 1932, it had at least one prominent detractor. Then Chief Justice Charles Evans Hughes, who tentatively agreed to the phrase and who had de facto control over such matters, was challenged by a prominent journalist, Herbert Bayard Swope, who was the executive editor of the *New York World* and three-time winner of the Pulitzer Prize. See E.J. KAHN, *THE WORLD OF SWOPE* 260–77 (1965). Swope, also apparently a friend of the Chief Justice, argued that the word “equal” was redundant. McGurn, *supra*, at 104. He “accuse[d] the . . . Court of having permitted tautology, verbosity and redundancy, each of which is an abomination in good usage.” *Id.* The critique seems sound: “Justice under Law” would convey the same meaning with fewer words; that is, equality is implied in “justice.”

Though he was ultimately unpersuaded and “quashed” Swope’s “indictment,” *id.* at 105, Chief Justice Hughes was discomfited. In a response to Swope, he encouraged the newsman to put down his “blue pencil,” and “consider the history of the law,” in which “‘Equal Justice’ is a time-honored phrase.” *Id.* Hughes quoted President Thomas Jefferson’s first inaugural, which “spoke of ‘equal and exact justice to all men.’” *Id.* (emphasis in original). He also pointed to the first Judiciary Act of 1789, which contains an oath taken by federal judges: “I . . . do solemnly swear . . . that I will administer justice without respect to persons, and do equal right to the poor and rich.” *Id.* at 106 (emphasis omitted). According to the Chief Justice, “probably no sentence in our Reports is more frequently quoted” than “equal justice,” and, had he more time, he could provide “a host of illustrations of the use of the phrase ‘equal justice.’” *Id.*

⁵² McGurn, *supra* note 51, at 104. As we argue in our other work, this distinction between just outcomes and just application of underlying rules, and the notion that courts should aim for both, is critically important to keep in mind and is too often confused. See Hanson & Strang, *The Justice Imperative*, *supra* note 21, Section III.B; Jon Hanson & Dean A. Strang, *Justice Deferred*, 21 HARV. L. & POL’Y REV. (Issue 1, forthcoming 2026) [hereinafter Hanson & Strang, *Justice Deferred*].

⁵³ A lawyer and former pupil of Chief Justice Hughes, Clarence P. Cowles, sought to provide more support for the Chief Justice’s choice and assembled a broader collection of historical precedents that together might make clear the pedigree of the principle “Equal Justice Under Law.” Cowles assembled twenty-four pages that arguably vindicated Hughes’s claims and that, in any event, provide indirect support for this Article’s thesis regarding the law’s promise of justice. Barrett McGurn, then the Supreme Court Press Secretary, provided this summary of Cowles’s painstaking work:

- Hammurabi (circa 2130 to 2088 B.C.). In his Code he called upon the strong to deal justly with “the weak, the orphan and the widow.”
- Pericles’ Funeral Oration (circa 404 B. C.), quoted by Thucydides, and translated by Richard Crawley: “If we look to the laws, they afford equal justice to all in their private differences.”
- God’s voice in Ezechiel, chapters 18 and 33 (King James Revised Standard edition): “Is not My way equal?” thus equating equality and justice.
- St. Paul to the Colossians (same edition), chapter 4: “Masters, give unto your servants that which is just and equal.”
- Aristotle (340–321 B.C.) in Book 5 of the *Nicomachean Ethics*: “the equitable is just.”

It is with such elevating imagery and aspiration in mind that Justice Stephen Breyer has written, “[T]he significance of the court’s front entrance extends beyond its design and function. . . . To many members of the public, this court’s main entrance and front steps are not only a means to, but also a metaphor for, access to the court itself.”⁵⁴

Beyond even those obvious symbols, the architecture of courthouses and courtrooms often conveys a more general message about the connection between law and justice, about judges as priests of justice, and about courthouses as temples of justice.⁵⁵ As architectural historian John C. McConnell explains, “It is these images of great columns, staircases, polished corridors, statuary, and the like, that are also the embodiment of justice for us. By remembering architectural forms in association with ideas about justice . . . we create archetypes—physical forms that have meanings defined by their associational value.”⁵⁶

So, across all echelons of our stratified judiciary (and across history⁵⁷), justice reigns. Or so it would appear to those looking at the architecture of legal institutional edifices from the outside.

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- The judicial oath prescribed by King Saint Louis (1226-1270), requiring all magistrates to swear that “without regard to persons they will do Justice according to the laws of this Kingdom.”
 - Blackstone’s Commentaries on the Laws of England (1768), Volume III, chapter 27: “Equity is synonymous with Justice.”
 - Sir Frederick Pollock’s volume, “A First Book of Jurisprudence” with its comment that “Justice administered according to the law . . . seems capable of being reduced to Generality Equality and Certainty”
 - Justice Pliny Merrick’s decision during the March 1859 Term of the Supreme Judicial Court of Massachusetts in *Fitchburg Railroad Company v. Addison Gage* (quoted in 12 Gray 393-1866): “The principle derived from (common law) is very plain and simple. It requires equal justice to all.”
 - As a proud Vermonter Mr. Cowles cited one other precedent from his own Green Mountain state. The Vermont Constitutional oath, required of all judges, is a pledge to do “equal right and justice to all men. . . according to law.”

McGurn, *supra* note 51, at 107–08.

⁵⁴ Breyer, J., *Statement Concerning the Supreme Court’s Front Entrance*, J. OF THE SUP. CT. OF THE U.S., Oct. 2009, at 831, <https://www.supremecourt.gov/orders/journal/jnl09.pdf> [<https://perma.cc/AK3Q-GQ8W>].

⁵⁵ See JUDITH RESNIK & DENNIS CURTIS, REPRESENTING JUSTICE: INVENTION, CONTROVERSY, AND RIGHTS IN CITY-STATES AND DEMOCRATIC COURTROOMS (2011) (examining how courthouse facades, courtroom design, and judicial iconography convey institutional messages linking law to justice); Lucille A. Roussin, *The Temple of American Justice: The United States Supreme Court Building*, 20 CHAP. L. REV. 51, 53–55 (2017) (describing Chief Justice Taft’s view that courthouse architecture should impress upon the judge “that he is a high-priest in the temple of justice”). Notably, one of the current exhibitions at SCOTUS is “The Supreme Court Building: America’s Temple of Justice.” *Current Exhibitions*, SUPREME COURT OF THE UNITED STATES, <https://www.supremecourt.gov/visiting/TempleOfJustice.aspx> [<https://perma.cc/NK3L-GMQG>] (last visited Nov. 4, 2025).

⁵⁶ JOHN C. MCCONNELL, THE HOUSES OF LAW: A HISTORY OF SUPERIOR COURT ARCHITECTURE IN MASSACHUSETTS (1984).

⁵⁷ See McGurn, *supra* note 51.

B. Language

That branding also pervades the language around and about our legal system, a system that styles itself, and is commonly referred to, as the “justice system” or the “system of justice.” The centrality of justice is further suggested by the fact that the most powerful and authoritative members of that system, the jurists occupying the nine seats of the United States Supreme Court bench, are titled “Justices,” as are the highest judges in most states. Meanwhile, in Delaware at least, lower-status magistrates are sometimes referred to as “justices of the peace.”⁵⁸

The word “justice” finds its way into every element of the system. There’s “criminal justice” and “civil justice.” There’s the problem of “access to justice,” when individuals cannot afford a lawyer.⁵⁹ There is the current euphemism for people re-entering society after prison or jail: “justice-involved.”⁶⁰ When a person, group, or institution seeks justice, each knows—indeed, is more or less required—to turn to the law for vindication. When an individual evades accountability to the law, that person is a “fugitive from justice.”⁶¹ The act of interfering with the law and its procedures is called “obstruction of justice.”⁶² An apparent error or failure within the system is called a “miscarriage of justice.”⁶³ Other lay conceptions of justice—justice with modifiers—

⁵⁸ See *Magistrate Screening*, DELAWARE DIVISION OF PROFESSIONAL REGULATION, <https://dpr.delaware.gov/boards/magistrate/> [<https://perma.cc/ZH95-VC88>] (last visited Nov. 4, 2025) (explaining screening for Delaware’s Justices of the Peace (Magistrates)).

⁵⁹ See *Resource Center for Access to Justice Initiatives*, A.B.A., https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/ [<https://perma.cc/3RMT-QMNR>] (last visited Nov. 4, 2025) (ABA web page describing their initiative to serve “judicial, private bar, and legal aid leaders who work together to provide people of low and modest income with meaningful access to their justice systems.”); ACCESS TO JUSTICE LAB, <https://a2jlab.org/> [<https://perma.cc/K3F5-B3NU>] (last visited Nov. 4, 2025) (A2J Lab works to transform the U.S. justice system through empirical research).

⁶⁰ Re-entry programs now often use this term, gentler than “convict” or “criminal” and designed to destigmatize people who already face many obstacles—both judicial and cultural—to establish normalcy. For example, the California Department of Health Care Services is one such initiative. See, e.g., *Justice-Involved Reentry Initiative*, CAL. DEPT. OF HEALTH CARE SERVS., <https://www.dhcs.ca.gov/CalAIM/Justice-Involved-Initiative/Pages/home.aspx> [<https://perma.cc/V2Y4-G5BP>] (last visited Nov. 4, 2025). The Center for Health Law and Policy at Northeastern University Law School’s “Changing the Narrative” project argues for the use of the phrase “justice-involved.” *Justice-Involved People*, CHANGING THE NARRATIVE, <https://www.changingthenarrative.news/justice-involved-people> [<https://perma.cc/5QLC-75YP>] (last visited Nov. 4, 2025). Similarly, North Carolina State University’s Institute for Emerging Issues has a lengthy briefing that highlights the term. Brodie Smith, *The Employment of Justice-Involved Persons*, INST. EMERGING ISSUES (May 22, 2023), <https://iei.ncsu.edu/2023/05/22/the-employment-of-justice-involved-persons> [<https://perma.cc/PL2V-YLNE>].

⁶¹ See 18 U.S.C. § 921(a)(15) (“The term ‘fugitive from justice’ means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.”); *Reed v. State ex rel. Ortiz*, 947 P.2d 86, 113 (N.M. 1997) (Minzner, J., concurring) (“Thus, justice, in the phrase ‘fugitive from justice,’ does not mean the ‘administration of what is just’ or fair; it means the administration of law”).

⁶² See 18 U.S.C. § 1503(a) (defining obstruction of justice as an act that “corruptly, or by threats of force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice.”).

⁶³ *Miscarriage of Justice*, BLACK’S LAW DICTIONARY (12th ed. 2024) (defining the term as “[a] grossly unfair outcome in a judicial proceeding, as when a defendant is convicted despite a lack of evidence on an essential element of the crime.”).

are interpreted as inferior to the undiluted form produced by law. “Vigilante justice,” “frontier justice,” “street justice,” “mass justice,” “mob justice,” and the like, are all identifiable and identified as constituting the sort of problematic ‘settling of accounts’ that occurs outside the law.⁶⁴ Often, indeed, those means to justice are punishable by law itself, as a matter of “justice.”

The language and symbolism of justice is inescapable, a physical and mental image impressed on every person who enters the courthouse. The power of this branding is so strong that it extends beyond the word’s common meaning in marketing; it leaves a permanent mark burnt into the institution of the courts, an ineffaceable promise to serve the people by engaging not just the law, but the core goal of justice. This preoccupation extends beyond the architecture and language of the courts, and directly into the courts’ people, the living organs of the legal system.

II. JUSTICE’S PROMISORS

“We are the servants of society, the bond-servants of justice.”

—Woodrow Wilson⁶⁵

What then of the people whom the law brands as servants of justice?⁶⁶ It is within these actors that we find the core goal of justice beginning to waver; justice lives in our hearts much more as flickering candlelight than the burning flame that courts proclaim. Yet actors within this system still cling to justice as a core motivation, both internally and externally. That is most obvious at the base: in the law schools and their students, the nation’s future lawyers. But it persists, to at least some extent, on up to the pinnacle: from lawyers generally and bar associations, to the special case of prosecutors, up to judges as top-level decision-makers. Yet as we ascend to each level, it becomes obvious how the goal of justice is increasingly obscured, changed, or transmuted within the minds of legal actors.

⁶⁴ See, e.g., Interview with Judge Denny Chin in JOEL COHEN, *BLINDFOLDS OFF: JUDGES ON HOW THEY DECIDE* 41–58 (2014).

⁶⁵ Woodrow Wilson, *The Lawyer and the Community*, Annual Address before the American Bar Association (Aug. 31, 1910), in 192 N. AM. REV. 604, 622 (1910), <https://www.jstor.org/stable/pdf/25106795.pdf> [<https://perma.cc/WKL3-ADYV>].

⁶⁶ Note importantly that we, the authors, are ourselves entirely voluntary participants in various roles within the legal system and profession. We are not among the involuntary participants—the accused, the victims of crime, family members, the citizen witnesses, the injured plaintiffs or the civil defendants—all of whom have distinct voices that go unheard most of the time. See, e.g., ABBE SMITH, *GUILTY PEOPLE* (2020) (assessing how guilty criminal defendants move through the criminal justice system); CHANEL MILLER, *KNOW MY NAME: A MEMOIR* (2019) (describing the author’s experience as a victim of sexual assault); SHAKA SENGHOR, *WRITING MY WRONGS* (2017) (providing an incarcerated individual’s first-hand perspective of American prisons); SIX BY TEN: *STORIES FROM SOLITARY* (Taylor Pendergrass & Mateo Hoke, eds., 2018) (collecting perspectives from incarcerated individuals in solitary confinement); JARVIS JAY MASTERS, *THAT BIRD HAS MY WINGS: THE AUTOBIOGRAPHY OF AN INNOCENT MAN ON DEATH ROW* (2010) (describing the author’s experiences facing the threat of execution for a crime he says he did not commit).

A. Law Schools

"A law student at the outset of his studies ought first to know the derivation of the word jus. Its derivation is from justitia. For . . . the law is the art of goodness and fairness. . . . Of that art we [jurists] are deservedly called the priests. For we cultivate the virtue of justice and claim awareness of what is good and fair, discriminating between fair and unfair, distinguishing lawful from unlawful, aiming to make men good not only through fear of penalties but also indeed under allurements of rewards, and affecting a philosophy which, if I am not deceived, is genuine, not a sham."

—Digest of Justinian Volume 1⁶⁷

"The students . . . will prove themselves to be leading orators and servants of justice."

—Digest of Justinian, The Whole Body of Law⁶⁸

Law schools across the United States portray themselves as promoting justice by educating their students in the means and methods of justice.⁶⁹ Similarly, many students opt to attend law school in order to prepare themselves for a career of advancing justice.⁷⁰ This section examines the way that law schools, in that way, constitute the institutional intersection of demand and supply of justice education.

1. Legal Education Generally

Legal education serves many critical roles in our legal system and society. In addition to providing most of the key personnel and professional participants in our judicial branch, law school is a common launching pad for political careers. Historically, most U.S. presidents, vice presidents, and members of Congress have come from legal backgrounds.⁷¹ While that percentage has declined in recent decades, nearly forty percent of the 2017 U.S. Congress attended law school.⁷² The judiciary, needless to say, is made up entirely of lawyers other than at the lowest local level of justices of the peace, who may

⁶⁷ DIG. 1.1.1 (Ulpian, Institutes 1).

⁶⁸ DIG. (Justinian, The Whole Body of Law) ("The students are to have nothing concealed from them, therefore, when these arcane matters have been revealed to them; and after perusing all the works we have composed . . . , they will prove themselves to be leading orators and servants of justice.").

⁶⁹ See Note, *Alienation in Law School*, 137 HARV. L. REV. 958, 965, n. 49 (2024).

⁷⁰ *Id.* at 963 ("Making the world a more just place is an important commitment of some incoming law students. One may hope to advance a particular cause; to zealously represent the interests of individuals; or simply to practice law well, out of a conviction that doing law *is* doing justice.").

⁷¹ Nick Robinson, *The Decline of the Lawyer-Politician*, 65 BUFF. L. REV. 657, 658 (2017).

⁷² *Id.* at 659.

or may not need a law degree as a prerequisite to holding the job, depending on the state.⁷³

Legal education matters most, however, because law schools are the place where lay people become law people, where they are professionalized, and where they seek to learn not just about the law but, importantly, how to “think like a lawyer.” Through that process, law students are prepared to interpret, apply, enforce, and maybe even make laws within our larger system of justice.⁷⁴

What law schools teach, what they don’t teach, how they teach, what they value, what they do not value, what questions they center, what behaviors they model, the explicit and implicit curricula of legal education—they all have a profound effect on who applies to law school, on the perspectives and lives of their students and graduates,⁷⁵ and in the end, on the legal profession, on the laws and legal system, and, on society itself.⁷⁶ The impact of law schools and legal education on law and the legal system was summarized well by then-Professor (later Supreme Court Justice) Felix Frankfurter, who wrote: “In the

⁷³ Cf. Sara Sternberg Greene & Kristen M. Renberg, *Judging Without a J.D.*, 122 COLUM. L. REV. 1287, 1345–88 (2022) (aggregating data from all fifty states and the District of Columbia regarding the extent to which, if at all, each state allows non-lawyers to serve as judicial officers and finding that thirty-two states allow at least some level of adjudication without a law degree).

⁷⁴ See Mary Ann Dantuono, *A Citizen Lawyer’s Moral, Religious, and Professional Responsibility for the Administration of Justice for the Poor*, 66 FORDHAM L. REV. 1383, 1390 (1998) (“Law schools are the portals through which all new members of the profession must pass, and attendance at law school may be the single most unifying experience of our profession.”).

⁷⁵ Many have observed that, for better or worse, law schools transform the minds, values, and futures of their students. See, e.g., Bethany Rubin Henderson, *Asking the Lost Question: What Is the Purpose of Law School?*, 53 J. LEGAL EDUC. 48, 48 (2003) (“Students arrive at law school full of excitement about the law’s capacity to further social justice. Yet many leave law school disillusioned, perceiving the law as a value-neutral instrument and lawyers as persons who wield that instrument without regard for its impact on society.”); ROBERT V. STOVER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL 5, 74–75 (1989) (concluding that law school is as much a professional socialization experience as it is a scholarly and skills-building enterprise, and business interests have driven how we train lawyers and continue to dominate our curriculum and our assessment of who we are).

⁷⁶ See WILLIAM M. SULLIVAN, ET AL., THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 2–4 (2007) (“Law school provides the single experience that virtually all legal professionals share. . . they are also the place where the profession puts its defining values and exemplars on display . . .”); Elizabeth Mertz, *Inside the Law Classroom: Toward a New Legal Realist Pedagogy*, 60 VAND. L. REV. 483, 512 (“Despite its façade, the law school classroom is the site of more than lessons about technical law. Educational research in other settings has demonstrated that the structure of classroom interactions affects how we ‘create settings in which students can learn lessons of caring, justice, and self-worth.’ Clearly, in a field such as law, these lessons are even more obviously part of what students will carry away with them.” (quoting Carol Weinstein, *The Classroom as a Social Context for Learning*, 42 ANN. REV. PSYCHOL. 493, 519 (1991))); ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER” 5 (2007) (“Legal training focuses students’ attention away from a systematic or comprehensive consideration of social context and specificity. Instead, students are urged to pay attention to more abstract categories and legal (rather than social) contexts, reflecting a quite particular, culturally driven model of justice.”). Bethany Henderson summarizes the power and import of legal education as follows:

The values and norms both implicit and explicit in students’ law school experience greatly affect their perception of the legal profession. . . . As law teachers encounter prospective lawyers before their impressions of the legal profession are fully formed, they “have a unique opportunity to influence the attitude of the nascent lawyer committed to their classrooms at the embryonic stage of his legal career.” Law schools have long recognized their socialization capacity; they have served as the “primary cultural and ideological device[s] in the making and shaping of the American legal profession” since the late nineteenth century.

last analysis, the law is what the lawyers are. And the law and the lawyers are what the law schools make them.”⁷⁷ Thus law schools not only teach what the law is; they help determine what the law will become.

