

ALIENATION IN LAW SCHOOL

There is a lot to admire about lawyers. Many commit their professional lives to the pursuit of a fairer world,¹ and at the same time they uplift the basic principles that underlie our system of social cooperation.² They are often smart, principled, and hardworking. Yet despite all that is good about the legal profession, it also has its share of darkness. Information on lawyers' well-being is limited,³ but empirical findings demonstrate that lawyers experience high levels of anxiety, depression, and substance use disorder,⁴ which may be acute symptoms of a broader sense of unhappiness in the profession.⁵ Qualitatively, scholars and practitioners report feelings of malaise and regret that linger around the culture of the bar.⁶ Those feelings may begin in law school.⁷

¹ Jerome Shestack, then-president of the American Bar Association, defined a lawyer as “an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good.” Jerome J. Shestack, Commentary, *Defining Our Calling*, ABA J., Sept. 1997, at 8, 8.

² See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 338 (1987) (“Non-white lawyers have passionately invoked legal doctrine, legal ideals, and liberal theory in the struggle against racism. Their success is attributable in part to the passionate response that conventional legalisms can at times elicit.” (footnote omitted)); see also *id.* at 338–42 (discussing examples of nonwhite lawyers advocating a “determinate rule of law committed to the end of oppression,” *id.* at 341).

³ Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 873 (1999).

⁴ After a flurry of studies in the 1990s raised alarms about startlingly high rates of mental illness in the legal profession, “a quarter century . . . passed with no . . . [additional] data emerging.” Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 46 (2016). To fill that gap, a 2016 study examined alcohol use, anxiety, and depression in 11,278 attorneys from nineteen states who were at various stages of their legal careers. *Id.* at 47–51. It found that attorneys experience significant rates of anxiety, depression, stress, and problematic drinking. *Id.* at 51. The earlier studies, in the 1980s and 1990s, also found high levels of anxiety, depression, suicidal thoughts, and alcohol dependency among law students. See Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1346–47, 1347 nn.31–32, 1379 (1997) (summarizing the literature); Schiltz, *supra* note 3, at 874–81 (same). Notably, these levels were higher for law students and lawyers than for incoming law students, suggesting that the experience of becoming a lawyer could be connected to the incidence of mental illness. See Daicoff, *supra*, at 1355, 1378–82.

⁵ For a recent analysis of the state of lawyers' overall psychological well-being, see generally Krystia Reed & Brian H. Bornstein, *A Stressful Profession: The Experience of Attorneys, in STRESS, TRAUMA, AND WELLBEING IN THE LEGAL SYSTEM* 217 (Monica K. Miller & Brian H. Bornstein eds., 2012).

⁶ See Schiltz, *supra* note 3, at 881–88 (reporting the results of several studies). For a more personal account of regret, see PAUL BUTLER, LET'S GET FREE 1–19 (2009), which recounts the author's experience as a prosecutor and his reasons for doing the job — as well as his own experience being wrongfully accused of a crime, which led him to rethink his choice of profession.

⁷ See Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 524 (1998) (“Students enter law school feeling slightly anxious but optimistic about their new endeavor. Significant numbers of them find law school a puzzling and isolating experience and . . . have vague fears that they may have lost something in the process.”).

It is easy to say that lawyers' unhappiness is a problem. It is more complicated to describe the sources of their unhappiness, and still more complicated to prescribe a fix — or even to be sure that fixes are possible or optimal. In an effort to tackle the descriptive question, this Note reflects on why lawyers might be unhappy, but it does not take a position on whether the structural sources of lawyers' unhappiness are failures in need of remedy or merely regrettable necessities of the profession. It focuses instead on how law students change over the course of law school, because law school is how nonlawyers become lawyers. In particular, it offers a concept for individual law students to use in describing their own experiences and an account of how that concept might function in the lives of law students. That concept is *alienation*, defined as a feeling of dissonance that arises when one makes a series of choices over time that fail to pursue one's deeply felt priorities. Three lessons of law school may contribute to alienation: first, that lawyers should pursue what matters to them through positive law; second, that lawyers should measure their worth by the prestigiousness of their achievements; and third, that positivism and prestige should remain central in lawyers' careers after they graduate.

This Note's scope is intentionally narrow: it offers a vocabulary term and a theoretical account of what that term means and how it functions in law school. But expanding the vocabulary available to describe the experience of lawyers and law students is important for two reasons. First, in order to produce sound analysis of a subject, it is necessary to have the right terms to describe it.⁸ Elucidating clear concepts, and a sense of what they can and cannot explain, is an important step toward understanding the problem of unhappiness in the legal profession. Second, where subjective experiences are concerned, simply being able to name one's struggle may help one respond more productively to it.⁹ And as lawyers become more aware of themselves, they may also provide better services to clients and support to their colleagues.¹⁰ It is important to emphasize that this Note is not making a veiled criticism of cultural and structural elements of law school. Rather, it is aimed at law students and lawyers seeking to clarify their own subjective experiences of law school, whatever those experiences may be. For this reason, this Note's contribution is intentionally compatible with both critical

⁸ See MIRANDA FRICKER, EPISTEMIC INJUSTICE 147–48 (2007); JOSÉ MEDINA, THE EPISTEMOLOGY OF RESISTANCE 91–95 (2013).

⁹ Accepting one's feelings is beneficial to a person's mental health. See Brett Q. Ford et al., *The Psychological Health Benefits of Accepting Negative Emotions and Thoughts: Laboratory, Diary, and Longitudinal Evidence*, 115 J. PERSONALITY & SOC. PSYCH. 1075, 1087–89 (2018). But a person cannot accept a feeling that she cannot clearly describe. Cf. sources cited *supra* note 8.

¹⁰ See Susanne M. Jones, Graham D. Bodie & Sam D. Hughes, *The Impact of Mindfulness on Empathy, Active Listening, and Perceived Provisions of Emotional Support*, 46 COMM'N RSCH. 838, 851–55 (2019).

and positive appraisals of law school culture and of the legal profession more broadly.

I. SELF-DEFINING CHOICES AND ALIENATION

Seamus Heaney writes: “The way we are living, timorous or bold, will have been our life,”¹¹ evoking how the choices that one makes come to define who one is. That point accords with the observation that choices are important to the meaning of being an individual.¹² Being an individual has two parts. First, a person must have “a capacity for critical reflection and intention formation” allowing the person to “make choices that are recognizably her own.”¹³ Second, she must actually make choices over time that really do reflect who she is, so that her “life and character . . . are meaningfully . . . [hers.]”¹⁴ This definition recognizes that systematic oppression and the variance of fate make different choices available to different people and subject those choices to differing real-life consequences.¹⁵ All that matters is what a person chooses in response to the realities of her life. Still, it is hard to make choices that are truly one’s own, and not everybody fashions a life that is distinctly hers from the options that are available to her. Externally, someone may be “subject to overwhelming pressures of conformity” that deprive her of “meaningful freedom of thought.”¹⁶ Internally, she may simply be less than honest with herself, “repressi[ng] . . . [her] deeply felt aims.”¹⁷

It feels strange, even harmful, to make choices that do not resonate with us as our own. Professor Joseph Raz writes:

A person who feels driven by forces which he disowns but cannot control . . . is thoroughly alienated from [his life]. . . . One can feel estranged from one’s achievements. One may feel incapable of taking pride and pleasure in one’s doings because one does not feel that they are one’s own. . . . [I]n one degree or another [these feelings] are part of the life of many.¹⁸

This theme is explored rigorously in the psychological literature on cognitive dissonance and regret.¹⁹ Cognitive dissonance is the discomfort that one experiences when she makes a choice that is not consistent with

¹¹ SEAMUS HEANEY, *Elegy*, in *FIELD WORK* 23, 23 (1979).

