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Judging Humbly: Hercules v. Hand

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FOREWORD

INTRODUCTION

When I told my kids that I was being nominated to the bench, one of my sons asked me, "Do you get a hammer?" I told him it's called a gavel. My second son then asked, "Do you get to carry your hammer around town?" My sons evidently saw judges as black-caped crusaders, roving the streets to right wrongs and smite wrongdoers—perhaps a cross between Batman and Thor, or maybe Judge Dredd. To them, judges seemed heroic.

Adults have a more grown-up vision of judges as superheroes. Some treat judges as the closest thing we have to an aristocracy. Americans rightly respect judges, and the judiciary as an institution, as symbols of our nation's commitment to the Constitution and the rule of law. So we judges ought to act dignified both on and off the bench. But the heroic, Herculean account of judging can easily go to our heads.[1] If we don't inoculate ourselves with humility, we risk contracting Black Robe Syndrome—an occupational hazard that comes from having power and hearing so many lawyers "Your Honor" us to death. In other words, we can grow arrogant.

Lawyers, especially judges, are rarely accused of being humble. People don't praise us for that. Instead, people praise us for our clever writing or great wisdom (if they agree with our decisions). Yet humble is exactly what judges should strive to be. If we properly understand our role in our constitutional democracy,

1. *Cf.* RONALD DWORKIN, LAW'S EMPIRE 239 (1986) (conceptualizing the idealized judge as Hercules, a jurist gifted with extraordinary skills and judgment who constantly strives to make the law the best that it can be).

we should prize humility and restraint. Our hero should be not Hercules, but Hand.

Judge Learned Hand famously suggested that Americans often put too much faith in laws and courts.[2] He instead put his faith in humility: "The spirit of liberty is the spirit which is not too sure that it is right[,] . . . which seeks to understand the minds of other men and women."[3] While there's some irony in a judge's encouraging his fellow judges to show more humility, I've seen firsthand the pitfalls of pride and the need for humility—both for my role in our constitutional system and for my own spiritual health.

As I'll explain, judges should embrace humility as a central judicial virtue. Part I of this Essay surveys how our constitutional order carefully limits the judicial role. Judges are caretakers, not trailblazers. Part II then explains how, in light of this restrained role, humility helps us judge well and fulfill our judicial duty. It's hard to analyze cases thoroughly and communicate clearly if we're puffed up by pride or weighed down by agendas. And Part III goes on to explore the personal and spiritual reasons to judge humbly. In short, judicial humility serves not only our democratic legal system and our fellow citizens, but also our souls.

I. JUDGES' RESTRAINED ROLE: SERVING THE PUBLIC

For ages, philosophers have dreamt of handing power to a chosen elite. In *The Republic*, Plato sketched out the reign of philosopher-kings.[4] For Hobbes, the ideal government was headed by an absolute monarch counseled by "men versed in the matter[s] about which he deliberates."[5] Rousseau made his leaders prophets of the "general will"—not a poll of what the public in fact wants, but an oracle of what it *should* want.[6] And Lenin saw the revolutionary vanguard as the ones charged with smashing the old system and its defenders to make way for the new.[7]

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2. LEARNED HAND, *The Spirit of Liberty*, *in* THE SPIRIT OF LIBERTY: PAPERS AND ADDRESSES OF LEARNED HAND 143, 144 (Irving Dillard ed., 1959).

3. *Id.*

4. PLATO, THE REPUBLIC 176-89 (R.E. Allen trans., Yale Univ. Press 2006) (c. 375 B.C.).

5. THOMAS HOBBES, LEVIATHAN 149 (G.A.J. Rogers & Karl Schuhmann eds., Thoemmes Continuum 2003) (1651).

6. JEAN-JACQUES ROUSSEAU, OF THE SOCIAL CONTRACT (1762), *reprinted in* THE SOCIAL CONTRACT AND OTHER LATER POLITICAL WRITINGS 39, 59-60 (Victor Gourevitch ed. & trans., Cambridge Univ. Press 1997).