A good place to discover a law school’s core values and goals might seem to be in its mission statement,⁷⁸ which one legal scholar describes as “a statement of the fundamental reason for an organization’s existence.”⁷⁹ A survey of law school mission statements—as well as their mottos, vision statements, and stated core values—suggests that “justice” is a major priority for law schools.⁸⁰

There are far too many law schools and mission statements to inventory here; for a sample, however, consider this list of some schools whose names begin with the letters “A,” “B,” or “C” in the United States:

- **Albany Law School’s** mission and vision statements includes the commitment to students to “promote the rule of law, equity, and access to justice in their professional pursuits and advance their careers using a sophisticated understanding of the law to improve society” and to “prepare graduates . . . who will . . . fundamentally transform the practice of law

Henderson, *supra* note 75, at 49–50 (quoting John R. Peden, *Goals for Legal Education*, 24 J. LEGAL EDUC. 379, 382 (1972) and ROBERT GRANFIELD, MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND 27–29 (New York, 1992)).

⁷⁷ Letter from Felix Frankfurter, Professor, Harvard Law School, to Harold Rosenwald 3 (May 13, 1927), as quoted in RAND JACK & DANA CROWLEY JACK, MORAL VISION AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS 156 (1989). In 1980, Chief Justice of the United States Supreme Court Warren E. Burger similarly highlighted the influence of legal education on law and the legal profession:

Every law school has a profound duty—and a unique opportunity—to inculcate principles of professional ethics and standards in its students. This duty should permeate the entire educational experience beginning with the first hour of the first day in law school. The failure to do this is, perhaps, even more serious than the failure to relate legal theory to practice.

Warren E. Burger, *The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility*, 29 CLEV. ST. L. REV. 377, 377 (1980); see also Harlan F. Stone, *The Public Influence of the Bar*, 48 HARV. L. REV. 1, 14 (1934) (describing how the character of law schools shapes the character of profession).

⁷⁸ In reality, mission statements probably are not especially revealing, a fact that is consistent with the basic thesis of this project, that prominent institutions and actors in the legal system do not practice what they preach. See Gordon T. Butler, *The Law School Mission Statement: A Survival Guide for the Twenty-First Century*, 50 J. LEGAL EDUC. 240 (2000) (explaining that “[e]very law school approved by the ABA is required to have a mission statement, but not every school does. Those that do seldom review their mission statement between accreditations. And most law schools do not make their mission statements readily available. They are seldom in the catalog or on the Web site”).

⁷⁹ Butler, *supra* note 78, at 240. A law school’s ABA accreditation depends upon it having a mission statement and requires schools to develop and periodically revise self-studies to evaluate “the strengths and weaknesses of [their] program in light of the school’s mission.” *Id.* at 241.

⁸⁰ In addition, the most influential organizations that help define or aggregate collective goals of law schools and legal educators—that is, the Association of American Law Schools (AALS) and the American Bar Association (ABA)—have mission statements, in which “justice” is integral. See ABA Mission and Goals, AMERICAN BAR ASS’N, https://www.americanbar.org/about_the_aba/aba-mission-goals/ [<https://perma.cc/8JEN-LXJN>] (last visited Jan. 11, 2026) (describing the ABA’s mission: “To serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession”). See *infra* notes 99–101 and accompanying text (describing the similar stated goals of AALS).

and related professions to help create a more just, fair and equitable world.”⁸¹

- Barry University’s Dwayne O. Andreas School of Law embraces a core commitment to prepare “all members of our community to accept social responsibility to foster peace and nonviolence, to strive for equality, to recognize the sacredness of Earth, and to engage in meaningful efforts toward social change. The University promotes social justice through teaching, research and service.”⁸²
- Boston College Law School, in part because of its roots “in the Jesuit tradition of service to God and others,” “recognizes its commitment to social and economic justice, and strives to advance this commitment both through its curricular offerings and in the extracurricular projects that it supports.”⁸³
- Boston University School of Law is an atypical law school that does not mention justice in its mission statement. Rather, the school proclaims, “In our teaching, we aim to prepare a diverse body of students for the ethical practice of law around the globe at the highest levels of quality and integrity and to serve the public interest.”⁸⁴
- The vision statement of Campbell University’s School of Law emphasizes a “community of faculty and students whose aim, guided by transcendent values, is to develop lawyers who possess moral conviction, social compassion and professional competence, who view the practice of law as a calling to serve others and to create a more just society.”⁸⁵ That vision is informed by a “Christian perspective on law and justice,” according to which “[p]articular emphasis therefore is given to practicing the highest ideals of integrity and civility, seeking transformative justice, promoting reconciliation, and helping those who are most in need of our assistance. In this way, our graduates can become effective advocates for legal and social justice, both in their local communities and in other parts of the world.”⁸⁶

⁸¹ *Strategic Plan*, ALBANY L., <https://www.albanylaw.edu/about/strategic-plan> [https://perma.cc/27QL-QDSR] (last visited Nov. 4, 2025).

⁸² *Dwayne Andreas School of Law*, BARRY UNIV., <https://www.barry.edu/en/academics/law/> [https://perma.cc/CV4Y-44BS] (last visited Nov. 4, 2025).

⁸³ *History and Mission*, B.C. L., <https://www.bc.edu/bc-web/schools/law/about/history-mission.html#mission> [https://perma.cc/FML4-X6TK] (last visited Nov. 4, 2025).

⁸⁴ *Law School Mission Statement*, B.U. SCH. OF L., <https://www.bu.edu/law/about/mission-statement/> [https://perma.cc/RV2P-KQNT] (last visited Nov. 4, 2025).

⁸⁵ *Our Vision*, CAMPBELL L., <https://law.campbell.edu/about/our-school/our-vision/> [https://perma.cc/HWV6-2V92] (last visited Nov. 4, 2025).

⁸⁶ *Id.*

- The mission of the Cleveland-Marshall College of Law at Cleveland State University distills to two imperatives: “Learn Law. Live Justice.”⁸⁷
- The Columbus School of Law (part of the Catholic University of America) mission includes the “core commitment to,” among other ideals, “justice rooted in the common good.”⁸⁸
- Cornell Law School retains the mission articulated at its founding 120 years ago: “to produce . . . well-trained, large-minded, morally based lawyers in the best sense,” more recently specifying that it aims for its graduates to be able to “[e]xercise with due care the role entrusted to them as officers of the legal system and public citizens, having special responsibility for the quality of justice.”⁸⁹

While not every law school places justice at the core of its mission or identity, that sample illustrates just how common the goal is among a variety of law schools, from big to small, from national to regional, and from public to private.⁹⁰ It illustrates that many of the institutions devoted to educating lawyers and preparing them for participation in our legal system place—or at least purport to place⁹¹—justice at the heart of their purpose and reason for being. And even many of those law schools that do not explicitly name justice nonetheless embrace missions that resonate with justice.⁹²

⁸⁷ *Mission and Vision*, CLEV. ST. U. L., <https://www.law.csuohio.edu/meetcsulaw/about/missionvision> [<https://perma.cc/S92W-H85B>] (last visited Nov. 4, 2025).

⁸⁸ *Columbus School of Law: Mission Statement*, CATH. U. AM., <https://www.law.edu/about-us/mission/index.html> [<https://perma.cc/H57S-D4FZ>] (last visited Nov. 4, 2025).

⁸⁹ *Registrar's Office: Learning Outcomes and Mission Statement*, CORN. L. SCH., <https://www.lawschool.cornell.edu/life-at-cornell-law/registrar/> [<https://perma.cc/34ZC-A43X>] (last visited Nov. 4, 2025).

⁹⁰ The two law schools at which we serve on the faculty similarly place justice high on their list of priorities in their mission statements. Drake Law School's mission statement begins as follows: “Drake Law School prepares graduates to promote justice, serve their communities, and uphold the ideals of ethics and professionalism.” *About: Mission Statement*, DRAKE L. SCH., <https://www.drake.edu/law/about/> [<https://perma.cc/L6S7-2FUL>] (last visited Nov. 4, 2025). As of 2000, their mission statement was “[a] diverse community of students and faculty [to] join together to produce a legal culture that seeks to promote justice, improve the law, and respond to the call of public service.” Butler, *supra* note 78, at 254. Harvard Law School's mission statement and seal are described below. See *infra* text accompanying notes 107–120.

⁹¹ See *supra* note 80.

⁹² The mission statement for Berkeley Law School, for instance, includes this description: “Through service, the law school tackles some of the most important, challenging and timely problems facing the state, nation and world, harnessing our excellence in teaching and research to improve government, business and society.” *Mission and Learning Outcomes*, U.C. BERKELEY L., <https://www.law.berkeley.edu/about-us/mission-learning-outcomes/> [<https://perma.cc/57SR-CLHK>] (last visited Nov. 4, 2025). Before 2008, the mission of St. Thomas University School of Law, part of a university sponsored by the Roman Catholic Archdiocese of Miami, used to emphasize the goal of “teach[ing] and prepar[ing] its students, in a personalized, caring environment under Catholic auspices, . . . contribut[ing] their talents to concerns for peace, freedom, justice, the dignity of the individual, and the betterment of humanity.” Butler, *supra* note 78, at 243. More recently it was altered such that “justice” is no longer explicit. *Mission Statement and Learning Outcomes*, ST. THOMAS U. COLL. L., <https://www.stu.edu/law/academics/mission-and-learning-outcomes/> [<https://perma.cc/QMX2-BZBE>] (last visited Nov. 4, 2025). Still, according to the newer mission statement, “the Law School remains committed in teaching,

Beyond mission statements, an analysis of law school websites—the online public presentation of the law school where potential students, potential donors, and others can acquire a sense of the institution’s priorities and achievements—suggests that many law schools publicly are “all in” on advancing justice and the public interest.

Students notice. An article by Luna Martinez G. analyzed the messaging on Berkeley Law’s website, where she was a student.⁹³ Martinez describes, among other things, a video embedded on Berkeley Law’s admissions website. The video begins, she writes, by asserting that “students come here because they want to make the world a better place,” followed by a student explaining how, “within three weeks of starting class, I was able to start advocating for low-income community members . . . and help people in the ways that I came to law school to do.”⁹⁴ The video also contains a montage of images from “the school’s clinics, a Black Lives Matter die-in, and a student arguing a motion at an eviction case in court. It closes with a view of the Bay and the words ‘the biggest thing is helping people.’”⁹⁵ Based upon those and similar examples,⁹⁶ Martinez concludes that:

The school’s self-image and mission seem to embrace the idea of legal training as a vehicle to advance ideals of justice and fairness in society. In fact, one of its learning outcomes is “using the law to solve real-world problems and to create a more just society.” It’s clear then that the school purports to advance certain ideas of political and social justice through the work of students. More important than these individual aspirations, however, is the school’s self-identification with a broader social project to use the law as a tool to build a more just and equal society.⁹⁷

Berkeley is not at all unusual in its public commitments. Reviewing the “Top 14 law schools’ admissions websites,” Martinez found “similar aspirational language about using a law degree to better society and change the world.”⁹⁸

The Association of American Law Schools (AALS), with its more than 170 institutional members, is the largest and, by far, most significant and influential association of law schools and legal educators in the U.S.⁹⁹ “Its member schools enroll most of the nation’s law students and produce the

scholarship, and service, to fostering a public order of human dignity, to training lawyers sensitive to the needs of the region’s underrepresented communities . . . *Id.*

⁹³ Luna Martinez G., *An Identity Problem: Can Law School Be A Tool for Social Change?*, 29 BERKELEY LA RAZA L.J. 31, 34–35 (2019).

⁹⁴ *Id.* at 34.

⁹⁵ *Id.*

⁹⁶ *See, e.g., id.* (describing the school’s Prospectus, which includes this message from the Dean: “We want students who . . . bring their passions—for justice, for social change, for the law.”).

⁹⁷ *Id.* at 34–35 (footnotes omitted).

⁹⁸ *Id.* at 35 n.10.

⁹⁹ *About AALS*, ASS’N AM. L. SCHS., <https://www.aals.org/about/> [<https://perma.cc/UA2C-X2LN>] (last visited Nov. 4, 2025).

majority of the country's lawyers and judges, as well as many of its lawmakers."¹⁰⁰ The AALS supports its mission, "to uphold and advance excellence in legal education" by promoting "core values of excellence in teaching and scholarship . . . while seeking to improve the legal profession, to foster justice, and to serve its many communities."¹⁰¹

Several of the best-known teaching organizations of law faculty also emphasize "justice" as a top priority. The Society of American Law Teachers (SALT) includes "law teachers, law school administrators, librarians, academic support experts, students and affiliates" from more than one hundred U.S. law schools.¹⁰² SALT, as highlighted on the front page of its website, is "committed to advancing teaching excellence, social justice and diversity."¹⁰³ Similarly, the Clinical Legal Education Association, which "exists to advocate for clinical legal education as fundamental to the education of lawyers" seeks, among other goals, to "pursue and promote justice and diversity as core values of the legal profession."¹⁰⁴

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² About SALT, Soc'y AM. L. Tchrs., <https://www.saltlaw.org/about/> [<https://perma.cc/4A6E-BTVX>] (last visited Nov. 4, 2025).

¹⁰³ Soc'y AM. L. Tchrs., <https://www.saltlaw.org/> [<https://perma.cc/HG3P-QFZ2>] (last visited Nov. 4, 2025).

¹⁰⁴ Mission Statement, CLINICAL LEGAL EDUC. ASS'N, <https://www.cleaweb.org/mission-statement> [<https://perma.cc/N39J-CXPS>] (last visited Nov. 4, 2025). Some law professors (particularly clinical law professors) have stressed the primacy of justice in law and legal education, as the following examples illustrate:

- In 1968, Calvin Woodward argued that "students must be trained to regard themselves as agents of justice as well as officers of the court. More important, they must be shown precisely what this responsibility entails. And establishing a course of instruction that will serve this purpose should be the great issue in legal education today." Calvin Woodward, *The Limits of Legal Realism: An Historical Perspective*, 54 VA. L. REV. 689, 736–37 (1968); see also *id.* at 737 (emphasizing that "Justice . . . must take precedence over law").
- In 1984, Professor Richard Burke wrote: "Truth, justice, and fairness, both in means and ends, are paramount on the scale of legal values, and when those are at stake, the other values must yield." Richard K. Burke, *"Truth in Lawyering": An Essay on Lying and Deceit in the Practice of Law*, 38 ARK. L. REV. 1, 22 (1984).
- Professor Anthony D'Amato argued in 1990 that "[j]ustice is the purpose and goal of law. It is the reason that law exists. It animates and breathes life into the law." Anthony D'Amato, *Rethinking Legal Education*, 74 MARQ. L. REV. 1, 35 (1990).
- UK Professor Andrew Boon argued in 1998 that "[t]he integration of skills and knowledge should assist practitioners in achieving the good of legal professions; achieving justice. The development of virtues consistent with this social good must be a central goal of legal education." Andrew Boon, *History is Past Politics: A Critique of the Legal Skills Movement in England and Wales*, 25 J. L. & Soc'y 151, 167 (1998).
- In 2007 Professor Roy Stuckey wrote: "All professional values deserve attention by law schools, but teaching students to strive to seek justice may be the most important goal of all." Roy Stuckey, *Can We Assess What We Purport to Teach In Clinical Law Courses?*, 9 INT'L J. CLINICAL LEGAL EDUC. 9, 25 (2014).

Based upon the explicit mission of those institutions and associations devoted to legal education, it seems quite clear that the advancement of justice is touted as a—perhaps *the*—top priority.

It is important to highlight that the mission statements of universities and other schools within those universities (e.g., physics, business, education, and divinity schools¹⁰⁵) often do not include the promotion of justice. Harvard is a rare terse exception.¹⁰⁶

Again, it's the law and legal system that promises justice, and that promise is a core part of what distinguishes the law from other institutions.

2. Harvard Law School Specifically

*"IUSTITIAM NAMQUE COLIMUS ET BONI ET AEQUI
NOTITIAM PROFITEMUR"*¹⁰⁷ (*"for we cherish justice and profess
knowledge or goodness"*¹⁰⁸)

—Inscription, Langdell Reading Room, Harvard Law School

For just one specific illustration of the justice promise, consider these examples illustrating the centrality of "justice" as the purported primary goal at Harvard Law School. Until recently, Harvard Law School's "mission" had been "[t]o educate leaders who contribute to the advancement of justice and [the] well being of society."¹⁰⁹ When Harvard Law School's new seal, featuring the words "Veritas Lex et Iusticia," was unveiled a few years ago, then-Dean John Manning explained the words' significance: "Harvard Law School," he proclaimed, "stands for truth, law, and justice."¹¹⁰ At that same time, Harvard Law School's Instagram page similarly told its 135,000 followers and countless

¹⁰⁵ The Harvard Divinity School mission statement is to "educate[] students for intellectual leadership, professional service, and ministry. . . ." *History and Mission*, HARV. DIVINITY SCH., <https://www.hds.harvard.edu/about/history-and-mission> [<https://perma.cc/PEQ5-BCCM>] (last visited Nov. 4, 2025). However, its vision statement does include a nod toward justice: "To provide an intellectual home where scholars and professionals from around the globe research and teach the varieties of religion, in service of a just world at peace across religious and cultural divides." *Id.*

¹⁰⁶ See, e.g., *Mission Statements of Top Universities in 2024*, IVY COACH (June 8, 2024), <https://www.ivycoach.com/the-ivy-coach-blog/college-admissions/mission-statements-universities/> [<https://perma.cc/Y3RJ-ZGJ3>] (highlighting mission statements of "top universities" in 2024; only Harvard refers to justice, promising to "strive for a more just, fair, and promising world"); Chris Drew, *23 University Mission Statement Examples*, HELPFULPROFESSOR.COM, (Oct. 5, 2023), <https://helpfulprofessor.com/university-mission-statement-examples/> [<https://perma.cc/25KV-E2ZG>] (providing a word cloud of 23 different university mission statements, where the following words were most common and justice was not visible: Students, Research, Learning, Knowledge, Community, Global / International / World, Lead, Classroom and beyond, Creative, Excellence).

¹⁰⁷ DIG. 1.1.1 (Ulpian, Institutes 1)

¹⁰⁸ Our translation is from Louis P. Pojman, *Equality and Desert*, 72 PHIL. 549, 549 (1997) (providing more of the pertinent quotation: "Law is the art of goodness and justice. By virtue of this [lawyers] may be called priests, for we cherish justice and profess knowledge or goodness and equity, separating right from wrong and legal from the illegal.").

¹⁰⁹ Pete Davis, *A Mission in Winter*, HARV. L. REC., (Jan. 7, 2016), <https://hlrecord.org/a-mission-in-winter/> [<https://perma.cc/4ZNG-LQLX>].

¹¹⁰ *Harvard Law Sch. Unveils New Shield*, HARV. L. TODAY (Aug. 27, 2021), <http://hls.harvard.edu/today/harvard-law-school-unveils-new-shield/> [<https://perma.cc/6SYT-NAFH>].

visitors that “HLS is dedicated to advancing the cause of justice all over the world.”¹¹¹ The same message is inscribed in Latin along the ceiling of the grand reading room in the Langdell Library.¹¹²

Justice as the paramount goal of legal education and the mission of Harvard Law School has been a common refrain among the law school’s deans. In the late 1970s, for instance, Harvard Law School’s ninth dean, James Vorenberg, emphasized that the law school provided “good training” for lawyers to play “heroic roles in the quests for racial equality, for arms control, for children’s rights, for environmental protection, and for international human rights.”¹¹³ In one orientation welcome speech, he encouraged the fresh 1Ls to use their education to “concern” themselves with “crucial questions about whether and how the law can be an instrument of a just society,” asking: “If lawyers [who] build their livelihoods on those processes are not morally obliged to serve as their guardians, who does have that obligation?”¹¹⁴

In 2009, when Martha Minow became the school’s twelfth dean, she amplified that commitment, vowing to make Harvard Law School “a justice school as much as a law school.”¹¹⁵ And, in 2017, the year of Harvard Law School’s bicentennial, as Dean Minow was stepping down, she offered these reflections about her vision for law, legal education, and Harvard Law School. “I have long wondered why we call the enterprise a law school and not a justice school.” After all, as she declared, “the point of law . . . [is] to serve society,” and “the law school every day is pursuing justice, as well as studying law.”¹¹⁶

When John Manning was named her successor, Dean Minow praised the selection: “Harvard Law School will be fortunate to have at the helm such an outstanding person whose . . . devotion to justice and the rule of law exemplify the School’s highest aspirations.”¹¹⁷ Dean Manning followed that prediction by repeatedly stressing the goal of promoting justice. When appointed, he immediately put the moment in context by underscoring the remarkable influence of Harvard Law School and emphasizing his hope that Harvard Law School would, under his leadership, “further the best ideals of law and justice.”¹¹⁸ He continued to deliver similar messages throughout his

¹¹¹ Harvard Law School (@harvardlaw), Instagram (Mar. 2022) (screenshot on file with authors from spring of 2022).