¹² See Benjamin Eidelson, *Respect, Individualism, and Colorblindness*, 129 *YALE L.J.* 1600, 1638 (2020). Professor Eidelson’s account builds on Professor Joseph Raz’s work on autonomy. See JOSEPH RAZ, *THE MORALITY OF FREEDOM* 372–75 (1986).

¹³ Eidelson, *supra* note 12, at 1638.

¹⁴ *Id.*

¹⁵ See *id.* at 1645.

¹⁶ *Id.* at 1637.

¹⁷ RAZ, *supra* note 12, at 382.

¹⁸ *Id.* at 382–83.

¹⁹ For an introduction to the theory and its evolution, see generally Eddie Harmon-Jones & Judson Mills, *An Introduction to Cognitive Dissonance Theory and an Overview of Current Perspectives on the Theory*, in *COGNITIVE DISSONANCE* 3 (Eddie Harmon-Jones ed., 2d ed. 2019).

who she thinks she is.²⁰ For example, a person who gives up a career in the arts to attend law school might feel tension between the choice and his identity as an artist. This dissatisfaction arises in major part from the ongoing act of choosing itself, not only from the consequences of the choice.²¹ Karl Marx used “alienation” in a similar sense, positing that self-definition is a process achieved in part through work.²² If a person’s work becomes “external” to him, in the sense that he “does not confirm himself in his work, but denies himself,”²³ the person experiences alienation. Marx observes that alienation can arise when none of the choices available in a particular system enable a person to do something that satisfies him.²⁴

A person experiences alienation when he looks at the life he has made through his external choices and does not recognize his internal sense of self looking back. Alienation arises from choices over time: choices of actions, of words, of priorities; in particular, choices of daily work. For example, at the back of a law student’s mind might linger the uneasy doubt that his routine life in school involves neglecting or mistreating things — people, creative practices, wellness habits — that were once an important part of how he saw himself. Such a feeling could arise from a pattern of choices that aim at something other than what really matters to him. People can make choices like that for internal reasons, when they are unaware of or afraid to act on the things that are most important to them;²⁵ for external reasons, when coercive pressures make them feel that they should act in a way that is different from how they want to act;²⁶ and for structural reasons, when they have a free choice

²⁰ See generally Elliot Aronson, *Dissonance Theory: Progress and Problems*, in THEORIES OF COGNITIVE CONSISTENCY 5 (Robert P. Abelson et al. eds., 1968). Subsequent interventions complicated that idea in two ways: first, by proposing that people evaluate some actions against societal norms, rather than their own self-conceptions, see generally Joel Cooper, *Unwanted Consequences and the Self: In Search of the Motivation for Dissonance Reduction*, in COGNITIVE DISSONANCE 149 (Eddie Harmon-Jones & Judson Mills eds., 1st ed. 1999); and second, by suggesting that in some cases, a dissonant action could prompt a change in the underlying self-conception, rather than the dissonant action always being resolved as an exception to the dominant self-conception, see generally Claude M. Steele, *The Psychology of Self-Affirmation: Sustaining the Integrity of the Self*, 21 ADVANCES IN EXPERIMENTAL SOC. PSYCH. 261 (1988).

²¹ People feel a greater sense of regret when they can still change course but continue to make the choice that they regret — in particular, educational and professional choices — than when the regretted choice is past and unalterable. See Neal J. Rouse & Amy Summerville, *What We Regret Most . . . and Why*, 31 PERSONALITY & SOC. PSYCH. BULL. 1273, 1283–84 (2005).

²² See SEAN SAYERS, MARX AND ALIENATION 20–21 (2011).

²³ KARL MARX, *Economic and Philosophical Manuscripts of 1844*, in EARLY WRITINGS 279, 326 (Pelican ed. 1975).

²⁴ See SAYERS, *supra* note 22, at 63 (“[Marx takes the position that] even in the freest of liberal societies, individuality and liberty are limited by the alienation which is a pervasive feature of modern life. On the one hand, individuals seem[] detached and isolated from each other, while on the other hand the enormous economic powers and social relations which we ourselves have created have escaped our control and rule over us as independent and hostile forces.”).

²⁵ See *supra* notes 12–19 and accompanying text.

²⁶ See *supra* note 16 and accompanying text.

between options but none is sufficient for them to fully realize their goals.²⁷ This feeling is unpleasant and associated with regret and confusion.²⁸

II. ALIENATION IN LAW SCHOOL

A. Law School as a Self-Defining Choice

A person's choice of work is an important self-defining choice.²⁹ Law students choose to enter the profession in part because it promises a variety of external benefits, including money, social reputation, and the power that comes with being legally and factually capable of practicing the trade.³⁰ These benefits are valuable in their own right. They make incoming students' own lives better and are instrumentally valuable for the people and communities that matter to aspiring lawyers. And for many people, such as those whose parents need financial support or those who are intimately connected to a community in profound need of legal services, the choice to pursue these benefits hardly feels like a choice at all.³¹ But this Note addresses law students who choose to go to law school, at least in part, for reasons beyond the external benefits it might bring.³² Some law students are attracted to the profession's promise of "something more, something more socially constructive than just doing a highly respectable [and well-paid] job."³³ For these students, one important motivation for choosing law school is that it promises to let them pursue important passions to a greater extent than they could in another profession.

²⁷ See *supra* note 24 and accompanying text.

²⁸ See *supra* notes 14–18 and accompanying text.

²⁹ Cf. Richard O. Brooks, *Ethical Legal Identity and Professional Responsibility*, 4 GEO. J. LEGAL ETHICS 317, 317 (1990) ("Students in college and law school may be seeking to define themselves as they adopt their professions . . .").

³⁰ For evidence that law students are motivated by the compensation and reputation of the profession, see Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCIS. & L. 261, 271 tbl.1 (2004). For evidence that law students also hope to use the power of the law to protect the people and causes they care about, see, for example, *NYLS Roundtable: Why Did You Choose to Go to Law School?*, N.Y. L. SCH. (Dec. 12, 2022) [hereinafter *NYLS Roundtable*], <https://news.nyls.edu/nyls-roundtable-why-did-you-choose-to-go-to-law-school> [<https://perma.cc/92GA-29VG>].

³¹ Cf. *NYLS Roundtable*, *supra* note 30.

³² Incoming law students' motivations include emotional intimacy, personal growth, community contribution, financial success, appealing appearance, and social popularity, similar to the motivations of undergraduates. See Sheldon & Krieger, *supra* note 30, at 271. Notably, at the start of law school, incoming students are more interested in intrinsic values over external appearances than are graduating college seniors. *Id.*

³³ Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 592–93 (1982).

The something-more that people want to pursue as law students and lawyers varies by person, but by definition, it has extralegal content.³⁴ Such students want to feel that they are not only enriching themselves and the people around them, but also advancing some vision of good in their own lives and the world.³⁵ Put differently, law students have ideas of what makes for a good life,³⁶ and they believe that law is a job that will enable them to pursue those commitments and parts of themselves. Law students “contain multitudes,”³⁷ but this analysis focuses on two normative ideals that are closely linked to the legal profession: justice and truth. The following paragraphs elaborate why people might believe law school is a good place to (1) pursue deep commitments to justice and (2) creatively seek truth.

Making the world a more just place is an important commitment of some incoming law students. One may hope to advance a particular cause; to zealously represent the interests of individuals; or simply to practice law well, out of a conviction that doing law *is* doing justice.³⁸ Each of these commitments has examples in the law. There are the cause lawyers,³⁹ the client-centered public defenders and civil legal service providers,⁴⁰ and the jurists whose commitment to fairness is

³⁴ Professor Duncan Kennedy writes: “There is the idea of . . . service through law, . . . a deep belief that in its essence law is a progressive force There is a contrasting, more radical notion, that law is a tool of established interests, . . . but [one] that . . . a coldly effective professional can sometimes turn against the dominators.” *Id.* at 592; *cf.* Matsuda, *supra* note 2, at 324.

