Divine Injustice: Myths of Good Lawyers & Other Legal Fictions

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ABSTRACT

When former President Trump's personal attorney, Rudy Giuliani, invoked a rhetoric of judicial "combat" following the 2020 U.S. Presidential Election, his words were an incantation, at once summoning centuries of terror and images of medieval warfare. But, by contextualizing this moment in the blood and birthright that underlie U.S. settler law, one can immediately position Giuliani's comment as merely the latest in a history of divinely unjust lawyering. Across this piece, I employ the phrase "divine injustice" to name this trend and to interrogate the violent irony of a U.S. legal system situated upon legacies of faith and fear, reflecting on my own lived experiences in entering this profession of prophets and phantoms. This piece proceeds in two parts: (1) First, I ground this discussion in the historical origins of U.S. legal prophecy-making and patterns of legal hauntings; (2) second, I reflect on the forms of divine violence that characterized my legal education, with a focus on the calls by liberation movements for our collective unimagining of legal structures. As this piece makes clear, the ever-recurring narrative of U.S. lawyers as "prophets" of justice is by no means random; it is the predictable outcome of a legal system established through the assertion of divine rule, entrenched white supremacy, and judicially constructed faith and fear.

TABLE OF CONTENTS

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ON FAITH & FEAR

> "Before 1215[,] . . . the accused was tossed into a pool with a rope tied around his hips. If he sank, he was hauled out an innocent person, for the purity of the water had accepted him. But if the water repelled him and he floated, he was condemned . . . In all events the judgment was God's. But in 1215 the Church forbade priests to officiate at ordeals and suddenly stripped these rituals of their divine imprimatur. When the Church decertified ordeals, it wrecked them, for the system no longer could claim that God—and not some mere human agency—had decreed the accused's guilt and authorized punishment."[1]
>
> —*George Fisher on the medieval origins of the criminal jury trial*

> "[C]riminals hide evidence, not honest people . . . And if we're wrong, we will be made fools of. But if we're right, a lot of them will go to jail. *Let's have trial by combat.*"[2]
>
> –*Rudy Giuliani on the imperative of the 2020 U.S. Presidential Election*

I place the above quotes against one another—perhaps concentric to and rooted in each other—to frame the core aspiration of this piece: to identify recurring formations of divinely unjust legal power. Despite the 800 years that separate them, I believe that elements of the medieval and the divine transmute both of these passages into what we might call artifacts of "divine injustice." Here, I mean "divine" in all its meanings. Divine, as in ordained by some higher power; divine, as in some quantity of "perfection;" divine, as in reference to a cleric; divine (from the Latin *divinare*), as in discovery by some supernatural insight.[3] Across this piece, I employ the phrase

1. *See generally* GEORGE FISHER, EVIDENCE 6-7 (3d ed. 2013) (citing Roger D. Groot, *The Early–Thirteenth–Century Criminal Jury, in* TWELVE GOOD MEN AND TRUE: THE CRIMINAL TRIAL JURY IN ENGLAND, 1200–1800, at 3, 17–18 (J.S. Cockburn & Thomas A. Green eds., 1988)).

2. Reuters, *'Let's Have Trial by Combat' over election -Giuliani*, REUTERS (Jan. 6, 2021) (emphasis added), https://www.reuters.com/video/watch/idOVDU2NS9R.

3. Plato employed divinatory language as a means for examining ways of knowing and lends some insight here. Peter Truck writes that Plato "uses the language of divination to mark a kind of knowledge that seems mostly to hang back, taking refuge in the privilege of silence that its social prestige allows . . . [H]e positions

"divine injustice"[4] to encapsulate each of these meanings and to interrogate the violent irony of a U.S. legal system situated upon legacies of faith and fear.[5]

To be clear, this piece does not purport to have clear solutions for these violent realities, nor is this piece the first (or last) to address them. My principal aim is, instead, to name the disorientation that legal education demanded of me, the dissonance that accompanies legal prophecy-making or what the legal system has opted to call "lawyering," and the ways that different, overlapping critiques of Empire all implicate a single structure of legal *faith and fear*:

> *Faith that the British crown had bestowed European colonizers with the power to discover and decimate a continent.[6] Fear that, even now, you don't know which continent I'm referencing.*
>
> *Faith that it was the divine right to enact what are now internationally designated as war crimes.[7] Fear that the U.S. Empire might still be expanding its enterprise of breaking and remaking worlds.[8]*
>
> *Faith that skulls and sin could be the foundations of justice—of an all-consuming racial caste system.[9] Fear that such a divinely unjust system could come toppling down*

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divinatory knowledge with respect to the need to explain itself: mostly, it just does not seem to bother." Peter T. Struck, *Plato and Divination*, 15 ARCHIV FÜR RELIGIONSGESCHICHTE 17, 20 (2014). *Compare Divine, adj. and n.1*, OXFORD ENGLISH DICTIONARY (2021) (defining divine in adjective form as "given by or proceeding from God; having the sanction of or inspired by God" but also "of surpassing beauty, perfection, excellence"), *with Divine, n.2*, OXFORD ENGLISH DICTIONARY (2020) ("One who has officially to do with 'divine things'; formerly, any ecclesiastic, clergyman, or priest; now, one skilled in divinity; a theologian"), *and Divine, v.*, OXFORD ENGLISH DICTIONARY (2020) ("To make out or interpret by supernatural or magical insight).

4. Compare with the use of "divine injustice" in literatures of philosophy & theology as a way of articulating divine wrath. *See* William C. Woody, *Divine Injustice*, 2 Diakrisis Yearbook of Theology and Philosophy 9 (2019); Richard J. Erickson, *Divine Injustice?: Matthew's Narrative Strategy and the Slaughter of the Innocents (Matthew 2.13-23)*, 19 J. FOR THE STUDY OF THE NEW TESTAMENT 5 (1997).

5. *See* discussion of myths of justice *infra* Section I.A; *see generally* Johnson v. M'Intosh, 21 U.S. 543, 576-77 (1823) (holding that the Christian colonial powers held a right to discovery to the North American continent).

6. *See M'Intosh*, 21 U.S. at 576-77.

7. *See, e.g.*, Ed Pilkington, *Police Killings of Black Americans Amount to Crimes Against Humanity, International Inquiry Finds*, GUARDIAN (Apr. 27, 2021, 2:00PM), https://www.theguardian.com/us-news/2021/apr/26/us-police-killings-black-americans-crimes-against-humanity (detailing a report by human rights experts, calling for the International Criminal Court to open an investigation into state-sanctioned anti-Black killings in the U.S.); *see* Anthony Dworkin, *Why America is facing off against the International Criminal Court*, ECFR.EU (Sept. 8, 2020), https://ecfr.eu/article/commentary_why_america_is_facing_off_against_the_international_criminal_cou/; *see also Q&A: The International Criminal Court and the United States*, HUMAN RIGHTS WATCH (Sept. 2, 2020, 12:00 AM), https://www.hrw.org/news/2020/09/02/qa-international-criminal-court-and-united-states.

8. *See* KATHRYN YUSOFF, A BILLION BLACK ANTHROPOCENES OR NONE 65 (2018) (exploring the grammars of exploitation and extractivism that underlie the field of geology and conceptualizations of the Anthropocene).

9. *See* DOROTHY ROBERTS, FATAL INVENTION: HOW SCIENCE, POLITICS, AND BIG BUSINESS RECREATE RACE IN THE TWENTY-FIRST CENTURY 37 (2011) (charting the racial science and eugenics that undergird historical and ongoing forms of white supremacy); *see also* ISABEL WILKERSON, CASTE: THE ORIGINS OF OUR DISCONTENTS (2020) (exploring the pillars and historical origins of a U.S. racial caste system in the context of the 2016 U.S. Presidential Election and COVID-19 Pandemic).

should communities of color be admitted into the house of whiteness and rights.[10]

Faith that the demarcation of the "great races" of man[11] *must accord with access to the great privileges and immunities of a stolen land built from stolen labor.*[12] *Fear that stare decisis means it is too late to turn back time.*[13]

Faith and fear, the twin children of Lady Liberty, conduct an industry of divine injustices—an orchestra of socio-legal myths that desperately cling to one another in the hopes of making some larger sound or semblance of truth. Birthed through bloodshed,[14] U.S. colonial systems dispense fables of faith and of fear, constructing the very strange and violent thing we've come to call 'justice.' But in order to understand how linked faith and fear were nurtured across centuries of U.S. settler law, let's briefly return to Rudy Giuliani. When former President Trump's personal attorney, Rudy Giuliani, invoked a rhetoric of "combat"[15] following the 2020 U.S. Presidential Election, his words were an incantation, at once summoning centuries of violence and white militia rule—the ribs surrounding America's beating heart and tradition of white supremacy.[16] This is to say that Giuliani's call to arms on January 6th was merely the latest articulation of the KKK marches, the publicly attended lynchings, and the practices of occupation that have defined this country's history.[17]

Further still, sifting through the blood and birthright that underlie the U.S. racial caste system and accompanying settler law, we can see a singular thread of divine

10. *See, e.g.*, People v. Hall, 4 Cal. 399 (1854) (holding that legal equality for people of Chinese descent necessarily presented a threat to the governance by and rights of white people in the state of California); *see also* United States v. Bhagat Singh Thind, 261 U.S. 204 (1923).

11. *Hall*, 4 Cal. At 402; *see* ROBERTS, *supra* note 9.

12. *See Remarks as Prepared for Delivery by President Biden—Address to a Joint Session of Congress*, WhiteHouse.gov (Apr. 28, 2021), https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/28/remarks-as-prepared-for-delivery-by-president-biden-address-to-a-joint-session-of-congress/ (U.S. President Joe Biden proclaimed in an April 2021 address to Congress that "[t]he middle class [had] built this country." But the longstanding and continued rejection of national reparations for U.S. chattel enslavement thereby convert this declaration into an active legal erasure, an ongoing deprivation of rights, and a continued event of genocide.); Laurie Kellman, *McConnell on Reparations for Slavery: Not a 'Good Idea,'* AP News (June 18, 2019), https://apnews.com/article/e79abc3b64e7400ea961f2fe99a73dc6.

13. *See* Lawrence S. Ebner, *Supreme Court Justices Continue to Debate When to Overturn "Bad" Precedent*, WASHINGTON LEGAL FOUND. (Apr. 22, 2020), https://www.wlf.org/2020/04/22/wlf-legal-pulse/supreme-court-justices-continue-to-debate-when-to-overturn-bad-precedent/.

14. *See* JOE FEAGIN, RACIST AMERICA: ROOTS, CURRENT REALITIES, AND FUTURE REPARATIONS 35 (2014) ("This country was born in blood and violence against non-European 'others.'").

15. Reuters, *supra* note 2.

16. *See* WILKERSON, *supra* note 9, at 17 ("Like other old houses, America has an unseen *skeleton*, a caste system that is as central to its operation as are the studs and joists that we cannot see in the physical buildings we call home. Caste is the infrastructure of our divisions. It is the architecture of human hierarchy, the subconscious code of instructions for maintaining, in our case, a four-hundred-year-old social order. Looking at caste is like holding the country's X-ray up to the light") (emphasis added).

17. Erica Fretwell, *From Lynchings to the Capitol: Racism and the Violence of Revelry*, AL JAZEERA (Jan. 13, 2021), https://www.aljazeera.com/features/2021/1/13/from-lynchings-to-the-us-capitol-us-racism-and-the-violence-of-revelry; *see generally Identifying Far-Right Symbols that Appeared at the U.S. Capitol Riot*, WASH. POST (Jan. 15, 2022, 2:56 PM), https://www.washingtonpost.com/nation/interactive/2021/far-right-symbols-capitol-riot/ (identifying the nooses, Nazi imagery, and white supremacist symbolism seen at the Capitol insurrection).

ordainment, at once tugging down into the depths of Westminster pools and simultaneously up through the prophecies and proclamations of Giuliani's microphone. One of faith and fear.

The legal profession[18] willingly accepts this tension. The open disillusionment of legal workers became clear in my first semester of law school courses when a professor (in one of their regular and welcomed digressions) admitted that the U.S. legal system would all but collapse should every person exert the full range of rights afforded to them. He closed this aside with a smile before returning to the content of our class.[19] But, as I've come to learn, this clashing of a hollowed happiness and of faith *but* fear within the profession is not an aberration; it is the core tenet of a legal industry that is unhealthy, overworked, disparately paid, disparately treated, cut-throat, and colonial in nature.[20]

18. We will return to a deeper examination of the "we." Here, I mean legal practitioners, educators and administrators of legal education, law students and legal workers, and all of the structures and places that substantively make or shape U.S. settler law. Moreover, I use the word "accept" but it might be more accurate to say that the legal profession *begrudgingly acknowledges* the issues of faith, fear, and lawyer disillusionment that mark our practice. A 2018 ABA Journal article featured the following quote discussing the "depression epidemic" from the perspective of a practicing attorney; "Lawyers wear a bullseye on their back. Many lawyers start their legal careers with crushing debt, zero clients and uncertainty about their future. Law students face insurmountable odds and can be depressed even before they step foot out of law school. Also, lawyers have to have an elephant's hide, the courage of a martyr, and the patience of a saint. We are not trained for this." *See* Dina Roth Port, *Lawyers Weigh in; Why is There a Depression Epidemic in the Profession?*, May 11, 2018, 7:00 AM), https://www.abajournal.com/voice/article/lawyers_weigh_in_why_is_there_a_depression_epidemic_in_the_profession; *see also* Daniel Lukasik, *One Lawyer Living and Working with Depression*, N.Y. STATE BAR ASSOC. (Aug. 1, 2019), https://nysba.org/one-lawyer-living-and-working-with-depression/#ref10 ("A 2016 survey of 12,825 practicing lawyers and judges found 28% reported a problem with depression in the past 12 months of the date of the survey"); *see generally* P.R. Krill, R. Johnson, & L. Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016); *see generally* David Schuyler, *Disillusioned lawyers seek careers outside law firms*, MILWAUKEE BUS. J. (Aug. 8, 1999, 11:00 PM), https://www.bizjournals.com/milwaukee/stories/1999/08/09/focus2.html.

19. I share this anecdote for two purposes: (1) First, to ground this piece in the very real and structurally violent ways that the law has come to think of itself and (2) second, to intentionally employ counter-storytelling and connect this piece to the critical race tradition from which it emerges. *See, e.g.*, Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 324 (1987) (examining the ways that critical legal studies and legal liberalism fail in the fight for liberation while suggesting we look to the bottom or adopt "the perspective of those who have seen and felt the falsity of the liberal promise" in defining justice); *see also* CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT xiii (Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas eds., 1995) [hereinafter CRITICAL RACE THEORY] ("Critical Race Theory embraces a movement of left scholars, most of them scholars of color, situated in law schools, whose work challenges the ways in which race and racial power are constructed and represented in American legal culture and, more generally, in American society as a whole"); *see also* Adalberto Aguirre, Jr., *Academic Storytelling: A Critical Race Theory Story of Affirmative Action*, 43 SOCIO. PERSPECTIVES 319 (2000).

20. *See, e.g.*, Victoria Pychon, *Young Lawyer Shares What She Wished She Knew Before Law School*, FORBES (Apr. 26, 2012, 1:24 AM), https://www.forbes.com/sites/shenegotiates/2012/04/26/young-lawyer-shares-what-she-wished-she-knew-before-law-school/?sh=3543d7ed217b; *see* Sharon Miki, *Lawyer Burnout Stopping it Before it Starts*, CLIO (Aug. 6, 2020), https://www.clio.com/blog/lawyer-burnout/; *see also* Kate Mangan, *How to Recognize and Prevent Lawyer Burnout*, LAWYERIST (Oct. 5, 2020), https://lawyerist.com/blog/recognize-prevent-lawyer-burnout/.

But we are not Westminster, you might counter, and the "then" of colonization is *certainly not* the "now!" To this point, I concede: We are not, and it isn't. But, in every possible sense, we are.[21] The interlocking crises of the past three years have demonstrated this and all of the ways that violent legacies, like sentinels of an ever-eroding Empire, still haunt the present.[22] In *The Law is a White Dog*, Colin Dayan makes this connection clear, drawing a direct line from the spectral to the legal rituals that "Make and Unmake Persons."[23] In interrogating the lineage of legal authority that expands out from histories of religious divinity, dehumanization, otherization, and ritual, Dayan writes:

> What is the design of the juridical no-man's-land that has been created when law loosens the link between human beings, animals, devils, other noxious creatures, or infernal vexations? I have cast this traffic and transplantation of persons across vast social, temporal, and spatial distances in the drama of rituals that are both penal and religious. The stuff of spiritual life becomes the raw material of legal authority.[24]

Throughout this piece, I employ rhetoric of hauntings as an extension of Dayan's work and of the broader scholarship of hauntology.[25] *The Law is a White Dog* was published in 2011 and it provides a vocabulary for analyzing the violent legal magic that has only increased over time. In applying Dayan's frame of legal haunting, the "then" of colonial jurisprudence is necessarily made the legal reality of "now." History is made in the present moment and time is truncated by all the terrors and nightmares that never end. Although such hauntings grow more frequent and more

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21. Timothy Bella and Marianna Sotomayor, *GOP lawmaker references lynching during anti-Asian violence hearing: 'Find all the rope in Texas and get a tall oak tree'*, WASH. POST (Mar. 18, 2021), https://www.washingtonpost.com/politics/2021/03/18/chip-roy-lynching-violence-atlanta/; David Law Williams, *Was slavery a 'necessary evil'? Here's what John Stuart Mill would say*, WASH. POST (July 18, 2021), https://www.washingtonpost.com/politics/2020/07/30/was-slavery-necessary-evil-heres-what-john-stuart-mill-would-say/; Chuck Kapelke, *The long history and present surge of anti-Asian violence*, BERKELEY NEWS (Apr. 1, 2021), https://news.berkeley.edu/2021/04/01/the-long-history-and-present-surge-of-anti-asian-violence/.

22. The crises referred to, here, being the COVID-19 pandemic, expanding structural discrimination, heightened anti-Black racism, and continual state violence. *See, e.g.*, Julia Brodsky, *Interlocked Crises: Racism, Police Violence, and the Pandemic*, FORDHAM LAW NEWS (June 17, 2020) https://news.law.fordham.edu/blog/2020/06/17/interlocked-crises-racism-police-violence-and-the-pandemic/ ("We're coping not only with a health pandemic, but a pandemic of poverty, a pandemic of policing, a pandemic of failed leadership, a pandemic of protests . . . We are at a moment of interlocking crises"); Rebecca A. Wilcox, *Distorted Mirrors: Toward a Clear Gaze on Black Suffering*, SOC. SCI. RSCH. COUNCIL: IMMANENT FRAME (Jan. 14, 2021), https://tif.ssrc.org/2021/01/14/distorted-mirrors-toward-a-clear-gaze-on-black-suffering/ (examining the ways that patterns of U.S. state violence put "the horrors of Black death, Black living, Black faith, and Black joy on full display" in 2020).

23. COLIN DAYAN, THE LAW IS A WHITE DOG: HOW LEGAL RITUALS MAKE AND UNMAKE PERSONS (2011).

24. *Id.* at 25.

25. *See, e.g.*, Michael Fiddler, *Ghosts of Other Stories: A Synthesis of Hauntology, Crime and Space*, 15 CRIME, MEDIA, CULTURE: AN INT'L J. 463, 464-65 (2018); *see also* Line Henriksen, In the Company of Ghosts: Hauntology, Ethics, Digital Monsters 19 (2016) (Ph.D. dissertation, Linköping University), available at http://liu.diva-portal.org/smash/get/diva2:918869/FULLTEXT01.pdf.

opaque but real as ever, a certain clarity becomes inescapable.[26] What was deemed impossible in the post-racial imagination is suddenly and frighteningly made very possible once more, like capitol sieges and daylight lynchings and judicial combat and mass graves.[27] This fear, one that is well-founded, cyclical, and historical, has driven a loss of faith in the justice system.