¹¹² See *supra* text accompanying note 107–108.

¹¹³ Robert Granfield & Thomas Koenig, *Learning Collective Eminence: Harvard Law School and the Social Production of Elite Lawyers*, 33 SOCIO. Q. 503, 507 (1992).

¹¹⁴ *Id.* at 507–08.

¹¹⁵ *The ‘Upstander,’* HARV. L. TODAY (Feb. 27, 2017), <https://hls.harvard.edu/today/the-upstander/> [<https://perma.cc/4MJ8-HF2G>] (“She accepted a five-year appointment after deciding that the job would give her the opportunity to continue to lead the school as Kagan and her predecessor, Robert C. Clark, had done—with students at the top of the priorities list, and with a mission to be a justice school as much as a law school.”).

¹¹⁶ Emily Newburger, *What justice demands of us, no one person can do alone.*, HARV. L. BULL. (Spring 2017), <https://today.law.harvard.edu/feature/justice-demands-us-no-one-person-can-alone/> [<https://perma.cc/F8VB-JDEP>] (interview with Martha Minow, reflecting on her time as dean).

¹¹⁷ John S. Rosenberg, *John Manning Appointed Dean of Harvard Law School*, HARV. MAG. (June 1, 2017), <https://www.harvardmagazine.com/2017/06/harvard-law-names-john-manning-dean> [<https://perma.cc/S2UC-C66P>].

¹¹⁸ *Id.*

tenure.¹¹⁹ In the summer of 2020, during the nationwide protests unfolding in response to the murder of George Floyd, Dean Manning reminded the HLS community of its values and purpose as follows: “[T]he tragic injustices our country has witnessed . . . have underscored, for our nation and our community, the urgent necessity of identifying, addressing, and remedying the racism, inequality, and abuse of power that have haunted this nation for so long. . . . We at HLS must . . . play a part in bringing about the needed change.”¹²⁰

The message is clear. The purpose of legal education, and specifically Harvard Law School, is not simply to teach students the law, how to pass the bar, and how to serve clients. The purpose and the public promise of legal education is the more transcendent goal of teaching and preparing students to advance justice. So law schools would have us believe.

B. Lawyers and Bar Associations

In numerous ways, as young lawyers emerge from law school and the bar exam to join the legal profession, the bar continues—publicly—to assert justice as its core value and ultimate purpose.¹²¹ Prominent academic experts on the legal profession also emphasize justice as the profession’s primary goal. Scott Cummings explains that lawyers “are asked, in short, to be ‘public citizens’ with a special obligation to promote the ‘administration of justice.’”¹²² Likewise, Richard Abel, when writing about the role of lawyers and the legal profession, refers to the “justice that law promises.”¹²³

¹¹⁹ For example, in his inaugural (2017) opening address to first-year students, Manning noted that “in a complex and often frightening world, good lawyers make indispensable contributions to law and justice.” John F. Manning, *quoted in* Christine Perkins, *Dean Manning: ‘There Are Lots of Good Ways To Do this Thing Called Law School: Your Job Is To Find the One That’s Right for You,’* HARV. L. TODAY (Sept. 6, 2017), <https://hls.harvard.edu/today/dean-manning/> [<https://perma.cc/L2MV-3ARY>]. In a welcome letter he emphasized that Harvard Law School is a community in which “to study, to teach, to write, to debate, to explore, to question, to innovate, to litigate, to advocate, and to pursue the highest ideals of law and justice.” John F. Manning, *Dean’s Welcome*, HARV. L. SCH., <https://perma.cc/2396-94PP> (last visited Jan. 11, 2025). Similarly, in his first decadal commencement address (to the class of 2018), Manning sent the graduates forward with a “wish for all of you [] that you will know the satisfaction of serving that high calling and of pursuing the highest ideals of law and justice.” John F. Manning, *quoted in* Shona Simkin, *Dean Manning Shares ‘Canons of Construction for Life,’* HARV. L. TODAY (May 30, 2018), <https://hls.harvard.edu/today/commencement-address-dean-manning-shares-canons-construction-life-video/> [<https://perma.cc/VJ2X-N27J>].

¹²⁰ John F. Manning, *From the Dean: A Year Unlike Any Other*, HARV. L. TODAY, Aug. 13, 2020, at 3.

¹²¹ Judge Margaret Robb of the Indiana Court of Appeals compiled the attorneys’ oaths of admission to the bar for all fifty states. Many of them include a sworn promise to pursue justice. Those that do not refer to related values, like truth and honesty. Margaret Robb, *Oaths of Admission for All 50 States*, <https://cdn.ymaws.com/www.inbar.org/resource/resmgr/litigation/Oaths.pdf> [<https://perma.cc/U3S8-KLT2>] (reviewed Nov. 6, 2025). Interestingly, the official oath of admission to federal courts requires the lawyer only to aver conduct “according to law” and that “will support the Constitution of the United States.” ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, *Form AO-153*, https://www.uscourts.gov/sites/default/files/ao153_0.pdf [<https://perma.cc/FXK4-CTRN>], reviewed Nov. 6, 2025.

¹²² Scott L. Cummings, *What Good Are Lawyers*, in *THE PARADOX OF PROFESSIONALISM: LAWYERS AND THE POSSIBILITY OF JUSTICE* 1, 1 (Scott L. Cummings ed., 2011).

¹²³ Richard L. Abel, *Just Law?*, in *THE PARADOX OF PROFESSIONALISM: LAWYERS AND THE POSSIBILITY OF JUSTICE* 296, 315 (Scott L. Cummings ed., 2011).

Indeed, lawyers are purportedly under an ethical duty to advance justice. The first clause of the American Bar Association (ABA)'s Model Rules of Professional Conduct preamble states that, "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice."¹²⁴

The legal profession's leading self-regulatory organizations—that is, their bar associations—underscore their devotion to justice as a core objective.

The ABA¹²⁵ was founded in 1878 alongside the rise of modern legal education.¹²⁶ Since then it has emphasized its twofold commitment to liberty and justice. At its second annual meeting in 1879, the fledgling organization articulated this principle: while "virtue is the parent of liberty and the main-spring of free government, . . . the best grown of liberty is the law."¹²⁷ The report elaborated:

The product of order, [the law] is a constant science. It vindicates the right and condemns the wrong; it upholds just authority, and forbids and punishes tyranny. It is the dispenser of justice; the exponent of public and private morality; the shield of innocence; the guardian of the defenceless; the comfort of and consolation of the good, and the confusion of the wicked. By its regular course and operation, the fruits of peace are secured, and the evils of war are diminished and assuaged by it. Without it a republic is impossible.¹²⁸

The profession's rhetorical allegiance to liberty and justice remains as fervent today as it was 1879.¹²⁹ With nearly half a million members,¹³⁰ the ABA is now the largest professional association for lawyers in the U.S. It centers the advancement of justice at the heart of its mission: "To serve equally our members, our profession and the public by defending liberty and *delivering justice* as the national representative of the legal profession."¹³¹ That devotion to justice is echoed across the ABA's website. For instance, the website's "About" page begins by affirming that the ABA "stands committed

¹²⁴ MODEL RULES OF PRO. CONDUCT PREAMBLE: A LAWYER'S RESP. (A.B.A. 2025) (emphasis added). The distinction between the lawyer as "representative of clients" and the lawyer as "an officer of the legal system and a public citizen" will turn out to be fundamental. *Id.*

¹²⁵ The ABA is a voluntary association of U.S. lawyers. A.B.A., <https://americanbar.org> [<https://perma.cc/76X7-7BT6>] (last visited Nov. 4, 2025). Its roles include setting academic standards for law schools and promulgating the model ethical codes for the legal profession. *About the American Bar Association*, A.B.A., https://www.americanbar.org/about_the_aba/ [<https://perma.cc/XZ3Q-3HCX>] (last visited Nov. 4, 2025).

¹²⁶ See Paula A. Monopoli, *Remembering the Origins of Modern Legal Education*, 85 U. PITT. L. REV. 305 (2023).

¹²⁷ Carleton Hunt, *Report of the Committee on Legal Education and Admissions to the Bar*, in REPORT OF THE SECOND ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION 233 (1879).

¹²⁸ *Id.*

¹²⁹ See *supra* text accompanying note 127–128.

¹³⁰ The ABA describes itself as "the largest voluntary professional association in the world." *Consumer FAQs*, A.B.A., https://www.americanbar.org/groups/professional_responsibility/resources/resources_for_the_public/consumer_faqs/ [<https://perma.cc/PW65-UDB4>] (last visited Nov. 4, 2025).

¹³¹ *ABA Mission and Goals*, A.B.A., https://www.americanbar.org/about_the_aba/aba-mission-goals/ [<https://perma.cc/8JEN-LXJN>] (last visited Nov. 4, 2025) (italics added).

to its mission of defending liberty and pursuing justice” and “works tirelessly to uphold the ideals of liberty and justice #ForAll.”¹³²

Other major national professional organizations appear similarly committed to justice. The mission of the American Association for Justice (AAJ), principally an organization of the plaintiffs’ personal injury bar, begins with this clause: “AAJ promotes justice and fairness for injured persons.”¹³³ Their logo (Figure C), like so many law-related images and logos, includes a pair of scales—that is, “the scales of justice.”

FIGURE C. LOGO OF THE AMERICAN ASSOCIATION FOR JUSTICE¹³⁴



We could continue, but the point should not be controversial enough to warrant additional space.¹³⁵ The legal profession and lawyers’ organizations frequently and conspicuously promise justice.¹³⁶

¹³² *The American Bar Association*, A.B.A., https://www.americanbar.org/about_the_abaj/ [<https://perma.cc/XZ3Q-3HCX>] (last visited Nov. 4, 2025).

¹³³ *About Us*, AM. ASS’N FOR JUST., <https://www.justice.org/about-us> [<https://perma.cc/89UL-4LHX>] (last visited Nov. 4, 2025).

¹³⁴ *Id.*

¹³⁵ For instance, the National Association of Criminal Defense Lawyers (NACDL) “works to activate the voices of members of the criminal defense bar and others in the broader community concerned about criminal justice reform to most effectively root out *systemic injustice* within the criminal legal system; to place all forms of inequities, including systemic racism, at the forefront of criminal justice reform.” *Mission and Vision*, NAT’L ASS’N OF CRIM. DEF. L., <https://www.nacdl.org/Landing/Mission-and-Vision> [<https://perma.cc/8KTE-MKYK>] (last visited Nov. 4, 2025) (emphasis added).

To be sure, some law-related professional organizations do not embrace “justice” as central to their mission or as a core value. For example, the National Creditors Bar Association (NCBA), formerly the National Association of Retail Collection Attorneys, is “dedicated to serving law firms engaged in the practice of creditors rights law.” *About National Creditors Bar Association*, NAT’L CREDITORS BAR ASS’N, <https://www.creditorsbar.org/about-ncba> [<https://perma.cc/ZAD4-ZCFS>] (last visited Nov. 4, 2025). But even among those organizations that did not expressly name “justice,” many emphasized aspirations—“fairness,” “equality,” and the like—that resonate with widespread conceptions of justice. For example, the mission of the National Lawyers Guild “is to use law for the people, uniting lawyers, law students, legal workers, and jailhouse lawyers to function as an effective force in the service of the people by valuing human rights and the rights of ecosystems over property interests.” *About*, NAT’L L. GUILD, <https://www.nlg.org/about/> [<https://perma.cc/53U6-LWKJ>] (last visited Nov. 4, 2025).

¹³⁶ Prominent academic commentators on the legal profession also emphasize justice as the profession’s primary goal. See Cummings, *supra* note 122, at 1 (“They [lawyers] are asked . . . to be ‘public citizens’ with a special obligation to promote the ‘administration of justice.’”); Abel, *supra* note 123, at 315 (in writing about the role of lawyers and the legal profession, referring to “justice that law promises”).

C. The Special Case of Prosecutors

While all lawyers are implicated by the promise to advance justice, the justice duty (or, relatedly, expectation) imposed on some lawyers is greater than others. Chief among those to whom a greater duty to pursue justice is imputed are prosecutors, who often are rhapsodized in the U.S. as “ministers of justice.”¹³⁷ Whatever the limits of that encomium, here we highlight the evidence that prosecutors, more than other lawyers, make a robust pledge to advance justice.

1. The Problem of Too Much Power

Prosecutors undeniably constitute a special category of lawyers who wield extraordinary power—which includes an ability to activate the coercive elements of the state without early or consistent accountability.¹³⁸ While judges are expected to justify publicly their decisions with reasons, most prosecutorial decisions appear as bureaucratic fiat out of a thick fog of discretion. Prosecutorial power often is unconstrained by even the facade of limitations, much less the threat of meaningful accountability.

As Michelle Alexander observes, “the prosecutor is the most powerful law enforcement official in the criminal justice system.”¹³⁹ “It is the prosecutor, far more than any other criminal justice official,” Alexander points out, “who holds the keys to the jail-house door” and who controls the most consequential decision points in the criminal system, not police or judges.¹⁴⁰ The prosecutor

¹³⁷ MODEL RULES OF PRO. CONDUCT r. 3.8 cmt. 1 (A.B.A. 2025) (“A prosecutor has the responsibility of a minister of justice and not simply that of an advocate”); see also Kenneth Bresler, *Pretty Phrases: The Prosecutor as Minister of Justice and Administrator of Justice*, 9 GEO. J. LEGAL ETHICS 1301, 1301–05 (1996) (tracing the history of the phrase). But see Bennett L. Gershman, *The Prosecutor as a “Minister of Justice”*, 60 N.Y. ST. BAR J. 8, 9 (May 1988) (evaluating the inaccuracy of the common phrase in practice). *Berger v. United States*, 295 U.S. 78, 88 (1935), offers an especially famous rendition of this imputed obligation without using the exact phrase: “The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.” This passage in *Berger* has additionally been held to extend a heightened responsibility to seek justice to *all* government attorneys, not just prosecutors. See *Freeport-McMoRan Oil & Gas Co. v. F.E.R.C.*, 962 F.2d 45, 47 (D.C. Cir. 1992) (holding that an obligation “that justice shall be done” applies “with equal force to the government’s civil lawyers.”). Thus, a “government lawyer in a civil action or administrative proceeding has the responsibility to seek justice” and “should refrain from instituting or continuing litigation that is obviously unfair.” MODEL CODE OF PRO. RESP. EC 7–14 (A.B.A. 1981).

¹³⁸ There are numerous fairly recent efforts, employing different media, to describe the problem of prosecutorial power. See generally, e.g., EMILY BAZELON, CHARGED: THE NEW MOVEMENT TO TRANSFORM AMERICAN PROSECUTION AND END MASS INCARCERATION (2019); Andrew Cockburn, *Power of Attorney*, HARPER’S MAG., Oct. 2019; *Home Page - The Appeal*, THE APPEAL, <https://theappeal.org/> [https://perma.cc/Q4VH-G4N8] (last visited Mar. 12, 2025); *The Power of Prosecutors*, AM. C.L. UNION (Apr. 5, 2018), <https://www.aclu.org/issues/smart-justice/power-prosecutors> [https://perma.cc/6WC2-79CF].

¹³⁹ MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 87 (2010).

¹⁴⁰ *Id.*

decides what charges to bring, what plea bargains to offer, what sentences to recommend.

Legal scholar and criminal law specialist Angela Davis reinforces this point. Prosecutors, who “control the direction and outcome of all criminal cases, particularly through their charging and plea-bargaining decisions” “are the most powerful officials in the American criminal justice system.”¹⁴¹ What makes prosecutorial power especially troubling is its near-total insulation from oversight and the fact that most “prosecutorial power” operates “behind closed doors, shielded from public view.”¹⁴²

Philadelphia District Attorney Larry Krasner, one of the sometimes valorized—and often disputed or challenged—group of “progressive” prosecutors, highlights the immense and often unchecked power local prosecutors hold compared to lawmakers.¹⁴³ “They unilaterally decide,” he writes:

whether or not to use the law to try to kill people, take their freedom, take their clean records and good reputations, take their future employability and their livelihoods, take their ability to form and provide for families, take them away from their families, and take their peace of mind and their money. Chief prosecutors have the latitude to offer favorable or unfavorable deals for guilty pleas on heavy or light charges, to offer diversion programs that avoid convictions, to drop cases, to try cases the right way or the wrong way, and to present honest or untruthful witnesses.¹⁴⁴

In short, writes Krasner, “[i]t’s a lot of power.”¹⁴⁵ He was by no means the first prosecutor to raise these concerns. In 1940, then-Attorney General of the United States Robert H. Jackson called the men gathered at the second annual gathering of United States Attorneys “one of the most powerful peace-time forces known to our country,”¹⁴⁶ explaining that prosecutors possess “tremendous” discretion and “more control over life, liberty, and reputation than any other person in America.”¹⁴⁷ Jackson offered this inventory of concrete powers:

He can have citizens investigated and, if he is that kind of person, he can have this done to the tune of public statements and veiled or unveiled intimations. Or the prosecutor may choose a more

¹⁴¹ Angela J. Davis, *The Power and Discretion of the American Prosecutor*, 49 *DROIT ET CULTURES* 55, 55 (2005); see *id.* (adding that “[t]hese decisions have greater impact and more serious consequences than those of any other criminal justice official.”); see also ANGELA J. DAVIS, *ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR* 31–33 (2007).

¹⁴² Davis, *supra* note 141, at 55; see also *id.* at 55 (noting that “the prosecutor’s charging and plea-bargaining decisions are totally discretionary and virtually unreviewable.”).

¹⁴³ LARRY KRASNER, *FOR THE PEOPLE: A STORY OF JUSTICE AND POWER* 9–10 (2021) (“[M]y thirty years as a lawyer told me that even lawmakers’ powers were slow and limited compared to the power a local chief prosecutor wielded. Legislators had little control over chief prosecutors’ decision making—their discretion to decide how to handle their cases.”).

¹⁴⁴ *Id.* at 10; see also *id.* (noting that “thirty years in courthouses had taught me the sad truth that most chief prosecutors have abused it.”). For some short, but excellent videos on the topic of excessive prosecutorial power and the related injustices, see *The Power of Prosecutors*, *supra* note 138.

¹⁴⁵ KRASNER, *supra* note 143, at 10.

¹⁴⁶ Robert H. Jackson, *The Federal Prosecutor*, 24 *J. AM. JUD. SOC’Y* 18 (1940) (address to Conference of United States Attorneys, Washington, D.C., April 1, 1940).

¹⁴⁷ *Id.*

subtle course and simply have a citizen's friends interviewed. The prosecutor can order arrests, present cases to the grand jury in secret session, and on the basis of his one-sided presentation of the facts, can cause the citizen to be indicted and held for trial. He may dismiss the case before trial, in which case the defense never has a chance to be heard. Or he may go on with a public trial. If he obtains a conviction, the prosecutor can still make recommendations as to sentence, as to whether the prisoner should get probation or a suspended sentence, and after he is put away, as to whether he is a fit subject for parole. While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.¹⁴⁸

Jackson noted mordantly, immediately before he made that plea, that “those who need to be told would not understand it anyway.”¹⁴⁹ For reasons that we clarify below, the great power of prosecutors is precisely what enhances their duty to advance justice.

2. *The Promise of More “Justice”*

The federal executive agency tasked with enforcing laws is called the United States Department of Justice or, more simply, the Justice Department. Until very recently, the Justice Department's mission statement included ensuring the “fair and impartial administration of justice for all Americans,”¹⁵⁰ and, still, the Latin motto on its seal—“Qui Pro Domina Justitia Sequitur”—translates loosely to “who prosecutes on behalf of justice.”¹⁵¹ The famous saying, “The United States wins its point whenever justice is done its citizens in the courts” is inscribed in the office rotunda of the Attorney General.¹⁵² In a speech midway through the Biden Administration, Attorney General Merrick Garland stressed the importance of that commitment as follows:

Like the Attorneys General who came before me, I begin every day by walking through a rotunda outside my office, where these words are inscribed: “The United States wins its point whenever justice is done its citizens in the courts.” The message of course, is that this is true regardless of whether the outcome is the one that the government favors.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ See Seth Wood, *Introduction*, 69 DOJ J. FED. L. & PRAC., no. 5, 2021, at 1, 1 (quoting this language). It appears that, since the beginning of the second Trump Administration, that mission statement has changed to the following: “To uphold the rule of law, to keep our country safe, and to protect civil rights.” *About DOJ*, U.S. DEP'T OF JUST., <https://www.justice.gov/about> [<https://perma.cc/U9YT-97WR>] (last visited Jan. 11, 2026).