³⁵ Professor Deborah Rhode writes:

Over the last century, attorneys have . . . appeared as . . . “high priests of justice,” with eyes well-elevated “above the golden calf.” Though contemporary metaphors are more subdued, legal practice is still idealized as a self-directed calling, informed by “the spirit of a public service.”

Deborah L. Rhode, *Ethical Perspectives on Legal Practice*, 37 *STAN. L. REV.* 589, 592 (1985) (footnotes omitted) (quoting THERON G. STRONG, JOSEPH H. CHOATE 130 (1917); David J. Brewer, *The Ideal Lawyer*, 98 *ATL. MONTHLY* 587, 591 (1906); ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 14 (1953)).

³⁶ *Cf.* Brooks, *supra* note 29, at 317 (“The fundamental question in legal ethics is: How does one lead a good life in the law?”). In spite of its lofty evocation, the “good life” in moral philosophy can encompass deep — and deeply practical — political commitments. *See, e.g.*, Jon Elster, *Self-Realization in Work and Politics: The Marxist Conception of the Good Life*, 3 *SOC. PHIL. & POL’Y* 97, 97–99 (1986).

³⁷ WALT WHITMAN, *SONG OF MYSELF* 69 (1904).

³⁸ *See, e.g.*, *NYLS Roundtable*, *supra* note 30 (providing evidence in law students’ own words).

³⁹ *See* Kenneth W. Mack, *Law and Local Knowledge in the History of the Civil Rights Movement*, 125 *HARV. L. REV.* 1018, 1040 (2012) (book review) (praising a bygone era in which “civil rights lawyers, and civil rights advocates, dared to believe that they could change the world, and often found unexpected rewards . . . in their efforts to do so”); Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 *STAN. L. REV.* 821, 864 (2021) (describing a new kind of lawyering in which attorneys and legal scholars engage their projects “in solidarity and in conversation with social movements”).

⁴⁰ *See* Rebecca Sharpless, *More than One Lane Wide: Against Hierarchies of Helping in Progressive Legal Advocacy*, 19 *CLINICAL L. REV.* 347, 385–94 (2012) (praising the unique and undervalued contributions of progressive direct-services lawyers, especially women).

extolled as an example for the current Supreme Court.⁴¹ Further, a commitment to justice is an important part of how the legal profession understands and describes itself, both internally and publicly.⁴² The conceptual links between law and justice are so tight in the United States that the two are sometimes used interchangeably.⁴³ For people whose sense of self is built in part on being a person who fights for justice, being able to pursue this commitment is important, and a career that offers the chance to do so is exciting.

Another normative commitment that may bring students to law school is to seek and express truth. Incoming law students who found a sense of purpose in a humanistic, scientific, or creative discipline but felt that their work was too remote or academic, could regard the law as a field in which they would be able to apply their skills to real-life issues and effect tangible change.⁴⁴ Further, such students might be attracted to the apparent interdisciplinarity of law,⁴⁵ the way that legal writings make reference to statistics, history, literature, music, and even sports.⁴⁶ They could hope that law's broad commitment to truth will

⁴¹ *E.g.*, *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2350 (2022) (Breyer, Sotomayor & Kagan, JJ., dissenting) (“[Justices] O’Connor, Kennedy, and Souter . . . were judges of wisdom. They would not have won any contests for the kind of ideological purity some court watchers want Justices to deliver. But if there were awards for Justices who left this Court better than they found it? And who for that reason left this country better? And the rule of law stronger? Sign those Justices up.”).

⁴² For example, a past dean of Harvard Law School is quoted as saying in an introductory address:

There are . . . questions about whether and how the law can be an instrument of a just society and they concern us all. If you find yourself worrying about such issues, you are in good company. If lawyers who build their livelihoods on those processes are not morally obliged to serve as their guardians, who does have that obligation?

Robert Granfield & Thomas Koenig, *Learning Collective Eminence: Harvard Law School and the Social Production of Elite Lawyers*, 33 SOCIO. Q. 503, 507–08 (1992); *see also* Harvard Law School, *2022 Last Lecture Series | Jon Hanson*, YOUTUBE, at 31:38 (Apr. 29, 2022), <https://www.youtube.com/watch?v=VM52Uoe8SbA> [<https://perma.cc/5ATY-VW7Z>] (discussing incoming students’ justice commitments); *The Court and Constitutional Interpretation*, SUP. CT. U.S., <https://www.supremecourt.gov/about/constitutional.aspx> [<https://perma.cc/QN84-P8S7>] (describing “equal justice under law” as the “ultimate responsibility” of the Supreme Court).

⁴³ *See, e.g.*, Erica Bryant, *Why We Say “Criminal Legal System,” Not “Criminal Justice System,”* VERA (Dec. 1, 2021), <https://www.vera.org/news/why-we-say-criminal-legal-system-not-criminal-justice-system> [<https://perma.cc/5ZH2-4R6T>] (explaining the need to distinguish law from justice when describing the United States criminal system).

⁴⁴ The law is, of course, a professional realm in which one’s ability to move others carries real consequences. *See* Joseph William Singer, *Persuasion*, 87 MICH. L. REV. 2442, 2442 (1989).

⁴⁵ Note, however, that some scholars oppose the interdisciplinization of law in favor of pure legal reasoning. *See* Kathleen M. Sullivan, *Foreword: Interdisciplinarity*, 100 MICH. L. REV. 1217, 1217–19 (2002) (describing and then rebutting this criticism).

⁴⁶ *See, e.g.*, Michael Heise, *Brown v. Board of Education*, *Footnote 11, and Multidisciplinarity*, 90 CORNELL L. REV. 279, 307–18 (2005) (statistics and history); Kenji Yoshino, *Revenge as Revenant: Titus Andronicus and the Rule of Law*, 21 YALE J.L. & HUMANS. 203 *passim* (2009) (literature); Alex B. Long, *[Insert Song Lyrics Here]: The Uses and Misuses of Popular Music Lyrics in Legal Writing*, 64 WASH. & LEE L. REV. 531, 540 (2007) (music); *Lockhart v. United States*, 577 U.S. 347, 351–52 (2016) (sports); Douglas E. Abrams, *References to Baseball in Judicial Opinions and Written Advocacy*, 72 J. MO. BAR 268 *passim* (2016) (same).

make room for them to use other vocabularies that are important to them as advocates.⁴⁷

These two normative visions of a legal career — oriented toward justice and truth — are more than the result of naïve optimism. They are modeled and debated in the pages of law reviews,⁴⁸ advertised on the websites of law schools,⁴⁹ and illustrated in popular literature.⁵⁰ At their core, these visions reflect the hope that law can be a compassionate, life-affirming practice.⁵¹ This is an admirable vision. Law dictates the terms of human coexistence, and as such, it should be attentive and responsive to the needs and lives of real people.⁵² Lawyers who see the trade as more than a vehicle for money and reputation are a credit to their profession. But if the law does not make space for them, law students with those ambitions may find themselves squeezed into roles that do not fit them. In that event, a student could reasonably look at the life she had chosen and find important parts of herself missing. In other words, she could feel alienated.

⁴⁷ See Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 HARV. NEGOT. L. REV. 1, 18–20 (2002) (surveying various approaches to expanding the bounds of legal advocacy and education).

⁴⁸ For examples of the law-as-justice paradigm in law reviews, see sources cited *supra* notes 39–40. For examples of the law-as-interdisciplinary-truth paradigm in law reviews, see sources cited *supra* notes 45–47.