7. *See* VLADIMIR LENIN, WHAT IS TO BE DONE? 94-100 (S. V. & Patricia Utechin trans., Oxford, Clarendon Press 1963).

The U.S. Constitution rejects such elitism. Our government's authority comes not from kings' divine right or philosophers' insights, but "deriv[es] [its] just powers from the consent of the governed."[8] Ultimate power belongs, not to a king, a tyrant, or an oligarchy, but to "We the People of the United States."[9] The touchstone of power is not intelligence or wisdom, but democratic legitimacy. Accordingly, the Constitution does not make judges philosopher-kings, prophets, or social engineers. Instead of being empowered to make the world a better place, judges "should be bound down by strict rules and precedents."[10] That is why the first judicial oath required judges to affirm that they would "do equal right to the poor and to the rich" and "faithfully and impartially" discharge their duties "agreeably to the constitution, and laws," not their personal preferences.[11] Judges still swear this oath to support and defend the Constitution, not to improve upon it.[12]

Judges, like other government officials, must serve the public. But unlike some other public servants, federal judges are neither elected nor politically accountable. True, judges are appointed by the President with the Senate's advice and consent. But the role of democracy in selecting us is indirect and limited to the front end of our tenure. That leaves us free to follow the law to unpopular outcomes, as in *Barnette*.[13]

Because we are not democratically elected legislators, we have no mandate to affect policy on what the law should be. This is by design.[14] If we made policy, especially in the absence of an energetic Congress or responsive Executive, there would be no check or balance on such "judicial legislation." As one Anti-Federalist feared, making federal judges "independent of the people, of the legislature, and of every power under heaven" could make them "soon feel themselves independent of heaven itself."[15] It is because we do not make policy that we need not represent the public politically or demographically. For instance, we have more education and more wealth than the average American. Our outlooks may thus

8. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

9. U.S. CONST. pmbl.

10. THE FEDERALIST NO. 78, at 434 (Alexander Hamilton) (Colonial Press 1901).

11. Judiciary Act of 1789, ch. 20, § 8, 1 Stat. 73, 76.

12. *See* 28 U.S.C. § 453 (2024).

13. W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943) (upholding Jehovah's Witness schoolchildren's First Amendment right to decline to say the Pledge of Allegiance in public schools).

14. *See* THE FEDERALIST NO. 79, at 435 (Alexander Hamilton) (Colonial Press 1901) (arguing that "the independence of the judges" contributes to "the complete separation of the judicial from the legislative power").

15. Brutus No. XV (Mar. 20, 1788), *in* 2 THE COMPLETE ANTI-FEDERALIST 438 (Herbert J. Storing ed., 1981).

differ systematically from the median voter's. But that's okay, as long as we are careful to implement existing law rather than substitute our views for those of Congress.

Even at common law, judges were not freewheeling innovators. We were small parts of a system much larger than ourselves, working within its bounds.[16] We would take one case at a time, focus on its facts, and make law only interstitially and when the facts went beyond existing law.[17] The common-law judge was a steward, not a philosopher-king.

All servants of the People must exercise humility. But several parts of our legal system reinforce humility's particular importance for judges.

First, as I have mentioned, is the oath, in which we swear to serve the law rather than rule it. We must "faithfully and impartially" do our duty and administer justice "without respect" to how much we like or esteem the particular litigants before us.[18] Our plain black robes reinforce that message of humble authority.

Second, there is the case-or-controversy requirement.[19] Every day, I open the newspaper and read breathless reports about illegal outrages. It would be tempting to stalk the streets with my gavel, like Batman or Judge Dredd, looking for wrongs to right. But I can't do that. Instead, I must wait for litigants to bring a case or controversy to court, frame it themselves, litigate it through trial, and appeal it to us. Only then may I rule, and only on the claims that the parties bring before me. I don't get to issue advisory opinions, jump the gun before a case is ripe, or rule after a case has settled or grown moot. All those restraints keep me from exercising force or will, leaving me only judgment and only within my narrow sphere.

Note how different this bottom-up approach is from academic scholarship. Academics are often hedgehogs, to use Sir Isaiah Berlin's famous metaphor.[20] They choose what areas to tackle. They start from a single big theory and proceed deductively to criticize doctrine for not conforming to their theoretical ideal.