¹⁵¹ *DOJ Seal - History and Motto*, U.S. DEP'T OF JUST., <https://www.justice.gov/about/history/doj-seal-history-and-motto> [<https://perma.cc/2CRN-8NM5>] (last visited Mar. 13, 2025).

¹⁵² See *infra* note 153 and accompanying text. To similar effect, see *Berger v. United States*, 295 U.S. 78, 88 (1935) (as a sovereign, the United States' interest “in a criminal prosecution is not that it shall win a case, but that justice shall be done”).

This is what distinguishes our justice system from those of many other countries. And it is what distinguishes our Justice Department from the law enforcement agencies of many other countries.

We are responsible not only for enforcing the law, but for upholding the Rule of Law. We are responsible for protecting civil rights and for pursuing justice for all Americans.¹⁵³

The special promise of “justice” made by the Department of Justice may compensate, consciously or not, for the extraordinary discretion and power that prosecutors in our system possess as well as the special role they play in representing the state. More concretely, the law purports to rein in the out-sized power of all prosecutors through a variety of professional codes, ethical rules, and exhortative judicial opinions all claiming to limit prosecutorial discretion by heightening a prosecutor’s duty to “seek justice” or “do justice” over and above the adversarial urge to rack up convictions.¹⁵⁴ In many states, the weight of this responsibility is formalized through an oath that goes beyond what is required of other lawyers¹⁵⁵—an extra pledge, a heightened ethical standard—that underscores the singular role prosecutors play in safeguarding fairness.¹⁵⁶ These measures promise to curb prosecutorial overreach by elevating duty over ambition or moral obligation over institutional rewards.

And the formal ethical strictures did not start with the current ABA Model Rules of Professional Conduct. The former Model Code of Professional Responsibility also laid it out plainly: “The responsibility of the public

¹⁵³ Attorney General Merrick B. Garland Delivers Remarks at the Office of Access to Justice’s Gideon Celebration, U.S. DEPT OF JUST. (Mar. 17, 2023), <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-office-access-justices-gideon> [https://perma.cc/V92R-TCHF].

¹⁵⁴ See Bruce A. Green, *Why Should Prosecutors “Seek Justice”?*, 26 FORDHAM URB. L.J. 607, 612 (1999). Subsequent portions of this project will detail more fully the relationship between power and justice.

¹⁵⁵ The problem of “too much power” paired with the solution of a heightened obligation to do justice has been offered as well for come civil lawyers representing especially powerful private clients. See William Simon, *Ethical Discretion in Lawyering*, 101 HARV. L. REV. 1083, 1090, 1123–25 (1988) (arguing that lawyers should exercise judgment and discretion in deciding what clients to represent and how to represent them, with the basic consideration being whether assisting the client would further justice); DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 65–66 (1988) (arguing that lawyers have a duty to challenge injustice and prioritize the public good, rather than blindly serving client interests or adhering strictly to professional role obligations); Robert W. Gordon, *Corporate Law Practice as a Public Calling*, 49 MD. L. REV. 255, 258–66 (1990) (arguing that lawyers have an obligation to incorporate public interest considerations into their professional responsibilities and decision-making).

¹⁵⁶ Warren Diepraam, *Prosecutorial Misconduct: It Is Not the Prosecutor’s Way*, 47 S. TEX. L. REV. 773, 773 (2006). The New Jersey Code, for example, provides that every person appointed county prosecutor shall, before entering upon the duties of his office, take and subscribe before the clerk of the county for which he has been appointed, or before a judge of the Superior Court, the following oath: “I, . . . , do solemnly promise and swear (or affirm), that I will faithfully, justly and impartially execute the duties of county prosecutor of this State, in and for the county of . . . , to the best of my abilities and understanding. So help me God.” N.J. STAT. § 2A:158-3 (2024). The federal oath of office, as outlined in 5 U.S.C. § 3331, requires prosecutors to “support and defend the Constitution of the United States” and to “faithfully discharge the duties of the office.” This oath is consistent across federal positions and does not specify the unique responsibilities of prosecutors and so does not delineate the special responsibilities of a prosecutor to “seek justice.”

prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict.”¹⁵⁷ Elsewhere, the American Bar Association echoes this, describing the prosecutor as “an administrator of justice” whose “primary duty is to seek justice within the bounds of the law, not merely to convict.”¹⁵⁸

Some states take it even further, reinforcing ethical codes with statutory mandates. The Texas Code of Criminal Procedure, for example, is unequivocal: “It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done.”¹⁵⁹

Those norms and mandates seem to imply that, for prosecutors, “winning” isn’t everything. It’s not even the main thing. Instead, the pursuit of justice stands as the guiding principle, the ultimate measure of prosecutorial performance. The problem of prosecutorial power and discretion has long been understood as the basis of this heightened obligation to focus on “justice” over law or other goals.¹⁶⁰ As the Michigan Supreme Court wrote in 1872,

¹⁵⁷ MODEL CODE OF PRO. RESP. EC 7-13 (A.B.A. 1981); *see also* MODEL RULES OF PRO. CONDUCT r. 3.8 cmt. 1 (A.B.A. 2025) (“A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.”).

¹⁵⁸ A.B.A. STANDARDS RELATING TO THE ADMIN. OF CRIM. JUST., Standard 3-1.2(C). In at least three ways, the ABA standards give content to that duty. First, they warn prosecutors against being unduly swayed by institutional pressures or incentives, such as “interests in personal advancement or aggrandizement,” A.B.A. STANDARDS, Conflicts of Interest, Standard 3-1.7., or tempted “to hide an injustice or material flaw in the case which is undisclosed to the defense,” A.B.A. STANDARDS, Waiver of Rights as Condition of Disposition Agreements, Standard 3-5.8, or daunted by “excessive” “workload,” A.B.A. STANDARDS, Appropriate Workload, Standard 3-1.8, or prone to insufficient “diligence, promptness and punctuality,” A.B.A. STANDARDS, Diligence, Promptness and Punctuality, Standard 3-1.9 (capitalization removed), or deterred by poor “coordination of the prosecution policies of local prosecution offices.” A.B.A. STANDARDS, Prosecution Offices, Standard 3-3.1.

Second, the A.B.A. standards repeatedly list “manifest injustice” as an overriding exception to other prosecutorial norms. The risk of manifest injustice, for instance, limits the norm against “offer[ing] commentary regarding the specific merits of an ongoing criminal prosecution or investigation.” A.B.A. STANDARDS, Relationship with the Media, Standard 3-1.10 (“The prosecutor should not offer commentary regarding the specific merits of an ongoing criminal prosecution or investigation, except in a rare case to address a manifest injustice and the prosecutor is reasonably well-informed about the relevant facts and law.”). Similarly, the standards provide that waivers of rights are to include “an exception for manifest injustice based on newly discovered evidence, or actual innocence.” A.B.A. STANDARDS, Waiver of Rights as Condition of Disposition Agreements, Standard 3-5.8. Finally, the A.B.A. standards offer justice as a decisional metric to be employed throughout the prosecutorial process. So the “interests of justice” determine when “[p]rosecutors may exercise supervision over law enforcement personnel,” A.B.A. STANDARDS, Relationships With Law Enforcement, Standard 3-3.2, when a “prosecutor should seek or file criminal charges,” A.B.A. STANDARDS, Minimum Requirements for Filing and Maintaining Criminal Charges, Standard 3-4.3, “whether an adverse ruling should be appealed,” A.B.A. STANDARDS, Appeals—General Principles, Standard 3-8.2, and how “to respond to a collateral attack on a conviction,” A.B.A. STANDARDS, Collateral Attacks on Conviction, Standard 3-8.5.

Third, the question of whether “a miscarriage of justice” has occurred should determine whether a prosecutor should “defend a conviction,” A.B.A. STANDARDS, Duty To Defend Conviction Not Absolute, Standard 3-8.1, and a prosecutor’s “response[] to new or newly-discovered evidence or law,” should be “consistent with . . . the duty to pursue justice.” A.B.A. STANDARDS, Responses to New or Newly-Discovered Evidence or Law, Standard 3-8.3 (capitalization altered).

¹⁵⁹ TEX. CODE CRIM. PROC. ANN. art. 2.01 (Vernon 2005).

¹⁶⁰ This emphasis on justice, we argue, is a reflection of the injustice framework and a heightened justice anxiety about and by prosecutors, given their conspicuous power and discretion to do harm. *See* Hanson & Strang, *The Justice Imperative*, *supra* note 21, Section II.C (discussing further the injustice dissonance experienced by law people, particularly those empowered with significant discretion over outcomes).

“[t]he prosecuting officer represents the public interest, which can never be promoted by the conviction of the innocent. His object, like that of the court, should be simply ‘justice’ and compromising that end is itself ‘unjust and dangerous to the whole community.’”¹⁶¹

3. *Public Promises of Justice from Prosecutors*

Courts and the overseers of the bar are not alone in ascribing to prosecutors a special duty to seek justice. Especially when addressing a lay audience, or seeking to explain themselves publicly, some prosecutors do it themselves. Of course, most prosecutors speak primarily to law people, not to lay people, at least apart from remarks to juries in those rare cases that go to trial or during campaigns by elected top prosecutors. But some few acquire enough popular visibility that they can speak to a larger audience of lay people.

We offer two examples only. From 2009 to 2017, Preet Bharara served as U.S. Attorney for the Southern District of New York, which he described as “the premier public law office in the country, if not the world.”¹⁶² Bharara has a significant popular presence and following, particularly in New York and among viewers of cable news networks.¹⁶³ His tenure as the U.S. Attorney in the Southern District of New York also inspired the five-season Showtime hit, *Billions*, in which Bharara’s fictional character, Chuck Rhoades, was played by Paul Giamatti.¹⁶⁴

Bharara’s 2019 memoir explains what he believes he was doing as a prosecutor. Indeed, the book, a *New York Times* best seller, is titled *Doing Justice: A Prosecutor’s Thoughts*.¹⁶⁵ In over 368 pages, the word “justice” appears more than two hundred times.¹⁶⁶ Recounting his years leading a powerful team of prosecutors, Bharara claimed, “I can’t recall a time when we didn’t think hard about what we were doing, why we were doing it, and whether it was in the interests of justice.”¹⁶⁷ After all, he explained, being a prosecutor is “not just any job; it’s the job of delivering justice.”¹⁶⁸ Bharara described treating his “duty”¹⁶⁹

¹⁶¹ Hurd v. People, 25 Mich. 404, 415–16 (Mich. 1872); see also Wellar v. People, 30 Mich. 16, 22–23 (Mich. 1874) (“[A] public prosecutor is not a plaintiff’s attorney, but a sworn minister of justice, as much bound to protect the innocent as to pursue the guilty.”).

¹⁶² PREET BHARARA, *DOING JUSTICE: A PROSECUTOR’S THOUGHTS ON CRIME, PUNISHMENT, AND THE RULE OF LAW* at xiii (2019).

¹⁶³ See Julie Hinds, *Preet Bharara, a Cable News Legal Star, Brings His Podcast to the Royal Oak*, DETROIT FREE PRESS (Nov. 10, 2019) <https://www.freep.com/story/entertainment/television/2019/11/10/preet-bharara-cable-news-legal-star-podcast-royal-oak/2531473001/> [<https://perma.cc/FZD8-LV9V>].

¹⁶⁴ See Erica Orden, *Manhattan U.S. Attorney Preet Bharara’s Office Gets Hollywood Treatment in Showtime Series*, WALL ST. J., (Feb. 4, 2016), <https://www.wsj.com/articles/manhattan-u-s-attorney-preet-bhararas-office-gets-hollywood-treatment-in-showtime-series-1451947972> [<https://perma.cc/7KR6-UUUS>].

¹⁶⁵ See generally BHARARA, *supra* note 162.

¹⁶⁶ See generally *id.* This is a ballpark number. We did not count and discount the number of times that the author might have been referring to a justice as a title or honorific. We did, however, check the first fifty pages and found only one time out of dozens, when the word was used as part of a title.

¹⁶⁷ *Id.* at xiv.

¹⁶⁸ *Id.* at 112.

¹⁶⁹ See *id.* at 57–58 (discussing the importance of a sense of duty).

to “do justice” as his central, ultimate, and paramount goal. In his words, “We are prosecutors. . . . We take our victims as we find them and try to get them justice. That is my real reward for doing the work that I love to do and, hopefully, doing it well enough to make a small difference in someone’s life. That was and is the mission.”¹⁷⁰

If genuine, that is as it should be. Justice is what our laws and legal system promise.¹⁷¹ Providing justice is how the *Justice* Department institutionally brands itself.¹⁷² And doing justice is what the various applicable ethical standards governing prosecutors purport to require and ensure.¹⁷³

Larry Krasner came to prosecution after Preet Bharara. He is a local state prosecutor, not a federal prosecutor.¹⁷⁴ Although his jurisdiction is a large city, Philadelphia, it does not have the same reach or cachet as Bharara’s former office.¹⁷⁵ Among certain circles, however, Krasner may be better known, not just for his ideas and actions as a thirty-year defense lawyer turned prosecutor, but also for the “progressive prosecution” trend that he, with others, helped to inspire.¹⁷⁶ Probably for that reason, Independent Lens chose him as the principal subject of its bingeable, eight-part documentary series, *Philly, D.A.*, which followed Krasner through his first four-year term.¹⁷⁷

At the same time, in *For the People: A Story of Justice and Power*, Krasner published an autobiographical account of his “lifelong journey through the streets and courtrooms and election precincts of one American city all the way up to his swearing-in ceremony.”¹⁷⁸ From the outset, Krasner insists that the pursuit of justice was the driving purpose of his candidacy:

The platform summarized the lessons I had lived and learned and heard by listening closely in my time in the justice system. It was what I knew to be true and what needed to happen if we were to move

¹⁷⁰ *Id.* at 221.

¹⁷¹ See *supra* Section I–II.B.

¹⁷² See *supra* notes 150–153 and accompanying text.

¹⁷³ See *supra* notes 154–161 and accompanying text. In her book, *Charged*, Emily Bazelon, “explore[s] the history of the American way of prosecution and the macro forces that could reshape it.” BAZELON, *supra* note 138, at xxix. To tell her story, Bazelon focuses on two D.A.s, including Memphis D.A. Amy Weirich. *Id.* When asked about what values drive the prosecutorial decisions in her office, Weirich responded: “Our job is to do justice . . . and sometimes that justice is going to trial and presenting the best case you can, and putting it in the hands of the jury. Oftentimes that justice is dismissing charges, or giving a first-time offender an opportunity to get on the right path.” *Id.* at 19.

¹⁷⁴ See KRASNER, *supra* note 143, at 10.

¹⁷⁵ *Id.*

¹⁷⁶ The progressive prosecutor movement encourages prosecutors to work to reform the criminal legal system from within. See generally Laurie L. Levenson, *Progressive Prosecutors: Winning the Hearts and Minds of Line Prosecutors*, 60 AM. CRIM. L. REV. 1495 (2023). “[Progressive prosecutors] are committed to doing whatever they can, consistent with public safety, to make the system fairer for all.” *Id.* at 1496. While there is significant internal and academic debate on what the progressive prosecutorial movement is or should be, scholars agree that progressive prosecutors seek for reform of the criminal justice system to a better imagined ideal. See Benjamin Levin, *Imagining the Progressive Prosecutor*, 105 MINN. L. REV. 1415, 1426–28 (2021).

¹⁷⁷ PBS, *PHILLY D.A.* (PBS television broadcast Apr. 21, 2021), <https://www.pbs.org/independentlens/documentaries/philly-da/> [https://perma.cc/V92D-MMHV].

¹⁷⁸ PENGUIN RANDOM HOUSE, *For the People*, <https://www.penguinrandomhouse.com/books/612136/for-the-people-by-larry-krasner/> [https://perma.cc/5JR9-SAZC] (last visited Mar. 13, 2025).

toward a truly just justice system. We are all equal and deserving of our government's protection, provided with transparency, respect, and restraint. In such a system, equal treatment is justice. And that kind of justice restores society—restores the relationship between people and government, and makes us safer. Safety and justice are symbiotic and complementary, not trade-offs between opposing forces, as the status quo would have us believe.¹⁷⁹

Krasner described entering the race because he believed that the “criminal justice system is broken; it is unjust. . . .”¹⁸⁰ Krasner's specific criticisms of conventional norms and existing policies of the criminal legal system center on their injustice. In decrying the harsh effect of sentencing guidelines, for instance, he attacked the common justification for the guidelines—that is, to produce “consistency across different jurisdictions and among different judges”¹⁸¹:

[C]onsistency alone is not justice, and consistency codified in excessively lengthy guidelines is terribly unjust when it forces judges to impose consistently excessive sentences. Individual justice is justice's goal, even when it appears or occasionally results in outcomes that are somewhat inconsistent.¹⁸²

He repeated the “oath to pursue justice” theme throughout his book and on numerous topics. In one instance, he observed:

[I]t is uniquely the prosecutor's sworn *oath* to seek justice for the people. Seeking justice for everyone moving forward presents its challenges. Prosecutors weren't there when a crime occurred, no matter how committed, persuasive, or certain they may be. They do not necessarily know what uncertainties, mistakes, motivations, biases, or games may be in play. But they should be trying really hard, all the time, to find out and to get it right, because that is what justice requires.¹⁸³

Like Bharara, then, Krasner publicly embraced the paramount purpose and normative metric of a prosecutor as “doing justice.” “The oath is to seek justice,”¹⁸⁴ he urged, and, “[t]here is no higher calling for a criminal justice

¹⁷⁹ KRASNER, *supra* note 143, at 26.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 95.

¹⁸² *Id.*

¹⁸³ *Id.* at 133. Krasner further narrates that, “Every day, when criminal proceedings start in jurisdictions all over America, lawyers stand up to identify themselves first and then identify their clients to the judge and on the court record, by name. Criminal defense lawyers state their client's first and last name: ‘For Jack Smith.’ Prosecutors identify their clients. They say: ‘For the people.’ There are a lot of people. It is uniquely the prosecutor's job to represent everyone in that jurisdiction, including Jack Smith.” *Id.*

¹⁸⁴ See *Philadelphia District Attorney Exonerates 9 People in 19 Months*, CBS NEWS THIS MORNING (Sept. 3, 2019), <https://www.cbsnews.com/news/philadelphia-district-attorney-larry-krasner-exonerates-nine-people-in-19-months/> [https://perma.cc/9W99-CE98]. Krasner added: “When somebody sits in a jail cell for a crime they did not commit, that is an injustice.” *Id.*

system than to focus holistically on . . . doing justice for everyone,” for “the job of the prosecutor is to achieve justice.”¹⁸⁵

D. Judges

Finally, judges as a category represent the pinnacle of the legal profession and their power as actors in, and spokespeople for, the law reflects that elevated status.¹⁸⁶ As described above, the cultural association between judges and justice is longstanding—a connection deliberately cultivated by prominent legal institutions and actors.¹⁸⁷ This section examines whether and how judges embrace, affirm, and perform that connection.

¹⁸⁵ KRASNER, *supra* note 143, at 177.

¹⁸⁶ See, e.g., Anna E. Carpenter, Jessica K. Steinberg, Colleen F. Shanahan & Alyx Mark, *Studying the “New” Civil Judges*, 2018 WIS. L. REV. 249, 250–51 (2018) (calling judges “the most powerful actors in this system”). Most polling suggests that public confidence in the neutrality and legitimacy of the judiciary is rapidly fraying. See Hanson & Kipnis, *Courting Injustice*, *supra* note 6, Section II.C; see also, e.g., Benedict Vigers & Lydia Saad, *Americans Pass Judgment on Their Courts*, GALLUP (Dec. 17, 2024), <https://news.gallup.com/poll/653897/americans-pass-judgment-courts.aspx> [<https://perma.cc/N7XB-2LLE>] (indicating that in 2024, only 35 percent of Americans said they trusted courts, a significant drop from prior years); Joseph Copeland, *Favorable Views of Supreme Court Remain Near Historic Low*, PEW RESEARCH CENTER (Aug. 8, 2024), <https://www.pewresearch.org/short-reads/2024/08/08/favorable-views-of-supreme-court-remain-near-historic-low/> [<https://perma.cc/AD6X-5X8M>] (describing Americans’ recent souring on the Supreme Court).