As public opinion polling demonstrates, faith in the justice system (if it was ever *truly* had) is lost.[28] This national shift and the growing rejection of U.S. legal institutions are best exemplified by the August 2020 razing of a Department of Corrections building,[29] a sign of community anguish from the attempted state killing of Jacob Blake. Spray-painted in the aftermath was the following message: "Are you listening yet?"[30] What should the legal profession make of indications that a growing segment of the U.S population rejects the continued unquestioned trust in a legal system lacking structural transparency?[31] This answer remains to be seen. While the law carries

26. Adrian Florido and Marisa Peñaloza, *As Nation Reckons With Race, Poll Finds White Americans Least Engaged*, NPR (Aug. 27, 2020, 5:00 AM) https://www.npr.org/2020/08/27/906329303/as-nation-reckons-with-race-poll-finds-white-americans-least-engaged (reporting that "58% of Americans acknowledge that racism is built into the American economy, government and education systems" but that white Americans were less likely than any other racial group to believe so); Christine Gillette, *Poll: Americans' Views of Systemic Racism Divided by Race*, UMASSONLINE (Sept. 22, 2020), https://www.uml.edu/News/press-releases/2020/SocialIssuesPoll092220.aspx.

27. David G. Embrick, *Two Nations, Revisited: The Lynching of Black and Brown Bodies, Police Brutality, and Racial Control in "Post-Racial' Amerikkka*, 41 CRITICAL SOCIO. 835, 837 (2015) ("modern day lynchings serve today in much the same way that they did in the past—as a way to illustrate and highlight white supremacy and emphasize minorities' place in a racialized social system); Will Schwarz, *Police killings of black people: the legacy of lynching writ large | COMMENTARY*, BALTIMORE SUN (May 31, 2020), https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0603-police-killings-lynching-legacy-20200531-pady24plgredhnwt3xdlyh6rdi-story.html; *Coronavirus: New York mass graves operations ramp up amid virus*, BBC (Apr. 10, 2020), https://www.bbc.com/news/av/world-us-canada-52243289; *see* Reuters *supra* note 2.

28. A Gallup poll of registered U.S. voters found that, in June 2020, only 24% of Americans had confidence in the criminal justice system. Additionally, polling found that 13% had confidence in Congress and 40% had confidence in the U.S. Supreme Court (though it is of note that the latter of these differed along lines of political party, with 53% of Republicans but 33% of Democrats having confidence in the nation's highest court). Megan Brenan, *Amid Pandemic, Confidence in Key U.S. Institutions Surge*, GALLUP (Aug. 12, 2020), https://news.gallup.com/poll/317135/amid-pandemic-confidence-key-institutions-surges.aspx.

29. Christine Flores, *Department of Corrections Building Burned to the Ground in Kenosha Unrest*, CBS58 (Aug. 25, 2020, 11:39 AM), https://www.cbs58.com/news/department-of-corrections-building-destroyed-in-kenosha-unrest.

30. Tamar Lapin, *Kenosha protestors burn down corrections building in aftermath of Jacob Blake shooting*, N.Y. POST (Aug. 25, 2020, 6:30 PM), https://nypost.com/2020/08/25/kenosha-protesters-burn-down-wisconsin-corrections-building/.

31. *See, e.g.*, Megan Brenan, *Amid Pandemic, Confidence in Key U.S. Institutions Surge*, GALLUP (Aug. 12, 2020), https://news.gallup.com/poll/317135/amid-pandemic-confidence-key-institutions-surges.aspx; *see* Michael Hornsby, *Nearly Six in Ten Americans Believe the US Became More Corrupt in 2017*, TRANSPARENCY INT'L (Dec. 12, 2017), https://www.transparency.org/en/press/nearly-six-in-ten-americans-believe-the-us-became-more-corrupt-in-2017; *see* Frank D. LoMonte, *Rebuilding Trust through Government Transparency and Accountability*, ABA HUM. RTS. MAG. (Mar. 4, 2021) https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-next-four-years/rebuilding-trust/ (discussing the need for the Biden Administration to rebuild public trust through government transparency and accountability).

on with its professionalizing of justice-making, a rejection of the legal systems governing the so-called "world's greatest democracy" booms from coast to coast.[32]

To be a law student during this era of endings[33] and violent landslides in legal faith was to navigate dissonance. In their *Critique of Rights in Critical Legal Studies*, Duncan Kennedy writes of this tension, exploring the "loss of faith" in the legal system—and legal reasoning in particular—that is experienced by legal advocates who come to see judicial indeterminacy as the foundation of all rights-based protections.[34] Kennedy compares this loss of faith in the legal system to the loss that one may experience in moving away from theology or religion, saying:

> Loss of faith in legal reasoning bears a close analogy to one of the many kinds of experience of loss of faith in God. The atheist who believes that he or she, or 'science,' has disproved the existence of God is analogous to the maximalist who believes that postmodern critical theory has proved the indeterminacy of legal reasoning.[35]

Kennedy presents a language for grappling with a lawyer's (or law student's) issues of faith and of fear.

Faith that U.S. legal actors are "doing the right thing"[36] and fear that we shouldn't be here in the first place.[37]

Faith that legal advocacy makes us "good" people but fear that we're upholding Empire.[38]

The theoretical framework of Jules Lobes' *Losers, Fools & Prophets: Justice as Struggle* provides a lens to examine these connections—ones that span centuries and settler systems. From Lobes' reading, a common theme of the "prophetic" lawyer

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32. *See Debunking the Voter Fraud Myth,* BRENNAN CTR. JUST. (Jan. 31, 2017), https://www.brennancenter.org/our-work/research-reports/debunking-voter-fraud-myth; *see also* Yascha Mounk, *America Is Not a Democracy*, ATLANTIC (Mar. 2018), https://www.theatlantic.com/magazine/archive/2018/03/america-is-not-a-democracy/550931/.

33. Carla Norrlöf, *Is COVID-19 the End of US Hegemony? Public Bads, Leadership Failures and Monetary Hegemony*, 96 INT'L AFFAIRS 1281 (2020); *see* Mathias Döpfner, *The Attempted Coup at the US Capitol is a Warning: The Future of Global Democracy is in Danger*, BUS. INSIDER (Jan. 7, 2021, 5:39 PM), https://www.businessinsider.com/capitol-siege-could-signal-end-global-democracy-social-media-authoritarian-2021-1.

34. DUNCAN KENNEDY, *The Critique of Rights in Critical Legal Studies*, *in* LEFT LEGALISM/LEFT CRITIQUE 179, 191 (Wendy Brown, Janet Halley & Duncan Kennedy eds., 2002).

35. *Id.* at 192.

36. *See, e.g.*, Art Hinshaw & Jess K. Alberts, *Doing the Right Thing: An Empirical Study of Attorney Negotiation Ethics*, 16 HARV. NEGOT. L. REV. 95 (2011); *see* Ian Johnstone & Mary Patricia Treuthart, *Doing the Right Thing: An Overview of Teaching Professional Responsibility*, 41 J. LEGAL EDUC. 75 (1991); *see* Max Mitchell, *'Doing the Right Thing'?: van der Veen's Defense of Trump Elicits Sharply Divided Views From Phil. Trial Lawyers*, LAW.COM (Feb. 17, 2021, 4:28 PM), https://www.law.com/thelegalintelligencer/2021/02/17/doing-the-right-thing-van-der-veens-defense-of-trump-elicits-sharply-divided-views-from-phila-trial-lawyers/.

37. Ronit Dinovitzer, Bryant G. Garth & Joyce S. Sterling, *Buyer's Remorse? An Empirical Assessment of the Desirability of a Lawyer Career*, 63 J. L. EDUC. 211 (2013); *see* Angela Chen, *Do People Regret Going to Law School*, JSTOR DAILY (July 11, 2016), https://daily.jstor.org/do-people-regret-going-to-law-school/.

38. *See* discussion of white saviorism and the "Atticus Finch complex" of U.S. legal actors *infra* Section II. C.

and justice as a persistent struggle emerges.[39] Such framing is not novel; the notion of the "prophet" lawyer has been previously discussed, employed, and critiqued across literature.[40] The present piece looks, instead, at the ways that this paradigm of legal prophet haunts the present moment. It is an insistence that the fables of U.S. legal prophecy and violent settler realities of U.S. legal systems are conjoined discourses that must be interrogated together.

This piece proceeds in two parts: First, I ground this discussion in the historical origins of U.S. legal prophecy-making and the patterns of U.S. legal hauntings that produce a divine injustice. Second, I reflect on the forms of divine violence that characterized my legal education, with a focus on the calls from liberation movements for our collective exhuming, disrupting, and unimagining of these legal structures. As I hope you'll soon see, the ever-recurring narrative of the U.S. lawyer as a "prophet" of justice is by no means random or the product of chance. It is the predictable outcome of a legal system established through the assertion of divine rule, toxic individualism under white supremacy, and theologically rationalized dominion.

I. THE LAWYER AS "PROPHET" & OTHER MYTHS OF JUSTICE

I grew up in the Roman Catholic Church. I mean this literally— religious education and church service constituted my early childhood. I mean this, also, in terms of my very essence— that the understandings of my queer disabled Xicanx self are wrapped up in the (white) sheet music of church choirs and (white) printed pages of (white) youth group agendas. There was a sharp direness (perhaps, fear) for me to find a semblance of self between the cool luminescence of stained glass to resolve the tensions and tears I'd locked in my chest. I was closeted and in search of prophecy (perhaps, faith), for my redemption (maybe) and my security (definitely). There, too, was faith and fear.

So, when legal scholar Jules Lobel writes that the social-justice-minded litigator might be akin to the religious prophets of Biblical legend,[41] I am left with an array of questions (personal ones, to be sure) about legality, justice, and about how each has been contemporaneously defined. In devising his theoretical and narrative claim, Jules Lobel focuses on the prophet as a "radical social critic," one who appeals to the public in their pursuit of a more "just and equal future."[42] As Lobel writes, "[t]he phrase 'prophetic litigation' emphasizes the vision of justice as a continual struggle- rather than as a set of legal norms or procedures[.]"[43] But what, precisely, is a

39. Jules Lobel, *Losers, Fools & Prophets: Justice as Struggle*, 80 CORNELL L. REV. 1331, 1333 (1995) (explaining that the "prophetic" lawyer views justice as a "fighting challenge.").

40. *Id.*; *see, e.g.*, Christopher H. Schroeder, *Prophets, Priests, and Pragmatists*, 87 MINN. L. REV. 1065 (2003); Milner S. Ball, *Law and Prophets, Bridges and Judges*, 7 J. L. & RELIGION 1 (1989); Thomas L. Shaffer, *Law Faculties as Prophets*, 5 J. LEGAL PROF. 45 (1980); *see also* Jay M. Feinman, *Priests and Prophets*, 31 ST. LOUIS U. L.J. 53 (1986).

41. Lobel, *supra* note 39.

42. *Id.* at 1338.

43. *Id.*

"prophetic" lawyer, and how might they be distinguished from the social justice[44] or critical[45] or public interest lawyer?[46]

Lobel identifies four defining characteristics of prophetic litigation that parallel Biblical prophets: (1) All Prophetic Lawyers, like Biblical prophets, harshly criticize the callousness and injustice of the social order and reject minor reforms in favor of "total redemption;"[47] (2) Prophetic Lawyers, like Biblical prophets, passionately engage in their communities and, as social activists, bring litigation out of crucial contemporary struggles;[48] (3) Prophetic Lawyers, like Biblical prophets, develop their symbols, metaphors, and legal theories for the purpose of energizing the population;[49] and, (4) both the Biblical prophet and the prophetic constitutional litigator "appeal to tradition to mediate the tension between an unjust present and a redemptive future."[50] For Lobel, the Prophetic Lawyer is like an artist whose medium is litigation, as "[b]oth fools and prophets live lives 'full of the poetry of faith."[51]

I agree with Lobel on many things. Lawyers are fools and lawyers do have visions of justice. But was prophecy ever ours to make? Through this piece, I intend to complicate underlying assumptions of Lobel's theoretical framework. Anglo-American law, as Lobel makes abundantly clear, is situated across a historically constructed moral (and religious) dimension, one that is anchored to a reoccurring narrative of justice or "legal struggle."[52] The present piece explores the lineage of legal prophets and the caste of clerics that we call lawyers, as well as the socio-legal consequences of naming U.S. legal work as anything close to 'prophetic.'

Losers, Fools & Prophets was written in 1995 and fastens a historical tether across millennia. But, within this continuum, there are several clear moments worth deeper examination, moments that reverberate with Lobel's language of divinity and that aid in our understanding of the U.S. lawyer as inherently operating as a "prophet"-type role. The first is the practice of "augury," or the practice of divining "fortunate signs" from the behaviors of birds in Ancient Rome.[53]

A. The Historical Origins of U.S. Legal Prophecy

"Augurs" were members of a prestigious religious college in Roman society whose duty was to observe and interpret signs (including the movement and patterns of

44. *See, e.g.*, Nan D. Hunter, *Lawyering for Social Justice*, 72 N.Y.U. L. REV. 1009, 1021 (1997).

45. *See, e.g.*, Ruth Buchanan & Louise Trubek, *Resistances and Possibilities: A Critical and Practical Look at Public Interest Lawyering*, 19 N.Y.U. REV. L. & SOCIAL CHANGE 687 (1992).

46. *See, e.g.*, *The New Public Interest Lawyers*, 79 YALE L.J. 1069 (1970).

47. Lobel, *supra* note 39, at 1338.

48. *Id.* at 1339 ("Indeed, the prophetic litigator's engagement and solidarity with an oppressed community distinguishes him from a judge, whose constitutional role requires more detachment from social activism").

49. *Id.* at 1339.

50. *Id.* at 1340.

51. *Id.* at 1330-44, 1344 ("Litigation is merely the lawyer's familiar medium for expressing outrage at society's callousness").

52. *Id.* at 1344.

53. *Roman Augury*, HARV. U. PREDICTION PROJECT, https://projects.iq.harvard.edu/predictionx/roman_augury (last visited Nov. 27, 2022).

birds) as expressions of approval or disapproval by the gods.[54] It is of great importance to our inquiry that, prior to 300 B.C., membership to this priesthood was limited only to those of the *patrician*, or ruling, class.[55] Augury and the "taking of auspices" is associated with the founding of Rome and is believed to have been borrowed from the Greeks.[56] The judgment divined by Roman augurs was often vague and was imbued with veracity as simply being "the will of the gods."[57] Now compare this with the 2019 publication of *Augur Justice*, a data analysis tool that allows users to determine the losing and winning probability of their divorce case based on the user's religion.[58] From this flash juxtaposition, we can see that we're still divining, looking for legal faith in probability without stopping to ask why. Better yet, let's compare the practice of augury with the legal moment and opening scene of this piece: Westminster.

We might say that the modern origin of divine injustice is the development of the U.S. criminal legal system. The first criminal "jury trial" is believed to have occurred in 1220 Westminster, England, as a direct response to the decertification of the so-called "trial by ordeal" by Pope Innocent III.[59] Instead of ordeal by cold water (described at the outset of this piece) or the ordeal of hot iron (whereby the accused walked barehanded with a hot iron bar and the proper healing of one's hands determined their fate), England and other European justice systems were forced to secure new ways of divining culpability.[60] In their coursebook, *Evidence*, legal scholar George Fisher overviews Westminster's tumult of institutions, writing:

> Lacking any claim to divine legitimacy, the jury eventually found a remarkable source of systemic legitimacy in the secrecy of its deliberation room. The jury's private and usually unexplained decisionmaking generally has protected it from embarrassing public failures. At least within the system's formal bounds the jury's verdict has been almost immune from contradiction. There never has been a mechanism by which the defendant or anyone outside the system could command the jury to reveal its decisionmaking processes. The jury's secrecy is arguably an aid to legitimacy, for the privacy of the jury box shrouds the shortcomings of the jury's methods.[61]

54. *Id.*; *Augur*, ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/topic/augur (last visited Apr. 15, 2021).

55. HARV. U. PREDICTION PROJECT, *supra* note 53.

56. *Id.*

57. *Id.*

58. Somya Goel, Sanjana Roshan, Rishabh Tyagi & Sakshi Agarwal, *Agur Justice: A Supervised Machine Learning Technique to Predict Outcomes Of Divorce Court Cases*, *in* 2019 Fifth International Conference on Image Information Processing 280-85 (2019), https://ieeexplore.ieee.org/abstract/document/8985764; *see also* Anthony D'Amato, *The Limits of Legal Realism*, 87 Yale L.J. 468, 468 (1978) ("[Justice] Holmes launched the highly successful American school of legal realism with his remark that 'law' consists of '*prophecies* of what the courts will do in fact.") (quoting Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 461 (1897)) (emphasis added).

59. FISHER, *supra* note 1, at 6.

60. George Fisher, *The Jury's Rise as Lie Detector*, 107 YALE L.J. 575, 585 (1997).

61. FISHER, *supra* note 1, at 7.

To this day, it is a criminal act to record, listen to, or observe any federal jury deliberation.[62] The jury is made sacrosanct. Jurors are made both auspice and augur, twelve holy birds with unequal knowledge of the law but endowed with the power to give and take life. If Lobel's Prophetic Lawyer is divining the future, the U.S. jury system is divining the past and all the harms that come with it. The paradigmatic thread from Roman augur to Biblical legend to Westminster trials and Jules Lobel is one of prophet; it is one of authority, carefully crafted ceremony, and auspices.

Each day that a singular position wields the powers of capital punishment, of the right to deny review or a jury's rationale, and of the infinite capacity to determine finality, divinity will be enshrined with legality. In this sense, judges are made the augurs of capital "T" Truth, bound only to past truths and other rough sketches of righteousness.[63] They can tinker with truth from behind the tightly drawn curtain of objectivity, but still, it is *inevitable* that the human and lively contours of imperfection will be cast through their opinions. Judges would have us believe they function only as altruistic 'truth technicians.' But this function quickly becomes 'banker of deference,' becomes 'builder,' becomes 'world-breaker,' becomes 'executioner,' becomes 'diviner,' becomes 'medieval prophet,' dagger drawn and *combat* at hand. The law is no more objective than any other field, and our tools for justice are as crude as ever.

But the deference of the judiciary does more than hide; it can also give. Deference, from the Latin *defferre*,[64] bestows judges with the legal power to create. Because judges can choose when to answer or hear harm, judicial deference might just be their own form of legal discretion. Discretion, from the Latin *discernere*, meaning to distinguish,[65] can be a fountain of rights from which protection might be doled out—

62. *See* Act of Aug. 2, 1956, Pub. L. No. 84-919, § 1, 70 Stat. 935 (codified as amended at 18 U.S.C. § 1508).

63. I use "capital 'T' Truth" to refer to the work of critical scholarships in rejecting and interrogating "Master" narratives and epistemologies. *See* Jackie Stacey, *Feminist Theory: Capital F, Capital T*, *in* Introducing Women's Studies 54, 54-55 (Diane Richardson & Victoria Robinson eds., 1997) (writing about the ways that scholarship on feminist theory has come to be viewed as "capital 'T'" Theory); Derrick P. Alridge, *The Limits of Master Narratives in History Textbooks: An Analysis of Representations of Martin Luther King Jr.*, 108 TCHRS. COLL. REC. 662, 662 (2006) (exploring how master narratives "permeate most history textbooks and deny students critical lenses through which to examine, analyze, and interpret social issues today"). By returning to philosophy, judicial indeterminacy might instead be seen as another symptom of legal augury: Of judges attempting to sketch the subjective version of reality they perceive. *See* Rocco A. Astore, *Unveiling Ultimate Reality in Plato's* Allegory of the Cave *and the* Bhagavad Gita, 11 INQUIRIES J. 1 (2019) (exploring divine truth, divine certainties, and the regulation of reality as seen across Plato's *Allegory of the Cave* and the Hindu text the *Bhagavad Gita*).