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16. *See* 1 JAMES KENT, COMMENTARIES ON AMERICAN LAW 439 (N.Y., O. Halsted 1826) ("In the just language of Sir Matthew Hale, the common law of England is, 'not the product of the wisdom of some one man, or society of men, in any one age; but of the wisdom, counsel, experience, and observation, of many ages of wise and observing men.'" (footnote omitted)).

17. *See, e.g.*, Harlan F. Stone, *The Common Law in the United States*, 50 HARV. L. REV. 4, 6 (1936) (stating that "the most significant feature of the common law" is "the fact that it is pre[e]minently a system built up by gradual accretion of special instances").

18. 28 U.S.C. § 453 (2024).

19. *See* Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992).

20. *See generally* ISAIAH BERLIN, THE HEDGEHOG AND THE FOX (1953) (employing a metaphor to contrast the thinkers who view the world through a single defining idea (the hedgehogs) with those who pursue many distinct ends (the foxes)).

They are tempted to be ambitious philosopher-kings, dreaming up castles in the air, unaccountable to precedent or reality.[21]

Judges, by contrast, are forced to be foxes because of Article III's case-or-controversy requirement. Judges cannot choose the disputes that come before them. Case by case, we serve actual people with real problems and doctrinal puzzles. Thus, theoretical ideals take a backseat to the shape of existing law, the crooked timber of humanity whose warp we must heed. We judges can tidy up a corner of the law, explain it better, harmonize it with related bodies of law, and even theorize it—but only so much, and only one case at a time.

Third, there is judicial methodology. I follow a method, not ad hoc intuitions of justice. When reading the Constitution, I strive to apply the provision's original public meaning. When reading a statute, I apply the ordinary meaning of the text, read in context. In either case, I don't write on a blank slate. I must apply precedent faithfully, even when I disagree with it. Usually, these tools point to a single right answer. Sometimes, they do not. After all, originalism and textualism have not been consistently followed throughout our history. But in those cases, my task is still to apply precedent—while flagging the tension so that other judges, lawyers, and the public understand why I reached the result that I reached.[22] Far from freewheeling creativity, I'm following existing sources, using stable methodology, and making law only interstitially and incrementally.

My role as a judge has changed my perspective on method. As an academic, I declined to call myself a straight-up originalist or textualist, noting arguments for considering a clause's purpose. There are plenty of good theoretical objections and refinements one can offer to any method, including originalism and textualism. But as soon as I saw how amorphous purposivism was in practice, I changed my mind.[23] If I stray from the text, I risk indulging my predilections and preconceptions. Such subjectivity raises the specter of playing Hercules when we feel like it.

Fourth, there is the practice of writing reasoned opinions. I can't just assert what I like as an *ipse dixit*. I must cite facts, statutes, precedents, and the parties'

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21. *See* William J. Stuntz, *Christian Legal Theory*, 116 HARV. L. REV. 1707, 1742, 1744 (2003) (explaining how, "in the law reviews, legal issues seem easier than they are" because academics are "blind[ ] to risks" and eager to be praised for showing off their creativity and cleverness).

22. *See, e.g.*, Axalta Coating Sys. LLC v. FAA, 144 F.4th 467, 482-83 (3d Cir. 2025) (Bibas, J., concurring) (applying binding Supreme Court precedent from 1977 while noting its theoretical tension with later precedents and original meaning).

23. *Compare* Stephanos Bibas, *Justice Kennedy's Sixth Amendment Pragmatism*, 44 MCGEORGE L. REV. 211, 212, 222-23 (2013) (praising judges' use of purpose, "practicality[,] and common sense" to temper formalistic readings), *with* Vooys v. Bentley, 901 F.3d 172, 195 (3d Cir. 2018) (en banc) (Bibas, J., dissenting) (declining to "venture into the quicksand of legislative history, or speculate about legislative purpose" because "[t]he text is clear").

positions, analyzing them closely and weaving them together into an argument that is both convincing and persuasive. In doing so, I must grapple with the losing parties' contentions.[24] We publish our opinions, and they must stand up to public scrutiny and criticism. That keeps us diligent, forcing us to stand on the solid footing of reason instead of the quicksand of personal opinion.