⁴⁹ E.g., Brian Leiter, *Interdisciplinary Legal Education and Scholarship: The Case of Law and Philosophy*, UNIV. CHI. L. SCH. (Apr. 8, 2014), <https://www.law.uchicago.edu/news/interdisciplinary-legal-education-and-scholarship-case-law-and-philosophy> [<https://perma.cc/HE76-JLBE>] (“The University of Chicago Law School has been at the forefront of interdisciplinary legal education and scholarship, and long before that became the norm in law schools nationwide.”); Amy Spooner, *Michigan Access Program Builds Community, Social Justice Activism*, UNIV. MICH. L. SCH. (Aug. 23, 2023), <https://michigan.law.umich.edu/news/michigan-access-program-builds-community-social-justice-activism> [<https://perma.cc/XUT9-N8CZ>] (describing a program that “helps [incoming students] hit the ground running on being social justice advocates during law school and beyond”).

⁵⁰ See generally, e.g., BRYAN STEVENSON, *JUST MERCY* (2014); Reginald Dwayne Betts, *Could an Ex-Convict Become an Attorney? I Intended to Find Out*, N.Y. TIMES MAG. (Oct. 16, 2018), <https://www.nytimes.com/2018/10/16/magazine/felon-attorney-crime-yale-law.html> [<https://perma.cc/L2EA-XHTK>] (describing the author’s admitted-students weekend at Yale Law School, where the dean’s address counted among the students “a Cordon Bleu chef, military officers, a poet — me”).

⁵¹ This belief resonates with people at the very top of the legal profession. For example, then-Dean Martha Minow, of Harvard Law School, shared two relevant aspects of her personal purpose in a 2014 interview. Christina Pazzanese, *Martha Minow’s Sense of Purpose*, HARV. L. SCH. (Apr. 23, 2014), <https://hls.harvard.edu/today/martha-minows-sense-purpose> [<https://perma.cc/8YCA-CBA5>]. First, her life “was going to have to deal with issues of social injustice,” and second, her thinking was influenced by clerking for Judge David Bazelon, whose “approach to judging was very much revered by people at Yale — a very interdisciplinary approach, bringing into the law psychology, sociology, and so forth. Working for him was like a seminar every day.” *Id.*

⁵² Cf. Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT’L BLACK L.J. 1, 6 (1988) (“[The] dichotomy between rational, objective commentary and mere emotional denunciation is often a false one . . . [that] could be averted if professors . . . would give students permission to drop the air of perspectivelessness, to stand within their own identity”); Riskin, *supra* note 47, at 9 (“[L]awyers and law professors have promoted ‘comprehensive’ approaches that would ‘humanize’ or broaden legal education or law practice.”).

B. *Change in Law School*

Over the course of law school, people change. That basic claim is supported by empirical evidence of various shifts that occur from the start of 1L until graduation.⁵³ Generally, students experience a shift from intrinsic motivation to external motivation and a reduction in subjective well-being.⁵⁴ At least one in two incoming law students who want to work in public interest will end up at a private firm when they graduate,⁵⁵ and whether public or private, students' sense of professional horizons narrows toward "one path of achievement."⁵⁶ Incoming law students' mental health "start[s] out little different from [that of] students in other professional fields and from the general population."⁵⁷ But over the course of law school, they "report large increases in . . . anxiety, depression, hostility, and paranoia."⁵⁸

That people change in law school is hardly surprising. After all, the point of law school is to immerse students in a particular way of thinking and interacting. Yet law school's training, with its emphasis on "faculty interrogation . . . and public performance,"⁵⁹ is:

intentionally destabilizing . . . [and contains a] disciplinary aspect . . . [that] encourages students to form their sense of selves and their success in terms of how well they do in . . . rituals of performance and competition . . . [that] recall[] the status hierarchies of high school where adolescents compete to conform.⁶⁰

It could be that this experience of learning to think like a lawyer carries serious consequences. Beyond basic skills, students learn ways of valuing and ranking themselves and "ideas about the possibilities of life as

⁵³ For empirical accounts of change in law school, see John Bliss, *From Idealists to Hired Guns? An Empirical Analysis of "Public Interest Drift" in Law School*, 51 U.C. DAVIS L. REV. 1973, 2020–23 (2018); Sheldon & Krieger, *supra* note 30, at 280–82; and Daicoff, *supra* note 4, at 1403–10. For qualitative and autobiographical accounts, see generally Bennett Capers, *The Law School as a White Space*, 106 MINN. L. REV. 7 (2021); Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515 (2007); Granfield & Koenig, *supra* note 42; and Kennedy, *supra* note 33.

⁵⁴ Sheldon & Krieger, *supra* note 30, at 264.

⁵⁵ See Bliss, *supra* note 53, at 1975 & n.1. The same study empirically validates this general trajectory and posits a "revised socialization timeline" in which 1Ls with vague public interest preferences apply to law firms out of risk aversion, construct a new narrative around their interest in the law during the law firm interview process, and ultimately accept offers at large firms, which they still perceive negatively, resulting in an "[i]nstrumental and civically disinvested lawyer identity." *Id.* at 2020–21.

⁵⁶ Granfield & Koenig, *supra* note 42, at 518.

⁵⁷ Sheldon & Krieger, *supra* note 30, at 262.

⁵⁸ *Id.* The same study empirically validates these claims and finds a correlation between a decline in subjective well-being and particular attitudinal changes that occur during law school. See *id.* at 283. For an earlier study supporting the same claim with regard to depression, anxiety, and other mental illnesses, see G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 AM. BAR FOUND. RSCH. J. 225, 246 (1986).

⁵⁹ Sturm & Guinier, *supra* note 53, at 521, 523.

⁶⁰ *Id.*

a lawyer” that prepare them to submit to hierarchical work environments.⁶¹ Students change or conceal important parts of themselves that are connected to their social identities.⁶² And the consequences of these lessons are not all abstract. As students proceed through law school, they report “less aggregate [subjective well-being], positive [feelings], [and] life-satisfaction, and more negative [feelings].”⁶³

In order to more precisely describe the change that occurs in law students, the next sections argue that over the course of law school, students find it harder and harder to pursue important commitments that factored in their decision to become lawyers. Because their self-defining choices no longer reflect important parts of themselves, such students feel partially alienated from their life in the law.⁶⁴ In the words of one student, “[Y]ou create a new person when you tell someone this is what I am I was saying [that I wanted to pursue litigation practice in a large law firm] so much I started to believe it.”⁶⁵ In the process, a student may come to feel “estranged from [her] achievements . . . [and] incapable of taking pride and pleasure in [her choices] because [she] does not feel that they are [her] own.”⁶⁶ The following sections describe three ways that law school impacts the self-defining choices available to lawyers.

Externally, students learn that to be taken seriously, they need to state their arguments through the abstract vocabulary of positive law. Internally, students learn to measure their professional worth on a scale of prestige. And as they look to the future, they recognize that these are the realities of their chosen profession. Each of these lessons — what constitutes a good legal argument, what defines a good lawyer, and what is possible for a life in the law — creates distance between the something-more that people hoped to realize through their careers in the law and the actual choices they make. Even if these lessons are ultimately worth the cost, if they nudge law students into choices that are different from the ones that they imagined themselves making at the start of law school, they may produce alienation. But determining the validity of these lessons is not the point. Rather, it is that by acknowledging their relationship to alienation, law students and lawyers can better

⁶¹ Kennedy, *supra* note 33, at 591.

⁶² See Capers, *supra* note 53, at 11–12 (explaining that to “master[] the ‘language of law’” as a “Black person in a white space,” the author “had to ‘unrace’ myself . . . [and] adopt[] . . . a ‘bleached out identity’” (citing Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 CARDOZO L. REV. 1577, 1601 (1993))); LANI GUINIER, MICHELLE FINE & JANE BALIN, *BECOMING GENTLEMEN* 28–29 (1997) (“For these women, learning to think like a lawyer means learning to think and act like a man.”).