64. *See Deference, n.*, OXFORD ENGLISH DICTIONARY (2021) (tracing the etymology of "deference" to the French "*déférer* to [Defer]" and defining deference as "[t]he action of offering . . . tendering, bestowing, yielding"); *but see Defer, v.2*, OXFORD ENGLISH DICTIONARY (2020) (defining "defer" from the Latin "d ferre to bring or carry away, convey down, to bring or carry with reference to destination, to confer, deliver, transfer, grant, give, to report, to refer (a matter) to any one").

65. *See Discretion, n.*, OXFORD ENGLISH DICTIONARY (3d ed. 2013) ("[t]he action of separating or distinguishing; the condition of being separate or distinguished; separation, disjunction, distinction"); *but see Discretion, n.*, OXFORD ENGLISH DICTIONARY (3d ed. 2013) ("[w]ith possessive adjective: a respectful form of address to a person in authority, esp. within the church").

naturally, unequally. To discern is to create poles of life that pronounce and denounce based on designation and difference.

But deference, equally meaning "to postpone," can also take.[66] For a judge to defer is to grant parole to non-Truth, thus allowing fables and falsehoods to extend indefinitely. Deference of this kind is to refuse to name or curtail an all-consuming non-Truth. It is to avoid deciding whether racial animus happened before our very eyes if we cannot capture it within the lines of Trump's court-developed narrative.[67] It is to postpone announcing whether *de jure* discrimination is here to stay[68] or if it remains a relic of the past and a waning "sunset" in the distance.[69]

Augury, as a practice of U.S. legal work, can be understood as the exercising of divinely unjust power. There are no specific roles or positions of the lawyer that embody divine injustice—only attitudes, positions, and our participation in a profession that advances white supremacy. Divine injustice is equally present in the substantive prophecy and precedent of U.S. settler law, of the *content* of legality as well.

B. Divining Injustice from Settler Fictions

Read widely as a foundational property law case, *Johnson v. M'Intosh* concerns a common question of U.S. colonial jurisprudence: "Whose land is it?"[70] The case is best known for its enshrining of the *doctrine of discovery*, or a colonial principle that "any land not inhabited by Christians was available to be 'discovered,' claimed, and exploited by Christian rulers."[71] In *M'Intosh*, Chief Justice John Marshall identifies a "right of discovery," writing for the court:

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66. *Defer, v.1*, OXFORD ENGLISH DICTIONARY (2021) ("[t]o put off (action, procedure) to some later time; to delay, postpone").

67. *See, e.g.*, Washington v. Davis, 426 U.S. 229, 246-48 (1976) (holding that a finding of racial discrimination against the government requires that the challenged law or policy have a discriminatory intent or purpose rather than just a discriminatory effect on a protected group).

68. *See* Trump v. Hawaii, 138 S.Ct. 2392, 2423 (2018) (holding that rational basis review and not heightened scrutiny applied to former President Trump's policy of suspending entry of individuals based on national origin). Here, Justice Sotomayor rejected the majority view, insisting that racial animus was central to the Trump Administration's policy in question: "Based on the evidence in the record, a reasonable observer would conclude that the Proclamation was motivated by anti-Muslim animus. . . . Rather than defend the President's problematic statements, the Government urges this Court to set them aside and defer to the President on issues related to immigration and national security. The majority accepts that invitation and incorrectly applies a watered-down legal standard in an effort to short circuit plaintiffs' Establishment Clause claim." *Id.* at 2433 (Sotomayor, J., dissenting).

69. The U.S. Supreme Court in Grutter held that race-conscious affirmative action programs must have a termination point or "sunset provision," ensuring that race-conscious admission policies are terminated as "soon as practicable." Grutter v. Bollinger, 539 U.S. 306, 342-343 (2003) ("In the context of higher education, the durational requirement can be met by sunset provisions in race-conscious admissions policies and periodic reviews to determine whether racial preferences are still necessary to achieve student body diversity").

70. *M'Intosh*, 21 U.S. at 543; *see* Jedediah Purdy, *Property and Empire: The Law of Imperialism in Johnson v. M'Intosh*, 75 GEO. WASH. L. REV. 329, 329-31 (2007) (contextualizing the judicial incoherence of the M'Intosh decision as "imperial jurisprudence"); Michelle Perez, *Whose Land is it Anyway? Why the Dakota Access Pipeline protests aren't really about oil*, INTER-AMERICAN L. REV., https://inter-american-law-review.law.miami.edu/land-anyway-dakota-access-pipeline-protests-arent-oil/ (last visited Apr. 15, 2021).

71. *The Doctrine of Discovery, 1493*, GILDER LEHRMAN INST. AM. HIST., https://www.gilderlehrman.org/history-resources/spotlight-primary-source/doctrine-discovery-1493 (last visited Apr. 15, 2021); *see also*

> [W]e perceive a complete recognition of the principle which has been mentioned. The right of discovery given by this commission, is confined to countries 'then unknown to all Christian people;' and of these countries Cabot was empowered to take possession in the name of the king of England. Thus asserting a right to take possession, notwithstanding the occupancy of the natives, who were *heathens*, and, at the same time, admitting the prior title of any Christian people who may have made a previous discovery.[72]

Chief Justice Marshall goes on to underscore the perceived inevitability of colonization by European powers, contending:

> What was the *inevitable* consequence of this state of things? The Europeans were under the necessity either of abandoning the country, and relinquishing their pompous claims to it, or of enforcing those claims by the sword, and by the adoption of principles adapted to the condition of a people with whom it was impossible to mix, and who could not be governed as a distinct society, or of remaining in their neighbourhood, and exposing themselves and their families to the perpetual hazard of being massacred.[73]

To hold that the court 'divines' justice would be an understatement. Under the *M'Intosh* court, settler colonialism, Indigenous genocide, and religiosity congeal to produce a bedrock of divine injustice, of faith in past decisions, and fear of a future absent clear legal demarcations. Violence is made inevitable. Inevitable, from the Latin *inevitabilis*, marks that which "cannot [be] avoided or escaped."[74] What was "inevitable" in the eyes and legal mind of Chief Justice Marshall was surely not inevitable to Indigenous Peoples. This divergence between colonial and Indigenous notions of "inevitability" brings us to the related legal doctrine of the reasonable (white) man standard.

There is an abundance of literature examining the reasonable person—once "reasonable man"—standard of U.S. settler law.[75] One example that doesn't fit neatly into this category (but that is nonetheless extremely relevant to this discussion) is Derrick Bell's *Brown v. Board of Education and the Interest-Convergence Dilemma*.[76] In their seminal piece, *The Interest Convergence Dilemma*, Bell contends that the landmark *Brown v. Board* decision resulted from the temporary converging of Black

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Joshua L. Seifert, Comment, *The Myth of Johnson v. M'Intosh*, 52 UCLA L. REV. 289, 289, 292 (2004) (naming the "racist myth-making" and national narrative that permeate the M'Intosh decision).

72. *M'Intosh*, 21 U.S. at 576 (emphasis added).

73. *M'Intosh*, 21 U.S. at 590 (emphasis added); Purdy, *supra* note 70, at 331 ("The key to the strangeness of the opinion is that Johnson v. M'Intosh is not just a property case; it is also the leading American case in the law of imperialism").

74. *See Inevitable, adj. (and n.)*, OXFORD ENGLISH DICTIONARY (2021) ("[T]hat which is inevitable, what cannot be avoided or escaped. Also (with an or plural), an inevitable fact, event, truth, etc.; a person who, or thing which, is necessarily chosen or employed.").

75. Marvin L. Astrada & Scott B. Astrada, *Law, Continuity & Change: Revisiting the Reasonable Person Within the Demographic, Sociocultural & Political Realities of the 21st Century*, 14 RUTGERS J. L. & PUB. POL'Y 196, 196 (2017); *see, e.g.*, Mia Carpiniello, *Striking a Sincere Balance: A Reasonable Black Person Standard for "Location Plus Evasion" Terry Stops*, 6 MICH. J. RACE & L. 355, 355 (2001) (examining the concept of a "reasonable Black person standard").

76. *See* Derrick A. Bell Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

and white community interests, namely: (1) That desegregation would provide credibility to global posturing by the U.S. government against Communism; (2) that desegregation would quell fear of mass discontent from Black veterans returning from war; and (3) that segregation itself was viewed as a barrier to further industrialization in the South.[77] Framed another way, Bell's piece implicitly names the point at which the "reasonable" white man was no longer "reasonable" for the furtherance of Empire. Consider this excerpt from the abstract of Bell's piece: "no conflict of interest [as to desegregation] actually existed; for a brief period, the interests of the races converged to make the Brown decision *inevitable*."[78] As Bell invites us to acknowledge, integration became more reasonable than uprising or hypocrisy. Rhetorically, the law is made a celestial body, crashing forward through time as an inevitable outcome of white logic and dragging with it bloodied histories. Inevitability—as an *a priori* determination of fate—is symptomatic of U.S. settler law's white reasonableness standard and the deference that is afforded to positions of power.[79] The law frequently (and consistently) makes the violent and unimaginable suddenly very real, visceral, and inescapable.

Literature in this area has called for a "revisiting" of the reasonable person standard, citing its theoretical inability to take into account the demographic, sociocultural, and political realities of subjects to U.S. legal systems.[80] Legal scholar Mia Carpiniello, for example, suggests the development of a "reasonable African American standard" for so-called *Terry*[81] stops as one way of minimizing racial disparities in Fourth Amendment adjudication.[82] Carpiniello, like many fellow critical

77. *Id.* at 524-25.

78. *Id.* at 518.

79. Duncan Kennedy identifies the relationship between inherently hyper-subjective judicial reasoning and undeniably hyper-subjective legal outcomes: "To lose your faith in judicial reason means to experience legal argument as 'mere rhetoric' (but neither 'wrong' nor 'meaningless'). The experience of manipulability is pervasive, and it seems obvious that whatever it is that decides the outcome, it is not the correct application of legal reasoning under a duty of interpretive fidelity to the materials." *See* KENNEDY, *supra* note 34, at 191. Judicial decision-making then becomes indistinguishable from the epistemic reality already embraced by a given judge. *See also* Zuleyma Tang Halpin, *Scientific Objectivity and the Concept of "the Other,"* 12 WOMEN'S STUD. INT'L FORUM 285, 285-86 (1989) (examining the relationship between western science, constructed notions of objectivity, and the formulation of the "self" by primarily "white, upper and middle class, heterosexual men of Christian background").

80. Astrada, *supra* note 75 at 196; *see* Michael Vitiello, *Defining the Reasonable Person in the Criminal Law: Fighting the Lernaean Hydra*, 14 LEWIS & CLARK L. REV. 1435, 1435-36 (2010).

81. *See* Terry v. Ohio, 392 U.S. 1, 27 (1968) (holding that police officers did not act unconstitutionally in choosing to "stop and frisk" any individual they reasonably suspected to be armed and criminally involved); *see also* Devon W. Carbado, *From Stop and Frisk to Shoot and Kill: Terry v. Ohio's Pathway to Police Violence*, 64 UCLA L. REV. 1508, 1508 (2017) ("[T]he constitutionalization of stop-and-question enables police officers to target African Americans with little to no justification").

82. Carpiniello, *supra* note 75, at 356. In calling for liberation and repair from the state, the Black Panther Party, too, rejected the reasonable white man standard in their "Ten Point Program." Item number nine of the Program, in particular, mandated the following: "We believe that the courts should follow the United States Constitution so that Black people will receive fair trials. The 14th Amendment of the U.S Constitution gives a man a right to be tried by his peers. A peer is a person from a similar economic, social, religious, geographical, environmental, historical, and racial background. To do this the court will be forced to select a jury from the Black community from which the Black defendant came. We have been, and are being tried by all-white juries that have no understanding of 'the average reasoning man' of the Black community." *See* The

scholars in this area, contends that the current reasonableness standard prioritizes white notions of reasonableness and necessarily excludes the discriminatory history and unique experiences of Black communities in the criminal legal system when assessing whether Black individuals respond "reasonably" to the police.[83] Critical race scholar Devon Carbado reminds us that this violence is not an aberration; racial profiling is embedded in the very analytical structure of Fourth Amendment law.[84]

To be unreasonable in the eyes of the law is to be, as the *M'Intosh* court put it, a legal being "who could not be governed."[85] Thus, to be unreasonable is to be outside of the white Christian male and propertied citizenry as understood at the time of the nation's violent construction. The courts have refused to open the metaphorical Pandora's box of identity—to break open the shrouded jury box and address, head-first, the procedural shortcomings of reasonableness. Doing so would require a disemboweling of race-neutrality, of court-made truth, and of divine U.S. legality. As the U.S. Supreme Court held in *McCleskey v. Kemp*, an analysis of a defendant's race would present issues of demarcation and of feasibility. "[I]n our heterogeneous society," the court wrote, "the lower courts have found the boundaries of race and ethnicity increasingly difficult to determine."[86] Moreover, they note that an examination of statistical data regarding racial bias in capital punishment would throw "into serious question the principles that underlie our entire criminal justice system."[87]

Divining justice, in the context of U.S. settler law, is to pick any number of conclusions that affirm white supremacist ideals and to repackage them as reason. The court fashions from the unreasonable, the violent and unimaginable, a votive offering to the court's legitimacy and to a manufactured notion of objectivity.[88] Without

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Black Panther Party for Self-Defense, *Ten Point Program*, 1 BLACK PANTHER 3 (1967), reprinted in *The Black Panther Party's Ten-Point* Program, Univ. Cal. Press Blog (Fed. 7, 2017), https://www.ucpress.edu/blog/25139/the-black-panther-partys-ten-point-program/.

83. Carpiniello, *supra* note 75, at 380; *see* Carbado, *supra* note 81, at 1508. The language of the 4th Amendment creates a reasonableness standard under which behavior is to be adjudged. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.

84. *See* Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 125 (2017) ("[T]he legalization of racial profiling. . . is not a sideline or peripheral feature of Fourth Amendment law. It is embedded in the analytical structure of the doctrine in ways that enable police officers to force engagements with African Americans with little or no basis.").

85. *M'Intosh*, 21 U.S. at 590.

86. *See* McCleskey v. Kemp, 481 U.S. 279, 316 n.39 (1987); *see also* Harris v. Forklift Systems, 510 U.S. 17, 24 (1993) (Scalia, J., concurring) (explaining that in certain contexts, e.g., workplace discrimination and assessing conduct that is hostile to a reasonable person, utilizing a reasonable person does not add or reduce any precision to the legal analysis in which the court is engaged).

87. *McCleskey*, 481 U.S. at 315.

88. CRITICAL RACE THEORY, *supra* note 19, at xiii (writing that "legal scholarship about race in America can never be written from a distance of detachment or with an attitude of objectivity"); *compare* PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 8-9 (1991) (examining the ways that legal understanding in Anglo-American jurisprudence is characterized by institutional designations of the "universal" or the "objective"), *with* Seifert, *supra* note 71, at 292 (providing a literary frame for understanding the *Johnson v. M'Intosh* decision and Justice Marshall's storytelling as reliant on western legal doctrine as much as western

such a designation of white reasonableness—of white law and white order—how else can the settler state reject Black liberation and Indigenous governance? It is from fear of (non-white) rebellion that we arrive at white legal faith.

In order to best situate this analysis of settler objectivity, I turn our attention to the rise of technological interventions purporting to "hack" legal processes.[89] Empirical Jury™ uses statistical analyses from large samples of human survey participants to create "an accurate picture of the odds of winning and the likely awards" associated with a given case.[90] Additionally, the product claims to identify for a client the characteristics that make the "best" jurors, so as to hack the *voir dire* process of jury selection.[91] Now compare this with the "virtual" policing initiative of Camden, New Jersey.[92] Since 2013, the Camden county police have deployed "crime forecasting software" that aims to better direct police patrols to the communities and places where certain crimes are "most likely to occur."[93] But as critics have continued to underscore, predictive policing relies on racist surveillance systems that *inevitably* reaffirm patterns of over-policing in low-income neighborhoods and the communities of people who are Black, Indigenous, and People of Color (BIPOC).[94] Divine injustice insists that only certain people (read: white) deserve true equal protection. It contends that only certain groups (read: privileged) can evade incarceration and only certain others (read: augurs) can cage.

In the context of the COVID-19 pandemic, we have relatedly seen a proliferation of technology-based initiatives aimed at addressing injustice. This has been met with an equal rise in criticisms for how these legal interventions entrench inequality. I will highlight one among these: *Are Litigation Outcome Disparities Inevitable? Courts, Technology, and the Future of Impartiality.*[95] The authors of this study grapple with the question central to the above-mentioned developments: Can technology divine a

literature); *see also* PAUL OUTKA, *The Colonial Pastoral, Abolition, and the Transcendentalist Sublime*, *in* RACE AND NATURE FROM TRANSCENDENTALISM TO THE HARLEM RENAISSANCE 27-9 (2008).

89. *Empirical Jury Case and Jury Analytics*, EMPIRICAL JURY, https://www.empiricaljury.com/products/analytics (last visited Apr. 15, 2021, 9:00 PM).

90. Michael Cowen, *62 – John Campbell – The Empirical Jury: Big Data with Big Results*, TRIAL LAWYER NATION (2020), https://auguryit.com/news-2018-21-08.html.

91. *Id.*

92. Rebecca Everett, *Camden, N.J., Police Use AI for Proactive Policing*, GOVTECH.COM (Feb. 19, 2020), https://www.govtech.com/public-safety/Camden-NJ-Police-Use-AI-for-Proactive-Policing.html.

93. *Id.*

94. *Id.*; *compare* Lawrence W. Sherman, *Targeting American Policing: Rogue Cops or Rogue Culture?* 4 CAMBRIDGE J. EVIDENCE-BASED POLICING 77, 84 (2020) (discussing the depletion of police "moral capital" in the U.S. from an international legal perspective and the "success" of the Camden police), *with* Brendan McQuade, *The "Camden Model" Is Not a Model. It's an Obstacle to Real Change*, JACOBIN MAGAZINE (July 4, 2020) (emphasis added), https://jacobinmag.com/2020/07/camden-new-jersey-police-reform-surveillance ("The current Camden fetish is an attempt to avoid any real reckoning with the failures of police and capital. It's an attempt to recalibrate state violence *in the guise of progressive reform.*").

95. *See, e.g.*, Avital Mentovich, J. J. Prescott & Orna Rabinovich-Einy, *Are Litigation Outcome Disparities Inevitable? Courts, Technology, and the Future of Impartiality*, 71 ALA. L. REV. 893 (2020); *see* Nancy A. Welsh, *Bringing Transparency and Accountability (with a Dash of Competition) to Court-Connected Dispute Resolution*, 88 FORDHAM L. REV. 2449 (2020); *see also* Amy J. Schmitz, *Measuring "Access to Justice" in the Rush to Digitize*, 88 FORDHAM L. REV. 2381 (2020).

sense of objectivity for us? Can it rid us of the bias of the jury box and the irrationality of augurs and justices? A critical reading of history tells us no and no.[96]

To these contentions and dead ends, Jules Lobel would fundamentally disagree. Lobel might reply that we are merely in the ever-ongoing process of perfecting justice, and that it is the role of the Prophetic Lawyer to divine a better collective future and to carry on the "struggle" of justice irrespective of litigation outcome. Evidence of this is seen in Lobel's work:

> History repeatedly has demonstrated the "immense symbolic power of an emancipatory vision of natural rights." From this perspective, the appropriateness of a given legal strategy should be assessed not solely by the likelihood of success in court, but also by the role it plays in advancing a popular movement . . . . The women's movement in the 1870s, and to a lesser extent the plant closing movement over 100 years later, effectively energized people around the country. Both cases were brought in political climates that were, if not sympathetic, at least not totally hostile, and their invocations of fights rang true to substantial sections of society. When, however, either the legal theory seems implausible to the overwhelming majority of the population, or the political climate is very hostile, litigation fails to provoke much reaction. The abolitionist lawyers faced the first problem, Plessy's lawyers the second.[97]

But Lobel and I differ on the waves and flow of history. Neoliberal reformers of the U.S. legal system would maintain that we simply need better augurs—more precise ones that can operate through more calculated channels and shepherd us to brighter futures when the time is right. I fundamentally disagree. As explored above, not all people were initially intended to be augurs, and legal apparatuses for divining truth were, and remain, explicitly colonial. Such a system will *inevitably* reproduce violence. The next section of this piece will extend this thread—from augurs to prophets and lawyers—and will analyze the institutional violence of a prophetic vision of lawyering.