Fifth, there is the judiciary's collaborative, multilevel structure. Cases start before a single judge, possibly with a jury finding the facts and applying the law. Then on appeal, we act not alone but almost always in threes. My own opinion is just one opinion. I must engage with the views of my colleagues and discuss them collegially, heeding the force of their perspectives and standing ready to recede when they raise points or authorities I hadn't considered. Judicial culture strongly encourages consensus: we converge where we can all agree, if possible, and often leave for another day those idiosyncratic views that might divide us. When I draft a precedent, it becomes the "Opinion of the Court," not my own. And in so deciding, we must keep in mind that our own work is subject to review. If our views are outliers, our colleagues may rehear the case en banc, or the U.S. Supreme Court may take up the case.

Collaboration also matters within chambers. We must be open to points and viewpoints that we've missed. We need our staff to check our citations and arguments, catch our errors, and push back respectfully. Humility greases that workflow.

I recall one case about the start of COVID, when colleges all went remote in the middle of the spring 2020 semester. A group of students sued, seeking partial tuition refunds. The question was whether the university had implicitly promised to provide an in-person education. At first, a clerk and I saw the contract as guaranteeing only an education and a degree. But another clerk saw things very differently. So we all sat around a table, arguing back and forth for a few days, with half my clerks taking one side and half the other. Thereafter, I changed my mind: the on-campus experience may implicitly be part of "what it means to go *off to* college."[25] I wound up denying, in part, the university's motion to dismiss.

Judges' legitimacy comes not from being selected democratically or being representatives of the People. Rather, it rests on democratically enacted laws. Our learning and experience should qualify us to interpret and follow those laws. As Alexander Hamilton famously put it, the judiciary has "neither force nor will,

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24. *See, e.g.*, United States v. Vines, 134 F.4th 730, 738 (3d Cir. 2025) (using diagrams to illustrate why the defendant's proposed statutory construction was unpersuasive).

25. Ninivaggi v. Univ. of Del., 555 F. Supp. 3d 44, 47, 51 (D. Del. 2021) (Bibas, J., sitting by designation) (internal quotation marks omitted).

but merely judgment."[26] If we exercised will instead of just judgment, we would usurp the legislature's primacy.

As these five features of the federal judiciary highlight, that restrained judicial role calls for humility. As a public servant, I am subservient to the Constitution, laws, and precedents. And to read those sources clearly, I must keep my own will and my own ego from infiltrating my interpretation. To see clearly and judge rightly, judges must strive to judge humbly.

II. HOW HUMILITY HELPS US JUDGE WELL AND EARN TRUST

Beyond the structure of the judicial role, the experience of judging impresses on us the need for humility. Judges need to draw on others' insights. As Justice Elena Kagan observed, "[N]o one has a monopoly on truth or wisdom . . . . [W]e make progress by listening to each other . . . ."[27] Every day I confront new issues of criminal law, bankruptcy, securities fraud, and more. Some areas I know a lot about. Some are almost entirely new.

Arrogance is fatal. In a job that requires keeping an open mind, we must resist the temptation to seek closure too soon. Black Robe Syndrome can easily go to our heads, as lawyers and litigants stroke our egos and "Your Honor" us incessantly. It can make us cocky—too sure that we are right and that the losing arguments (and our dissenting colleagues) are either senseless or dishonest. It risks exacerbating the well-known psychological bias of making assumptions and jumping to conclusions. It blinds us to the unintended consequences of our decisions. And it tempts us to show off how clever we are.

The antidote is humility. We must remain open to changing our minds, especially based on new evidence and new arguments. Like Judge Hand, we should not be sure that our first impression is the right one. That means sparring with steelmen, not strawmen. It's not easy to do that, especially when the lawyers present mediocre arguments. But we must keep thinking about the best arguments against our leaning. We (and our clerks) need to be our own devil's advocates. Could I be wrong? Am I missing part of the puzzle? What do the best lawyers and judges say on the other side, and why? That's part of why we typically don't become judges until middle age—until, for many of us, the tribulations of marriage, parenthood, home ownership, and career have hopefully sobered us out of some youthful hubris.