There are more subtle indications, too. For example, mass media in recent years have taken to identifying federal judges by the president who appointed them, suggesting unmistakably a presumption of partisan preference and the newsworthiness of bucking the trend. See, e.g., Zach Montague, *The Reagan-Appointed Judge Fast-Tracking Trump to Trial*, N.Y. TIMES (June 18, 2025), <https://www.nytimes.com/2025/06/18/us/politics/judge-william-g-young-trump.html> [<https://perma.cc/P2SM-GA5M>] (taking care to mention that a judge who is presiding over a Trump trial was appointed by a Republican president, and going on to mention “other federal judges, including several Trump appointees, who have dealt a legal blow to Mr. Trump’s agenda,” perhaps as a signal of the newsworthiness of a judge appointed by a party handling cases which may be politically deleterious to that party); Daniel Wiessner, *US Judge Invalidates Biden Rule Protecting Privacy For Abortions*, REUTERS (June 18, 2025), <https://www.reuters.com/business/healthcare-pharmaceuticals/us-judge-invalidates-biden-rule-protecting-privacy-abortion-2025-06-18/> [<https://perma.cc/8SGL-QEJ3>] (indicating that U.S. District Judge Matthew Kacsmaryk, who struck down a federal regulation which provided more privacy protection to transgender patients and women seeking abortions, was “appointed by President Donald Trump”); Christal Hayes, *It’s Not Just ‘Obama Judges’: Here Are Republican Appointees Who Have Ruled Against Trump*, USA TODAY (Nov. 24, 2018), <https://www.usatoday.com/story/news/politics/2018/11/24/five-times-republican-appointed-judges-ruled-against-president-trump/2083399002/> [<https://perma.cc/Z7ZM-BFW4>] (listing instances of judges appointed by the Republican party making rulings that seem adverse to Republicans’ interests, likely as a signal of the unexpectedness, or at least the newsworthiness, of such actions).

¹⁸⁷ See *supra* text accompanying notes 50, 58, & 61.

The term “Justice” as a title is itself revealing, representing a choice or a branding decision of sorts. After all, the Constitution never calls Supreme Court members “Justices.” Article III refers only to “the judges, both of the supreme and inferior courts.” U.S. Const. art. III, § 1. Article II likewise speaks of appointing “Judges of the supreme Court.” U.S. Const. art. II, § 2, cl. 2; but see U.S. Const. art. I, § 3, cl. 6 (providing the lone exception in referring to “the Chief Justice” presiding over impeachment trials).

So, Congress chose that term when promulgating the Judiciary Act of 1789, which created a “Chief Justice” and “Associate Justices” of the Supreme Court. Judiciary Act of 1789, ch. 20, § 1, 1 Stat. 73; see also 28 U.S.C. § 1. So before the Court issued a single opinion, Congress branded its members with a title that personified justice rather than adjudication.

1. *The Judicial Oath*

Judges begin their service with a public promise—a sworn oath—about how they will handle their responsibilities and the power conferred by their position. Since 1789, every federal judge has taken this oath, or one similar to it, pursuant to the Judiciary Act of 1789:

I, _____, do solemnly swear or affirm that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____, according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States. So help me God.¹⁸⁸

Legal scholars seem to agree that judicial oaths matter and can be effective in shaping the behavior of the public officials who swear to them.¹⁸⁹ Erik Encarnacion and Guha Krishnamurthi argue that the oaths compel judges “to discharge their responsibilities to the best of their abilities and understanding.”¹⁹⁰ Because “oaths involve an official[] voluntarily undertaking an obligation to discharge her responsibilities in good faith,” the commitment extends beyond simply “the obligation to always get the right answer or to never make a mistake.”¹⁹¹ After all, they explain:

That choice carried rhetorical and institutional weight. As Jason Boatright has detailed, the Latin *justitia* signified in the standard Latin lexicons “justice, equity, righteousness, uprightness”—“the condition of being provided with *jus*.” Jason Boatright, *The History, Meaning, and Use of the Words Justice and Judge*, 49 ST. MARY’S L.J. 727, 735–36 (2018). In contrast, *judex*—the root of “judge”—was simply the one who “shows or proclaims *jus*.” *Id.* at 737. “A *judex* tells people what *jus* is,” Boatright writes, “but *justitia* is a representation of *jus* itself.” *Id.*

The title of “Justice” thus associated the Court’s members not with neutral craft, but with the embodiment of justice—the likes of equity, fairness, right—as such. Congress borrowed that moral mantle at the founding in what appears to have been an effort to bestow a bit more legitimation on the Court.

¹⁸⁸ Judiciary Act of 1789, ch. 20, § 8, 1 Stat. 73, 76 (emphasis added) (codified as amended at 28 U.S.C. § 453 (2018)). In ways irrelevant, that oath was amended under the Judicial Improvement Act of 1990. *See* 28 U.S.C. § 453 (2018); Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 404, 104 Stat. 5089, 5124 (“Section 453 of title 28, United States Code, is amended by striking out ‘according to the best of my abilities and understanding, agreeably to’ and inserting ‘under.’”).

State judges sometimes take oaths that mirror the federal oaths in terms of their commitment to justice. *See, e.g.*, O.C.G.A. § 15-6-6 (2024) (Georgia superior court judges swear to “administer justice without respect to person and do equal rights to the poor and the rich”). For discussion of how electoral pressures facing many state judges can complicate fulfillment of these promises, *see infra* note 267.

¹⁸⁹ *See, e.g.*, Evan D. Bernick & Christopher D. Green, *What is the Object of the Constitutional Oath?*, 128 PENN STATE L. REV. 1 (2023). Professors Bernick and Green observe that oaths “are commonplace in America today, just as they have been commonplace throughout American history.” *Id.* at 18. They point out that presidents, legislators, as well as judges all take an oath and often emphasize that they take “the same” oath. *Id.* at 6. Moreover, they devote pages to illustrations “from all over the political spectrum in current culture” of politicians and jurists going out of their way to emphasize the shared commitments that the “the same oath” entails. *Id.* at 10–21.

¹⁹⁰ Erik Encarnacion & Guha Krishnamurthi, *The Oath Doesn’t Require Originalist Judges*, 15 HARV. L. & POL’Y REV. 571, 572 (2021).

¹⁹¹ *Id.* at 579.

It is a much more serious charge to claim that a judge has violated her constitutional oath than to claim that she made a mistake of law. Lower courts make the latter type of mistake all the time; that's why we have courts of appeal. To err is human. But it would be intuitively far more troubling if judges systematically failed to discharge their duties in good faith.¹⁹²

In short, the goal—and arguably an effect—of judicial oaths is to ensure that judges set aside personal interests and strive to “administer justice” to the best of their ability. As the next subsection argues, judges often fail to deliver on that promise.

2. *Judges while Judging: Judicial Opinions*

The link between justice and the judiciary has been widely accepted and actively promoted, so it's unsurprising that in published opinions, judges sometimes explicitly and more often implicitly invoke justice in their reasoning.

The United States Supreme Court, the nation's highest judicial authority, has long emphasized justice as its core value and norm. In *Marbury v. Madison*—the landmark case defining the judiciary's role in the U.S. constitutional system—Chief Justice Marshall cited Lord Mansfield's holding that the writ of mandamus “ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good government there ought to be one,” adding that “this court ought to assist by mandamus, upon reasons of justice.”¹⁹³

In 1837, Chief Justice Shaw of the Massachusetts Supreme Judicial Court proclaimed that in “a court of justice,” the mandates of “reason and justice” must prevail.¹⁹⁴ U.S. Supreme Court Justice Brown, writing in 1898 on the meaning of “due process of law,” pointed to “certain immutable principles of justice” as the defining touchstone.¹⁹⁵

Nearly a century later, Justice Thurgood Marshall described the “two seemingly incompatible notions” that animate our criminal justice system: “the adversary model, and the state's primary concern with justice.”¹⁹⁶ Similarly, Justice Brennan described in grand terms the superiority of our system over those in which justice yields to mob violence, corruption, or tyrannical power:

Constitutional power to bring an accused to trial is fundamental to a scheme of ‘ordered liberty’ and prerequisite to social *justice* and peace. History has known the breakdown of lawful penal authority—the feud, the vendetta, and the terror of penalties meted out by mobs or roving bands of vigilantes. It has known, too, the perversion of that

¹⁹² *Id.*

¹⁹³ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 169 (1803) (citing *Rex v. Barker* (1762) 97 Eng. Rep. 823, 824; 3 Burr. 1265, 1266).

¹⁹⁴ *Thayer v. City of Boston*, 36 Mass. (19 Pick.) 511, 515 (1837).

¹⁹⁵ *Holden v. Hardy*, 169 U.S. 366, 384, 389 (1898).

¹⁹⁶ *United States v. Bagley*, 473 U.S. 667, 696 (1985) (Marshall, J., dissenting).

authority. In some societies the penal arm of the state has reached individual men through secret denunciation followed by summary punishment. In others the solemn power of condemnation has been confided to the caprice of tyrants. Down the corridors of history have echoed the cries of innocent men convicted by other irrational or arbitrary procedures. These are some of the alternatives history offers to the procedure adopted by our Constitution. The right of a defendant to trial—to trial by jury—has long been cherished by our people as a vital restraint on the penal authority of government. And it has never been doubted that under our constitutional traditions trial in accordance with the Constitution is the proper mode by which government exercises that authority.

... [T]oday, as in Lincoln's time, a man may ask 'whether (this) nation or any nation so conceived and so dedicated can long endure.' It cannot endure if the Nation falls short on the guarantees of liberty, justice, and equality embodied in our founding documents.¹⁹⁷

Beyond describing justice as the deep goal of the law or its interpretation, the Supreme Court sometimes frames standards of decision or statutory construction around the less demanding aim of avoiding manifest injustice. As Justice Blackmun wrote in *Bradley v. School Board of Richmond*, "[a]n appellate court must apply the law in effect at the time it renders its decision, unless such application would work a manifest injustice."¹⁹⁸ Similarly, at the level of trial courts, the standard for granting a mistrial is "manifest necessity" to avoid injustice.¹⁹⁹

Judges sometimes justify their rulings by portraying specific outcomes as dictated by justice.²⁰⁰ In fact, federal court decisions reflect this pattern clearly. A Westlaw search²⁰¹ reveals that 52 opinions use the homely phrase "justice necessitates," 545 include the phrase "justice dictates," 1,353 cases use "justice demands," and more than 10,000 include "justice requires," including 214 decided by the U.S. Supreme Court. The implication in those opinions is

¹⁹⁷ *Illinois v. Allen*, 397 U.S. 337, 347–48 (1970) (Brennan, J., concurring) (emphasis added).

¹⁹⁸ *Bradley v. Sch. Bd. of Richmond*, 416 U.S. 696, 697 (1974) (citing *Thorpe v. Hous. Auth. of Durham*, 393 U.S. 268, 281 (1969)); see *Willard v. Tayloe*, 75 U.S. (8 Wall.) 557, 567 (1870) ("In general it may be said that the specific relief will be granted when it is apparent, from a view of all the circumstances of the particular case, that it will subserve the ends of justice; and it will be withheld when, from a like view, it appears that it will produce hardship or injustice to either of the parties."); *United States v. Kirby*, 74 U.S. (7 Wall.) 482, 486–87 (1869) ("All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence, and it will always be presumed that the legislature intended exceptions to its language, which would avoid results of this character.").

¹⁹⁹ See, e.g., *United States v. Perez*, 22 U.S. (9 Wheat.) 579, 580 (1824).

²⁰⁰ For example, in *Skilling v. United States*, three justices sum up the basis for their dissent from the conclusion that Enron CEO Jeff Skilling received a fair trial with the phrase, "justice demands trials that are fair in both appearance and fact." *Skilling v. United States*, 561 U.S. 358, 464 (2010) (Sotomayor, J., concurring in part and dissenting in part) (citing *Irvin v. Dowd*, 366 U.S. 717, 722 (1961)).

²⁰¹ <https://legal.thomsonreuters.com/en/products/westlaw/edge> (sign in; then search selecting "all federal" for jurisdiction field and search separately for "justice necessitates," "justice dictates," "justice demands," and "justice requires.") (last visited Mar. 13, 2025).

that the norm of justice—not the judge, and perhaps not even the law—is the driving force.²⁰²

3. Judges on Judging: Personal Narrative

“In all times and places he has had a sense of justice and a desire for justice. Any child expresses this fact of nature with his first judgment that this or that ‘isn’t fair.’ A legal system is simply a mature and sophisticated attempt, never perfected but always capable of improvement, to institutionalize this sense of justice and to free men from the terror and unpredictability of arbitrary force.”

—Chief Justice Earl Warren²⁰³

Judge Richard Posner once observed, “[r]emarkably little is known to the general public, or even to the practicing legal profession, about judges—the way they decide cases.”²⁰⁴

There are, of course, countless academic theories attempting to explain judicial decision-making, often offering conflicting views of the ideal or actual judicial decision-making process. This Article is not concerned with the sort of theoretical work that has kept law professors busy and law review editors

²⁰² On legal determinacy, see, for example, DUNCAN KENNEDY, *A CRITIQUE OF ADJUDICATION (FIN DE SIÈCLE)* (1997); Mark Tushnet, *Survey Article: Critical Legal Theory (without Modifiers) in the United States*, 13 J. POL. PHIL. 99, 108–12 (2005).

The justice promise is evident not only in judges’ explicit statements but also in the absence of statements to the contrary. Judges rarely, if ever, claim to sacrifice justice, much less promote injustice. Even in the rare instances when a judge acknowledges a gap between a legal ruling and justice, such admissions are typically framed as exceptions—unfortunate but temporary consequences of institutional constraints, role-based obligations, or jurisdictional limits. While this section emphasizes the frequency with which judges affirm the importance of justice—supporting the notion of a meaningful justice promise—it is equally notable that judicial opinions almost never suggest an intentional rejection of justice as a guiding principle. When judges acknowledge tensions between formal legal constraints and just outcomes, they typically do so with reluctance, portraying such conflicts as an unavoidable but regrettable consequence of legal formalism. See generally ROBERT M. COVER, *JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS* 131–49 (1984); but see Hanson & Strang, *Justice Deferred*, *supra* note 52, Part II (arguing that certain judicial methodologies openly reject justice as a norm of any relevance to judicial decision making). For an example of a rare explicit rejection of justice as a relevant judicial consideration, see *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 857 (1990) (Scalia, J., concurring) (“‘Manifest injustice,’ I fear, is just a surrogate for policy preferences.”); see also *id.* (Talking about ‘justice’ is akin to discussing ‘mercy, or compassion, or social utility, or whatever other policy motivation might make one favor a particular result.’).

²⁰³ Earl Warren, *The Law and the Future*, FORTUNE, Nov. 1955, at 106.

²⁰⁴ Richard Posner, *Foreword* to Cohen, *supra* note 64, at xv–xviii. There are many explanations for that knowledge gap. One is that judges themselves are often unwilling to share openly or are themselves unaware of what moves them. As Judge Posner himself has argued, “Many judges would say that nothing outside ‘the law,’ in the narrow sense that confines the word to the texts of formal legal documents, influences *their* judicial votes at all. Some of them are speaking for public consumption, and know better. Those who are speaking sincerely are fooling themselves.” RICHARD A. POSNER, *REFLECTIONS ON JUDGING* 130 (2013). This Article will not examine or challenge the veracity of what judges say moves them, in large part because our focus here is, in a way, more legalistic than that. It is examining whether and to what extent the legal system’s spokespeople “promises” justice, whether or not it intends to disregard or breach that promise.

buried in manuscripts since the early twentieth century.²⁰⁵ Most of that work, incidentally, does not center justice in its theory or analysis, although there are exceptions.²⁰⁶ Instead, we look specifically to the words spoken by prominent jurists, when positioned outside their robes and often speaking to a wider audience, about the role and significance of justice as their ultimate goal.²⁰⁷

To make the task manageable, we limit our focus in this section primarily to historical book ends—drawing extrajudicial commentary from the origins of U.S. jurisprudence and then leapfrogging to reflections shared by judges today.²⁰⁸

Digging down to the roots of American law, the period that Roscoe Pound dubbed the “formative era,”²⁰⁹ two names stand out as the most influential of their generation: Chancellor James Kent and Justice Joseph Story. Each left their mark as both jurists and legal scholars.

Chancellor Kent of New York “inaugurated legal education at [Columbia],” where he was appointed as professor of law in 1793.²¹⁰

²⁰⁵ One minor symptom of the profession's ills is the lack of connection, mostly, between practicing lawyers and academic lawyers. Almost no practitioners and few judges ever will find this Article—or anything else published in a law review. For their part, most law professors never again will see a deposition conference room in person, let alone a courtroom, if they ever did. But practitioners sometimes come close to our concern here in a different argot, one that the former judge who wrote *Anatomy of a Murder* used well: “Judges, like most people, may be divided roughly into four classes: judges with neither head nor heart—they are to be avoided at all costs; judges with head but no heart—they are almost as bad; then judges with heart but no head—risky but better than the first two, and finally, those rare judges who possess both head and a heart.” “ROBERT TRAVER” (JOHN D. VOELKER), *ANATOMY OF A MURDER* 313–14 (1958). Voelker (1903–1991) was a Michigan Supreme Court justice; he wrote this best-selling novel (later an Otto Preminger film of the same name) under the *nom de plume* Robert Traver). Judges in that rare fourth group offer the best chance of keeping the justice promise, as we explain it here.

²⁰⁶ For example, Ronald Dworkin's work represented a notable if only partial exception in addressing justice as an explicit norm in judging. See generally, e.g., RONALD DWORKIN, *LAW'S EMPIRE* (1986). The larger body of work stretches at least from classic American writers like Oliver Wendell Holmes, Jr. (*THE COMMON LAW* (1881)), through the legal realists (for example, Karl N. Llewellyn's *THE BRAMBLE BUSH* (1930)), to positivists, critical scholars, and many more. A very recent contribution in this vein is CHAD M. OLDFATHER, *JUDGES, JUDGING, AND JUDGMENT: CHARACTER, WISDOM, AND HUMILITY IN A POLARIZED WORLD* (2025).

²⁰⁷ We note here a book, now more than thirty years old, that collects the thoughts across a range of judicial subjects of an important subset of judges, Black men and women on the bench. See generally LINN WASHINGTON, *BLACK JUDGES ON JUSTICE* (1998). Perhaps unsurprisingly, the interviews in the book demonstrate a deep acculturation: these judges mostly sound like other judges, albeit with a strong sense of the effects of race and class on legal outcomes. Often, for example, their views of crime are highly dispositionist, seeing crime as rooted in bad choices or individual evil, whatever the background circumstances attending it. See, e.g., *id.* at 41, 50, 66, 87, 88, 95–96, 107, 109, 174–77 (an especially strong law-and-order dispositionist view, from Judge Henry Bramwell). The rule of law also gets much praise, and efficiency is another favored quality. *Id.* at 17 (rule of law), 20 (efficiency, meaning quick trials). But discussion of justice as a norm is sparing, with law and practical or programmatic issues, like funding, getting more attention. But see *id.* at 29, 30–31, 42 (repeated references to justice by Judge Veronica S. McBeth), 56 (brief discussion of fairness by Judge Joseph B. Brown, Jr., a Shelby County, Tennessee, judge who went on to become a reality television personality on the show *Judge Joe Brown*), 95, 96, 105 (brief references by Judge Reggie B. Walton), 124 (brief paean to “equal justice under law” by Judge Damon J. Keith), 149 (retired Judge George W. Crockett, Jr.).

²⁰⁸ Future portions of this project will examine the role that the justice norm has purportedly played in judicial decision-making in between.

²⁰⁹ See generally ROSCOE POUND, *THE FORMATIVE ERA OF AMERICAN LAW* (1938).

²¹⁰ John H. Langbein, *Chancellor Kent and The History of Legal Literature*, 93 COLUM. L. REV. 547, 548 (1993).

Kent eventually authored *Commentaries on American Law*, a four-volume compendium of U.S. law,²¹¹ which became “the most influential American law book of the antebellum period.”²¹² By then, Kent had devoted twenty-five years to serving on the New York bench, and “was already a famous figure in American law.”²¹³ Reflecting on his time as a judge, Kent described to a friend the central place of justice in shaping his decisions:

I saw where justice lay and the moral sense decided the cause half the time, and I then sat down to search the authorities until I had exhausted my books, and I might once and a while be embarrassed by a technical rule, but I most always found principles suited to my views of the case²¹⁴

At least on this account, for Kent justice came first; the laws and cases were the malleable building blocks with which he constructed just legal outcomes.