C. From Prophecy to Power: Storming the Gates of Gatekeeping

While in law school, a white classmate in my professional responsibility course observed that the bar exam was a welcomed and needed feature of the legal industry, because it operated to prevent "scumbags" from acquiring bar certification. Far from being a unique justification for the at times controversial and historically discriminatory

96. *See* FREDERIK ZUIDERVEEN BORGESIUS, COUNCIL OF EUR., DISCRIMINATION, ARTIFICIAL INTELLIGENCE, AND ALGORITHMIC DECISION-MAKING (2018) https://rm.coe.int/discrimination-artificial-intelligence-and-algorithmic-decision-making/1680925d73 (examining the ways that AI-driven decision-making can lead to discrimination); *see* Kate Crawford, *Artificial Intelligence Is Misleading Human Emotion*, ATLANTIC (Apr. 27, 2021), https://amp.theatlantic.com/amp/article/618696/; *see also* Todd Feathers, *This Company Is Using Racially-Biased Algorithms to Select Jurors*, VICE (Mar. 3, 2020, 8:00AM), https://www.vice.com/en/article/epgmbw/this-company-is-using-racially-biased-algorithms-to-select-jurors (discussing "Momus Analytics," another data-driven legal intervention that experts say falls short of its aim to deliver "superhuman insight.").

97. Lobel, *supra* note 39, at 1345.

exam,[98] the context in which this comment was made brought with it an additional layer of irony and psychological violence—never mind that beyond the four corners of our Zoom classroom, a concerted effort was underway to undermine the results of the 2020 U.S. Presidential Election through extra-judicial and judicial-adjacent procedural mechanisms;[99] never mind that the origins of the bar exam are firmly rooted in a history of exclusion, anti-Black racism, and xenophobia;[100] never mind that the word "scumbag"—some lesser other in a notoriously white, male, and upper-class professional field—*itself* was coded.[101] The rest of that class, I wondered: In an industry predicated on colonial violence, did this classmate mean their ancestors or mine?

But my classmate wasn't wrong. Not all people *were* intended to be augurs of justice—certainly not in ancient Rome and certainly not under U.S. settler law. Let's begin with the California case of *People v. Hall*, wherein a California court held that Chinese Americans and Chinese immigrants had no right to testify against white citizens.[102] The court arrived at this decision on grounds of public policy, believing that a contrary holding would spell an unraveling of white supremacy under the law:

> We have carefully considered all the consequences resulting from a different rule of construction, and are satisfied that even in a doubtful case, we would be impelled to this decision on grounds of public policy. The same rule which would admit them to testify, would admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls.[103]

To permit peoples of Chinese descent to testify against white citizens would be to permit an imagined future of equality – a future of joint custody to the right of divining. With this admission in mind, we can see the ways that white supremacy is all-consuming and infects all aspects of our judiciary, legal systems, and governance as a settler-nation. The court goes on to insist that this conclusion is not one of emotion or unreasonableness but of practicality—of reason and "nature:"

> This is not a speculation which exists in the excited and over-heated imagination of the patriot and statesman, but it is an actual and present danger. The anomalous spectacle of a distinct people, living in our community, recognizing no laws

98. Daniel R. Hansen, *Do We Need the Bar Examination–A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives?*, 45 CASE W. RSRV. L. REV. 1191 (1995).

99. *See* David Eggert, *Giuliani to Republicans: Pressure Legislature on Biden Win*, AP NEWS (Dec. 2, 2020), https://apnews.com/article/election-2020-joe-biden-donald-trump-legislature-constitutions-1d853c0a4cdf262ce45e2814b39731d2; *see also* Keith E. Whittington, *Trump's Scheme for State Legislatures to Overturn the Election Won't Work*, WASH. POST (Nov. 20, 2020), https://www.washingtonpost.com/outlook/2020/11/20/trump-state-legislatures-election/.

100. *See, e.g.*, Dan Subotnik, *Does Testing = Race Discrimination?: Ricci, the Bar Exam, the LSAT, and the Challenge to Learning*, 8 U. MASS. L. REV. 332, 365 (2013) (providing a historical perspective to the bar exam and the connection between testing, immigration, and racism); Lauren Hutton-Work & Rae Guyse, *Requiring a Bar Exam in 2020 Perpetuates Systemic Inequities in Legal System*, APPEAL (Jul. 6, 2020), https://theappeal.org/2020-bar-exam-coronavirus-inequities-legal-system/.

101. *See Scumbag, n.*, OXFORD ENGLISH DICTIONARY (2023) ("A base, despicable person. Also as a term of abuse.").

102. *Hall*, 4 Cal. at 399.

103. *Hall*, 4 Cal. at 404.

> of this State, except through necessity, bringing with them their prejudices and national feuds, in which they indulge in open violation of law; whose mendacity is proverbial; a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point, as their history has shown; differing in language, opinions, color, and physical conformation; between whom and ourselves nature has placed an impassable difference, is now presented, and for them is claimed, not only the right to swear away the life of a citizen, but the further privilege of participating with us in administering the affairs of *our* Government.[104]

The year was 1854 but it might have been 1920 or 2023, because the path to becoming an augur of U.S. settler law has been (and remains) paved through mechanisms of exclusion and a colonial caste system.

We see the *ethos* of the *Hall* opinion repeated across all facets and areas of the settler legal system.[105] To be sure, this violence has evolved to operate in a more covert and insidious manner. But access to augury continues to be fraught with white supremacy and interrelated systems of subordination. The U.S. Supreme Court's hesitation to address animus and biases inherent to the jury selection process readily demonstrates this.[106] In the case of *Hernandez v. New York*, the Court held that the state was within its right to dismiss bilingual jurors in instances where the jury was to receive Spanish-language testimony.[107] But compare *Hernandez* with former President Trump's assertion that the "Obama judges" of the Ninth Circuit Court of Appeals were rogue agents, and the language is revitalized.[108] Moreover, compare *Hernandez* with former President Trump's racist conspiracy theory that then-President Obama was not born in the U.S. and the white nationalism of *Hall* is almost repeated verbatim.[109] Trump's xenophobic and racist attacks on U.S. Representatives Alexandra Ocasio-Cortez, Ayanna Pressley, Rashida Tlaib, and Ilhan Omar—all women of color and all U.S. citizens—send a clear message:

> So interesting to see 'Progressive' Democrat Congresswomen, *who originally came from countries whose governments are a complete and total catastrophe* . . . now loudly and viciously telling the people of the United States, the greatest and most powerful Nation on earth, how our government is to be run.[110]

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104. *Hall*, 4 Cal. at 404-5 (emphasis added).

105. *Thind*, 261 U.S. at 204; Hernandez v. New York, 500 U.S. 352 (1991); Hutton-Work & Guyse, *supra* note 100.

106. *See generally Hernandez*, 500 U.S. at 352 (holding that a prosecutor's use of preemptory challenges to strike bilingual Latinx jurors was not necessarily unconstitutional).

107. *Hernandez*, 500 U.S. at 352; *see also* Christopher F. Bagnato, *Comment: Change is Needed: How Latinos Are Affected by the Process of Jury Selection*, 29 CHICANA/O LATINA/O L. REV. 59 (2010).

108. Katie Reilly, *President Trump Escalates Attacks on 'Obama Judges' after Rare Rebuke from Chief Justice*, TIME (Nov. 21, 2018), https://time.com/5461827/donald-trump-judiciary-chief-justice-john-roberts/.

109. *See, e.g.*, Philip Bump, *Another Trump Birther Conspiracy Debunked with a Birth Certificate. This Time: His Father*, WASH. POST (Apr. 3, 2019), https://www.washingtonpost.com/politics/2019/04/03/another-trump-birther-conspiracy-debunked-with-birth-certificate-this-time-his-father/.

110. Theodore R. Johnson, *Donald Trump Has Made It Clear: The Only 'Real Americans' Are White and Christian*, GUARDIAN (July 16, 2019), https://www.theguardian.com/commentisfree/2019/jul/16/trump-real-americans-white-christian (emphasis added).

Through Twitter and through tirade, the discursive creation of 'otherness' seeks to cast doubt on one's eligibility to conduct augury, to uphold laws, to participate in settler legality, and to forecast fate. *Hernandez* took place in 1991, but it might have very well been 1854 or 2021.

A primary architect to this endeavor of exclusion has been the American Bar Association (ABA). As one report notes, "by the mid-1800s, the American Bar Association began expressing concerns over the 'quality' of immigrant and 'mixed-race' applicants."[111] The same report indicates that, when the ABA inadvertently admitted three Black lawyers in 1920, the ABA subsequently asked its members to consider expelling the Black attorneys because of the ABA's commitment to "keeping pure the Anglo-Saxon race."[112] Augury is a protected practice.

D. Reasonable Prophets and the Limits of Settler Reason

By Lobel's account, a lawyer is—at best—a "zealous" advocate who divines a better future. By contrast, a lawyer is—at worst—the byproduct of converging power and U.S. settler law. At worst, a lawyer is someone who has permeated the sieve of exclusion far enough so as to be ordained an augur of cosmic proportions by both the legal profession and U.S. society. A lawyer is, at worst, a justice or judge or attorney who is unaware or disinterested in acknowledging their unchecked power.

But let's take this critique a step further: What do we as a profession expect from our legal workers? When does a "zealous" augur simply mean a *resourced* one? Does our profession even care if we are good or bad prophets? To better understand this, let's look to legal scripture. Paragraph two of the preamble to the ABA Model Rules of Professional Conduct reads as follows:

> As a representative of clients, a lawyer performs various functions . . . As advocate, a lawyer *zealously* asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.[113]

I bring this section to our attention so as to discuss the issue of "zealous"-ness as codified and practiced across the legal profession. Zealous, from the Latin *zelus*—once meaning "jealous"—evolved over the centuries to reach its current meaning.[114] In fact, in the 17th century, "zealous" was used disparagingly to describe Puritanical devotion and religious fanaticism.[115] What do jealousy and devotion have to do with

111. Hutton-Work & Guyse, *supra* note 100.

112. *Id.*; *see also* Subotnik, *supra* note 100, at 365.

113. MODEL RULES OF PRO. CONDUCT Preamble: A Lawyer's Responsibilities (AM. BAR ASS'N 2020).

114. *See Zealous, adj.*, OXFORD ENGLISH DICTIONARY (2020) ("[especially] of God: fiercely or passionately protective or vigilant in the preservation of something; jealous"); *but see Zeal, n.*, OXFORD ENGLISH DICTIONARY (2021) ("[i]n Biblical language, as an attribute of God: passionate love or care which will tolerate no unfaithfulness or disobedience.").

115. *See Zealous, adj.*, OXFORD ENGLISH DICTIONARY (2020) ("In the 17th [century], sometimes with disparaging implication of excessive puritanical zeal"); *see also Zeal, n.*, OXFORD ENGLISH DICTIONARY (2020) ("In the late 16th and 17th centuries frequently used in Puritan discourse to express religious devotion

zealous advocacy? In short, everything. The retainer- and case-specific model for lawyering ties our financial security to our wins. Scenes of so-called "ambulance chaser" lawyers dot popular imaginary with notions of lawyers as financial exploiters,[116] unprofessional,[117] or selfish (or "attorneys working towards self-interest instead of public interest.")[118] Beneath the sheer realities of racial capitalism, our profession remains income-driven and concerned with our own success. "Zealous" can come to mean whatever we pour into it. Today, zealous-ness might be pro bono work and tomorrow it equally can be community destabilization.

Returning again to the ABA preamble, what then does "zealous" representation truly mean? By some accounts, not much. As legal scholar Robin West writes,

> [t]he ideal of lawyering espoused by the profession, and memorialized by the various codes of ethics that govern it, strips the lawyer of responsibility for the moral quality of not only his clients' ends but also of his own actions taken on his clients' behalf—and all on the dubious bet that by so doing, the system, in some mechanistic and formalistic manner, will almost miraculously crank out justice as the outcome.[119]

We might pair West's perspective with data indicating an unequal implementation of "zealous"-ness.[120] A 2011 study of practicing defense attorneys, for instance, found that lawyers were more likely to seek pleas with higher sentences for a Black client than they were for a white client.[121] Said another way: The identity of their client corresponded to how zealous they felt they could be. To be "zealous," then, is to reiterate, uphold, or divine some new form of injustice. I say this to mean that the U.S. legal profession has codified a value-neutral meaning of legal work and that "zealous" will tend to mean whatever the most powerful client wants. To understand this, let's look again to the litigation brought by Rudy Giuliani in response to (or rather, in defiance of) the 2020 U.S. Presidential Election. Was he simply being "zealous?"

An inquiry of "zealous" advocacy is both complicated and truncated by an analysis of the role that law firms and courts played in delegitimizing the 2020 Election. On the one hand, the seemingly never-ending litigation over the election laid bare the "divine" position of power that is inherent to the legal profession, a certain power to

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and enthusiasm for reform, and hence used disparagingly by others to suggest excessive fervour [sic] or fanaticism.").

116. *See, e.g.*, Timothy Kuhn, *Positioning Lawyers: Discursive Resources, Professional Ethics and Identification*, 16 ORGANIZATION 681 (2009).

117. *See, e.g.*, Paula Baron & Lillian Corbin, *The Unprofessional Professional: Do Lawyers Need Rules?* 20 LEGAL ETHICS 155 (2017).

118. *See, e.g.*, *Shifting Public Opinion: Three Current Events that Prove People's Aversion to Lawyers Should Change*, SUFFOLK U. L. REV. (Feb. 18, 2018), https://sites.suffolk.edu/lawreview/2018/02/18/shifting-public-opinion-three-current-events-that-prove-peoples-aversion-to-lawyers-should-change/.

119. Robin West, *The Zealous Advocacy of Justice in a Less Than Ideal Legal World*, 51 STAN. L. REV. 973, 974 (1999).

120. *Id.*

121. Vanessa A. Edkins, *Defense Attorney Plea Recommendations and Client Race: Does Zealous Representation Apply Equally to All?* 35 L. HUMAN BEHAV. 413 (2011).

make and reshape democracy at the whim of whiteness.[122] Yet, at the same time, former President Trump's legal team was not (formally) successful in categorically subverting the transition of presidential power.[123] Joseph Biden is still the sitting U.S. president, despite Trump's refusal to concede[124] and his public de-platforming from major social media channels following his incitement of mob violence.[125] However, as the dust continues to settle on not four but four hundred years of "unprecedented" conduct, what have *we the people*[126] learned of the U.S. legal profession?

For one: Election lawyers traded institutional and democratic norms for power and profits in 2020 with very little regard for how such actions would destabilize or delegitimize the country at an institutional level.[127] In the case of Trump's former lawyer, Sidney Powell, we learned (and continue to learn) that "zealous" simply means what one could get away with. Most well-known for her promise to deliver a "Biblical" lawsuit in defense of former President Trump, Powell was described as

122. *See* Dylan Jackson, *How Will History Remember Trump's Big Law Firms?* LAW.COM (Jan. 7, 2021), https://www.law.com/americanlawyer/2021/01/07/how-will-history-remember-trumps-big-law-firms/ (discussing the involvement of several big law firms in lawsuits to overturn the 2020 election results in several states).

123. Burgess Everett, Andrew Desiderio & Marianne Levine, *GOP Castigates 'Terrible Job' by Trump Legal Team*, POLITICO (Feb. 9, 2021), https://www.politico.com/news/2021/02/09/gop-trump-legal-team-impeachment-468130.

124. *See, e.g.*, Tim Elfrink, *After Electoral College Backs Biden, Trump Continues Falsely Insisting He Won: 'This Fake Election Can No Longer Stand'*, WASH. POST (Dec. 15, 2020), https://www.washingtonpost.com/nation/2020/12/15/trump-electoral-college-biden/.

125. Hannah Denham, *These Are the Platforms That Have Banned Trump and His Allies*, WASH. POST (Jan. 14, 2021), https://www.washingtonpost.com/technology/2021/01/11/trump-banned-social-media/.

126. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 582 (1990) (examining the ways that "We, the People" serves to construct an essential, unitary idea of who is and is not included in the nationalist narrative of the U.S.) Here, I similarly employ it as an investigative tool: Who does "unprecedented" language serve and for whom has the past several years been enlightening? When the lived realities of BIPOC are placed on full display, why are they then reframed as lessons; why is BIPOC death equated to white learning?; *see also* Nicholas Mirzoeff, *The Capitol Insurgency and the Monument*, MONUMENT LAB (Feb. 15, 2021), https://monumentlab.com/bulletin/the-capitol-insurgency-and-the-monument (exploring the ways that the 2020 Capitol siege was an assertion of white nationalist power and a "properly constituted form of 'we, the people"); *see also* Jimmy Watson, *'Unprecedented Times'? We've Seen This Stuff Before*, MONMOUTH U. POLLING INST. (Oct. 7, 2020), https://www.monmouth.edu/polling-institute/2020/10/07/unprecedented-times-weve-seen-this-stuff-before/; *see also* Shawn Langlois, *Why the Wealthiest Americans Should Prepare for 'a Revolt Against the Unprecedented Inequality,'* MARKETWATCH (Jan. 2, 2021), https://www.marketwatch.com/story/americas-top-10-reckon-theyre-untouchable-safe-and-protected-are-they-11609360165.

127. *See* Austin Sarat, *Trump's Lawyers Will Get Away with Facilitating His Anti-Democratic Antics and They Know It*, VERDICT (Dec. 11, 2020), https://verdict.justia.com/2020/12/11/trumps-lawyers-will-get-away-with-facilitating-his-anti-democratic-antics-and-they-know-it; *see also Bipartisan Legal Experts and the States United Democracy Center File Bar Complaint Against John Eastman*, STATES UNITED DEM. CTR. (Nov. 17, 2021), https://statesuniteddemocracy.org/eastman/; *see also* Mario Nicolais, *John Eastman Is a Traitor Who Tried to Kill Our Democracy*, COLORADO SUN (June 19, 2022,), https://coloradosun.com/2022/06/19/nicolais-eastman-january-6-opinion/; *see also* David Enrich, *How a Corporate Law Firm Led a Political Revolution*, NY TIMES (Aug. 25, 2022), https://www.nytimes.com/2022/08/25/magazine/jones-day-trump.html.

"unrelenting" in her battle on Trump's behalf.[128] Powell, before and in the aftermath of the 2020 Election, filed a series of lawsuits in battleground states across the country, the majority of which were outright rejected by courts.[129] The most institutionally concerning of these was a lawsuit that Powell maintained would "blow up" Georgia.[130] Described as the "Kraken,"[131] the fabled lawsuit was merely one of a larger tapestry of deception, white supremacist conspiracy theories, and legal lies.[132]

As of this piece's writing, Rudy Giuliani has been formally suspended from practice in New York for his active role in undermining the 2020 U.S. election, and a recent campaign has emerged to "deter future abuse of the legal system by lawyers seeking to overturn legitimate elections."[133] This includes Sidney Powell, who faces her own share of consequences: There has been a call from Michigan Governor Gretchen Witmer for Powell's disbarment,[134] she recently underwent (and avoided) an effort to be disbarred by the Texas state bar.[135] and a defamation suit against her is ongoing.[136] Yet the latter

128. Kate Brumback, *Sidney Powell Unrelenting in Legal Battle on Trump's Behalf*, AP NEWS (Dec. 10, 2020), https://apnews.com/article/election-2020-joe-biden-donald-trump-georgia-lawsuits-0ed38af7f94b596308475aa8b28c871c.