⁶³ Sheldon & Krieger, *supra* note 30, at 280.

⁶⁴ Alienation of this kind may have started earlier in life, perhaps far earlier. The point is not to place unique blame on law school, but rather to call attention to the process for the sake of law students’ own self-understanding.

⁶⁵ Bliss, *supra* note 53, at 2023.

⁶⁶ RAZ, *supra* note 12, at 382–83.

understand their self-defining choices and, as proposed in Part III, engage in practices that strengthen their sense of agency as they make self-defining choices in their legal careers.

C. *A Positivist Vocabulary*

Law school is as much about learning to *speak* like a lawyer as it is about learning to think like one.⁶⁷ That is, it is about learning a set of rules that distinguish better arguments from worse ones from nonsense ones — about learning what to say if one wants to be taken seriously.⁶⁸ Law school teaches or reinforces that serious legal communication begins in positivism, meaning argument about the content of the rules that already have been enacted by legislatures, promulgated by agencies, and announced by courts. Students receive this message explicitly, through introductory first-year materials explaining the hierarchy of different sources of law in our system of government,⁶⁹ and implicitly, through an intense focus throughout the core first-year curriculum on the history of doctrinal and statutory law across the blackletter classes.⁷⁰ Professors may raise other ideas about the content of our law, such as alternative philosophies of legal meaning⁷¹ or dynamic theories of constitutional interpretation,⁷² and many focus on external critiques of the consequences of our law, often called “policy” arguments.⁷³ But when these theories are discussed after first establishing the positive law in an area, and only then as alternatives or as external critiques, their discussion reinforces positivism as the mainstream method of legal reasoning.

⁶⁷ See Sturm & Guinier, *supra* note 53, at 527 (describing how a professor’s teaching role as Socratic judge involves “construct[ing] a contest[,]. . . serv[ing] as the arbiter of excellence and truth[, and] . . . judg[ing] class contributions] by their cleverness and responsiveness to the professor’s chosen line of inquiry”).

⁶⁸ *Id.* (“Strong students are rewarded for being able to differentiate between a winning and losing argument . . .”).

⁶⁹ See, e.g., *Sources of Law: Cases, Statutes, Secondary Sources and More*, U.C. COLL. L., S.F. (Jan. 13, 2023, 9:16 AM), <https://libguides.uchastings.edu/academic-success/sourcesoflaw> [<https://perma.cc/F4XU-4M7C>].

⁷⁰ See, e.g., *Course Descriptions for Required 1L Classes*, UNIV. VA. SCH. L., <https://www.law.virginia.edu/academics/course-descriptions-required-1l-classes> [<https://perma.cc/F78Q-GBB5>]; *J.D. Curriculum*, VAND. SCH. L., <https://law.vanderbilt.edu/jd-program/curriculum> [<https://perma.cc/LLH8-5LHD>].

⁷¹ For example, natural law, see generally Nicola Lacey, *Philosophy, Political Morality, and History: Explaining the Enduring Resonance of the Hart-Fuller Debate*, 83 N.Y.U. L. REV. 1059 (2008), or constructivism, see generally Scott J. Shapiro, *The Hart-Dworkin Debate: A Short Guide for the Perplexed* (Mar. 5, 2007) (unpublished manuscript), <https://ssrn.com/abstract=968657> [<https://perma.cc/C46X-ANP4>].

⁷² E.g., BRUCE ACKERMAN, *WE THE PEOPLE* 159–62 (1991).

⁷³ E.g., Robin West, *The Contested Value of Normative Legal Scholarship*, 66 J. LEGAL EDUC. 6, 10 (2016) (“[F]or decades now, explication of the law that ‘is’ has not been central to the work of many scholars in the legal academy . . .”).

There are good reasons to teach positivism as the core of legal reasoning. It is undoubtedly the foundation of American jurisprudence.⁷⁴ Our judges are not as Aristotle envisioned, working case-by-case to effect justice in the world.⁷⁵ Judges generate rules by “distinguishing what is significant from what is not . . . [and] ‘working from the particular to the general and back again,’ [then] applying these habits of thought to actual human affairs.”⁷⁶ They are constrained by horizontal⁷⁷ and vertical⁷⁸ stare decisis, by the words of legislatures and agencies,⁷⁹ and by the Constitution.⁸⁰ As such, to be an effective lawyer in the United States, one must be skilled at positivist argument. In service of this point, Professor Bennett Capers quotes the poet Adrienne Rich: “[T]his is the oppressor’s language, yet I need it to talk to you.”⁸¹ And even if one disagrees with the use of positivism as the dominant mode of legal reasoning in the United States, it is necessary in making a sound argument to understand exactly what it is one disagrees with, and why.⁸² For this reason, spending significant time on positive law could be an important means to a law student’s personal goals.

But for all of its benefits, positive law is also a limited and foreign vocabulary for a person to articulate why her commitments are

⁷⁴ See Anthony J. Sebok, *Misunderstanding Positivism*, 93 MICH. L. REV. 2054, 2055 (1995) (“[P]ositivism is so pervasive in American legal culture that at various times it has been the dominant jurisprudence of America.”).

⁷⁵ See Lawrence B. Solum, *The Virtues and Vices of a Judge: An Aristotelian Guide to Judicial Selection*, 61 S. CAL. L. REV. 1735, 1753 (1988) (describing Aristotle’s account of equity as reaching a just result in each case and advancing an overall theory of judicial selection consistent with Aristotelian principles).

⁷⁶ Cf. Sturm & Guinier, *supra* note 53, at 521 (quoting Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 597 (2007)).

⁷⁷ Perhaps less so today. See, e.g., *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2244 (2022). But see Jonathan H. Adler, *The Restrained Roberts Court*, NAT’L REV. (July 13, 2023, 2:17 PM), <https://www.nationalreview.com/magazine/2023/07/13/the-restrained-roberts-court> [https://perma.cc/GDX6-ELCD].

⁷⁸ See *Jamison v. McClendon*, 476 F. Supp. 3d 386, 392 (S.D. Miss. 2020) (Reeves, J.) (“This Court is required to apply the law as stated by the Supreme Court. . . . The officer’s motion seeking [qualified immunity] is therefore granted. But let us not be fooled by legal jargon. Immunity is not exoneration. And the harm in this case to one man sheds light on the harm done to the nation by this manufactured doctrine.”).

⁷⁹ Among Justice Kagan’s most famous words is surely her 2015 remark that “we’re all textualists now,” Harvard Law School, *The 2015 Scalia Lecture | A Dialogue with Justice Elena Kagan on the Reading of Statutes*, YOUTUBE, at 08:28 (Nov. 25, 2015), <https://youtu.be/dpEtszFTToTg> [https://perma.cc/32AE-Q87V], although she also warned in 2022 that “[t]he current Court is textualist only when being so suits it,” *West Virginia v. EPA*, 142 S. Ct. 2587, 2641 (2022). Both quotes illustrate the importance to advocates of being skilled in textualist interpretation.

⁸⁰ E.g., *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008) (“[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table. . . . [Whether] the Second Amendment is outmoded in [today’s] society . . . is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct.”).

⁸¹ Capers, *supra* note 53, at 12 (alteration in original) (quoting ADRIENNE RICH, *The Burning of Paper Instead of Children*, in *THE FACT OF A DOORFRAME* 116, 117 (1984)).