Justice Joseph Story, a contemporary of Kent’s, juggled even more roles. While serving as an associate justice on the U.S. Supreme Court, he simultaneously led Harvard Law School—rescuing it from collapse and transforming it into “a school for a national elite, an aristocracy not of wealth or breeding, but of intelligence, hard work, and character.”²¹⁵ As Dan Coquillette and Bruce Kimball explain, Story’s influence within the university was unmatched, for he held “a position within the university so powerful that it would be unthinkable today.”²¹⁶ On top of that, he authored the seminal three-volume treatise, *Commentaries on the Constitution of the United States*.²¹⁷

Story stands out among U.S. judges and scholars “as possibly the most learned and influential defender of the natural law tradition.”²¹⁸ He emphasized the importance of justice in the law, arguing that the “the welfare of the whole community,” depended upon “the actual administration of justice,” which, in turn, depended upon the legal profession.²¹⁹ The lawyer, Story claimed, “stands alone, to maintain the supremacy of law against power, and numbers, and public applause, and private wealth.”²²⁰

In *Commentaries on the Constitution of the United States*, Story emphasized the centrality of justice to the success of any legal system. “[E]stablish[ing]

²¹¹ See JAMES KENT, *COMMENTARIES ON AMERICAN LAW* (1826–30).

²¹² Langbein, *supra* note 210, at 548.

²¹³ *Id.*

²¹⁴ Letter from James Kent to Thomas Washington, Esq. (Oct. 6, 1828), in James Kent, *An American Law Student of a Hundred Years Ago*, 2 AM. L. SCH. REV. 547, 552 (1911).

²¹⁵ DANIEL R. COQUILLETTE & BRUCE A. KIMBALL, *ON THE BATTLEFIELD OF MERIT: HARVARD LAW SCHOOL, THE FIRST CENTURY* 143 (2015).

²¹⁶ *Id.* at 157.

²¹⁷ See JOSEPH STORY, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES: WITH A PRELIMINARY REVIEW OF THE CONSTITUTIONAL HISTORY OF THE COLONIES AND STATES BEFORE THE ADOPTION OF THE CONSTITUTION* (1833).

²¹⁸ James McClellan, *Joseph Story’s Natural Law Philosophy*, 5 BENCHMARK 85, 85 (1993).

²¹⁹ Joseph Story, *Discourse Pronounced Upon the Inauguration of the Author as Dane Professor of Law in Harvard University* (Aug. 25, 1829), reprinted in *THE LEGAL MIND IN AMERICA: FROM INDEPENDENCE TO THE CIVIL WAR* 180 (Perry Miller ed., 1962).

²²⁰ *Id.*

justice," he stressed, "must forever be one of the great ends of every wise government; and even in arbitrary governments it must, to a great extent, be practi[c]ed, at least in respect to private persons, as the only security against rebellion, private vengeance, and popular cruelty."²²¹ Whether reliably or not, the ideal of justice also guided his judicial decisions. As James McClellan explains: "In many of Story's constitutional opinions, he frequently prefaced his remarks with the bold assertion that his reasoning was based upon the principles of 'natural justice.'"²²²

Rise to today, and judges continue to stress the primacy of justice in their public reflections on the judicial role, reinforcing the image of judges as stewards of fairness and equity. In *Blindfolds Off: Judges on How They Decide*,²²³ Joel Cohen captures judges candidly discussing the tension between legal formalism and the pursuit of just outcomes. Judge Emmet Sullivan, for instance, distills this dual responsibility through symbols, explaining, "Those scales of justice behind the bench are behind my bench [the judge physically pointing] for a reason. And they're always balanced. That's what I stand for—a fair system of justice."²²⁴ Sullivan adds, "I take very seriously the oath that I took to administer justice,"²²⁵ highlighting the notion that judges are charged with more than simply enforcing the letter of the law.

Judge Leonie Brinkema echoes that view: "your job is to ensure that the case is tried fairly . . . and that justice gets done."²²⁶ Judge Denny Chin amplifies this ethos, rejecting the idea that courts operate without a "soul." Chin argues that "justice necessarily implicates having a soul. I think that if you have a soul you're more likely to achieve justice."²²⁷ Known for presiding over Bernie Madoff's sentencing, Chin hopes to be remembered not for the 150-year sentence, but for the judge's prioritization of justice. "My goal," he explained "from the beginning was to do justice. . . . I think people who were there thought that the proceedings were conducted in a just way."²²⁸

²²¹ STORY, *supra* note 217, at 463–464 §482.

²²² McClellan, *supra* note 218, at 91; In *Terrett v. Taylor*, 13 U.S. (9 Cranch) 43, 52 (1815), for instance, Story wrote: "[W]e think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and the letter of the Constitution of the United States." Cf. Morgan D. Dowd, *Justice Joseph Story: A Study of the Legal Philosophy of a Jeffersonian Judge*, 18 VAND. L. REV. 643, 657 (1965) ("For Story, the supposed task of the justice was to discover the law and once having found it—to make it conform to his own concept of the public will.").

Later in this series, we intend to come back to the relationship—the similarities, differences, and overlap—between the notion of "natural justice," as used by Joseph Story, and "justice" as we are defining and using the term. For an implicit initial step in that effort, see Hanson & Strang, *The Justice Imperative*, *supra* note 21, Part I (summarizing some of the deep roots of the yearning for justice).

²²³ COHEN, *supra* note 64.

²²⁴ *Id.* at 238.

²²⁵ *Id.* at 250.

²²⁶ *Id.* at 8–9.

²²⁷ *Id.* at 36.

²²⁸ *Id.* at 39.

Trial judges, closer to the legal front lines than their appellate counterparts, may feel more viscerally the responsibility of navigating hard cases in a just way. In *Tough Cases*, a compilation of essays by trial court judges, the contributors give voice to “the struggles of conscientious trial court judges to find justice within the confines of the law when the path is either unmarked, or is clearly marked but pointing in the wrong direction.”²²⁹

Trial judges also must grapple with the looming specter of appellate review—and the tension between their personal sense of justice and the strictures of the law. One judge recounts a moment of anguish over sending a defendant to prison despite believing in his innocence: “I could see a miscarriage of justice coming down soon.”²³⁰

Reflecting the wiggle room that the law itself allows, another judge describes bending the law to avoid an unjust outcome:

A judge takes an oath to follow the law, an oath I take very seriously and like to think I have always done to the best of my ability. I skirted the line in this case and rejected the jury’s prerogative to determine guilt or innocence to avoid what I thought would be a miscarriage of justice. Was justice ultimately done? I think, in the end, it was, but at a cost to my fidelity to the law. I don’t think I would do it again.²³¹

Those reflections shine a light on the conflict some judges confront between the demands of law and the pull of justice. The next section suggests that this tension is widely felt.

4. *Judges on Judging: Surveys*

Surveys of judges on the topic, of which there have been very few, support the hypothesis that judges perceive the advancement of justice as a primary—even paramount—duty.

In 2011, Rick Swanson published a study of state judges, in which he interviewed or surveyed seventy-eight jurists from the highest courts of thirty-five states.²³² The survey asked respondents to rank the “possible roles of a state supreme court justice in order of their importance,” among the following four options: (a) “[t]o achieve clarity of unclear law”; (b) “[t]o achieve justice for litigants”; (c) “[t]o establish statewide uniformity of law”; or (d) “[t]o achieve good public policy.”²³³

²²⁹ *TOUGH CASES: JUDGES TELL THE STORIES OF SOME OF THE HARDEST DECISIONS THEY’VE EVER MADE 2* (Russell F. Canan, Gregory E. Mize & Frederick H. Weisberg eds., The New Press 2018).

²³⁰ *Id.* at 39.

²³¹ *Id.* at 56.

²³² Rick A. Swanson, *Judicial Roles in State High Courts*, 94 *JUDICATURE* 169, 170 (2011).

²³³ *Id.* at 170 (emphasis in original).

Of the seventy-eight respondents, “[t]wenty-nine judges (37.2 percent) ranked justice as the highest goal.”²³⁴ According to Swanson, those respondents:

described justice as “crucial,” “fundamental,” “*ipse dixit*,” and “obviously” most important. Justice is “why we’re here,” “what we’re really all about,” “the business we’re in” and “what I’m paid to do.” Two other judges explained “we are the *justice* system” and “if you want justice, you go to a courthouse.” One judge speculated “most people would put [justice] first.” Several of these judges elaborated that justice is about “making sure people are given their day in court.” As one judge remarked, “That’s what I think I was hired to do by the people of the state” Another judge agreed:

The mission of the judicial system is to render equal justice for all under the law. That’s most important to me. Whether you’re poor, handicapped, your gender, your status in life, is immaterial when it comes to achieving justice for all . . . done with compassion and mercy.²³⁵

Several judges also emphasized the role of justice as a motivating factor for litigants, noting that:

litigants are “our customers” and that “even losers feel satisfied if they received a fair hearing.” The need for justice is especially important at the high court level because it is “the end of the line” and “the last opportunity” for most litigants, especially when “life itself” is at issue. As one judge explained, “Justice for litigants makes everything else pale in comparison . . . it’s the most important thing I *could* do . . . we have the death penalty—what could be more important than that?” And, justice must supersede uniformity or else merely a “uniformity of bad results” might occur.²³⁶

Moreover, some of those jurists who ranked clarity or uniformity over justice were careful to emphasize that those qualities should be thought of as a “means to justice.”²³⁷ It is possible that many of the judges who saw their role as simply applying the law, presumed law was itself just. Or, relatedly, perhaps they were focused on a narrower conception of justice: equality or consistency of outcomes across similar cases. “Providing justice,” from that perspective, meant producing clear, uniform precedents that would enable lower courts to apply the law consistently and efficiently.²³⁸ Professor Swanson quoted one judge who, for instance, observed that “if you follow the law, it usually is fair” and another who explained that “to have justice, you have to have uniformity

²³⁴ *Id.* at 172. The group that ranked “justice” first consisted of twenty-nine judges, behind only the group that ranked “clarity” first (thirty-four judges). In comparison, the groups that ranked “uniformity” and “public policy” first trailed behind at fifteen judges and six judges respectively. *Id.* at 171.

²³⁵ *Id.* at 172 (emphasis in original).

²³⁶ *Id.* (emphasis in original).

²³⁷ *Id.* at 171.

²³⁸ *Id.*

of law.”²³⁹ And still another asked, “How can you say achieving justice is not your most important question? But how do you achieve justice? You obtain clarity in the law, you obtain statewide uniformity of law, you make good public policy.”²⁴⁰ In short, as Swanson summarized, “many judges viewed clarity, uniformity, and justice as either similar or mutually supportive concepts, not conflicting concepts.”²⁴¹

Other judges were not so sanguine about the law, as is, and were even willing to identify a potential gap between the law as written and justice.²⁴² Indeed, several justice-preferring judges indicated a willingness to bend the law toward justice.²⁴³ According to Swanson, one judge noted that the juridical process is “not just following rules” but also involves abiding by a sense of justice, observing that judges are moved by lawyers who “win[] the reader’s heart” and “show his mind how to get there.”²⁴⁴ Still another noted that “if the law is outdated, we achieve justice by changing the law . . . sometimes the law needs changing and you need to say the law was in error.”²⁴⁵

In sum, Swanson’s evidence and analysis suggests that most jurists understand their role of providing justice and understand the provision of justice as the ultimate, or at least an important, goal of the law.²⁴⁶

²³⁹ *Id.*

²⁴⁰ *Id.* These explanations are consistent with the notion of “procedural justice” to, or even as a substitute for, substantive justice. For a helpful literature review of research on procedural justice, see Dale Miller, *Disrespect and the Experience of Injustice*, 52 ANN. REV. PSYCHOL. 527 (2001) (defining “procedural justice” as “the fairness of the methods, mechanisms, and processes used to determine outcomes as opposed to the fairness of the outcomes themselves.”).

It may be worth clarifying that these narrower conceptions of justice are not inconsistent with our broader framework; indeed, they are often micro-applications of the same underlying goal of negating harms produced by power without legitimacy. Consider consistency, for instance, even concepts like “rule of law” can be understood as manifestations of a commitment to justice. To call for consistency across cases is to call for a kind of equality: treating similar situations similarly. Failing to do so produces a form of injustice because inconsistency suggests an inequality without legitimacy—arbitrary differential treatment that cannot be justified.

In that way, narrow forms of injustice, can serve as a flawed and distracting substitute for outcome justice. See Hanson & Strang, *Justice Imperative*, *supra* note 21, Parts III.A–D (mapping different types of injustice, including the difference between real justice and legal justice. For instance, consistency by itself, is not itself justice, a point stressed by Larry Krasner above. See *supra* note 182 and accompanying text (regarding sentencing guidelines). As we make clear later in the series, there is a deeper and broader conception of justice that is imperative for the system to ultimately be true to its promise and to the social contract. See, e.g., *id.* at Part I. Seemingly fair processes, consistent outcomes, or strict application of the law do not themselves constitute the fulfillment or advancement of justice unless the outcomes produced are also substantively just.

²⁴¹ Swanson, *supra* note 232, at 171–72. Even justices who did not rank “justice” so highly often apologized with phrases like “I don’t mean to be so hard-hearted” or “I know that sounds bad,” or “It’s terrible to say.”

²⁴² *Id.* at 172.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ Again, though, some of Swanson’s survey respondents “viewed clarity, uniformity, and justice as either similar or mutually supportive concepts,” *Id.* at 171–72. For a cursory description of some of the problems with that perspective, see *supra* note 240.

III. THE BROKEN PROMISE

*"The gold of her promise
has never been mined / Her borders of justice
not clearly defined / Her crops of abundance
the fruit and the grain / Have not fed the hungry
nor eased that deep pain."*

—Maya Angelou²⁴⁷

*"There is no greater tyranny than that which is perpetrated under the
shield of the law and the name of justice."*

—Charles de Montesquieu (apocryphal)²⁴⁸

A. "It's Law all the Way Down"

But for all of the architecture, stylized language, and aspirational signals of law people, lay people and law people in training would discover that judges and lawyers only occasionally gesture at justice and then only to maintain appearances when they sense that outside lay people are watching closely. The law people rarely demonstrate an actual commitment to justice.²⁴⁹

²⁴⁷ MAYA ANGELOU, *America*, in *THE COMPLETE COLLECTED POEMS OF MAYA ANGELOU* 85 (1994).

²⁴⁸ This quotation is widely attributed to Montesquieu but does not appear in the book where it is usually cited, in *The Spirit of the Laws*. See generally MONTESQUIEU, *THE SPIRIT OF THE LAWS* (Thomas Nugent trans., Hafner Publ'g Co. 1949) (1748). In any event, people tend to understand and value the quotation and its meaning, whatever its source.

²⁴⁹ This might seem to contradict some of the survey evidence and statements reviewed above, in which, for instance, judges proclaimed justice as a primary aspiration. As later portions of this series will make clear, however, the sort of paeans to justice so common in law tend to be, especially recently, paper thin, even if chiseled in granite. See generally Hanson & Strang, *The Justice Imperative*, *supra* note 21, Section III.B; Hanson & Strang, *Justice Deferred*, *supra* note 52, Section II.B; Hanson & Kipnis, *Courting Injustice*, *supra* note 6, Part II.

Markus Dubber's philosophical analysis of how a "sense of justice" informs legal opinions provides one explanation for this puzzling phenomenon. After surveying judicial usage, he concludes that, even when judges invoke justice sincerely, that "sense of justice," properly understood, operates as a formal capacity that "does not decide cases, or determine action"; instead, it only, "sets the framework within which justice is possible." See Markus Dirk Dubber, *Making Sense of the Sense of Justice*, 53 *BUFF. L. REV.* 815, 857 (2005); see also MARKUS DIRK DUBBER, *THE SENSE OF JUSTICE: EMPATHY IN LAW AND PUNISHMENT* 75 (2006) ("As a formal capacity shared by all persons as such, rather than by some substantive community or other, the sense of justice is the prerequisite for judicial decision making as well as for jury deliberation, for legislative action as well as for police behavior. It does not decide cases or determine action; it sets the framework within which justice is possible."). The sense of justice, in other words, is a precondition for recognizing that justice matters and that others deserve just treatment, but it provides no substantive guidance about what outcomes actually serve justice in particular cases. See *id.* at 51 ("The sense of justice can only play a *formal* role, as a necessary precondition for a theory of justice and for the existence of a legal system," functioning merely as "the moral sentiment which allows and motivates us to act justly" without providing substantive guidance about what justice requires. (emphasis in original)). His moral psychology perspective illuminates how judges can genuinely invoke justice while deciding cases purely legalistically.

Owing to that dissonance and the psychological motives shaping how judges cope with it, many judges have come to understand themselves as advancing justice precisely by ignoring

Indeed, law people sometimes privately eschew “justice” altogether. The criticism, in essence, is that because justice has no shared meaning, it cannot be employed as a metric in law, lest it be used simply as cover for subjective judicial discretion. Some of the most influential scholars and jurists of the last century have offered that criticism as a basis for disregarding the goal of justice.²⁵⁰

Oliver Wendell Holmes, Jr. “hate[d] justice” for that reason, explaining that “I know if a man begins to talk about [justice], for one reason or another he is shirking thinking in legal terms.”²⁵¹ The even more influential Richard Posner similarly complained to a journalist that terms “like fairness and justice. . . have no content.”²⁵² But again, most judges and lawyers do not attack or belittle justice; they just do not speak of it at all.

Yet the tension between promise and practice has not been static. While the legal system has too often served as an instrument of power and purveyor of injustice, by design, there is always a battleground on which people

outcome justice. As we detail in Hanson & Strang, *Justice Deferred*, *supra* note 52, Section II.B “judicial injustice” focuses narrowly on process, constraint, and democratic legitimacy to justify ignoring the consequential injustice of judicial outcomes; judges rationalize that it would be unjust for unelected officials to consider whether outcomes are substantively just. That narrow conception of injustice, in fact, has been the cornerstone of the conservative legal movement’s attack on justice-oriented jurisprudence and promotion of law and economics, textualism, and originalism. *See id.*

A key broader point, developed across this series, however, is that judges never truly escape justice concerns. Even those claiming justice has no role in law typically root their arguments in injustice narratives (for example, about judicial overreach or democratic legitimacy) or adjust their attributional causal stories, or alter, ignore, or conceal the inconvenient facts or the disconcerting consequences of what they are doing to avoid having to confront their role in promoting injustice. *See, e.g.,* Jon Hanson & Dean A. Strang, *Injustice Narratives in Criminal Law: The Specific Role of Dehumanisation in CITIZENS, THE STATE AND JUSTICE: A MULTIDISCIPLINARY PERSPECTIVE* 100–14 (Dan Jasinski & Noel McGuirk eds., 2026).

For justice to serve its proper end of reducing actual injustice rather than merely managing judicial self-perception, a true devotion to justice requires more than goodwill or abstract commitments. It demands a meaningful framework for assessing injustice beyond legal categories, doctrines, and processes, coupled with systematic attention to causes and accountability for consequences, all embedded within institutions and structures designed to facilitate and reward that effort among judges trained for that purpose.

²⁵⁰ *See generally* Hanson & Strang, *Justice Deferred*, *supra* note 52, Part II.

²⁵¹ Letter from Oliver Wendell Holmes to John C.H. Wu (July 1, 1929), in JUSTICE HOLMES TO DR. WU: AN INTIMATE CORRESPONDENCE, 1921–1932 53 (1935).