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26. THE FEDERALIST NO. 78, at 428 (Alexander Hamilton) (Colonial Press 1901).

27. *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. 57 (2010) (statement of Elena Kagan, Solic. Gen. of the U.S.).

Humility means subordinating our own wills to the law. As Justice Neil Gorsuch put it when he was nominated to the Supreme Court, a judge who always reaches results that he likes is a bad judge.[28] We must be the law's servant, not its puppeteer. Our guiding star must be reaching the objectively right answer based on authoritative sources of law. And we must avoid injecting, or even seeming to inject, our personal views into our judicial opinions.

We must set good examples, whether we like the laws or not. For instance, more than a year and a half after the COVID pandemic hit America, I moderated a panel in Washington, D.C., which still required everyone to wear masks in public places. By then, COVID vaccines had been available for almost a year, and everyone who wanted one could have gotten the shot plus a booster. I thought the continued masking requirement was unnecessary, and most of the crowd was hostile to it. But as a guardian of the law, I felt I had to wear my own mask consistently and remind the audience to follow local law.

Just as I don't ignore the law when I disagree with it, I don't update it just because I see a better way. Judges must be the law's servants, even when the law seems stuck. Congress does not always work well, quickly, or at all.[29] And judges are tempted to improve upon its handiwork. Judge Posner, for instance, admitted candidly that he was "imposing on a half-century-old statute [Title VII] a meaning of 'sex discrimination' that the Congress that enacted it would not have accepted."[30] Channeling Hercules, he wrote that he and his colleagues were *not* "merely the obedient servants of the 88th Congress (1963-65), carrying out their wishes."[31] He justified this "judicial interpretive updating" as required to bring Title VII into the twenty-first century.[32] In so doing, he extended the suggestion of scholars who advocate "dynamic statutory interpretation."[33]

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28. *Confirmation Hearing on the Nomination of Hon. Neil M. Gorsuch to Be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary*, 115th Cong. 67 (2017) (statement of Hon. Neil M. Gorsuch, Judge, U.S. Ct. of Appeals for the Tenth Cir.).

29. *See, e.g.*, Nolan McCarty, *Polarization, Congressional Dysfunction, and Constitutional Change*, 50 IND. L. REV. 223, 223-25 (2016).

30. Hively v. Ivy Tech Cmty. Coll., 853 F.3d 339, 357 (7th Cir. 2017) (en banc) (Posner, J., concurring).

31. *Id.*

32. *Id.* at 353.

33. *See generally, e.g.*, WILLIAM N. ESKRIDGE, Jr., DYNAMIC STATUTORY INTERPRETATION (1994) (arguing that statutory meaning evolves with shifting political and institutional contexts and situating this theory within broader jurisprudential debates).

Such agents are not faithful to their role in our constitutional system.[34] The Constitution expressly entrusts such updating and patching to Congress. That is doubly true when we venture into contentious policy issues.

In drug policy, for instance, Congress has traditionally criminalized and punished selling, possessing, or using narcotics to stigmatize and deter drug use.[35] More recently, many thoughtful people have advocated turning towards a public-health approach, treating drug addiction as a disease to manage rather than punish.[36] People on both sides sincerely argue the merits of each approach. But judges should not take sides in that debate. As I explained when I held that a proposed "safe-injection" site ran afoul of Congress's drug laws, "[C]ourts are not arbiters of policy. We must apply the laws as written. If the laws [criminalizing drug premises] are unwise, [public-health proponents] can lobby Congress to carve out an exception."[37]

Instead of resolving policy debates, our job is to preserve a level democratic playing field. That means applying existing law and keeping the other branches of government in their lanes.[38]

When judges respond to legislative inertia by overreaching, we warp the system, blunting the legislative responsibility and habit of fixing social problems. If we update old laws or accommodate social changes, what incentive remains for the legislature to act? The Warren Court repeatedly made this mistake, prompting political campaigns against the courts and distrust of them.[39]

Humility also means giving equal justice to all. Small, dull, routine cases may not excite us as much, but they still matter to the parties. Even a pro se petitioner deserves a clear, simple explanation that shows that we've understood him and done our homework.[40] Many such litigants lose, but we should show them that

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34. *See* Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 112 (2010) (describing the federal courts as the "faithful agents of Congress").