129. *Id.*

130. *Id.*

131. Alison Durkee, *Sidney Powell Still Wants Her Election 'Kraken' Case Heard in Court*, FORBES (Apr. 22, 2021, 4:36PM), https://www.forbes.com/sites/alisondurkee/2021/04/22/sidney-powell-still-wants-her-election-kraken-case-heard-in-court/?sh=465f43204863.

132. *See, e.g.*, *id.*; *see also* Mallory Simon & Sara Sidner, *Decoding the Extremist Symbols and Groups at the Capitol Insurrection*, CNN (Jan. 11, 2021, 10:07AM), https://www.cnn.com/2021/01/09/us/capitol-hill-insurrection-extremist-flags-soh/index.html (connecting Powell's Kraken reference to QAnon conspiracies and the vitriolic imagery of domination on full display at the January 2021 Capitol siege).

133. Teri Kanefield, *Rudy Giuliani's New York Suspension Proves Dangers of Trump's Lies*, NBC (June 26, 2021, 8:07AM), https://www.nbcnews.com/think/opinion/rudy-giuliani-s-new-york-suspension-proves-dangers-trump-s-ncna1272422; *Defending Democracy & the Rule of Law*, The65Project, https://the65project.com/ (last visited Apr. 22, 2023, 8:00PM). It is only now, three years after the 2020 Election, that lawyers from Trump's team are facing real repercussions from the profession. *See e.g.*, *Nicholas Riccardi, Former Trump Lawyer Jenna Ellis Censured for Falsehoods About 2020 Election*, PBS (Mar. 9, 2023, 1:25PM), https://www.pbs.org/newshour/politics/former-trump-lawyer-jenna-ellis-censured-for-falsehoods-about-2020-election; Tierney Sneed, *Inside the Effort to Disbar Attorneys Who Backed Election Lawsuits*, CNN (Mar. 10, 2022, 5:08AM), https://www.cnn.com/2022/03/10/politics/ethics-complaints-attorney-misconduct-trump-election-reversal/index.html; Jacob Shamsian and Charles R. Davis, *California Authorities Want to Disbar John Eastman for Trying to Help Trump Overturn the 2020 Election Results*, BUS. INSIDER (Jan. 26, 2023, 6:48PM), https://www.businessinsider.com/trump-lawyer-john-eastman-california-bar-discipline-charges-2020-election-2023-1.

134. Madison Hall, *A Lawyer Who Filed Sidney Powell's Michigan Election Lawsuit Says He Shouldn't Be Disbarred and Was Just 'Holding the Fort' for Her*, BUS. INSIDER (Feb. 5, 2021, 3:43PM), https://www.businessinsider.com/michigan-lawyer-who-helped-sidney-powell-is-fighting-disbarment-2021-2 (Rhetoric from a local Michigan attorney ensnared in the Powell disbarment effort underscores the rhetorical rendering of the election lawsuits as war or some form of battle).

135. *See e.g.*, Joe Patrice, *Sidney Powell Avoids Disbarment As Judge Refuses to Consider Misnumbered Exhibits . . . Seriously*, Above the Law (Feb. 24, 2023, 3:15PM), https://abovethelaw.com/2023/02/sidney-powell-avoids-disbarment-as-judge-refuses-to-consider-misnumbered-exhibits-seriously/.

136. *See* Sarah Ellison and Amy Gardner, *At Center of Fox News Lawsuit, Sidney Powell and a 'Wackadoodle' Email*, Wash. Post (Mar. 16, 2023, 11:22AM), https://www.washingtonpost.com/media/2023/03/16/sidney-powell-fox-news-dominion/; Jacqueline Thomsen, *Can't Have It Both Ways: Sidney Powell's Defamation Defense Could Put Her in Ethical Bind, Experts Say*, LAW.COM (Mar. 23, 2021, 3:01PM), https://www.law.com/nationallawjournal/2021/03/23/cant-have-it-both-ways-sidney-powells-defamation-defense-could-put-her-in-ethical-bind/.

of these actions—the defamation suit—returns us to a question of augury. How could Powell's defense uncouple her legal actions from the insurrection that resulted? The answer is, in short, contending that no "reasonable person" would have believed her conspiracy theories. As reported from court filings, Powell's legal team claimed:

> Indeed, Plaintiffs themselves characterize the statements at issue as 'wild accusations' and 'outlandish claims.' . . . Such characterizations of the allegedly defamatory statements further support Defendants' position that *reasonable people* would not accept such statements as fact but view them only as claims that await testing by the courts through the adversary process.[137]

Who was the "reasonable" actor in all of this? Was it Powell for shouting these "unreasonable" claims from the perceived pulpit of the President's office and defense team? Was it Giuliani for amplifying these conspiracy theories only to reach an *inevitable* climax and a call to armed combat? Was it Donald Trump for allowing these augurs to lead the Empire to a point of brimstone and blasphemy, squandering time on Twitter like some disgraced Nero figure[138] while a white supremacist mob stormed the Capitol? Was it current President Joe Biden, only the latest white male colonizer to sit upon the seat of settler power, for not openly calling for all of these characters in the caste of clerics and fools to be disbarred and criminally prosecuted? Was it the ABA for not responding to this crisis—of values and legitimacy—that continues to cast shadows over the legal industry, itself a burning edifice and testament to white power that grows brighter with each day of inaction?[139]

Maybe most pressing in the context of this paper: Were *these* the prophets that Jules Lobel spoke of? As Lobel writes, "[c]ourts are not merely forums to settle private parties' disputes, but can function, and have functioned, as forums in which broad public issues are debated, as attested by the enormous press coverage given to, and public fascination with, the Supreme Court."[140] Would Sidney Powell claim that she is a legal loser—a prophet—merely ahead of her time? Would she contend that the

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137. Katelyn Polantz, *Sidney Powell Argues in New Court Filing that No Reasonable People Would Believe Her Election Fraud Claims*, CNN (Mar. 23, 2021, 1:43PM), https://www.cnn.com/2021/03/22/politics/sidney-powell-dominion-lawsuit-election-fraud/index.html (emphasis added).

138. U.S. Senator Bernie Sanders made this comparison in 2020, asserting that former President Trump had done less to address the COVID-19 pandemic than Roman Emperor Nero during the 64 A.D. Great Fire of Rome. *Compare* Michael Ray, *Did Nero Really Fiddle as Rome Burned?* BRITANNICA, https://www.britannica.com/story/did-nero-really-fiddle-as-rome-burned (last visited Apr. 27, 2021, 9:00AM), *with Sanders: 'Nero Fiddled While Rome Burned. Trump Golfs,'* WASH. POST (Aug. 18, 2020, 12:28AM), https://www.washingtonpost.com/video/politics/sanders-nero-fiddled-while-rome-burned-trump-golfs/2020/08/18/d6be527f-4934-4604-b11b-740e191610d3_video.html (capturing Senator Bernie Sanders' comparison of Donald Trump to Nero).

139. In all fairness, ABA President Patricia Lee Refo issued a statement condemning the siege of the U.S. Capitol. Notably absent from this condemnation, however, was any reflection on the role of the legal industry in advancing the "dozens of lawsuits challenging the election results" and the legal fanfare that led up to this specific moment of "criminal conduct." Physical manifestations of anti-democratic subversion were clearly criminal in the eyes of the ABA but somehow Giuliani and Powell's procedural subversion in the courts was not. *See Statement of ABA President Patricia Lee Refo Re: Violence at the U.S. Capitol*, ABA (Jan. 6, 2021), https://www.americanbar.org/news/abanews/aba-news-archives/2021/01/statement-of-aba-president-patricia-lee-refo-re–violence-at-the/.

140. Lobel, *supra* note 39, at 1346.

past few years were simply her moment to engage with the forum of truth? Would Giuliani at last concede that they had been "made *fools* of?"[141]

Herein lies my central issue with the thrust of Lobel's prophet framing: U.S. legal prophecy assumes a linearity of progress advanced by the well-meaning individual. It assumes a forward motion of justice that is not marred—much less defined by—circular, socio-legal hauntings, by both "good" and "bad" legal prophets. Prophetic Lawyering fails at collective liberation because it centers individual dreams of change. As Section II of this piece demonstrates, I do not believe that justice is possible in this nation so long as we continue to use tools and words that were forged through cataclysmic forms of horror. I do not believe that lawyers can (or should) be prophets.

E. The Ghosts of Legal Prophecy

Through an anti-prophet framing, we see that U.S. settler law is characterized by jointed hope but hauntings, righteous but deplorable settlers, and faith but fear. Take, for instance, the U.S. Supreme Court's handling of *Milliken v. Bradley*, a case challenging regional school segregation in Michigan during the early 1970s.[142] In rejecting a lower court's imposition of a multi-district school desegregation plan, the *Milliken* court found that a wide-reaching and regional desegregation plan would present logistical, financial, and operational problems.[143] Moreover, the court held that the plaintiffs had failed to sufficiently link the specific policies of the Detroit school district to the segregative effects documented across the outlying school districts.[144] *Milliken*, under Lobel's framework, was a failed case (in a legal sense) but a winning legal theory (perhaps morally) that was merely ahead of its time in establishing educational equity through equal protection litigation and racial integration. But were the advocates here early or were they simply not "zealous" enough? Was their cause not righteous enough to win the day? Were the lawyers or the court itself the "good" or "bad" prophets? I am inclined to think that a Prophetic Lawyering lens misses the point altogether: The most superficial analyses of domination and white supremacy better explain this case.

An alternative, *anti-prophet* reading of *Milliken* would situate the case as the legal 'roof' to equity in education under current U.S. settler law[145] and would concede that the lawyers here had crashed against the limits of the law's white supremacist imagination.[146] Evidently, the legal team in *Milliken* bore the burden of animating

141. Reuters, *supra* note 2.

142. Milliken v. Bradley, 418 U.S. 717 (1974).

143. *See id.* at 743.

144. *Id.* at 744-5.

145. *See* Washington v. Davis, 426 U.S. 229 (1976); MICHAEL F. DELMONT, WHY BUSING FAILED: RACE, MEDIA, AND THE NATIONAL RESISTANCE TO SCHOOL DESEGREGATION 17 (2016) (writing that the *Milliken* court had placed a "nearly impossible burden of proof" on plaintiffs seeking school desegregation); *see also* David Crump, *Evidence, Race, Intent, and Evil: The Paradox of Purposelessness in the Constitutional Racial Discrimination Cases*, 27 HOFSTRA L. REV. 285 (1998); *Making the Violation Fit the Remedy: The Intent Standard and Equal Protection Law*, 92 YALE L.J. 328 (1982).

146. The debate by scholars over negative and positive constitutional rights is not shared internationally. *See, e.g.*, Tamar Ezer, *A Positive Right to Protection for Children*, 7 YALE HUM. RTS. & DEV. L.J. 1 (2004) ("While American academics heatedly debate the wisdom of including positive economic or social rights in

some skeleton of white supremacy, of invoking the ghouls and grand dragons of the 'then' to validate the violence of the 'now,' and to advance a vision of justice.[147] But the *Milliken* opinion was not 'wrong,' so much as it was ahistorical in its relation to 'justice:' as if the social and legal realities of segregation were not already clear; as if to imply that the bloodiest riots in U.S. history had not overtaken the streets of Detroit only eight years earlier;[148] as if 1,000 homes had not been burnt to the ground;[149] as if three years before this decision the KKK had not bombed ten school buses in the Detroit suburbs;[150] as if the court had not existed in the same America where subordination and terror had structurally, and legally, coalesced. The lawyers did not need to be prophets so much as they needed to be powerful persuaders, well-versed historians, legalistic sorcerers, and calculated mathematicians. But, above all, the *Milliken* court did not need a better legal theory—white flight *was* inevitable. It needed better law.

If, as Lobel claims, "prophetic litigation" emphasizes a vision of justice as a continual struggle, what happens when litigation is no longer an option (or desirable[151]) or when legal struggle cannot persist? What happens when legal future is conjoined with the vitriolic past? Do we pray for another earthquaking *Brown* to overturn every cemented precedent that breeds injustice? Does it mean that we—not *we* the lawyers but *we* the upholders of the settler state—must advance a decolonial cause of action, a cause *for* action in a field that does not act on its own? As a frame for envisioning justice, Prophetic Lawyering is theoretically flawed in its inability to see beyond the individual tugs of change along a continuum. The framework does not account for all of the times that the unjust was upheld as perfectly "reasonable" and for all of the Krakens and beasts that are perfectly legal in pursuing injustice.

Prophetic Lawyering assumes, within itself, a sense of objectivity in creating the "reasonable" prophet standard for a better future. It pretends that advocates and

constitutional norms, the question, as a practical matter, is moot in much of the world."); Douglas S. Reed, *Popular Constitutionalism: Towards a Theory of State Constitutional Meanings*, 30 RUTGERS L.J. 871 (1999). Moreover, U.S. opposition to constitutional amendments is well-documented and is in tension with democratic values. *See e.g.*, Vicki C. Jackson, *The (Myth of Un)Amendability of the US Constitution and the Democratic Component of Constitutionalism*, 13 INT'L J. CONST. L. 575 (2015) (tracing the ideological and emotional opposition to constitutional amendments in the U.S.); *United States*, CTR. ECON. SOCIAL RTS., https://www.cesr.org/countries/united-states (last visited Apr. 27, 2021) ("The United States stands virtually alone in the world as an opponent of economic and social rights.").

147. *See e.g.,* Andrea Alajbegovic, *Still Separate, Still Unequal: Litigation as a Tool to Address New York City's Segregated Public Schools*, 22 CUNY L. REV. 304, 311-13 (2019) (overviewing the impact of the *Milliken* decision on integration litigation); DELMONT, *supra* note 145, at 29-30.

148. *See generally* JOE T. DARDEN & RICHARD W. THOMAS, DETROIT: RACE RIOTS, RACIAL CONFLICTS, AND EFFORTS TO BRIDGE THE RACIAL DIVIDE 1 (2013) (writing that "[i]n July 1967, Detroit experienced the bloodiest urban disorder and the costliest property damage in U.S. history").

149. *Id.*

150. *See* Sarah Alvarez, *How Court's Bus Ruling Sealed Differences in Detroit Schools*, NPR (Nov. 19, 2013, 4:23 AM), https://www.npr.org/sections/codeswitch/2013/11/19/245970277/how-courts-bus-ruling-sealed-differences-in-detroit-schools.

151. *See, e.g.*, Derrick A. Bell Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE. L.J. 470 (1976) (examining the conflicts of interests that civil rights lawyers faced in seeking integrationist ideals against the stated wishes of client communities of color) [hereinafter *Serving Two Masters*].

allies of the movement toward liberation share a common vision of repair. It pretends that white supremacists cannot equally serve as prophetic lawyers. It provides for a future of equity just as much as it does one of phantasmal existence, of maybe rights and maybe bloodshed. And this is divine injustice: Of continued faith *and* fear. Divine injustice looks like heroes and saviors[152] and equity premised on ego. But divine injustice also looks like capitol attacks and screaming men and tiki torches;[153] it looks like bus bombs and white flight.[154] Settler law has desired to sidestep this chasm, to avoid apparitions and the hateful things—perhaps the only things truly tethering the legal profession together.

As an embrace of legal pessimism[155] and rejection of legal moderatism's ghastly return,[156] this piece joins the many voices of scholars and communities that call for the ripping of settler roots. To "de-prophet" the law would be to raze the Master's House,[157] to shatter the settler altars of legal prophecy, and to unearth the very pipelines, preambles, and profits that create saviors in the first place. To de-prophet U.S. settler law would be to destroy it.

II. TO DE-PROPHET IS TO DECONSTRUCT

When I am asked why I chose to pursue a legal career, my answer is relatively straightforward: That the law of U.S. Empire is a white supremacist institution that needs to be deconstructed and abolished. When asked what area of work I hope to specialize in, my reply is similar: That I hope to one day no longer be asked that question because settler law will be no more. I often wonder if people, upon hearing these answers, think that I mean this theoretically, or if they understand that I mean the

152. *See infra* notes 167, 177–180 and accompanying discussion.

153. Patrice Taddonio, *'Enabling It to Happen Again': How Charlottesville Led to the Capitol Attack*, PBS FRONTLINE (Jan. 26, 2021), https://www.pbs.org/wgbh/frontline/article/how-charlottesville-led-to-the-capitol-attack/.

154. Alvarez, *supra* note 150.

155. *See e.g.*, Sharon Ee Ling Quah, *Navigating Emotions at the Site of Racism: Feminist Rage, Queer Pessimism and Fire Dragon Feminism*, 35 AUS. FEMINIST STUDIES 203, 203 (2020) (discussing the "superpowers" of feminist rage and queer pessimism as forms of navigating systemic racism); *see* Patrice Douglass, Selamawit D. Terrefe & Frank B. Wilderson, *Afro-Pessimism*, OXFORD BIBLIOGRAPHIES ONLINE (Aug. 28, 2018), https://www.oxfordbibliographies.com/view/document/obo-9780190280024/obo-9780190280024-0056.xml.

156. Dan Priel discusses the ways that a foundational schism in legal realist thought, between human- and empirically driven models for legal reform, defines the present. Law-and-economics, one descendant of the epistemological rift, centralizes the legal conservatism of traditional legal realists within contemporary debates about law. DAN PRIEL, THE RETURN OF LEGAL REALISM, *in* Oxford Handbook of Historical Legal Research 10-11, 22-23 (Markus D. Dubber & Christopher Tomlins eds., 2018). Jason Iuliano extends this examination by investigating the public lies and private truths espoused by legal elites. Iuliano contends that extreme legal realism and extreme legal formalism have been discarded in the academic domain in favor of more "moderate, nuanced" theories; in essence that "everyone is both a formalist and a realist." Jason Iuliano, *The Supreme Court's Noble Lie*, 51 U.C.D. L. REV. 911, 942 (2018).

157. In her infamous remarks at the 1984 NYU Institute for the Humanities Conference, scholar-activist Audre Lorde names the incapacity for institutions of power to deconstruct patterns of power, or the structural scaffolding of the "master's house." In critiquing academia's erasure of women of color and especially queer women of color, Lorde concludes that the master's tools of change will never achieve a just dismantling of hierarchical power. *See* Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House, in* Sister Outsider: Essays and Speeches 2 (Crossing Press 2007) (1984).

plain meaning and so much more: That I'm tired of pretending I want to be a prophet of injustice and that legal work looks like much more than lawsuits and litigating, that I'll never be the Atticus Finch or hero-type character they want me to be. I wonder if they understand that this industry will destroy itself before it holds itself accountable,[158] that this Empire will continue to embrace implosion before it permits repair. I wonder if they realize that waiting for heroes and saviors will forever fail us, that the work of collective repair starts now and outside the law.