²⁵² Paul M. Barrett, *Influential Ideas: A Movement Called “Law and Economics” Sways Legal Circles*, WALL ST. J., Aug. 4, 1986, at 1, col. 1 (“Judge Richard A. Posner has little use for words like fairness and justice. ‘Terms which have no content,’ he calls them. What America’s lawyers and judges need . . . is a healthy dose of free-market thinking.”). When Posner wasn’t complaining that “justice” was a vacuous concept, he argued that it *did* have a precise meaning: efficiency. *See, e.g.,* Richard A. Posner, *The Economic Approach to Law*, 53 TEX. L. REV. 757, 777 (1975) (writing on “justice” that “the most common [meaning] . . . is simply ‘efficiency.’ When we describe as “unjust” convicting a person without a trial, taking property without just compensation, or failing to require a negligent automobile driver to answer in damages to the victim of his carelessness, we can be interpreted as meaning simply that the conduct or practice in question wastes resources.”); *see also* NICHOLAS MERCURO & STEVEN G. MEDEMA, *ECONOMICS AND THE LAW: FROM POSNER TO POSTMODERNISM AND BEYOND* 105–06 (Princeton Univ. Press, 2006) (“The Chicago school’s reliance on efficiency is in part due to the belief that it is a legitimate and important goal for legal-economic policy, but it also reflects their concern as to what can ‘come in’ under the name of ‘justice’ or ‘fairness,’ neither of which has a unique definition that commands universal acceptance. As a consequence, Chicagoans are skeptical of the motives of those who invoke its use. . . .”).

and organizations can fight for at least marginal justice. Moreover, the judiciary has sometimes systemically trended toward justice but, more consistently, back toward injustice. As we detail in *Justice Deferred*, recent decades have witnessed a massive, coordinated, and extended campaign against justice as a norm or consequence of the judiciary and legal system.²⁵³ Beginning in the late twentieth century, leading political actors, legal scholars, and judges participated in a well-funded effort to delegitimize justice as a normative guide for constitutional interpretation.²⁵⁴ That campaign, decorated in the rhetoric of neutrality and judicial humility, worked to portray justice as subjective, partisan, or naïve, and to elevate conceptions of legal decision-making that denied justice any independent role.²⁵⁵ The promise of justice was reframed as a threat to legal legitimacy itself, as unjust, and the pursuit of justice came to be labeled improper, unprofessional, or even lawless.²⁵⁶

Justice Elena Kagan's 2010 Supreme Court confirmation hearing illustrated the triumph of that campaign.²⁵⁷ Then-Solicitor General Kagan was questioned by Senator Jon Kyl, who was eager to discern her opinions on "the standard for judges in approaching cases."²⁵⁸ Kyl opened by referencing President Obama's view that, in the toughest cases, justices must rely on more than just legal texts—they must consider something like their own sense of justice. Kyl elaborated:

[Obama] has used a couple of different analogies. One was to a 26-mile marathon and said that in hard cases, adherence to precedent and rules of construction and interpretation will only get you through the first 25 miles. And he has said that while the law is sufficient to decide 95 percent of cases, in the last 5 percent, legal

²⁵³ See generally Hanson & Strang, *Justice Deferred*, *supra* note 52, Part II.

²⁵⁴ See *id.*

²⁵⁵ *Id.* There now have been many historical accounts of that extensive campaign. See e.g., MICHAEL AVERY & DANIELLE McLAUGHLIN, *THE FEDERALIST SOCIETY: HOW CONSERVATIVES TOOK THE LAW BACK FROM LIBERALS* (2013); JANE MAYER, *DARK MONEY: THE HIDDEN HISTORY OF THE BILLIONAIRES BEHIND THE RISE OF THE RADICAL RIGHT* (2016); AMANDA HOLLIS-BRUSKY, *IDEAS WITH CONSEQUENCES: THE FEDERALIST SOCIETY AND THE CONSERVATIVE COUNTERREVOLUTION* (2015); STEVEN M. TELES, *THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT: THE BATTLE FOR CONTROL OF THE LAW* (2010). Leading figures on the political right from the late 1960's into the 1980's included Attorney General Edwin Meese, III (before, during, and after that role), Prof. Robert Bork and U.S. Supreme Court justice Antonin Scalia. Edwin Meese III, U.S. Att'y Gen., *Address Before the American Bar Association* (July 9, 1985) <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/07-09-1985.pdf> [<https://perma.cc/TW8J-289U>]; ROBERT H. BORK, *Neutral Principles and Some First Amendment Problems*, 47 IND. L. J. 1 (1971) (a seminal article—perhaps the seminal article—in this movement, and widely cited since it appeared); ROBERT H. BORK, *THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW* 1 (1990) (his well-known popular work); Antonin Scalia, *Originalism: The Lesser Evil*, 57 U. CIN. L. REV. 849, 863 (1989).

²⁵⁶ *Id.*

²⁵⁷ This is but one illustration of the transformative effect of the conservative legal movement's attack on justice. For more evidence of that anti-justice campaign, see Hanson & Strang, *Justice Deferred*, *supra* note 52; Hanson & Kipnis, *Courting Injustice*, *supra* note 6; Hanson, Kipnis, Kristoffersen, & Porcile, *Inside the Justice Crisis*, *supra* note 21.

²⁵⁸ *The Nomination of Elena Kagan to Be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. 1, 103 (2010) [hereinafter *Kagan Nomination Hearings*] (question of Senator Kyl, Member, S. Comm. on the Judiciary), <https://www.govinfo.gov/content/pkg/CHRG-111shrg67622/pdf/CHRG-111shrg67622.pdf> [<https://perma.cc/PG9Q-4786>].

process alone will not lead you to the rule of decision. He says the critical ingredient in those cases is supplied by what is in the judge's heart or the depth and breadth of the judge's empathy.²⁵⁹

Then came the challenge: "Do you agree with him that the law only takes you the first 25 miles . . . and that the last mile has to be decided by what is in the judge's heart?" Kagan's reply reflects what has become the axiomatic judicial response to such questions²⁶⁰:

I think it's law all the way down. When a case comes before the court, parties come before the court, the question is not do you like this party or do you like that party, do you favor this cause or do you favor that cause. The question is, and this is true of constitutional law and it's true of statutory law, the question is what the law requires. Now, there are cases in which it is difficult to determine what the law requires . . . and people can disagree about how the constitutional text or precedent—how they apply to a case. But it's law all the way down, regardless.²⁶¹

Kagan repeated that "law all the way down" response numerous times throughout her hearings.²⁶² Implicitly, then, Kagan was agreeing with Holmes, rejecting the notion that justice plays an independent role in judicial decision-making.

Kagan's response, again, represented what had become the dominant perspective: a full embrace of law as self-justifying and a categorical rejection of justice as having any independent role in judicial reasoning.²⁶³ If it's "law all the way down," then justice is, at best, an incidental byproduct, present or recognizable only when it happens to align with the legal outcomes determined by other means.²⁶⁴ This stance directly repudiates not only President

²⁵⁹ *Id.*

²⁶⁰ See Hanson & Strang, *Justice Deferred*, *supra* note 52, Section II.D.

²⁶¹ *Kagan Nomination Hearings*, *supra* note 258, at 103 (response of Elena Kagan).

²⁶² See, e.g., *id.* at 160 (Elena Kagan responding to Senator Cornyn) ("I think that judges are always constrained by the law. They're . . . always constrained by the law. It's law all the way down."); *id.* at 173 (responding to Senator Durbin) ("So—so to say that something is law all the way down, which is absolutely the case, that it would be completely improper for a judge to import personal, or moral, or political preferences into the occasion."); *id.* at 203 (responding to Senator Klobuchar: "I said yesterday on a couple of different occasions it is law all the way down. You know, you are looking at the text, you are looking at structure, you are looking at history, you are looking at precedent. You are looking at law and only at law, not your political preferences, not your personal preferences."); *id.* at 299 (responding to Senator Grassley) ("It is law all the way down, I think is what I said yesterday, and that is what I believe. It is not personal views. It is not moral views. It is not political views. It is law all the way down.").

²⁶³ In other articles in this series, we argue that, despite its promises and rhetorical invocations of justice, the law ultimately rejects justice as a guiding principle or endpoint. See, e.g., Hanson & Strang, *Justice Deferred*, *supra* note 52, Part II. As we will explain there, this occurs in part through an emphasis on "legal justice" over "real justice." Hanson & Strang, *The Justice Imperative*, *supra* note 21, Section III.B. The shallow nature and limited extent of the judiciary's commitment to justice, both in theory and in practice, are exemplified by this section and the preceding section discussing the role of justice in judicial rhetoric.

²⁶⁴ Cf. Hanson, Kipnis, Kristoffersen, & Porcile, *Inside the Justice Crisis*, *supra* note 21 (describing Justice Kagan's prioritization of law over justice today). We acknowledge, too, that Justice Kagan's confirmation hearing was in part performative, an attempt by the senators in making speeches and asking questions and by the nominee in offering responses that were

Obama's suggestion that justice might matter in hard cases, but implicitly the promises documented throughout Section II of this Article. By 2010, when Kagan testified, such repudiation had become the price of confirmation, a ritual performance in which nominees were required to demonstrate allegiance to text, original meaning, and "law" while disavowing "justice" as the judiciary's guiding light.

Justice Deferred details the history of the attack on justice.²⁶⁵ And several articles map the system-wide consequences of that anti-justice turn—patterns of widespread and still-growing injustice attributable to a judiciary and legal apparatus that have renounced justice as the key norm and supplanted it with anti-justice jurisprudential approaches.²⁶⁶

For the balance of this Article, however, we focus on the entry point into that structure: legal education. As will become clear, the legal system's elevation of formalistic reasoning over meaningful commitment to justice starts with what students encounter at the outset of their professional formation. Legal education trains lawyers to perform publicly as if legal disputes that find their way into the legal system are decided ultimately according to applicable law. The claim that it's "law all the way down" serves as an excuse for ignoring harms and inequalities, normalizing the very injustices advanced throughout our system by many of its most prominent actors, including prosecutors, judges, and even Supreme Court justices.²⁶⁷ At its extreme, this may even be an alibi of sorts: lawyers and judges claiming that they have no business with justice, but only law, so they were somewhere else, so to speak, when injustice occurred.

B. *Bait and Switch in Legal Education*

This section documents how being comfortable in the law's duplicity is a fundamental part of what it means to become a lawyer and, more important, to "think like a lawyer."²⁶⁸ Indeed, conventional legal education enacts a kind of bait and switch, involving an "insincere offer[] to sell one item in order to induce the buyer to purchase another."²⁶⁹ In the case of legal education, the promise is to prepare students to advance justice while, in fact, delivering

shaped by the highly politicized public setting in which certain queries and answers have become expected. *See id.*

²⁶⁵ Hanson & Strang, *Justice Deferred*, *supra* note 52.

²⁶⁶ *See* Hanson & Kipnis, *Courting Injustice*, *supra* note 6; Hanson, Kipnis, Kristoffersen, & Porcile, *Inside the Justice Crisis*, *supra* note 21; Jon Hanson & Lica Porcile, *The Law Crisis and the Authoritarian Turn*, 21 HARV. L. & POL'Y REV. (symposium issue, forthcoming 2027) [hereinafter Hanson & Porcile, *The Law Crisis*]; Hanson & Kristoffersen, *Inside the Law Crisis*, *supra* note 21. For a summary of those articles and others in this series, see Hanson & Strang, *The Justice Series*, *supra* note 1.

²⁶⁷ *See also* Jon Hanson & Dean A. Strang, *Injustice Narratives in Criminal Law: Introducing the Framework*, in CITIZENS, THE STATE AND JUSTICE: A MULTIDISCIPLINARY PERSPECTIVE 7–19 (Dan Jasinski & Noel McGuirk eds., 2026).

²⁶⁸ *See, e.g.*, FREDERICK SCHAUER, THINKING LIKE A LAWYER (2012).

²⁶⁹ David Adam Friedman, *Explaining "Bait-and-Switch" Regulation*, 4 WM. & MARY BUS. L. REV. 575, 575 (2013).

them an education in practicing law, often in ways that ignore or perpetuate injustice.

1. *The Bait*

As we detailed above, law schools commonly and elaborately present themselves as institutions dedicated to justice, preparing students to pursue justice and contribute to a more just society.²⁷⁰

2. *Taking the Bait*

This justice promise aligns closely with the aspirations of many applicants who decide to attend law school for that very reason. Ever since legal education became a subject of scholarly study in the mid-twentieth century,²⁷¹ several studies have examined student motivations for attending law school. Those studies consistently find that many—sometimes most—students attend law school with justice-related aspirations, such as helping others, reforming social structures, or serving the public interest, rather than, for example, pursuing personal wealth by advocating on behalf of corporate clients.²⁷²

²⁷⁰ See *supra* text accompanying notes 69–106.

²⁷¹ See James R. P. Ogloff, David R. Lyon, Kevin S. Douglas, & V. Gordon Rose, *More than "Learning to Think Like a Lawyer": The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73, 78 (2000) (observing that, as of 2000, "there have been well over one-thousand scholarly articles, and a large number of books, devoted to the topic of legal education since 1965.").

²⁷² See, e.g., Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 559–60, 576–77, 579 tbl.14b, 624 (1973) (analyzing student motivations across eight law schools between 1960 and 1972 and finding that seventeen percent of students cited a desire to serve the underprivileged, while thirty-one percent considered a desire to restructure society as greatly important); ROBERT V. STOVER & HOWARD S. ERLANGER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL 3 (1989) (finding that, in the late 1970s, one-third of entering University of Denver law students intended to work in public interest law as their first full-time job); Craig Kubey, *Three Years of Adjustment: Where Your Ideals Go*, 6 JURIS DR. 34, 36 (1976) (reporting that thirty-seven percent of entering students at UC Davis Law in 1975 expected to work as movement, poverty, or public interest lawyers after graduation); ROBERT GRANFIELD, MAKING ELITE LAWYERS 37–38, 48 (1990) (finding that a significant number of Harvard Law School students attended for altruistic reasons and that seventy percent of incoming students expressed a preference for public-interest careers); Suzanne Homer & Louis Schwartz, *Admitted but Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN'S L.J. 1, 52 tbl.6 (1989) (reporting that, in a 1988 study at UC Berkeley Law, forty-one percent of women and thirty percent of men intended to work in public interest or public sector jobs at the time of admission); Howard S. Erlanger, Mia Cahill et al., *Law Student Idealism and Job Choice: Some New Data on an Old Question*, 30 LAW & SOC'Y REV. 851, 853–54 (1996) (finding that over half of entering University of Wisconsin law students aspired to work in fields with an explicit social reform component, such as poverty law, consumer or environmental protection, or affirmative action); Lynn A. Addington & Jessica L. Waters, *Public Interest 101: Using the Law School Curriculum to Quell Public Interest Drift and Expand Students' Public Interest Commitment*, 21 AM. U.J. GENDER SOC. POL'Y & L. 79, 83 (2012) (reviewing studies indicating that between thirty-three percent and thirty-seven percent of entering law students intended to pursue public interest careers); Jenée Desmond-Harris, "Public Interest Drift" Revisited: Tracing the Sources of Social Change Commitment Among Black Harvard Law Students, 4 HASTINGS RACE & POVERTY L.J. 335, 370 (2007) (surveying Black Harvard Law students in the mid-2000s and finding that roughly eighty percent were motivated to attend law school, in part, by a desire to serve society).

Those findings comport with the experience of law professors who have written about legal education and the common mismatch between student hopes and expectations and student experience. As Duncan Kennedy put it in his now-classic, and still-widely read polemic on legal education, “A surprisingly large number of law students go to law school secretly wishing that being a lawyer could turn out to mean something more, something more socially constructive than just doing a highly respectable job.”²⁷³ More recently, Sam Moyn observed, “Many students believe that they are doing something more than enrolling in a trade school to solve other people’s legal problems for (often tremendous) pay. Students are also hoping to advance or even incarnate certain ideals of political and social justice.”²⁷⁴

Between those temporal bookends is a sizable library of related observations by law professors. Deborah Maranville describes “the passion for justice and enthusiasm for helping other people” that provides law students “their strongest initial motivations for wanting to become lawyers.”²⁷⁵ Robert Solomon describes how students “come to law school filled with passion, with morality, with a sense of justice.”²⁷⁶ And so on.²⁷⁷

In sum, it may appear that those providing and receiving legal education are interacting in a marketplace of shared purpose, where institutions provide the justice-centered training and career opportunities that students seek. But that is not the case.

3. *The Switch*

Conventional legal education undermines students’ ability to pursue justice-centered aspirations and sustain their moral commitments in at least three key ways. First, it relegates discussions of justice and related norms and concepts to the margins, treating them as beyond the bounds of the curriculum. Second, it instills a mode of legal reasoning that attends to surface-level

²⁷³ Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEG. ED. 591, 592 (1982).

²⁷⁴ Samuel Moyn, *Law Schools Are Bad for Democracy: They Whitewash the Grubby Scramble for Power*, CHRON. OF HIGHER EDUC., Dec. 16, 2018, <https://www.chronicle.com/article/law-schools-are-bad-for-democracy> [<https://perma.cc/C9UF-CMQZ>].

²⁷⁵ Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 J. LEGAL EDUC. 51, 51 (2001).

²⁷⁶ Robert A. Solomon, *Teaching Morality*, 40 CLEV. ST. L. REV. 507, 508 (1992).

²⁷⁷ See, e.g., WEST, *supra* note 19, at 47 (describing students’ initial “public service” “career goals” of “doing the people’s justice” be it in the form of “legal aid work for poor people, cause lawyering for community organizations, public defense of indigent criminal defendants, or simply government lawyering at any level”); STUART A. SCHEINGOLD & AUSTIN SARAT, *SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING* (2004) (discussing the role of cause lawyering in legal education and practice); Richard L. Abel, *Choosing, Nurturing, Training and Placing Public Interest Law Students*, 70 FORDHAM L. REV. 1563, 1566 (2002) (observing that “many students are attracted to law by a desire to serve their own conceptions of the public interest”); Tan N. Nguyen, *An Affair to Forget: Law School’s Deleterious Effect on Students’ Public Interest Aspirations*, 7 CONN. PUB. INT. L.J. 95, 95 (2008) (noting that “a great deal of . . . [law school] graduates entered law schools with aspirations of engaging in public interest work following graduation”); Louis S. Rulli, *Too Long Neglected: Expanding Curricular Support for Public Interest Lawyering*, 55 CLEV. ST. L. REV. 547, 548 (2007) (discussing the need for greater curricular emphasis on public interest lawyering).

legal questions, obscuring the causes and consequences of injustice while displacing and subtly discrediting students' pre-existing moral and justice-based intuitions. Third, it inundates students with a heavy workload, including reading and other coursework, extracurricular obligations, job-search pressures, and often bar exam preparation, leaving little room for independent exploration or meaningful critique of the system. A full defense of these claims must await future work, but for now, it is sufficient to highlight the broad consensus among scholars and practitioners who have studied the topic: traditional legal education breaks its promise to focus on justice or to prepare students to advance justice in their careers.

Legal scholar Robin West describes legal education's bait and switch from justice to law as follows: although "[j]ustice is carved into building on legal campuses"²⁷⁸ and heralded as the end of legal education, it's actually the law itself that serves as both the means and end of legal education. "Justice," she writes, is "widely hailed on commencement, Law Day, and Constitution Day speeches as the point of the legal enterprise,"²⁷⁹ but justice otherwise has little or no role in legal education. "[I]nside the law schools, inside the classrooms, and inside the pages of law reviews," she explains, there is "no indication whatsoever that justice and what it might require is even marginally relevant to the study of law, much less central to it."²⁸⁰

In his "Letter to a Law Student Interested in Social Justice," Professor William P. Quigley reflects on the experiences of law students who arrive at law school motivated by justice, but leave disillusioned with law.²⁸¹ Quoting one student's reflections about that process—"the first thing I lost in law school was the reason that I came"²⁸²—Quigley describes the bait and switch as follows:

Many come to law school because they want in some way to help the elderly, children, people with disabilities, undernourished people around the world, victims of genocide, or victims of racism, economic injustice, religious persecution or gender discrimination. Unfortunately, the experience of law school and the legal profession often dilute the commitment to social justice lawyering. The repeated emphasis in law school on the subtleties of substantive law and many layers of procedure, usually discussed in the context of examples from business and traditional litigation, can grind down the idealism with which students first arrived.²⁸³

It's not just that justice is omitted, Quigley points out. It's that justice is discouraged: "Those who practice social justice law are essentially swimming

²⁷⁸ West, *supra* note 19, at 26.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ William P. Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DEPAUL J. FOR SOC. JUST. 7, 8 (2007).

²⁸² *Id.* at 8.