35. *See, e.g.*, Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207.

36. *See* Jennifer D. Oliva & Taleed El-Sabawi, *The "New" Drug War*, 110 Va. L. Rev. 1103, 1108-09 (2024) ("There is no doubt that the rhetoric that drives the drug war has changed in recent years as policymakers have adopted 'health-oriented' language.").

37. United States v. Safehouse, 985 F.3d 225, 230 (3d Cir. 2021).

38. *See* West Virginia v. EPA, 597 U.S. 697, 721-24 (2022) (restricting agencies' ability to assert "highly consequential power[s] beyond what Congress could reasonably be understood to have granted").

39. *See* Brett Bethune, *Influence Without Impeachment: How the Impeach Earl Warren Movement Began, Faltered, but Avoided Irrelevance*, 47 J. Sup. Ct. Hist. 142, 155 (2022) (documenting the movement to impeach Chief Justice Warren for perceived judicial overreach during the Civil Rights Era).

40. *See, e.g.*, Eric J. Segall, *Justice O'Connor and the Rule of Law*, 17 U. Fla. J.L. & Pub. Pol'y 107, 137 (2006) ("The rule of law requires judges to explain their decisions in a coherent fashion

we've treated them fairly and with respect. Some habitual litigants may frustrate us. Even so, we must respond patiently. Our oath to "do equal right to the poor and to the rich" requires no less.[41]

Being humble doesn't mean being wishy-washy or milquetoast. When we reach a conclusion, we should state that conclusion clearly. Sometimes that requires courage not to shrink from controversy. But our degree of confidence should inform how broadly we frame our holdings and reasoning and how much we leave undecided. We should acknowledge counterarguments and assess their weight honestly. Sometimes, humility means *not* opining on a sexy constitutional issue. For instance, there may be a threshold justiciability bar to reaching the merits,[42] or the canon of constitutional avoidance may tell us to take a lower-profile way out.[43] There is a golden mean between arrogant judicial maximalism and cowardly ultraminimalism; humility shows the way.

Though judges should err on the side of caution, sometimes we must stick our necks out. In a recent case, the state of New Jersey tried banning private contracts with the federal government for immigration detention.[44] That law was a clever effort to evade the bar on regulating the federal government directly, and it also interfered with the federal government's exclusive responsibility to enforce immigration laws. Ordinarily, it's better to rule narrowly and say little about litigants' motives. But New Jersey's law openly admitted its subversive purpose, and it threatened our federal-state balance. So rather than write narrowly, I thought it important to say loud and clear that intergovernmental immunity bars such stratagems.[45]

Humble judges should also embrace accountability. We should not only *be* humble but also *be seen as* humble and restrained.[46] That means showing our work and explaining ourselves clearly to the people to earn the public's confidence. We should not overstate the winning side's arguments and authority or understate the losing side's. In other words, judges should be candid and

that provides litigants a fair description of the result, explains why similar cases are decided differently, and provides reasonable notice to the public of what to expect in the future.").

41. 28 U.S.C. § 453 (2024).

42. *See, e.g.*, California v. Texas, 593 U.S. 659, 666 (2021) (declining to reach a constitutional challenge to the Affordable Care Act on the ground that plaintiff states lacked standing).

43. *See, e.g.*, Zadvydas v. Davis, 533 U.S. 678, 682 (2001) (declining to invalidate a provision of the Immigration and Nationality Act that appeared to permit indefinite detention of aliens and instead reading the statute to contain an implicit "reasonable time" limitation).