Jules Lobel's conceptualization of prophetic litigation paradoxically speaks to the same liturgy of violence as Giuliani's invocation of settler combat. "Liturgy," from the late Latin *liturgia* and itself from the Greek "public service" or "service to the Gods,"[159] here reflects a divine rite and legal ritual of commanding power. But how can that be? How can it be that prophetic legal visions of a more just society could be related (in fact bound) to white rallies and the subversion of democracy? It is because U.S. legal power has historically and structurally been synonymous with white power. The very act of divining justice—through augury or prophecy or lawyering as interchangeable acts—is made possible by white supremacy's illusion of "objectivity," or the colonial lens through which linked seeds of racial capitalism and settler colonialism were seen and sown. It is because of cases like *M'Intosh* and *Hall* and *Jones*[160] that cases like *Brown* and (as we've seen) *Roe*[161] and *Obergefell*[162] have lived with a lasting poltergeist. So long as justice and injustice can both comingle in the settler crypt of legality, new shoots of tomorrow will remain rotted, recoiling, and withering from a poisoned past. As Indigenous scholars have maintained, U.S. law has already ushered in apocalypse, and we already live in the aftermath of violent legal realities.[163] Left intact and unexamined, the past is forever and inevitable.

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158. I do not make light of this language. I mean it very literally that the U.S. legal industry has and will continue to shove its membership to a point of a health crisis before it reconciles the tensions of power, exploitation, and privilege that permeate the field. Disparate mental, physical, and emotional health outcomes along with gross inequities across lines of socio-economic status, race, ethnicity, gender identity, and sexual orientation within the profession are not aberrations—they define it. *See* discussion of U.S. lawyer wellbeing *supra* notes 18, 20.

159. *See Liturgy, n.*, OXFORD ENGLISH DICTIONARY (2020).

160. For centuries, reasonableness has been racially defined. In identifying the rights and humanity of enslaved Black peoples in the U.S., the Mississippi Supreme Court writes: "Is not the slave a reasonable creature, is he not a human being, and the meaning of this phrase *reasonable creature* is a human being, for the killing a lunitic [sic], an idiot, or even a child unborn, is murder, as much the killing a philosopher, and has not the slave as much reason as a lunitic, an idiot, or an unborn child?" *See* State v. Jones, 1 Miss. 83, 85 (1820); Mark Tushnet, *The American Law and Slavery, 1810-1860 - A Study in the Persistence of Legal Autonomy*, 10 LAW & SOC'Y REV. 119, 119 (1975).

161. Roe v. Wade, 410 U.S. 113 (1973), overruled by Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022).

162. Obergefell v. Hodges, 576 U.S. 644 (2015); *see* Carl H. Esbeck, *A Post-Obergefell America: Is a Season of Legal and Social Strife Inevitable*, 11 CHRISTIAN L. 3, 3 (2015) (opining that U.S. "domestic tranquility" can no longer be taken for granted in a "Post-Obergefell" nation, but the centering of implicitly white straight Christian voices erases the fact that tranquility has never been uniformly experienced under settler colonialism and U.S. legal domination. Tranquility is naivety).

163. David G. Lewis, *Native People Live in the Post Apocalypse*, QUARTUX: J. CRITICAL INDIGENOUS ANTHROPOLOGY (Mar. 19, 2021), https://ndnhistoryresearch.com/2021/03/19/native-people-live-in-the-post-apocalypse/.

A. To Unearth Rotted Roots

Let's revisit property under U.S. settler law. In their impactful piece, *Whiteness as Property*, Critical Race scholar Cheryl Harris examines the ways that whiteness as an identity came to be figured as a property interest under "parallel systems of domination" of Black and Indigenous peoples.[164] As Harris writes, *Johnson* (and similar cases of settler violence) "established whiteness as a prerequisite to the exercise of enforceable property rights . . . This fact infused whiteness with significance and value because it was solely through being white that property could be acquired and secured under law."[165] Moreover, as explored in Section I of this piece, the *Johnson* court constructs an understanding of whiteness as directly related (if not endowed by) a Christian perspective of the world.[166] The rights to claiming title and carving the continent hinged on the court's dichotomy between the Christian colonial powers and a configuration of the non-Christian Indigenous "heathens" of the New World. This language haunts the pages of settler law, and the very same construal of legal identity can be seen in *People v. Hall*. In analyzing the intent of the legislature for the purposes of determining who might be considered "white" enough to testify against a white citizen, the court held that "[t]he evident intent of the Act [regulating Criminal Proceedings] was to throw around the citizen a protection for life and property, which could only be secured by removing him above the corrupting influences of *degraded castes*."[167] Race, under settler law, is as much a matter of humanity as it is economy.[168]

Critical Race scholar Dorothy Roberts writes of these hierarchies, tying their histories to the legacies of settler law, racial eugenics, and the feedback loop that develops among them around the turn of the 20th century. As explored by Roberts, the schema of Carl Linnaeus—the so-called "father" of classification[169]—sought to divide humans into four discrete categories: The "[v]igorous, muscular", and law-governed European; the "[i]ll-tempered" and "stubborn" Indigenous person; the "stern" and opinion-driven Asian, as well as the "lazy" and "crafty" African.[170]

These categories were truncated down to three by French anatomist Georges Cuvier (the "Caucasian, Mongolian, and Ethiopian"), expanded to five by Medical Professor Johann Friedrich Blumenbach (the "Caucasian, Mongolian, Ethiopian,

164. Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1709 (1993).

165. *Id.* at 1724.

166. *See infra* Section I and the white settler constructions of dominion-derived legality.

167. *Hall*, 4 Cal. at 403 (1854).

168. *See generally* SVEN BECKERT, EMPIRE OF COTTON: A GLOBAL HISTORY (2014) (charting the mutually reinforcing relationship between the cotton industry, colonialism, and global capitalism); *see also* Myles Lennon, *Decolonizing Energy: Black Lives Matter and Technoscientific Expertise Amid Solar Transitions*, 30 ENERGY RSCH. & SOC. SCI. 18, 24-25 (2017) (examining the ways that chattel enslavement, Indigenous genocide, and land commodification were central to the construction of U.S. racial capitalism).

169. *Carl Linnaeus (1707-1778)*, UC Berkeley Museum Paleontology, https://ucmp.berkeley.edu/history/linnaeus.html (last visited Apr. 26, 2021, 9:00AM); *see* Kevin Brown, *The Hypothetical Opinion in Grutter v. Bollinger from the Perspective of the Road Not Taken in Brown v. Board of Education*, 36 LOY. U. CHI. L.J. 83, 97 (2004) (connecting the taxonomies of Carl Linneaus to U.S. racial segregation and the *Brown v. Board* decision).

170. ROBERTS, *supra* note 9, at 29-31.

American, and Malay"), and were later recontoured into four by Philosopher Immanuel Kant (the "[white, Black], Hindustan[i], and Kalmuck").[171] In comparing *M'Intosh*, *Hall*, or any number of the equal protection cases litigating a plaintiff's "whiteness,"[172] what we see emerge is a kaleidoscope of Christianity, Caucasian identity, and colonization. From this historical and socio-legal juncture, systems of racial capitalism,[173] white supremacy,[174] and settler colonialism[175] were developed. These form the foundations of settler legality, corrupted pillars that will never allow for justice outside of the normatively white, cisgender,[176] straight, and male[177] Christian-colonial gaze.[178]

To unearth these realities is to admit that Critical Race Theory was never *really* controversial; it was and continues to be an honest methodology for telling history and it remains a threat to white supremacy.[179] To excavate and meaningfully dispose of the root system that undergirds U.S. settler law is to question how we structure legal education and the classes that we offer. It is to demand answers for the continued absence (in fact, erasure) of legal history in our instruction of the legal profession. It is to ask what our own role is in upholding violent realities. Unearthing such questions requires a collective unlearning of the many stories and assumptions of what lawyers are supposed to be in the first place.

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171. *Id.*

172. *Thind*, 261 U.S. at 204.

173. *See* Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151, 2153 (2013) (defining "racial capitalism" as "the process of deriving social and economic value from the racial identity of another person" in excavating the capitalist processes that commodify racial).

174. *See, e.g.*, *White Supremacy, n.*, OXFORD ENGLISH DICTIONARY (3d ed. 2015) ("[t]he belief or theory that white people are superior to other peoples, and should therefore have greater power, authority, or status. Also: a social system based on or perpetuating the political, economic, and cultural dominance of white people"); Joshua Inwood, *White Supremacy, White Counter-Revolutionary Politics, and the Rise of Donald Trump*, 37 ENV'T PLAN. C: POL. SPACE 579 (2018).

175. Evelyn Nakano Glenn, *Settler Colonialism as Structure: A Framework for Comparative Studies of U.S. Race and Gender Formation*, 1 Soc. Race Ethnicity 54, 54, 57 (2015) (outlining settler colonialism as a structure under which imperial power acquires land and resources through processes of Indigenous genocide, forced removal, and confinement. Settler colonialism must be understood as an active, ongoing system, not a "past historical event.").

176. *See, e.g.*, Nishant Upadhyay, *Coloniality of White Feminism and its Transphobia: A Comment on Burt*, FEMINIST CRIMINOLOGY 1 (2021).

177. *See, e.g.*, Gillian R. Chadwick, *Reorienting the Rules of Evidence*, 39 CARDOZO L. REV. 2115, 2115 (2018) (writing that "Latent heterosexism is deeply engrained in the common sensibility of the American legal system"); Lynn Hecht Schafran, *Is the Law Male: Let Me Count the Ways*, 69 CHI.-KENT L. REV. 397 (1993); Karen Busby, *The Maleness of Legal Language*, 18 MANITOBA L.J. 210 (1989).

178. *Compare* Laura Mulvey, *Visual Pleasure and Narrative Cinema*, *in* Visual and Other Pleasures 62 (Palgrave Macmillan 1989) (exploring the ways that patriarchal society has structured the film form through a "male gaze" and "phallocentricism"), *with* Tang Halpin, *supra* note 79, at 285 (examining the relationship between western science, constructed notions of objectivity, and the formulation of the "self" by primarily "white, upper and middle class, heterosexual men of Christian background."); *see generally* Jared A. Goldstein, *How the Constitution Become Christian*, 68 HASTINGS L.J. 259, 262 (2017) (exploring the ways that the U.S. Constitution served as a "magic mirror" from which the Christian movements could visualize Christian values).

179. *See* Janel George, *A Lesson on Critical Race Theory*, ABA (Jan. 11, 2021), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/a-lesson-on-critical-race-theory/.

B. To Vacate Legal Saviorism

To dispel the myths of what lawyers really do (and *really* don't do), let's reintroduce Prophetic Lawyering: How can we—the legal professionals, but also, *we* the inheritors of a colonial construction of justice—disconnect legal advocacy from the settler violence from which it emerged? We cannot, if we truly see the hauntings and horrors of this settler nation for the ever-present history that it is. In this way, Prophetic Lawyering is an imperial illusion. Lobel's vision of Prophetic Lawyering is enticing, but it is corrosive. It is enchanting, from the Latin *incantare* and *cantare*, "to sing."[180] *Cantare*, also meaning "chant:" To make melodic sounds or to recite in repetitive tone[181] (not unlike *chanting* men and tiki torches). To be a prophet under systems of settler colonialism, white supremacy, and racial capitalism is to replicate patterns of violence simply repackaged as colonial benevolence. A Prophetic Lawyer is an augur is a cleric is a white savior is a diviner and an expander of Empire. An unpacking of legal heroism helps to make this point clear.

White saviorism refers to a colonial dynamic in which whiteness purports to "save" people of color and communities from the Global South as a form of "doing good."[182] Here, I make reference to "white saviorism" for two purposes: First, for its related religious and historical context, and second, for the applicability of its critique from many non-legal areas (an indication of the law's continued refusal to grapple with power at a structural level or to any widespread extent). Written about extensively in the context of non-profit work and human rights, the "White Savior Industrial Complex" is necessarily a relation of power.[183]

As Teju Cole writes, "[t]he White Savior Industrial Complex is a valve for releasing the unbearable pressures that build in a system built on pillage."[184] Critiques of white saviorism have extended into the legal discipline, explicitly naming the ways that public interest work seeks to advance justice under the "myth that only the western white individual can liberate BIPOC suffering."[185] White actors in a predominantly white legal profession are centered as the makers and breakers—both the cause and the cure—of an imploding Empire of domination.[186] But what would it

180. *See Enchant, v.*, OXFORD ENGLISH DICTIONARY (2020) (tracing the etymology of "enchant" to the Latin *incantare*: "in- upon, against + cant re to sing").

181. *See, e.g.*, *Chant, v.*, OXFORD ENGLISH DICTIONARY (3d ed. 2017) ("to sing (a song, esp. a repetitive one) in a monotone, or with a prolonged intonation").

182. *See* Teju Cole, *The White-Savior Industrial Complex*, ATLANTIC (Mar. 12, 2012), https://www.theatlantic.com/international/archive/2012/03/the-white-savior-industrial-complex/254843/.

183. *Id.*; Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Right*s, 42 HARV. INT'L L. J. 201 (2001) (identifying a "savages-victims-saviors" construction within colonial human rights discourse); *see also* Nicole Maurantonio, *"Reason to Hope?": The White Savior Myth and Progress in "Post-Racial" America*, 94 JOURNALISM & MASS COMM'N Q. 1130 (2017) (discussing media-based narratives of white savior mythology).

184. Cole, *supra* note 182.

185. *See, e.g.*, Bavani Sridhar, *Is the Public Interest Lawyer Antiracist?*, NE. U.L. REV. FORUM (Oct. 2, 2020), https://nulronlineforum.wordpress.com/2020/10/02/is-the-public-interest-lawyer-antiracist/; Kiki Tapiero, *A Reflection on Law School as a Social Justice Student*, 30 BERKELEY LA RAZA L.J. 179, 183 (2020) ("Most public interest students come from privilege and with a saviorism complex.").

186. *See* PAULO FREIRE, PEDAGOGY OF THE OPPRESSED 60 (Myra Bergman Ramos trans., Continuum 2005) (1970) ("converts, on the other hand, truly desire to transform the unjust order; but because of their background they believe that they must be the executors of the transformation"); Tapiero, *supra* note 185, at

be to "de-prophet" or to exhume the processes of prophetization that are central to the law, to remove the synapses and vertebrae of the law's white body of lies? I think, as the *Hall* court has concurred, it would be an unraveling.[187] To de-prophetize would be to reorganize the legal field in a way outside of systems of domination, where the practices of justice-making are not beholden to the income, structures, and interests of white supremacy—where justice is not contingent on prophecy. As Black and Indigenous liberation leaders have maintained for centuries,[188] this requires dismantling the settler state, settler law, and the socio-legal institutions propping both up.

C. To Disrupt Imperial Grammars

Here, I want to focus on what might be called a prophet "pipeline" that is created by the routinization of U.S. settler law as a profession—through U.S. law schools and the self-reinforcing settler structures of the U.S. legal industry. In this context, I'm intentional to use the word "pipeline" as a way of naming the oppressive grammar and ideologies that underlie U.S. settler law, as the imperial state is adept at funneling power along the historical ridges and through the vacuous valleys of inequity.[189] Lines of power in the legal industry seek to reify existing powerlines of privilege and the language of subjugation thus defines our realities.[190] "Pipelines" are colonial tools for redirecting—oil, resources, opportunities, power, people, and even words.[191]

Kathryn Yusoff writes of this flow of power and of grammars of extractivism in the environmental justice context. In *A Billion Black Anthropocenes or None*, Yusoff explores the ways in which the grammar of geology—in positioning the

183; Katie Rose Guest Pryal, *American Lawyers Have an Atticus Finch Complex, and It's Killing the Profession*, QUARTZ (Mar. 31, 2016), https://qz.com/651270/the-american-legal-system-has-an-atticus-finch-complex-and-its-killing-the-profession/ (discussing the inspirations that drove law students to pursue legal education).

187. *Hall*, 4 Cal. at 404-5.

188. *See, e.g.*, GORD HILL, 500 YEARS OF INDIGENOUS RESISTANCE (2011); Alleen Brown, *A Lakota Historian on What Climate Organizers Can Learn from Two Centuries of Indigenous Resistance*, INTERCEPT (Mar. 7, 2019, 8:00AM), https://theintercept.com/2019/03/07/nick-estes-our-history-is-the-future-indigenous-resistance/; *Vision for Black Lives*, MOVEMENT 4 BLACK LIVES, https://m4bl.org/policy-platforms/ (last visited Apr. 27, 2021); *see also* Robert Allen, *A Historical Synthesis: Black Liberation and World Revolution*, 3 BLACK SCHOLAR 7 (1972) (connecting the struggle for Black liberation to the interdependent struggles of minoritized communities within the U.S. and those of the marginalized Global South).

189. WILKERSON, *supra* note 9, at 70 (writing that racial caste can be conceptualized as "the worn grooves of comforting routines and unthinking expectations, patterns of a social order that have been in place for so long that it looks like the natural order of things.").

190. *See, e.g.*, SHI-XU, *Discourse and Reality*, *in* A CULTURAL APPROACH TO DISCOURSE 13-41 (2005) (contending that linguistic communication or discourse are thoroughly constitutive of reality).

191. An ever-growing literature addresses the "Cradle-to-Prison Pipeline," or the confluence of factors driving poor and low-income youth of color into the U.S. criminal legal system. Previously formulated as the "School-to-Prison Pipeline," shifting rhetoric demonstrates a shifting understanding of how deep and pervasive this pipeline is. *See, e.g.*, *Dismantling the Cradle-to-Prison Pipeline*, NE. L. CTR. PUB. INTEREST ADVOC. COLLABORATION, https://web.northeastern.edu/cpiac/portfolio/cradle-to-prison/ (last visited Apr. 27, 2021, 9:00AM); *see* Sam LaPres, *4 Things You Need to Know About the Cradle-to-Prison Pipeline*, TEXAS INST. CHILD & FAMILY WELLBEING, https://txicfw.socialwork.utexas.edu/4-things-you-need-to-know-about-the-cradle-to-prison-pipeline/ (last visited Apr. 27, 2021, 9:00AM).

Anthropocene as a period of human-led geological transformation—erases the violent legacies of Black and Indigenous geo-trauma.[192] For Yusoff, our understandings of capitalism-driven ecocide are bound up with race, power, and designations of 'human' by colonial institutions.'[193] The same is necessarily true of the law; the ontologies and taxonomies of Carl Linneus and of *M'Intosh* were acts of genesis, purporting to create both man (and non-man) and matter (and anti-matter) of the New World. So, when the legal industry constructs pre-law "pipelines," it too is drilling for minerals and people, for novel ways of extracting and exacting colonial benevolence. One website alone identifies thirty-three pre-law "Pipeline Programs."[194] But I urge us to interrogate deeper: When do settler notions of 'access' merely become more (but different) settler systems of power and gatekeeping?[195]

1. A Field of Drilling & Extraction

The language of augur "pipelines" and legal "prophets," like the Latin embedded in each of the writs and bits of U.S. settler law, speaks to a mode of temporal communication, one that articulates a future from the institutional ransacking of the past. Metaphors of pipelines have erased any institutional responsibility for the inequities that (*inevitably*) emerged from systems of domination. Put more directly, the American Bar Association would *create* a Council for Diversity in the Educational Pipeline to "increase diversity, equity, and inclusion in the educational pipeline to the legal profession"[196] *before* it will abolish the LSAT entrance exam and bar exam—the industry's staunchest gatekeeping structures. The ABA will implore the *restoration* of the grand jury—like returns of grand dragons or America's grand old party—*before* it will consider its reimagining.[197]

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192. YUSOFF, *supra* note 8, at 105 ("This geologic prehistory . . . constitutes the present in all its geotraumas and thus should be embraced, reworked, and reconstituted in terms of agency for the present, for the end of this world and the possibility of others"); *see also* Kalamaoka'aina Niheu, *Indigenous Resistance in an Era of Climate Change Crisis*, 1 RADICAL HISTORY REV. 117, 117-129 (2019).

193. YUSOFF, *supra* note 8, at 105.

194. *Other Pipeline Programs*, YALE L. SCH., https://law.yale.edu/centers-workshops/law-school-access-program/other-pipeline-programs (last visited Apr. 27, 2021, 9:00AM).