²⁸³ *Id.* at 9.

upstream while others are on their way down.”²⁸⁴ Notwithstanding any public promises that law schools might make about advancing justice, “[t]he actual message from law school,” Quigley observes, “is that justice work, if done at all, is done in the margins or after the *real* legal work is done.”²⁸⁵

The displacement of justice by law is no accident. Nearly a century ago, famed Professor Karl Llewellyn offered what would become a classic articulation of that point in his 1930 book, *The Bramble Bush: On Our Law and Its Study*.²⁸⁶ In it, Llewellyn emphasized the distinction between hard, analytic law thinking and mushy, vacuous justice thinking:

[Year one of law school] aims, in the old phrase, to get you to “think like a lawyer.” The hardest job of the first year is to lop off your common sense, to knock your ethics into temporary anesthesia. Your view of social policy, your sense of justice—to knock these out of you along with woozy thinking, along with ideas all fuzzed along the ages. You are to acquire the ability to think precisely, to analyze coldly, to see . . . and manipulate the machinery of law. It is not easy thus to turn human beings into lawyers.²⁸⁷

Like Holmes, Llewellyn had disdain for moral considerations in legal reasoning. He described legal education as the necessary corrective, acculturating students to “think like a lawyer.” Law school achieved that end largely in the first year, when each student is bifurcated into two selves: their former lay selves and their burgeoning law selves. Law school, done well, numbs the new students’ “sense of justice”—supplanting it with precise technical lenses of law. The purpose and effect of legal education, then, is to transform “human beings into lawyers,” cogs within “the machine of law.”

As stark and yellowed as Llewellyn’s rendering might appear, it has continued to resonate in the structures and culture of legal education since. In 1992, David Barnhizer summed up legal educational norms (disapprovingly) this way: “Most faculty in American law schools would deny the appropriateness of any mission that requires them to either understand or advance justice.”²⁸⁸ Moreover, even the small portion that might accept such a mission

²⁸⁴ *Id.* at 10.

²⁸⁵ *Id.* at 11.

²⁸⁶ KARL N. LLEWELLYN, *THE BRAMBLE BUSH: THE CLASSIC LECTURES ON THE LAW AND LAW SCHOOL* 174 (11th prtg. 2008); *see also* DAVID V. WILSON II, *BRAMBLE BUSH: THE CLASSIC LECTURES ON THE LAW IN LAW SCHOOL* KARL N. LLEWELLYN Oxford University Press, 2008 Edition, Hous. Law., November/December 2008, at 45 (“It is only a slight exaggeration to state that anyone who has graduated from law school in the United States since 1930 has at least heard of *The Bramble Bush*.”). Note as well that Llewellyn personally supported human rights and briefed such cases. *See* WILLIAM TWINING, *KARL LLEWELLYN AND THE REALIST MOVEMENT* 110 (1973) (describing Llewellyn’s involvement with opposing the Sacco-Vanzetti executions and with the NAACP and ACLU).

²⁸⁷ LLEWELLYN, *supra* note 286, at 101.

²⁸⁸ David Barnhizer, *The Justice Mission of American Law Schools*, 40 CLEV. ST. L. REV. 285, 286 (1992).

“would dissipate abruptly if anyone attempted to be specific in terms of the obligation.”²⁸⁹

Martha Minow, who has long been one of those professors, and who as dean of Harvard Law School routinely affirmed the centrality of advancing “justice” in legal education,²⁹⁰ admits that in practice, “law school quickly gives the message that law is not about justice.”²⁹¹ Those students who attempt to raise justice considerations quickly get the message that, in Minow’s words, “[j]ustice is for the sentimental, the immature, or, in any case, not for lawyers.”²⁹²

Similarly, in their 2004 book, Professors Stuart Scheingold and Austin Sarat echoed Llewellyn by likening the process of “learning to think like a lawyer” to “learning to leave one’s personal moral political views behind” and “to think analytically about the fit between facts and rules.”²⁹³

In 2005, Professor John Breen similarly stressed that the acculturation process begins early: “From almost the first day of law school, most prospective lawyers are taught to separate their most fundamental moral beliefs (including their beliefs about justice) from their understanding of the law.”²⁹⁴ “Even the suggestion that moral discourse about the law might contribute to the education of future lawyers,” he added, “causes some law professors to bristle.”²⁹⁵

The 2007 Carnegie Report, “Educating Lawyers,” explains that students, “[i]n their all-consuming first year, . . . are told to set aside their desire for justice. They are warned not to let their moral concerns or compassion for the people in the cases they discuss cloud their legal analyses.”²⁹⁶

Also in 2007, legal anthropologist Elizabeth Mertz wrote that law school teaches students “that questions of . . . justice are peripheral to the central business of law.”²⁹⁷ In her studies of law school dynamics, Mertz found that

²⁸⁹ *Id.* at n.3; see also James R. Elkins, *Thinking Like A Lawyer: Second Thoughts*, 47 MERCER L. REV. 511, 515 (1996) (“[e]very law school probably has teachers who puzzle over the troubled relation of law and justice with students,” but those “students now that the ‘justice agenda’ is not what law school is all about. While law implicates justice, the implications are often assumed to be beyond the limits of what law schools can, or should, try to teach”).

²⁹⁰ Emily Newburger, *What Justice Demands of Us, No One Person Can Do Alone: Looking Back and Ahead with Martha Minow*, HARV. L. TODAY (May 17, 2017), <https://hls.harvard.edu/today/justice-demands-us-no-one-person-can-alone/> [<https://perma.cc/AA4V-Q3WY>]. (“I have long wondered why we call the enterprise a law school and not a justice school. Look, medical schools are not called health schools. But we need to remember that the point of law and the point of medicine are to serve society, not simply to advance expert knowledge systems and the states of those with expertise.”).

²⁹¹ Martha Minow, *Introduction: Seeking Justice*, in OUTSIDE THE LAW: NARRATIVES ON JUSTICE IN AMERICA 1, 1 (Susan Richards Shreve & Porter Shreve eds., 1997).

²⁹² *Id.*

²⁹³ STUART A. SCHEINGOLD AND AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING 51 (2004).

²⁹⁴ John Breen, *Justice and Jesuit Legal Education: A Critique*, 36 LOY.U.CHI. L.J. 383, 385 (2005).

²⁹⁵ *Id.*

²⁹⁶ WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 6 (Carnegie Found. for the Advancement of Teaching 2007), http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf [<https://perma.cc/9EKV-H34QJ>].

²⁹⁷ Mertz, *supra* note 76, at 507.

“students who attempt to raise issues of fixed values or non-legal morality do not generally get very far in the classroom exchanges.”²⁹⁸

Again, the effect of law school is to anesthetize (if not euthanize) students’ sense of justice. As Dean Jane Aiken lamented in 2012, “[t]ypical law school classes have the effect of teaching students they have little power to affect justice in society.”²⁹⁹

Robin West explained in her 2013 book on “Teaching Law” that “law professors, both as scholars and teachers, have long eschewed the study of the concept of justice, as a guiding principle of law, law teaching, or legal scholarship.”³⁰⁰ Consequently, “what law students almost never receive is even an introduction to what *justice* . . . might require of the substance of law.”³⁰¹ The problem isn’t simply that justice is omitted, it’s that “[s]tudents are explicitly discouraged from mentioning ‘justice’ in the classroom, and are never rewarded for discussion of its requirements on exams.”³⁰² This censorship of justice, West continues, does not exactly put students’ former justice-aspiring selves to sleep. Rather it leaves “them with the distinct impression that those intuitions are of no relevance to their education, and hence to their work as lawyers. Adversarial ethics—according to which they should align their talents, work, and interests with those of their clients, whatever the justice of doing so—wins by default.”³⁰³

Students and recent law graduates are the most likely to notice this bait-and-switch. The broken promise of justice is crucial for law students.³⁰⁴ Some of them came into law school skeptical already, if they grew up in communities or in an economic stratum in which law often fails to serve their families and neighbors. In a sense, then, law school may move their peers in the same direction. Legal education presents itself as a training ground for justice but instead, we argue, prepares students to reduce or manage the dissonance produced by the wide gap between law and its consequences, on the one hand, and justice and its aspirations on the other through a set of motivated tactics.³⁰⁵

²⁹⁸ *Id.* at 508.

²⁹⁹ Jane Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J.L. & Soc. JUST. 231, 234–35 (2012).

³⁰⁰ WEST, *supra* note 19, at 26.

³⁰¹ *Id.* at 56.

³⁰² *Id.* at 89.

³⁰³ *Id.*

³⁰⁴ See *supra* Section III.B.2.

³⁰⁵ Students learn an arsenal of dissonance-reduction strategies: justifying unjust outcomes by telling particular sorts of outcome-affirming attributional stories; invoking legal rules and precedents as normative and controlling; downplaying justice as an unrealistic, naïve, or even dangerous concern; disregarding contextual factors shaping the outcome, avoiding confronting the human consequences of legal doctrines and judicial outcomes; and denying personal responsibility for resultant systemic harms by framing themselves as mere technicians doing their job and applying law rather than as moral agents shaping outcomes. For a more detailed description of that dissonance, the remarkable psychological impact it often has, and common psychological and institutional responses to it, see Hanson & Strang, *The Justice Imperative*, *supra* note 21, Section II.C.

The misrepresentations mislead justice-oriented young people who flock to law schools in hope of making the world more just³⁰⁶; they also stifle efforts to shape a legal system that would fulfill that promise.

In sum, despite the surface-level praise for and promise of justice, law schools deliver only law. Students must discover after they're already attending and paying for their legal education that justice is "unimportant," "irrelevant," "inappropriate," "of little concern or importance," "of no relevance," "in the margins," "peripheral," "beyond the limits," "sentimental," and "immature" and that they must therefore learn to "anesthetize," "lop off," "knock . . . abandon" "put aside," "eschew," "leave . . . behind," "separate," the sort of "cloud[y]," "fuzzed," and "woozy thinking" associated with justice. Worse, regarding justice, they have "little power" and if they dare raise the topic, they are destined not to "get very far," while being "never rewarded" and "explicitly discouraged."

Professor Angela Harris has summed up the bait and switch phenomenon built into legal education this way: "Justice is the reason why many of my students have come to law school. But justice is not what the law provides."³⁰⁷ Our legal education system is thus nearly devoid of the "moral value that should be the lifeblood of the entire curriculum."³⁰⁸ Only by acknowledging the legal system's duplicity can we begin to imagine, reform, or rebuild a legal order that centers justice.

4. Consequences

What this all means is that justice is not the actual priority of legal education; it instead is the casualty. In Llewellyn's terms, generations of young "human beings" eager to make the world a more just place have been drawn into the legal profession, only to be socialized through a legal educational process that separates them from that ambition and turns them into law-centered "lawyers" who "think like a lawyer."

³⁰⁶ We write during a period of rapid change. Today's law students may belong to a cohort unusually skeptical of established institutions. In some respects, they are not unlike the generation that arrived in law schools during the late 1960s and early 1970s, shaped by civil rights struggles, Vietnam protests, urban unrest, political assassinations, and Watergate. In both eras, once-settled ground shifted beneath people's feet, creating openings for new assumptions, expectations, and theories for understanding law. We will examine the distinctive qualities of this current moment and its potential to reshape legal education and the legal profession in later parts of this series. E.g., Hanson & Kipnis, *Courting Injustice*, *supra* note 6; Hanson, Kipnis, Kristoffersen, & Porcile, *Inside the Justice Crisis*, *supra* note 21.

For now, we note that this Article aims to capture what has been the dominant model and experience in legal education for at least the last half century, not necessarily the flux and ferment of this particular moment. The legal educational system still operates largely on the inertia of that established model, even as the world around it has been transforming. The patterns we document below, including the bait-and-switch, reflect traditional curricular and pedagogical practices and assumptions that, until very recently at least, long have defined legal training. Whether this cohort of students will accept or challenge those norms remains to be seen. But understanding what they're being asked to accept requires first understanding the system as it has long operated.

³⁰⁷ Angela P. Harris, *Teaching the Tensions*, 54 St. Louis U. L.J. 739, 743 (2010).

³⁰⁸ West, *supra* note 19, 89.

Accepting as true Felix Frankfurter's observation—that "the law and the lawyers are what the law schools make them"³⁰⁹—the harm of a legal education system that strips the profession's incoming members of their desire and ability to advance justice is plain: a legal system that is less just and a world with more injustice. That manifests in numerous ways. Most obviously, it distorts what jobs law school graduates go on to do.³¹⁰ Less obviously, it leaves lawyers unprepared to identify injustice and to use their talents, training, and energy to resist it, even as they become the personnel that is charged with that mandate. Robin West explains: "[L]egalism is so encompassing a world view . . . that it 'crowds out' the law student's or scholar's *inquiry* regarding . . . the justice or injustice, of a law . . . It crowds out worries over whether an entire swath of law, or an entire legal system, is just or unjust."³¹¹ No wonder, as Professor Deborah Rhode observed: "Many lawyers . . . have lost their connection to the values of social justice that sent them to law in the first place."³¹²

It may be tempting to suppose that many of the greatest champions of justice have been lawyers, trained in traditional ways. We accept that it is possible for justice-oriented law students to navigate their way through law school in a way that enables them to fight for justice. But that perspective belies the broad and system-wide effects of legal education and its effects on the legal profession. Some may be able to swim against the tide of law to get to justice, but the currents and the gravitational forces producing them are still shaping how many take up that effort, how many succeed in that struggle, and how far they get.³¹³ Indeed, a common lament of lawyers renowned for their work in fighting injustice is that law school was an obstacle to that work.³¹⁴

³⁰⁹ See *supra* text accompanying note 77.

³¹⁰ See, e.g., Christa McGill, *Educational Debt and Law Student Failure to Enter Public Service Careers: Bringing Empirical Data to Bear*, 31 LAW AND SOCIAL INQUIRY 677, 698–701 (2006) (finding that two-thirds of the students entering law school in the hopes of seeking a government or public interest work do not end up doing that work); PETE DAVIS, OUR BICENTENNIAL CRISIS 36–37 (2018) ("Indeed, if you walk through the halls of Harvard Law School, less than 20 percent of the students you meet—students being equipped and empowered by a Harvard Law education—will put their degrees to use in organizations dedicated to advancing the legal interests of those outside of a small group of the most wealthy and powerful corporations and individuals.");

³¹¹ WEST, *supra* note 19, at 66.

³¹² RHODE, *supra* note 24, at 2.

³¹³ As Jacob Reisberg, now a public interest lawyer, then a third-year law student, complained in 2015, "I can say with total certainty that as a student at Harvard Law School, it's incredibly easy to avoid ever having to think about racial injustice; it's incredibly easy to avoid ever having to talk about, in your classroom, issues of social injustice or broader power inequality." Christina Pazzanese, *After Ferguson, the Ripples Across Harvard*, HARV. GAZETTE (Mar. 4, 2015), <https://news.harvard.edu/gazette/story/2015/03/after-ferguson-the-ripples-across-harvard/> [<https://perma.cc/2BQ4-TA6C>] (comment during a community symposium, "Law School or Justice School: Connecting the Dots Between Harvard and Ferguson").

³¹⁴ In his memoir, civil rights attorney Bryan Stevenson wrote about his disappointment with law school: "The courses seemed esoteric and disconnected from the race and poverty issues that had motivated me to consider the law in the first place," leaving him "feeling adrift." BRYAN STEVENSON, JUST MERCY: A STORY OF JUSTICE AND REDEMPTION 4–5 (2014).

In her autobiographical book, *Becoming Abolitionist*, lawyer, organizer, and writer Derecka Purnell describes how she discovered bait-and-switch. DERECKA PURNELL, BECOMING ABOLITIONISTS: POLICE, PROTESTS, AND THE PURSUIT OF FREEDOM (2021). "At orientation, the dean welcomed the class by saying that Harvard was not simply a law school, but a 'justice school.'" *Id.* at 52. "I immediately filled with hope," she continues, "because that's exactly what I came to law

This means that even the most justice-oriented lawyers feel they arrive at their work despite their legal education, not because of it.

They feel that way because judges, lawyers, law people generally breach the profession's promise with impunity; as we have noted, some legendary and influential judges have renounced it outright. Yet by the law's own reasoning,³¹⁵ the legal system should not be permitted to promise justice without also offering real accountability. In the United States—and in most other places—it always has.³¹⁶

CONCLUSION: THE IMPORT OF THE JUSTICE PROMISE

At the core of this Article is an analysis of the ways in which the judicial system brands and markets itself as the *justice system*, and the implications of that concerted effort. All of this branding and marketing begin to explain more about why justice is important; why it is important for its own sake, of course, but also why it has acquired a vast secondary social importance.

When, as now seems increasingly clear, the justice promise does not hold, the question that follows is no longer whether the law serves justice,

school seeking: justice. But I did not find any justice in the hundreds of pages I read each night for class. Nor was it in any of the lectures I attended." *Id.*

Michelle Alexander, attorney, civil rights activist, and author of *The New Jim Crow*, had this warning for prospective law students in 2020: "[L]aw school is a place where you learn the rules of the game and how to play it. But it isn't a place where people think deeply about justice." David Remnick, Host, Ten Years After "The New Jim Crow" (Interview with Michelle Alexander), in *The New Yorker*: THE NEW YORKER INTERVIEW (Condé Nast Jan. 17, 2020), <https://www.newyorker.com/news/the-new-yorker-interview/ten-years-after-the-new-jim-crow> [<https://perma.cc/2BQ4-TA6C>]; see also *id.* (adding that although that may not be "true for every law school, . . . it's true for too many of them.").

³¹⁵ See *supra* text accompanying notes 28–33.

³¹⁶ Student motivations undoubtedly vary across the legal education landscape. The studies we cite tend to skew toward relatively "elite" law schools, as conventionally characterized. At some non-elite (and elite) institutions, students may be particularly drawn by prospects of career advancement or by opportunities to serve their communities in practical ways: drafting wills, handling real estate transactions, providing accessible legal services. We do not claim that all law students arrive seeking to transform society or pursue "big J" justice.

To be sure, too, some schools openly advertise themselves as trade schools to train students to provide routine legal services. For example, Massachusetts School of Law, the lowest ranked law school in Massachusetts (and not accredited by the American Bar Association) adopted a mission statement that does not mention justice, instead stating that its goal is:

to provide an academically rigorous affordable legal education emphasizing ethics, advocacy, leadership, and professional skills . . . MSLAW prepares its graduates to use their skills to help their clients while providing its graduates the societal advancement and influence that a law degree has traditionally provided.

Massachusetts School of Law, *About*, <https://www.mslaw.edu/about/> [<https://perma.cc/UB36-LJ55>].

Still concerns remain. First, many non-elite law schools commonly make explicit justice promises in their mission statements and marketing materials. See *supra* notes 80–92 and accompanying text. Second, the scholars and students we quote throughout this section represent a reasonably wide range of legal educational institutions, not just elite law schools. Professor Quigley's observations, for one example, emerge from his experience at Loyola University New Orleans College of Law, not a top-ranked institution.

but whether it was ever intended to.³¹⁷ Bluntly, it may be past time for judges, lawyers, and law schools to answer this: have we made this justice promise, over and over, in good faith? Or has it all been fraud in the inducement?

Our project will continue to address those questions.³¹⁸ The next article in particular, *The Justice Imperative*, will take up the questions of why we must prioritize justice and how to understand the norm concretely, by addressing *injustice*.³¹⁹ We will examine, among other topics, the psychological power and effects of perceptions of injustice and the anxiety—produced by the cognitive dissonance that attends causing or ratifying injustice while promising justice, what we have called injustice dissonance—apparent in the work of judges. We will explore how judges cope with that dissonance, often in ways that are duplicitous or deceptive, probably even to themselves.

That injustice dissonance, though, does not fulfill the justice promise; it only seeks to obscure the breach. When a promise eventually is exposed as illusory, manipulative, or fraudulent, trust in that promise, and in those behind it, can erode swiftly. We may be there now.

To understand how we arrived at this moment, it is essential first to recognize the existence of the justice promise and the legitimate expectation it creates that law will advance justice. Only then can we fully grasp how an unjust system could appear to function over time, quietly producing conditions that eventually expose the deception in sudden, stark relief. Only then can we comprehend the gravity of breaching the justice promise. And only then can we begin to imagine what it would take to build a judicial system in which justice is not merely promised, but genuinely pursued and advanced. That is our task in the Articles that follow.

³¹⁷ Hanson & Kipnis, *Courting Injustice*, *supra* note 6; Hanson, Kipnis, Kristoffersen, & Porcile, *Inside the Justice Crisis*, *supra* note 21.

³¹⁸ See Hanson & Strang, *The Justice Series*, *supra* note 1.

³¹⁹ See Hanson & Strang, *The Justice Imperative*, *supra* note 21.