44. N.J. STAT. ANN. § 30:4-8.16(b)(1)-(2) (West 2025).

45. *See* CoreCivic, Inc. v. Governor of N.J., 145 F.4th 315, 320-29 (3d Cir. 2025).

46. *Cf.* CODE OF CONDUCT FOR UNITED STATES JUDGES Canon 2 (JUD. CONF. OF THE U.S. 2019) (stating that "[a] Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities").

transparent. The public respects our branch because the words on the page reflect considered judgment, without shading or agenda.[47]

And when we make mistakes, we should admit them. For instance, in a copyright case about artificial intelligence, at first I denied summary judgment, finding genuine disputes about whether copying Westlaw's headnotes infringed the company's copyright and whether that constituted fair use.[48] After all, judicial opinions themselves are not copyrightable, so I thought that headnotes chiseled out of them might not be either.[49] But as the trial approached, I studied the case further and "analogized the [headnote drafter's] editorial judgment to that of a sculptor," chiseling away at a raw block of marble.[50] Thus, I changed my mind, confessing that I'd gotten it wrong the first time and explaining why.[51]

Candor earns us credibility. It shows the public that we are straight shooters. Explaining ourselves clearly, simply, and honestly makes us worthy of the public's trust. In an era when it's hard to tell what's authentic and what's contrived, leveling with the public is bracing and refreshing. And it reminds the public that we are guardians of truth, not politicians in robes. So we should avoid haughtiness, abstruse verbiage, technical minutiae, and other obstacles to explaining, convincing, and persuading our audiences—including We the People. Clear writing thus counteracts the stereotype of lawyers as arrogant dissemblers, hired guns rather than truthful guardians.

All these rules, practices, norms, and expectations are far more Learned Hand than Hercules. They nudge us toward Burkean incrementalism, reminding us that we do not go it alone; if we see further than others, it is because we stand on the shoulders of many giants who have come before.[52] These practices ground judges in the wisdom of the past.

Unfortunately, much of this Burkean architecture is undercut by modern legal culture. Law schools cultivate the heroic mindset. People are often drawn to

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47. *See* Stephen J. Choi & G. Mitu Gulati, *Which Judges Write Their Opinions (And Should We Care)?*, 32 FLA. ST. U. L. REV. 1077, 1093 n.41 (2006) (recounting Justice Brandeis's famous observation that the Supreme Court was so respected because "everyone knew that the Justices did all of their own work").

48. Thomson Reuters Enter. v. Ross Intel. Inc., 694 F. Supp. 3d 467, 475 (D. Del. 2023) (Bibas, J., sitting by designation).

49. *See* Banks v. Manchester, 128 U.S. 244, 253-54 (1888).

50. Thomson Reuters Enter. v. Ross Intel. Inc., 765 F. Supp. 3d 382, 393 (D. Del. 2025) (Bibas, J., sitting by designation).

51. *Id.* at 390 ("A smart man knows when he is right; a wise man knows when he is wrong. Wisdom does not always find me, so I try to embrace it when it does—even if it comes late, as it did here.").

52. *See, e.g.*, Cass R. Sunstein, *Burkean Minimalism*, 105 MICH. L. REV. 353, 359 (2006) (describing proponents of Burkean minimalism as pragmatic adherents to long-standing judicial traditions).

law school to self-consciously "do good" and "make a difference." Admissions committees expect applicants to brag about their leadership. Constitutional-law classes celebrate social movements, impact litigators, and heroic judges who pioneer social change. Law reviews prioritize the publication of large-scale, anti-institutionalist critiques over nuanced doctrinal analyses. Commencement speeches exhort young lawyers to go out and change the world; they rarely mention cultivating craft or absorbing wisdom from one's elders.

After law school, things are no better. Politicians applaud judges when they score a political win via a judicial opinion. States on both sides of the political aisle forum shop to seek out judges they think are more likely to rule in their favor, leading to a concentration of high-profile cases in particular judicial districts. And the din of social media inflames judges' egos and ambitions, tempting us to angle for the spotlight. All that attention corrodes the traditional restraint that sustains judges' humble role.