⁸² See Robert Talisse & Scott F. Aikin, *Two Forms of the Straw Man*, 20 ARGUMENTATION 345, 345–47 (2006).

important to her.⁸³ Most obviously, it is created by people who are not her. Much of American positive law is decades, or even centuries old, and was created by people whose perspectives were limited to particular social identities and historical contexts.⁸⁴ Yet even if positive law's creators were contemporary and diverse, engagement with it would nonetheless require generating neutral principles that operate at a higher level of generality than the particular equities of a given case or issue.⁸⁵ And, as law professors are fond of using hypotheticals to illustrate, the neutral principle that resolves a particular case in a manner consistent with someone's deeply held values may resolve a case in a different context in a manner that is abhorrent to her.

This may well be a positive feature from the perspective of system design, but it also imposes an alienating requirement on people who are motivated to pursue specific goals because of their own distinct lived experiences or commitments to particular communities. They will need to describe their causes in neutral ways that obscure the very reasons that motivate them to care about their causes in the first place. For example, *Dobbs v. Jackson Women's Health Organization*⁸⁶ mattered because it resolved whether the state could force a woman to carry a pregnancy that she did not want to carry. The significance of that question is deeply personal to people on both sides of the dispute.⁸⁷ But from a legal perspective, the contest was about neutral principles: *stare decisis*⁸⁸ and how to determine what rights are fundamental under the Constitution.⁸⁹

As an illustration of how one could enter law school committed to specific priorities and leave confused about general principles, consider

⁸³ Cf. Leslie Green, *Positivism and the Inseparability of Law and Morals*, 83 N.Y.U. L. REV. 1035, 1057–58 (2008) (“The vice internal to law is, unsurprisingly, *legalism*. It has two main dimensions: the overvaluation of legality at the expense of other virtues that a political system should have . . . and the alienation of law from life.” (footnote omitted)).

⁸⁴ See Michael W. McConnell, *Textualism and the Dead Hand of the Past*, 66 GEO. WASH. L. REV. 1127, 1127 (1998); Mark V. Tushnet, *Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles*, 96 HARV. L. REV. 781, 787–92 (1983).

⁸⁵ For example, canons of statutory interpretation, principles of separation of powers, or presumptions of constitutional law. Put generally, the problem is that “individual, concrete human voices and abstract, general legal rules often conflict. Written laws are impersonal. . . . [The focus of the written law on general principles], say some legal scholars, can be destructive. It may . . . exalt logical consistency and predictability over compassion and substantive justice.” Toni M. Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?*, 87 MICH. L. REV. 2099, 2101 (1989).

⁸⁶ 142 S. Ct. 2228 (2022).

⁸⁷ For firsthand accounts of the human stakes of this question, see, for example, Nicole Walker, Opinion, *My Abortion at 11 Wasn't a Choice. It Was My Life.*, N.Y. TIMES (Aug. 18, 2022), <https://www.nytimes.com/2022/08/18/opinion/abortion-pregnancy-child-roe.html> [<https://perma.cc/VX3V-8gUA>]; and David N. Hackney, Opinion, *I'm a High-Risk Obstetrician, And I'm Terrified for My Patients*, N.Y. TIMES (July 5, 2022), <https://www.nytimes.com/2022/07/05/opinion/ob-gyn-roe-v-wade-pregnancy.html> [<https://perma.cc/DT8A-3L4M>].

⁸⁸ *Dobbs*, 142 S. Ct. at 2261.

⁸⁹ *Id.* at 2244.

a person who comes to law school because he believes that a person's autonomy over their own body — the essence of liberty⁹⁰ — is offended when the state forces them to carry an unwanted pregnancy.⁹¹ He feels called to protect pregnant people's bodily autonomy through a legal career. Positive law is a powerful instrument for achieving his fundamental goals of justice for people who can become pregnant and full representation of the stakes of pregnancy in their lives. But his reasons for having those goals cannot be captured in the words and ideas that positivist legal argument offers him,⁹² because to "think like a lawyer" is to think narrowly, to be creative only within a restrictive set of guidelines.⁹³ Positive law is a necessary and powerful instrument, but if it becomes a person's primary way of describing what is important to him, he could lose touch with the fundamental reasons that brought him to law school.

An example of resisting this tendency comes from Justice Douglas, who in *Sierra Club v. Morton*⁹⁴ lamented that standing doctrine was being applied to allow environmental treasures to "be despoiled, defaced, or invaded by roads and bulldozer . . . [in spite of] public outrage."⁹⁵ On the basis of an emotionally expressive account of the beauty of the natural world, he proposed to radically reorient the doctrine:

[Legal standing should extend to] valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes — fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it. . . . Those who hike it, fish it, hunt it, camp in it, frequent it, or visit it merely to sit in solitude and wonderment are legitimate spokesmen for it, whether they may be few or many. . . . [E]nvironmental issues should be tendered by the inanimate object itself. . . . That, as I see it, is the issue of 'standing' in the present case and controversy.⁹⁶

⁹⁰ See *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 850–53 (1992), *overruled by Dobbs*, 142 S. Ct. 2228.

⁹¹ For a comprehensive explanation of this understanding, see DAVID BOONIN, *A DEFENSE OF ABORTION* 133–39 (2003), and for rebuttals to numerous objections to the notion, see *id.* at 139–281.

⁹² Those reasons are likely to be rooted in empathy for specific people's lived experiences. See sources cited *supra* note 87; cf. Annie Finch, *Gwendolyn Brooks's "the mother,"* POETRY FOUND. (Aug. 7, 2023), <https://www.poetryfoundation.org/articles/159670/gwendolyn-brooks-the-mother> [<https://perma.cc/2BGV-9WQZ>] (analyzing a poem that bears "honest witness[] . . . [to the] courage, . . . fear, . . . grief, . . . [and] nuances" that arise when a person chooses to have an abortion).

⁹³ See generally ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL* ch. 9 (2007).

⁹⁴ 405 U.S. 727 (1972).

⁹⁵ *Id.* at 741 (Douglas, J., dissenting).

⁹⁶ *Id.* at 743–45, 752 (footnote omitted).

Unlike other passionate dissents, Justice Douglas's position derives its argumentative weight entirely from the real-life stakes of the case, rather than merely using those to illustrate the force of a positivist argument. Yet moving as they are, Justice Douglas's words are outliers. Contemporary American law treats our deeply held values, what Professor Robin West calls the "passionate root of justice,"⁹⁷ as decoration at best and distraction at worst.⁹⁸ Immersion in legal reasoning can cause a person to internalize that message and begin to define her own commitments through the intentionally abstract vocabulary of positivism.

D. Prestige Seeking

Over the course of law school, students also must negotiate their identity in relation to the external measurement of legal prestige. Legal prestige is defined here as the social and professional trophies of achievement that are bestowed on those who win contests in which many participate but few win, such as law school admissions, curved exams, journal write-ons, or firm hiring processes. Different students relate differently to prestige, but some students (and some lawyers) come to regard prestige as an important measure — perhaps *the* measure — of success in their professional life.⁹⁹ Accumulating a certain amount of prestige may well be necessary to access other opportunities that provide exceptional training or a rare chance to do a specific and meaningful kind of work.¹⁰⁰ Yet this section gives an account of how seeking prestige for its own sake can distract a person from pursuing her own deep

⁹⁷ West, *supra* note 73, at 16.

⁹⁸ In the words of Professor Capers, "students are trained to think like a particular kind of lawyer, one that brackets or entirely dismisses differences in culture, or social context. Or rather, one that recognizes contextual differences matter only insofar as they 'fit into legal categories decreed by precedential tests or statutory requirements.'" Capers, *supra* note 53, at 36 (quoting Elizabeth Mertz, *Inside the Law School Classroom: Toward a New Legal Realist Pedagogy*, 69 VAND. L. REV. 483, 496–97 (2007)).