195. As explored by Bell, the aims of post-*Brown* civil rights attorneys diverged from those of the Black client communities they represented. This divergence brings to the fore the very institutional power and structural silencing that litigators had sought to challenge. In this way, hierarchy had been replicated. Bell, *supra* note 76. Whiteness, and proximity to it both racially and structurally, is made the metric of equity and repair. *See, e.g.*, Mary Pattillo, *The Problem of Integration*, NYU FURMAN CTR. (Jan. 2014), https://furmancenter.org/research/iri/essay/the-problem-of-integration ("Promoting integration as the means to improve the lives of Blacks stigmatizes Black people and Black spaces and valorizes Whiteness as both the symbol of opportunity and the measuring stick for equality").

196. *Council for Diversity in the Educational Pipeline*, ABA, https://www.americanbar.org/groups/diversity/diversity_pipeline/ (last visited Apr. 27, 2021, 9:00AM).

197. *See, e.g.*, *Constitutional Rights and the Grand Jury. Hearing Before the Subcomm. on the Const. of the H. Comm. on the Judiciary*, 106th Cong. 92 (2000) (statement of Robert D. Evans, Am. Bar Ass'n) ("The question of fairness in grand jury proceedings has . . . become an issue of special interest to the legal profession. Over the years the American Bar Association has developed thirty-one specific principles to *restore* the grand jury's original "protective" function and to eliminate abuses in the grand jury system") (emphasis added); *but see* Lauren-Brooke Elsen, *What Is on the Horizon for Grand Jury Reform*, BRENNAN CTR. JUST. (Jan. 24,

But Antonio—you may ask—*what will we use if not the bar? Surely, we can't admit everyone all the time. What will become of our profession without the LSAT and some credentials for who we admit to practice?* To this, I have several thoughts. First, I implore the reader to ask how it feels to share the profession with Giuliani and Eastman and legal workers who were committed to usurping an election. Neither the LSAT nor the bar tested whether these actors cared about communities or collective forms of care. Neither the LSAT nor the bar had a way of ensuring their future clients would not be hellbent on advancing fascistic rule. Neither metric protected us in the first place. Secondly, I invite proponents of gatekeeping exams to name and investigate what skills these exams demonstrate other than test-taking ability, ableism, neurotypicality, wealth, resources, and privilege. Did the LSAT prepare you for legal education? Did the bar really prepare you for practice? Or was it merely another form of legal "hazing?"[198] As history centers for us, the bar and LSAT are *bars* to the profession because we are afraid of settler law's undoing—we keep faith out of fear for (non-white) rebellion.[199]

The language of the law insists that we not only *bar* and gatekeep, but that we also drill for *good* law school applicants because the profession can't imagine anything other than lawyers who uphold white supremacy. But who do we deem as *good* and *bad* lawyers? Who—for that matter—is the 'we' in this question? Is it the bar? The profession at large? Society? Most importantly, why are we so determined to be *good* upholders of Empire?

2. A Field of Good, Bad People

Lobel's Prophetic Lawyering is one cross-section of the pipeline linking the divine power of U.S. settler law to the prophecies and language of legal augury. The theory of a "prophetic" lawyer conjures images of Linneus' "vigorous" (perhaps *zealous*) European and of "good" men like Atticus Finch, the "lawyer-hero" of *To Kill a Mockingbird*.[200] Using this lens, let's revisit my former classmate's concern for legal "scumbags." As Professor Paul Hoffman writes in *What the Hell Is Justice: The Life and Trials of a Criminal Lawyer*, criminal defense attorneys are thought of as those lawyers "in the courts every day, handling everything from misdemeanors to murder, who [have] represented both the *scum* of the streets and the overlords of the

2015), https://www.brennancenter.org/our-work/analysis-opinion/what-horizon-grand-jury-reform (discussing the secrecy inherent to the grand jury and proposals for change in the wake of anti-Black state killings).

198. Abigail Hess, *'Literal Hell'—How the Pandemic Made the Bar Exam Even More Excruciating for Future Lawyers*, CNBC (Aug. 19, 2020), https://www.cnbc.com/2020/08/19/literal-hellthe-pandemic-has-made-the-bar-exam-more-excruciating.html.

199. Hutton-Work & Guyse, *supra* note 100.

200. *Compare* ROBERTS, *supra* note 9, at 29-31 (charting Linneaus' taxonomies and the "vigorous" European classification of mankind), *with* Rose Guest Pryal, *supra* note 186 (discussing the lawyer-hero complex that drives "Atticus [wannabe]" law students into the legal profession), Rebecca Stone, *Legal Design for the Good Man*, 102 VA. L. REV. 1767, 1767 (2016) (discussing Justice Holmes' "bad man" of the law and developing a "typology" of "good" legal actors), *and* Abbe Smith, *Can You Be a Good Person and a Good Prosecutor?* 14 GEO. J. LEGAL ETHICS 355 (2001) (examining the moral dichotomy that is drawn between prosecutors and defense attorneys, a distinction that itself extends from the conflation of criminality, amorality, and "good"-ness in the U.S.).

underworld."[201] Connect this to the well-intended white lawyer and the white saviorism entrenched within the U.S. legal profession.

The human hierarchies of Linneus are at once reproduced and magnified. The "good" white legal body is figured as oppositional to the "scum"—turned *heathen*—criminal and non-white other.[202] Some have even referred to this relationship of power as an "Atticus Finch complex" or of "good white liberals" who cannot disconnect their white savior complex from their work supporting poor and non-white clients.[203] This language matters for understanding the making (and the breaking) of worlds and assessing flows of power within the U.S. legal profession. Enter shocking yet *inevitable* acts: Horrifying scenes of the capitol siege, four years and four centuries of horror, and open white nationalism, racism, and linked anti-Semitism.[204] Colonies, Christianity, and Commerce, as platforms from which settler law could be shaped, made this vision possible: Of person and non-person and of matter and anti-matter. Of "thugs"[205] and "fine

201. PAUL HOFFMAN, WHAT THE HELL IS JUSTICE: THE LIFE AND TRIALS OF A CRIMINAL LAWYER vii (1974).

202. For a discussion of civil death, *see* DAYAN, *supra* note 23, at 55 (writing that "[t]he ritual of civil death, which came into prominence in the United States as slavery was abolished, resurfaced as a literal and legal *via negativa*. The prisoner condemned to life imprisonment fell outside the boundary of human empathy: no longer recognized as a social, political, or individual entity.") Michelle Alexander, too, writes of the legal apparatuses that shape criminality in *The New Jim Crow*. From a lens of racial caste, Alexander makes visible the use of race in the criminal legal system to "label people of color 'criminals' and then engage in all the practices we supposedly left behind [after Jim Crow]." MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 2 (2011). Moreover, Alexander juxtaposes legacies of racial terror to name the permanence of past realities: "As a criminal, you are afforded scarcely more rights, and arguably less respect, than a black man living in Alabama at the height of Jim Crow. We have not ended racial caste in America; *we have merely redesigned it*." *Id.* at 2 (emphasis added).

203. Osamudia James explores in great detail the violent, historical connection between white saviorism, liberalism, and lawyer-hero narratives: "Atticus Finch presented an enduring model to which many white liberals still cling. But besides being a fictional character, Atticus Finch is a myth. And a dangerous myth because he keeps good white liberals from reconsidering the fact that they live in white neighborhoods; from challenging administrators about the racial segregation of their children's schools or white supremacy advanced in the curriculum; or from acknowledging how they benefit from a system that keeps people of color laboring in their homes but excluded from their social and professional spaces." Osamudia R. James, *Now We Can Finally Say Goodbye to the White Savior Myth of Atticus*, N.Y. Times (July 15, 2015, 11:31AM), https://www.nytimes.com/roomfordebate/2015/07/15/how-should-schools-deal-with-the-new-atticus-finch/now-we-can-finally-say-goodbye-to-the-white-savior-myth-of-atticus; Rose Guest Pryal, *supra* note 186.

204. *See* Paul A. Djupe & Jacob Dennen, *Christian Nationalists and QAnon Followers Tend to Be Anti-Semitic. That Was Seen in the Capitol Attack*, WASH. POST (Jan. 26, 2021, 7:45AM), https://www.washingtonpost.com/politics/2021/01/26/christian-nationalists-qanon-followers-tend-be-anti-semitic-that-was-visible-capitol-attack/; Elana Schor, *Anti-Semitism Seen in Capitol Insurrection Raises Alarms*, AP NEWS (Jan. 13, 2021), https://apnews.com/article/election-2020-donald-trump-race-and-ethnicity-discrimination-elections-a72d2c399574206d64606f3d254c4b01 (documenting different forms of white supremacist imagery on display at the 2020 siege of the U.S. Capitol, including the Confederate flag and references to the Auschwitz concentration camp).

205. *See, e.g.*, Brian Dakss, *"When the Looting Starts, the Shooting Starts": Trump Tweet Flagged by Twitter for "Glorifying Violence,"* CBS NEWS (May 29, 2020, 1:16PM), https://www.cbsnews.com/news/trump-minneapolis-protesters-thugs-flagged-twitter/ (reporting on former President Trump's comment via Twitter that protestors in the wake of George Floyd's killing by the state were "THUGS").

people"[206] and of "reasonable" ransacking[207] and "alternative" truths.[208]

3. A Field of Heroes & Gods

To de-prophet the U.S. legal profession would be to unearth and dissolve the very grammars that constitute it. No more pipelines or prophets or scumbags or heathens or losers or fools. To de-prophet the U.S. legal profession would mean for the law to (finally) grapple with its saviorism and devotion to divinity. It would mean that there are no neutral "umpires" of law.[209] It would mean a vacating of settler values and an end to "playing god."[210] Because to insinuate, as some critics have, that judges are "playing God"[211] in the context of life-altering—in fact, life-ending—decisions or that someone judging on high has abused the supreme deference inherent to their role is to miss the point entirely. To 'play' with legal power would require much more than wigs or robes to detach neutral legality from fascistic divinity; it presumes that the roles of judge and lawyer are not already imbued with a divine essence that predates the American Republic. Like a theatre of performed repair, we wield judicial props, don carceral costumes, and adorn our courts' altars with procedural garland. Lobel was right; lawyers *are* prophetic—not because of the good will, performance, or visions of any one person, but because U.S. settler law is divine.

But, like a returning comet, swinging back into the stratosphere of auspices and omens, a Westminster-style conjunction looms over a republic that was never built to last. What would it mean for the legal system to be shocked, from its outermost facades to its doctrinal bedrock, by a comparable decertification to that of the

206. Angie Drobnic Holan, *In Context: Donald Trump's 'Very Fine People on Both Sides' Remarks (Transcript)*, POLITIFACT (Apr. 26, 2019), https://www.politifact.com/article/2019/apr/26/context-trumps-very-fine-people-both-sides-remarks/ (documenting the transcript of former President Trump's comments to reporters, in which he noted there were "fine people" on "both sides" of the 2019 Charlottesville neo-Nazi rally).

207. Polantz, *supra* note 137.

208. *See* Aaron Blake, *Kellyanne Conway Says Donald Trump's Team Has 'Alternative Facts.' Which Pretty Much Says It All*, WASH. POST (Jan. 22, 2017, 11:38AM), https://www.washingtonpost.com/news/the-fix/wp/2017/01/22/kellyanne-conway-says-donald-trumps-team-has-alternate-facts-which-pretty-much-says-it-all/ (reporting on 2017 remarks by former Counselor to the President, Kellyanne Conway, that "alternative facts" had been given by then Press Secretary, Sean Spicer).

209. The project of neoliberal reform erases the hyper-subjective relativism that Duncan Kennedy and fellow critical scholars identify as central to judicial decision-making. White neoliberalism reduces judicial discretion to mere metaphor as opposed to any intrinsic structure or substance. *See, e.g.,* Kim M. Wardlaw, *Umpires, Empathy, and Activism: Lessons from Judge Cardozo*, 85 NOTRE DAME L. REV. 1629 (2010) (discussing the different metaphors and political lenses through which judicial decision-making is conceptualized).

210. *See, e.g.*, Samuel J. Levine, *Playing God: An Essay on Law, Philosophy, and American Capital Punishment*, 31 N.M. L. REV. 277 (2001); Tom Roston, *The Human Cost of 'Playing God,'* SALON (May 7, 2017), https://www.salon.com/2017/05/06/playing-god-documentary-ken-feinberg/ (overviewing the documentary "Playing God," an account of the alternative dispute resolution expert responsible for compensating the victims of America's "worst mass calamities"); *see, e.g.*, force majeure, CORNELL LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/force_majeure (last visited Feb. 12, 2023).

211. Levine, *supra* note 210, at 277 ("[M]any of the questions that the American capital sentencer is expected to answer can be resolved only on the basis of Divine knowledge"); *see also* Fred E. Inbau, *Playing God: 5 to 4* (The Supreme Court and the Police), 89 J. CRIM. L. & CRIMINOLOGY 1441, 1441 (1999) (maintaining that the U.S. Supreme Court "play[ed] God" in crafting its Miranda v. Arizona decision) (citing Miranda v. Arizona, 384 U.S. 436, 545 (1966)).

ordeals? It would be a seismic breaking between law and imperial divinity. As Indigenous writers have maintained,[212] imagining an end to divine injustice requires advancing the fall of the settler Empire—not in metaphor or in theory, but as a violent praxis of both repair and recalibration.[213]

D. To Disembowel the Beasts of Legal Myth

I am tired of wrapping my words in Latin and lies.

During my first year of law school—a year that taught me more about whiteness than it did about doctrine, I had a classmate that responded to being cold called[214] with an unrelated and incorrect Latin phrase. Adding bits of ancient fluff to his meager answer, he clearly sought to compensate for his not-knowing by performing the aesthetics of the law. Some laughed, knowing exactly how he must have felt and of the perceived need to perform law-student-ness.

Some of us didn't.

It was any ordinary day in our constitutional law class, but it might have been the U.S. Supreme Court or Rudy Giuliani or any other snapshot into the phantasmal—into visions of prophets speaking in long-dead tongues, invoking words with harmful but hollow meaning, and into a divine injustice. For students of U.S. settler law, this scene of legal prophecy may be as equally representative of their education in 2020 via Zoom[215] as it was in 1870, at the inception of the now widely used case method.[216] Under the *auspices* of then-Harvard Law School Dean and our augur-in-chief, Christopher Columbus Langdell, an era of doctrinal genesis ended just as quickly as it had begun.[217] Case method like case selection like Roman augur like Langdell like *M'Intosh* and stare decisis: We're still this way because *I* said so. Now, in the 150 years since the initial formulations of legal education, the U.S. legal industry's refusal to grapple with change remains the only constant fixture.[218] But the aim

212. *See, e.g.*, Eve Tuck & K. Wayne Yang, *Decolonization is not a Metaphor*, 1 DECOLONIZATION: INDIGENEITY, EDUC. & SOC. 1 (2012).

213. *Id.*; FRANTZ FANON, THE WRETCHED OF THE EARTH 34 (Constance Farrington trans., Présence Africaine 1963) (1961) (describing decolonization as a "violent" phenomenon).

214. Alex Bou-Rhodes, *The Infamous Cold Call: Should You Be Terrified?* BC L.: IMPACT (Sept. 6, 2017), https://bclawimpact.org/2017/09/06/the-infamous-cold-call-should-you-be-terrified/.

215. In March of 2020, a vast majority if not all of U.S. law schools transitioned to remote or hybrid delivery of courses in response to the COVID-19 pandemic. One videoconferencing provider, Zoom Video Communications, has seen a seismic increase in use, as remote work and school practices yielded a 3,200% increase in Zoom profits from 2019 to 2020. *See* Stephanie Francis Ward, *Amid Coronavirus Worries, How Do Law Schools Move Online*, ABA J. (Mar. 12, 2020, 3:05PM), https://www.abajournal.com/web/article/Amid-coronavirus-worries-how-do-law-schools-move-online (discussing the industry-wide transition to virtual delivery of legal education); Stephen Gandel, *Zoom's Pandemic Profits Exceeded $670 Million. It's Tax Payment? Zilch*, CBS NEWS (Mar. 24, 2021, 1:45PM), https://www.cbsnews.com/news/zoom-no-federal-taxes-2020/.

216. This discussion derives from Antonio Coronado, *HTTPS:/ /404-Error: The Continued Crash of the Legal Industry*, NE. U.L. REV. FORUM (Sept. 4, 2020), https://nulronlineforum.wordpress.com/2020/09/04/https-404-error-the-continued-crash-of-the-legal-industry/ (citing Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517 (1991)).

217. *Id.*; Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517 (1991).

218. *See, e.g.*, Nicholas S. Zeppos, *2007 Symposium on the Future of Legal Education*, 60 VAND. L. REV. 325 (2007).

of this Article is not to repeat the works and scholarships of Indigenous[219] and Black liberation movements[220]—of *persistence* against settler law and its accompanying profession since time immemorial. Instead, it is to interrogate the imperatives facing the people and all of the profits that make up the U.S. legal industry from the perspective of someone moving—perhaps plummeting—through the prophet pipeline. It is to join in naming and rejecting the prophet industrial complex of the law.

My mom, here and many other places throughout this piece, would likely roll her eyes, shifting in her seat as she sighed in agreement that I was not aiming to become a "real lawyer"[221]—those who fight for life and liberty in the cavernous halls of settler justice. I would laugh and agree, insisting that I never want to. I do not want to be a prophet (maybe more eye rolls). Then she would reply: "You can't change things overnight son; we're *always* going to have these problems and people are *always* going to disagree about them."

To de-prophetize the law is to subvert 'always' and all of its inevitability. It is to reimagine the possibility of legal education beyond that of memorization and cold calls and mountainous debt and dead tongues and the ghosts of dead white men—of *fear*—as well as that of divinity and white saviors and augurs-turned-heroes and legalistic prophets—of *faith*. The effect of the current model is a pedagogical evasion of the Krakens and legal beasts that linger just beyond the classroom. But what would it mean for every U.S. law school to reject both the case method and the 'core' cases of settler law? What would it mean for legal education to be reconfigured around a frame of repair? For the very first course a law student took to be one of naming and condemning settler histories or the threads tying Westminster, Giuliani, and the now?

Legal education, in its current manifestation, teaches myths of divine injustice by grounding the law degree in the courses necessary to pass the bar exam.[222] Mostly nothing more and mostly nothing less.[223] But what might it look like for the law to

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219. As Kenna Neitch notes, the characterization of Indigenous liberation as "resistance" and not "persistence" can reduce these practices to "mere reactions against European (and later Euro-American) colonialism." Kenna Neitch, *Indigenous Persistence: Challenging the Rhetoric of Anti-colonial Resistance*, 45 FEMINIST STUD. 426, 428 (2019). Furthermore, the language of "resistance," Neitch contends, reinforces the otherization of non-dominant cultures. *Id.* Neitch suggests, alternatively that scholarly discourse advance a framing of "persistence," as to not frame Indigenous agency as "contingent on its opposition to a dominant power." *Id. See also* James V. Fenelon & Thomas D. Hall, *Revitalization and Indigenous Resistance to Globalization and Neoliberalism*, 51 AM. BEHAV. SCIENTIST 1867 (2008); Lee Irwin, *Freedom, Law, and Prophecy: A Brief History of Native American Religious Resistance*, 21 AM. INDIAN Q. 35 (1997); Hilary Klein, *A Spark of Hope: The Ongoing Lessons of the Zapatista Revolution 25 Years On*, NACLA (Jan. 18, 2019), https://nacla.org/news/2019/01/18/spark-hope-ongoing-lessons-zapatista-revolution-25-years.

220. In declaring their "Ten Point Program," the Black Panther Party took aim at the judiciary and the inequalities inherent to U.S. settler law. BLACK PANTHER, *supra* note 82, at 3.

221. Dena Robinson & Kimya Forouzan, *For Lawyers of Color, Collective Liberation Looks Like Mental Health Care*, IF/WHEN/HOW (Nov. 25, 2019), https://www.ifwhenhow.org/lawyers-of-color-mental-health/.