III. HOW HUMILITY HELPS JUDGES HELP THEMSELVES

As I've explained, humility is useful. It helps us do our jobs better and function better as a social institution. But it's also good for us personally. Mentally and emotionally, it grounds us. Socially, it makes the judiciary a better, more humane place to work. And spiritually, it cultivates detachment and inner peace.

Too many lawyers are frazzled, burnt out, even depressed.[53] They may feel pressured by client complaints, billable hours, and business development. We judges are spared many of those pressures. But having been practicing lawyers, we bring many of those habits of mind onto the bench: carrying the weight of the world on our shoulders, judging ourselves by our productivity, fretting about outcomes, pushing ourselves and our staff. And like so many lawyers, we tend to be type-A perfectionists.

Humility takes the edge off these pressures. It grounds us, as the word's etymology suggests. It punctures the illusion that we can do it all on our own. It counteracts the nagging temptation to judge ourselves harshly as failed superheroes. It reminds us that we're only human and that we cannot remake the world like Play-Doh. And it ensures that we offer the parties true justice, untainted by our ambition.

By the time we reach the bench, we judges have been climbing the career ladder for decades. It can feel like the crowning achievement of an ambitious career. Yet we've built up habits of restlessness, constantly looking for the next gold stars on our resumes. Restlessness can tempt us to judge with an eye toward

53. *See* Cheryl Ann Krause & Jane Chong, *Lawyer Wellbeing as a Crisis of the Profession*, 71 S.C. L. REV. 203, 204 (2019).

publicity and possible promotion, preventing us from enjoying our profession here and now. And it can disquiet us in the life-tenured jobs that most of us will inhabit till death do us part. Humility both gives us a proper sense of self and quells that ceaseless striving, reminding us to do our best in the role that we've been given and to take satisfaction in it. Otherwise, restless striving will rob us of the joy and satisfaction we should find in our vocation.

Humility also improves workplaces. Big egos breed friction, arguments, and even fights. Some arrogant lawyers are notoriously difficult to work for. Humility makes us better bosses. It also makes us better colleagues, giving one another grace and receiving it in return. It makes us more likable, more generous, and readier to listen and learn. Give and take makes everyone happier.

By contrast, arrogance can breed humiliating spectacles. The Supreme Court of Louisiana recently warned of the dangers of "Black Robe Fever" or "Robeitis."[54] After being pulled over for running a red light, a judge berated the police officer, claimed he was "lying," disobeyed his orders, and justified himself by saying, "[y]ou have no idea who you're talking to."[55] The tape completely vindicated the police officer, and the judge was suspended without pay.[56] This embarrassing episode could have been avoided if the judge had acted as "a servant of the people and a disciple of the law," not "self-righteous, self-centered, [and] self-serving."[57]

Finally, humility is a virtue. It cleanses the eye of the soul, making us see our own faults clearly rather than proudly fixating on others' flaws. It saves us from playing God. And it teaches us to calmly accept all that we can't control. That is an ancient Stoic insight as well as a Christian one. In short, it puts us in our place.[58]

CONCLUSION

Our legal culture venerates hubris over humility. But our constitutional structure calls for judges who are more like Learned Hand than Hercules. Judges who take it upon themselves to solve social problems distort the democratic process. Judges who strive to decide cases according to the law promote it. In turn, those judges increase the public's trust in the judicial process, making it less likely

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54. *In re* Judge Royale Colbert, 2025-00994, p. 16 (La. 12/11/25) (Weimer, C.J., concurring in the result).

55. *Id.* at 5.

56. *Id.* at 4, 15.

57. *Id.* at 16 (Weimer, C.J., concurring in the result).

58. *Cf.* Marah Stith McLeod, *A Humble Justice*, 127 YALE L.J.F. 196, 208 (2017) (rooting Justice Thomas's humble judicial philosophy in his deep Catholic faith).

that people will take the law into their own hands. Humble judges also make the task of judging easier by promoting collegiality in the workplace, listening to dissenting viewpoints, and engaging in good faith. In a world that prizes attention seekers, judges would do well to avoid succumbing to that impulse. Judges — and the country as a whole — will be better for it.

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