⁹⁹ In 1992, Professors Robert Granfield and Thomas Koenig reported the following quote from a 3L at Harvard Law School who initially wanted to pursue a public-service career:

I can't go into some public interest job straight out of here. It's not really because of my loan debt though. . . . I guess I want to keep my options open. I've gotten into the habit of going for the brass ring and so I don't want to slip. The problem with the brass rings [is] that they don't conform to a non-mainstream career route. In public interest jobs it's not clear where you go to be on top. I'm caught on a success treadmill.

Granfield & Koenig, *supra* note 42, at 518.

¹⁰⁰ For example, a 2023 report on law professor hiring found that in each year from 2011 to 2023, 90% of new law professors had clerkships, fellowships, or another advanced degree; in many years the rate was near 100%. *Lawsky Entry Level Hiring Report 2023*, PRAWFSBLAWG (May 15, 2023), <https://prawfsblawg.blogs.com/prawfsblawg/2023/05/lawsky-entry-level-hiring-report-2023.html> [<https://perma.cc/7RV4-7YBH>].

commitments, or even from understanding what those commitments are.¹⁰¹

All that is appealing about prestige, and thus all that is scary about foregoing it, may combine to function like the lantern of a will-o'-the-wisp, leading a traveler astray. It may induce a person to postpone or give up on pursuing her own goals for two reasons. First, prestige provides a simple answer to hard career questions. A person overwhelmed by the vast possibilities for life after law school may find some comfort in the way that the conventional wisdom of legal prestige presents a limited set of jobs to pursue and offers an easy way to choose between them. Although a clerkship or a job in big law may not be what a person deeply wants to do, there is a reassuring logic to the thought that if it impresses one's professors and one's peers, a choice cannot be so bad. And given how hard it may be to understand one's own deep desires, the prestigious choice may feel more straightforward than striking out in search of the nebulous possibility of a choice that is distinctly one's own. Second, prestige provides an outward marker of one's excellence. For example, winning a prestigious job can function as shorthand for all of one's efforts in law school: class rank, connections with professors, extracurricular achievement. There may be a perceived or real opportunity cost to passing up this kind of consolidation, because foregoing a marker of prestige invites the possibility that one's achievement and merit will be doubted in the future.

But if one does not really want to do the prestigious thing, choosing it because it is easy or because it marks her status will mean occupying her time with a project that is not really hers. In some cases, prestigious work may impose real costs on a person. In an everyday example, it is not difficult to imagine a law student whose quality of life suffers because various impressive extracurriculars occupy her every minute. And the costs may be far greater, such as when a prominent Ninth Circuit judge was posthumously accused of regular sexual harassment of his women clerks.¹⁰² But even in the most mundane prestigious positions, if a person chooses it only because it is prestigious, she will be pursuing ends that are not her own, and thus missing the opportunity to make a life in the law that reflects who she wants to be.

In addition to all that is alienating about prestige, it has structural features that are likely to communicate a negative assessment of a person's value as a lawyer. First, it can isolate a person from important

¹⁰¹ Cf. Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 590–92 (2015) (finding that attorneys with prestigious legal positions and related superior performance in law school were less satisfied and happy than those with service-oriented positions and lower law school performance).

¹⁰² See Catie Edmondson, *Former Clerk Alleges Sexual Harassment by Appellate Judge*, N.Y. TIMES (Feb. 13, 2020), <https://www.nytimes.com/2020/02/13/us/politics/judge-reinhardt-sexual-harassment.html> [<https://perma.cc/8XC6-XP83>].

social supports in the law. When what one has in common with her friends is their continued experience of rituals that declare the excellence of some and the inadequacy of others, it may be harder to seek the support of those friends specifically when one needs it.¹⁰³ Second, legal prestige is by definition numerically scarce. From the highest-ranked schools,¹⁰⁴ to the highest grades on curved exams,¹⁰⁵ to the most competitive professional opportunities,¹⁰⁶ the number of people who are turned away at each gate is more than the number who pass through. This is true no matter how skilled participants are: Imagine if eighty constitutional law professors took another professor's curved first-year exam. Despite their eminent qualifications, most would receive the same grades that they themselves give to middling students. Last, legal prestige measures people only relative to one another. Many nonlegal contests have absolute, in addition to relative, measures, which are important because they communicate the underlying merit that relative measurement hides. For example, the gap between gold medalist Sha'Carri Richardson and bronze medalist Shelly-Ann Fraser-Pryce at the 2023 World Athletics Championships one-hundred meter race was twelve hundredths of a second.¹⁰⁷ If all that was known about the race was the relative rankings, the fact of near parity between the two racers would be lost, and it would be tempting to exaggerate the magnitude by which Richardson bested Fraser-Pryce.

Taken together, to seek legal prestige is to play a losing and confusing game. If a person habitually seeks prestige, she is likely to win a few times, lose most, and never really know why. The message will be clear: for reasons out of her control, she is not a particularly good lawyer or job candidate. Feeling inadequate in this way is not only demoralizing; it also invites a person to invest more time into the next prestige contest,

¹⁰³ See Kennedy, *supra* note 33, at 606 ("Very few people can combine rivalry for grades, law review, clerkships, good summer jobs, with helping another member of their study group so effectively that he might actually pose a danger to them.")

¹⁰⁴ See Paul Caron, *Law School Rankings by Fall 2022 Acceptance Rates*, TAXPROF BLOG (Feb. 22, 2023), https://taxprof.typepad.com/taxprof_blog/2023/02/law-school-rankings-by-fall-2022-acceptance-rate.html [<https://perma.cc/SKA5-L9BA>].

¹⁰⁵ See 8.2 — *Understanding Grades and the Curve*, 7SAGE, <https://7sage.com/lawschool/lesson/8-2-understanding-grades-and-the-curve> [<https://perma.cc/LVD6-97PS>].

¹⁰⁶ See, e.g., Karen Sloan, *These Law Schools Sent the Most Grads to Federal Clerkships*, REUTERS (May 1, 2023, 6:18 PM), <https://www.reuters.com/legal/government/these-law-schools-sent-most-grads-federal-clerkships-2023-05-01> [<https://perma.cc/9JB2-HEP2>] ("Federal clerkships are prestigious, year-long positions that are viewed as key credentials for other sought-after jobs. . . . [J]ust 3% of . . . law graduates in 2022 are clerking for federal judges.")

¹⁰⁷ See Wayne Sterling, *American Sha'Carri Richardson Wins Women's 100 Meters at World Track and Field Championships*, CNN (Aug. 21, 2023, 7:50 PM), <https://www.cnn.com/2023/08/21/sport/shacarri-richardson-world-title-100-meters-spt-intl/index.html> [<https://perma.cc/Y8S7-6MS7>].

in order to prove wrong the previous message of inadequacy.¹⁰⁸ Many law students may seek exactly this kind of continuous external reinforcement of their self-esteem.¹⁰⁹ This addictive element of prestige suggests that in spite of its potentially alienating features, it can be difficult to give up.

E. Professional Culture

Law school is meant to prepare students to be lawyers. The old adage advises a prospective student not to go to law school unless she wants to become a lawyer,¹¹⁰ and data suggests that this is good advice. Around three in four law graduates are employed as lawyers after they graduate.¹¹¹ Due to the sheer number of people following these paths, they are highly visible on campus and receive significant support from career services offices.¹¹² As such, the training that law students receive, and the alienation that this Note argues accompanies it, are likely to carry with them a sense of inevitability: most law students will enter positions that will make the same demands and measurements of them, so there is little value to resisting those dynamics as students.