222. *See, e.g.*, Emmeline Paulette Reeves, *Teaching to the Test: The Incorporation of Elements of Bar Exam Preparation in Legal Education*, 64 J. LEGAL EDUC. 645 (2015) (defending a "teaching to the test" pedagogical approach to legal education).

223. A recent "reimagining" of legal education from within academia has built upon prior critical scholarships to challenge the structural and curricular rigidity of U.S. law schools. Unsurprisingly, the critiques

adopt a "just transition" model: For law school admissions processes to be centered on a goal of reducing net lawyer production and not a university's profits? What would it look like for the profits and prophecies of the law to instead flow to the remediation of past and current harms?[224] What would it mean for the $160,000 median student loan debt of practicing lawyers (or the $155,000 *starting salary* of a private sector associate, for that matter) to instead become direct financial remuneration for the industry's role in upholding U.S. settler law?[225] For the U.S. Supreme Court

advanced through these efforts reprise legal realism's concern with doctrinal impracticability and pedagogical reliance on structure, not substance. *See, e.g.*, Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y. U. L. REV. 405, 407 (2018); Deborah L. Rhode, *Legal Education: Rethinking the Problem, Reimagining the Reforms*, 40 PEPP. L. REV. 437 (2013); *see also Curriculum B (Section 3)*, GEO. L., https://curriculum.law.georgetown.edu/jd/curriculum-b-section-3/ (last visited Apr. 28, 2021, 9:00AM) (overviewing Georgetown Law's alternative doctrinal curriculum for the 1L year). Law school graduates report feeling unprepared to practice the law and legal scholars have expressed a desire for including live-client work in the 1L curriculum—these both being *inevitable* consequences of the industry's move from an apprenticeship model to the bar exam for the sake of racist gatekeeping. *See* David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. Times (Nov. 19, 2011), https://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html; Nancy Vettorello & Beth Hirschfelder Wilensky, *Reimagining Legal Education: Incorporating Live-Client Work into the First-Year Curriculum*, 8 MICH. B. J. 56 (2017); Subotnik, *supra* note 100, at 365 (providing a historical perspective to the bar exam and the connection between testing, immigration, and racism); Hutton-Work & Guyse, *supra* note 100.

224. For centuries, liberatory movements have continued to advance overlapping and complementary calls for the deconstruction and elimination of colonial regimes. *See, e.g.*, Combahee River Collective, *The Combahee River Collective Statement*, *in* HOW WE GET FREE: BLACK FEMINISM AND THE COMBAHEE RIVER COLLECTIVE (Keeanga-Yamahtta Taylor ed., 2017) (1977) (advancing a vision of Black liberation, anti-racist and anti-sexist politics, collective process, and nonhierarchical distribution of power); *see also* Fannie Lou Hamer, *Nobody's Free Until Everybody's Free*, *in* THE SPEECHES OF FANNIE LOU HAMER: TO TELL IT LIKE IT IS (Maegan Parker Brooks & Davis W. Houck eds., 2014) (1971). This work, in the past few years especially, has included a renewed, explicit demand for the reallocation of funds and resources to repair historical and ongoing harms by the state. *See* Seth J. Prins & Brett Story, *Connecting the Dots Between Mass Incarceration, Health Inequity, and Climate Change*, 110 AM. J. PUB. HEALTH S35 (2020) (explicitly tying the movement for prison decarceration and abolition to a "just transition" model in the Environmental Justice context); Dreisen Heath, *Defunding the Police Is a Reparations Issue*, HUM. RTS. WATCH (Oct. 2, 2020, 10:00AM), https://www.hrw.org/news/2020/10/02/defunding-police-reparations-issue ("To get [to the vision of defunding the police], we need to limit the scope of policing and what police are responsible for, as well as to redirect resources from policing to social services, affordable housing, equitable education, community-based health care systems, and local economic development."); Mariame Kaba *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html (calling for the redirection of the "billions that now to go to the police" as resources for health care, housing, education, good jobs, mental-health checks, and restorative-justice practices); *Abolitionist Principles & Campaign Strategies for Prosecutor Organizing*, CMTY. JUST. EXCHANGE (Jan. 22, 2020), https://www.communityjusticeexchange.org/abolitionist-principles (presenting abolitionist principles for organizing toward the abolition of prosecution).

225. This juxtaposition is not theoretical or a rhetorical critique of entrenched disparity; it is a charge for material repair, an exposition of privately arranged inequity, and a call for the restorative dismantling of the financial pipelines that make up the U.S. legal industry—to take away the money that organizes an industry of harm. *See* Antonio Buti, *The Notion of Reparations as a Restorative Justice Measure*, *in* ONE COUNTRY, TWO SYSTEMS, THREE LEGAL ORDERS – PERSPECTIVES ON EVOLUTION (Jorge Costa Oliveira & Paulo Cardinal eds., 2009); *compare* Stephanie Francis Ward & Lyle Moran, *Law School Debt is Delaying Plans*, ABA JOURNAL (Dec. 1, 2020, 12:00AM), https://www.abajournal.com/magazine/article/law-school-debt-is-delaying-plans-for-recent-grads-and-heres-how-6-are-adapting (discussing U.S. law student debt), *with* Heather Long, *Millions of Americans Are Heading into the Holidays Unemployed and over $5,000 Behind on Rent*, WASH. POST (Dec. 7, 2020, 2:27PM), https://www.washingtonpost.com/business/2020/12/07/unemployed-debt-rent-utilities/, *and Private Sector Salaries*, NALP, https://www.

and Capitol to no longer be altars of domination and to no longer exist as sites of settler sanctity?[226] What would it mean for legal education to truly be open to all and for there to be no more hurdles or pipelines in gatekeeping the practice—for that matter, for augury and prophecy to be decertified?

It would be an anti-imperial *imagining* of our collective futures.

E. To Dispossess & Unimagine

As Professor Amna Akbar recounts in *Toward a Radical Imagination of Law*, discussions of reimagining reach a reoccurring question: "What is the proper role of lawyers within the movement" for collective liberation?[227] For racial justice organizer James Hayes, "[l]awyers must work with movements to imagine. . . the kind of state we want to live in."[228] Whether by "restorative justice"[229] or "collaborative law"[230] or any number of forms, community-specific and harm-contextual work has sought to center individuals—and not doctrine—in an effort to reimagine systems of justice.

The legal profession must expedite the process of parceling out each section of the prophet pipeline for community repair and deconstruction. At its very core, legal education must be reimagined to train future legal advocates for roles of community supporters, of repairers, of listeners—not leaders—and of global liberation. We must be specific in addressing harm while also global in uprooting domination.[231] BIPOC,

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nalp.org/privatesectorsalaries (last visited Apr. 27, 2021, 9:00PM) ("the overall median first-year associate base salary as of January 1, 2021 was $165,000, up $10,000 (6.5%) from 2019, the year of the last survey administration.").

226. *See, e.g.*, Mirzoeff, *supra* note 126 (framing the U.S. Capitol as an active altar of practiced and memorialized white supremacy, with the January 2020 siege serving as merely the latest votive offering to displacement and empire).

227. Akbar, *supra* note 223, at 407.

228. *Id.*

229. Restorative justice theory centers repair, not retribution, in facilitating cooperative, consented transformational change in the lives of those affected by harm. The Center for Justice & Reconciliation describes restorative justice as viewing crime as "more than breaking the law – it also causes harm to people, relationships, and the community. So a just response must address those harms as well as the wrongdoing." Ctr. for Just. & Reconciliation, *What is Restorative Justice?* RESTORATIVE JUST. BRIEFING PAPER 1 (2005), https://www.d.umn.edu/~jmaahs/Correctional%20Assessment/rj%20brief.pdf.

230. The emergence of "collaborative law" builds on the "multi-door courthouse" model of Harvard Law School Professor Frank Sander. *See* Address by Frank Sander at the National Conference on the Causes of Dissatisfaction with the Administration of Justice (Apr. 7-9, 1976), *reprinted in* Sander, *Varieties of Dispute Processing*, 70 F.R.D. 111 (1976) (discussing his concept of the "multi-door courthouse" where a court house is also the site of alternative dispute resolution options as opposed to just litigation). Collaborative law seeks to replace the costly, adversarial "threats and ultimatums" of litigation with "problem-solving strategies" that find "better solutions." *About BLC*, BOS. L. COLLABORATIVE, LLC, https://blc.law/about-blc/ (last visited Apr. 27, 2021, 9:00PM); *Collaborative Divorce and Family Law*, Mass. Collaborative L. Council, https://massclc.org/collaborativedivorce (last visited Apr. 27, 2021, 9:00PM); *Judges Love Collaborative Law-Here's Why*, ABA (July 2018), https://www.americanbar.org/news/abanews/publications/youraba/2018/july-2018/neither-mediators-nor-negotiators–collaborative-lawyers-emphasi/ ("Collaborative law is a bottom-up movement spurred by lawyers' looking to protect families from adversarial divorce proceedings.").

231. *See* David N. Pellow, *Toward A Critical Environmental Justice Studies: Black Lives Matter as an Environmental Justice Challenge*, 13 DU BOIS REV.: SOC. SCI. RSCH. RACE 221 (2016) (discussing the need for critical environmental justice work and for the work toward liberation to be global and specific).

in particular, must reclaim the right to stubbornness, sternness, craftiness, and all of the behaviors banished by white supremacy in our demolition of Empire.[232]

This work unequivocally means the dispossession of settler dreams and colonial notions of "good" legal advocates. These dreams must be actively unimagined, and we must demand nothing short of the total deconstruction of imperial ways of being. The profession must wrangle the ghosts of settlers' past to co-advance—advocate for and defend in the most *zealous* of terms—an anti-capitalist, anti-oppressive, and decolonial imaginary[233] under the intentional and intersectional leadership of movement leaders. 'Imaginary,' deriving from the Latin *im gin rius* for "unreal" or "pretended,"[234] feels most appropriate for the future. Legal workers must be comfortable and steadfast in embracing the unreal, the surreal, the fictitious, and the visions of sovereignty not written in colonial ink.[235]

'We'—the U.S. legal worker and settler profession—can no longer exist. Communities and movement leaders continually demonstrate that there can be no room for prophetic magistrates or augurs-turned-heroes in a future premised on global liberation. As Civil Rights activist Ella Baker poignantly noted in her organizing efforts, "strong people don't need strong leaders,"[236] and the very same is true of lawyers. *See, e.g.*, Attorneys John Eastman[237] and Sidney Powell[238] and Rudy

232. These banned behaviors might be restated as going against white settler notions of professionalism. *See, e.g.,* Aysa Gray, *The Bias of 'Professionalism' Standards*, STANFORD SOC. INNOVATION REV. (June 4, 2019), https://ssir.org/articles/entry/the_bias_of_professionalism_standards ("Professionalism has become coded language for white favoritism in workplace practices that more often than not privilege the values of white and Western employees and leave behind people of color"); Blog, *Professionalism or Socialized White Supremacy*, NASPA (Sept. 24, 2019), https://www.naspa.org/blog/professionalism-or-socialized-white-supremacy.

233. *See, e.g.*, EMMA PÉREZ, THE DECOLONIAL IMAGINARY: WRITING CHICANAS INTO HISTORY xv (1999) (writing that "[t]here is no pure, authentic, original history. There are only stories—many stories."); Amy Verhaeghe, Ela Przybylo & Sharifa Patel, *On the Im/possibilities of Anti-racist and Decolonial Publishing as Pedagogical Praxis*, 28 FEMINIST TEACHER 79 (2018).

234. *Imaginary, adj. and n.*, OXFORD ENGLISH DICTIONARY (3d ed. 2009); *but see Imaginary, adj. and n.*, OXFORD ENGLISH DICTIONARY (3d ed. 2009) ("(in legal use) *fictitious*") (emphasis added).

235. The revolutionary work of Black and Indigenous liberation movements imagines a future of decolonization and global, collective liberation from forms of exploitation and domination. *See, e.g.*, MOVEMENT 4 BLACK LIVES, *supra* note 188 (detailing the visions for liberation and policy agenda of the Movement for Black Lives); *Seeding Sovereignty: Acting in Kinship and Building Community, like Our Grandparents Taught Us to*, SEEDING SOVEREIGNTY, https://seedingsovereignty.org/ (last visited Apr. 27, 2021, 9:00PM) ("By investing in Indigenous folks and communities of the global majority, we cross the threshold of liberation together"); Suzanne Newman Fricke, *Introduction: Indigenous Futurisms in the Hyperpresent Now*, 9 WORLD ART 107 (2019); Ambelin Kwaymullina, Indigenous Standpoints, Indigenous Stories, Indigenous Futures: Narrative from an Indigenous Standpoint in the Twenty-First Century and Beyond (July 18, 2017) (Ph.D. Thesis, University of Western Australia), https://research-repository.uwa.edu.au/en/publications/indigenous-standpoints-indigenous-stories-indigenous-futures-narr.

236. *Ella Baker*, SNCC DIGITAL GATEWAY, https://snccdigital.org/people/ella-baker/ (last visited Oct. 22, 2021).

237. *See* Aaron Blake, *The Architect of Trump's Plot to Steal the 2020 Election Explains Himself— Absurdly*, WASH. POST (Oct. 22, 2021, 10:02AM), https://www.washingtonpost.com/politics/2021/10/22/architect-trumps-plot-steal-2020-election-explains-himself-absurdly/ (discussing conservative lawyer John Eastman's self-proclaimed title as a "white-knight hero" for initially supporting but eventually discouraging Trump's attempt to overturn the 2020 U.S. Election).

238. *See* Brumback, *supra* note 128; Durkee, *supra* note 131; Simon & Sidner, *supra* note 132; Hall, *supra* note 134; Durkee, *supra* note 135; Thomsen, *supra* note 136; Polantz *supra* note 137.

Giuliani[239] and Christopher Columbus Langdell[240] *but see also* RBG[241] and former President Obama[242] and Kim Kardashian[243] and Atticus Finch[244] and all of the many people that we entrust with legal celebrity—canonized and deified in the popular imagination as immune from critique, themselves jury boxes on our collective fates.

The law does not need more licensed augurs or imperial wealth.

Now more than ever, we need healers and storytellers. We need careworkers and resource-finders, organizers, and facilitators. We need people who are equipped with more than a glorified legal Google[245] and who, instead, are prepared to fill their dream community role.[246]

The law does not need more prophets.

The law does not need more lawyers.

ON NAMING DIVINE INJUSTICE

My writing of this piece coincided with (among many, many things) the end of law school and the start of my work as a full-time legal educator. At various points I've become consumed with self-doubt and uncertainty: What was the point of this? (The degree, but even this piece?) Surely it had become brilliantly transparent—clear through the clouds of smoke that enshrouded the capitol on January 6th—that U.S. settler law occupied land, time, and space in patterns of haunting. What good would my writing do in naming this new era of the phantasmal? I equally know that, like the Critical Race practices of storytelling that inform my work, there is a fierce power in naming. I know that we cannot wait nor will an admission of culpability ever come from the U.S. Empire.

So, I join in ripping back the curtains on an experiment[247] not just incomplete but gruesome, in revealing the sorcery of objectivity and the magic of prophecy-making.

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239. Reuters, *supra* note 2.

240. Weaver, *supra* note 217, at 517.

241. *See, e.g.*, Terry Nguyen, *The Commodification of Ruth Bader Ginsburg*, VOX (Sept. 24, 2020, 10:50AM), https://www.vox.com/the-goods/21454169/ruth-bader-ginsburg-merch-political-fandom; Caitlin Gibson, *Sorry, It Turns Out Ruth Bader Ginsburg Is Not Your Liberal Cartoon Superhero After All*, WASH. POST (Oct. 13, 2016, 12:20PM), https://www.washingtonpost.com/news/arts-and-entertainment/wp/2016/10/13/sorry-it-turns-out-ruth-bader-ginsburg-is-not-your-liberal-cartoon-superhero-after-all/.

242. *See, e.g.*, Ben Arogundade, *Terrorist, Superman, Feminist, Messiah: Barack Obama's Life as a Cover Star*, GUARDIAN (Sept. 7, 2017, 1:00AM), https://www.theguardian.com/artanddesign/2017/sep/07/terrorist-superman-feminist-messiah-barack-obamas-life-as-a-cover-star.

243. *See, e.g.*, Lisa Richwine, *Kim Kardashian Shrugs Off Critics, Reveals Law School Progress*, REUTERS (Jan. 18, 2020, 9:15PM), https://www.reuters.com/article/us-television-kardashian/kim-kardashian-shrugs-off-critics-reveals-law-school-progress-idUSKBN1ZI017.

244. *See* Rose Guest Pryal, *supra* note 186; James, *supra* note 203.

245. Here, I reference the inherent gatekeeping function of legal research and of the vested interest that legal research databases have in holding case law and public law behind a paywall.

246. @burnitupbabee, *I don't have a dream job*, TWITTER (July 4, 2020, 11:13 AM), https://twitter.com/burnitupbabee/status/1279433189925294080 (framing the "dream community role").

247. *See, e.g.*, THE FEDERALIST NOS. 12, 16 (Alexander Hamilton) (describing the creation of the American Republic as an "experiment"); *compare* ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 34 (Henry Reeve trans., The Pennsylvania State University 2002) (1835) (characterizing the construction of an American society as "the great experiment"), *with Anderson Cooper 360 Degrees*, CNN (May 29, 2020,

I join in angrily tearing up the film, billable hours, the movies, and the millions that legitimate an otherwise imploding U.S. legal industry. The legal industry is unable to meaningfully respond to the interlocked crises of the past three years or any of the calamities that it has created. In this way, law school has made me a legal agnostic—a belief that neither Duncan Kennedy nor Jules Lobel fully capture and a hyper-awareness of the faith and non-faith foundational to settler law.

Despite the impasses, the hauntings that thumped and crashed against each page, I chose to continue writing this piece for different people. I wrote for (maybe addressed to) the well-meaning classmate. *Hell*, I wrote for the well-meaning professor, who believes that their degrees insulate them from critique. And I wrote for everyone in legal academia that thinks prophecy does not pertain to them—that they're the "good" and *zealous* ones. This piece became for all minoritized students who enter an open field of prophets and phantoms, who must either learn to shout through time or else be lost beneath the weight of undue boulders—sinking to the bottom of pools and into the jaws of great beasts and other Krakens of injustice.

This piece is for the students who will withstand the ordeal of legal fire but will be assured that this is merely training us. Training *who* and for *what*? *Draining us* for how long? It is to affirm that the metric of prophecy was never meant for people, that it never serves us, and that it will forever mean deadening dualities of creation *and* destruction, of power *and* subordination, of linked faith *and* fear. And I wrote this piece for *me*, to name the reverberations of legal righteousness and all the divine dissonance that sought to split me in two.

To students: Fasten yourself to one another. Hold tight against the currents that churn through augur pipelines. Know that it was never you, or your lack of Latin, or your propensity for prophecy; it was always about divine injustice.

8:00PM), http://transcripts.cnn.com/TRANSCRIPTS/2005/29/acd.01.html (documenting Cornel West's assertion that America is a "failed social experiment"), *and* Jonathan Allen, *Trump Envisioned 'American Carnage.' Now He's Got It.*, NBC NEWS (May 31, 2020, 2:02PM), https://www.nbcnews.com/politics/white-house/trump-envisioned-american-carnage-now-he-s-got-it-n1220361 (reporting the "reality" of "American carnage" and domestic combat following the state-sanctioned killing of George Floyd); *see also* Nancy Scheper-Hughes, *Another Country? Racial Hatred in the Time of Trump: A Time for Historical Reckoning*, 7 HAU: J. ETHNOGRAPHIC THEORY 449, 450 (2017) (conceptualizing America as a "failed experiment in liberty and justice").