III. LAW STUDENTS CAN RESIST ALIENATION

There is a reason that incoming law students seek something more through their lives in the law. At root, the law embodies people's shared aspirations for the communities in which they live. Defined in this way, the law is capacious, and the profession can be compatible with full, rewarding, and beautifully varied lives — lives with enduring commitments to normative good. But the alienating structures of the law described above have been carefully criticized for decades by scholars and

¹⁰⁸ Cf. Iijima, *supra* note 7, at 527 (“[F]ocus on a narrow definition of success — getting high grades and securing prestigious employment — undermines the foundation that previously gave students a sense of self-worth, purpose, and personal fulfillment. Ironically, while the students’ worth becomes increasingly identified with intellectual ability, their intellectual ability comes into question, perhaps for the first time.”).

¹⁰⁹ See *supra* note 99.

¹¹⁰ E.g., Elie Mystal, *Dear God, Don't Go to Law School Unless You Know What Lawyers Do*, ABOVE L. (July 27, 2018, 5:00 PM), <https://abovethelaw.com/2018/07/dont-go-to-law-school-unless> [<https://perma.cc/B4FM-4344>].

¹¹¹ See AM. BAR ASS'N, EMPLOYMENT OUTCOMES AS OF MARCH 15, 2023 (CLASS OF 2022 GRADUATES) (2023), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2023/class-2022-online-table.pdf [<https://perma.cc/SK26-E742>].

¹¹² For example, see the career paths described in detail on the websites of Harvard Law School's two career advising offices, the private-sector-oriented Office of Career Services and the public-sector-oriented Office of Public Interest Advising. See *Practice Settings in the Private Sector*, HARV. L. SCH., <https://hls.harvard.edu/ocs/career-research/practice-settings> [<https://perma.cc/5DMQ-EBEJ>]; *Career and Application Guides*, HARV. L. SCH., <https://hls.harvard.edu/bernard-koteen-office-of-public-interest-advising/opia-job-search-toolkit/career-and-application-guides> [<https://perma.cc/K2DT-RHT8>].

students,¹¹³ many in positions of power at leading institutions, and these criticisms still retain force. Perhaps these structures are necessary; perhaps those who feel empowered by them are simply unwilling to enact broader change.¹¹⁴ Either way, deep structural changes to legal education seem unlikely in the immediate future. Even as they push for systemic changes to legal culture and education, law students can resist alienation on a personal level.

Being the person that one hoped to become when she started law school may seem a daunting task after months', years', or a career's worth of alienating pressures. But on a personal level, that change can start today. What follows are some ideas for law students and lawyers who feel that living as a lawyer requires them to neglect important parts of themselves. Generations of students and professors worked to lay foundations and then constructed a variety of reformist and radical programs on those foundations, all of which could help create a less alienating program of legal education.¹¹⁵ But the following pages focus on proposals that are available to individual students without requiring institutional change or support. They are meant to provide an accessible foundation for people who wish to begin a more reflective engagement with their self-defining choices within the law.

This Note suggests that the first step is simply to compassionately recognize that one has faced significant alienating pressures in law school and, like all who face such pressures, has likely succumbed to some of them. This Note has attempted to offer a first step toward describing that experience, but it is limited by its generality and the requirements of its form. Deepening one's understanding of one's past choices, why one made them, and how one feels about them is not easy, and there is no formula to do so. Yet some common-sense intuitions avail. First, one can create time and space for reflection. This can come in many ways: therapy, meditation, religion, exercise, and even simply taking time to be alone and do something one loves. These practices can give rise to greater clarity about one's priorities and greater confidence in one's ability to pursue them.¹¹⁶ Second, a person can change

¹¹³ See, e.g., Roberto Mangabeira Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561, 567–600 (1983); Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School,"* 38 J. LEGAL EDUC. 61, 71–82 (1988); Derrick A. Bell, *Who's Afraid of Critical Race Theory?*, 1995 U. ILL. L. REV. 893, 899–902; Matsuda, *supra* note 2, at 326–32; GUINIER, FINE & BALIN, *supra* note 62, at 28–29; Sturm & Guinier, *supra* note 53, at 521; Kennedy, *supra* note 33, at 591–92.

¹¹⁴ Cf. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 513–15 (1976).

¹¹⁵ See sources cited *supra* note 113.

¹¹⁶ See, e.g., Riskin, *supra* note 47, at 41–44 (collecting reflections by law students and lawyers on the effects of participation in mindfulness programs); Charity Scott, *Mindfulness in Law: A Path to Well-Being and Balance for Lawyers and Law Students*, 60 ARIZ. L. REV. 635, 652–64 (2018) (describing the potential benefits to lawyers of mindfulness, including “[e]motion [r]egulation,” *id.*

how she approaches present choices. For example, a person who reluctantly intends to work at a firm because she worries she will be unable to pay off her loans otherwise could compile information that responds to her reasons for being conflicted. What she finds could ease her mind about a risk she wants to take or conversely confirm her desire to take a safer route — either way, it will help her make a more informed choice. Third, a person can experiment with setting boundaries or taking risks in the name of making more considered decisions. This could mean waiting to decide on a job until she feels confident in what she wants to do, or limiting the people with whom she discusses fraught choices and when she talks about them.

As one pursues individual change, one can also pursue community with like-minded people. For decades, there have been calls for, and responses to, extracurricular groups devoted to discussing the law from a critical perspective and engaging in advocacy arising from those discussions.¹¹⁷ Recent academic work has highlighted how solidarity between lawyers and nonlawyers is leading to a new kind of lawyering;¹¹⁸ and past efforts by lawyers with critical assessments of law to create working groups and organize within the academy have enjoyed success.¹¹⁹ The power of naming and analyzing one's experience with people who have a common understanding of it is well known.¹²⁰ If seeking public participation in a formal group is intimidating, many of the same benefits can be had simply by acknowledging feelings of alienation and discussing self-defining choices informally among peers.

Lastly, a person can take note of — and participate in — revitalized approaches to lawyering that may empower advocates to pursue their

at 654, “[e]mpathy and [c]ompassion,” *id.* at 657, and “[c]hange in [p]erspective on the [s]elf,” *id.* at 658); Angela Harris, Margaretta Lin & Jeff Selbin, *From “The Art of War” to “Being Peace”:* *Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CALIF. L. REV. 2073, 2132 (2007) (proposing that mindful lawyering “reveal[s] a different vision and paths that lawyers can take to realize social justice”). A firsthand account by Professor Margaretta Lin, who provided legal support to a coalition resisting gentrification in a historically significant Black neighborhood, *see id.* at 2101–11, elaborates on the role that mindfulness played in shaping her approach to community lawyering and questions of representation, *id.* at 2114–18, communication, *id.* at 2118–21, emotions, *id.* at 2121–23, and tactics, *id.* at 2123–25.

¹¹⁷ See, e.g., Kennedy, *supra* note 33, at 611 (“The core of a law-school organizing strategy should be the left study group.”); Crenshaw, *supra* note 52, at 12 (“In developing this seminar, I consciously attempted to create an atmosphere in which students were not objectified, subjectified, or alienated and where significant reserves of knowledge were not left untapped.”); Capers, *supra* note 53, at 55–56 (“My hope is that law schools will have the courage and audacity to . . . reinvent themselves from the bottom up in a way that is cosmopolitan and then some, as a place where intellectual curiosity thrives, where change and challenge are celebrated, where education itself is a practice of freedom . . .”).

¹¹⁸ See Akbar, Ashar & Simonson, *supra* note 39, at 825–30.

¹¹⁹ See generally Sumi Cho & Robert Westley, *Critical Race Coalitions: Key Movements that Performed the Theory*, 33 U.C. DAVIS L. REV. 1377 (2000).

¹²⁰ See, e.g., Crenshaw, *supra* note 52, at 13; Pamela Allen, *The Small Group Process*, in RADICAL FEMINISM 277, 277–81 (Barbara A. Crow ed., 2000); AMY SONNIE & JAMES TRACY, HILLBILLY NATIONALISTS, URBAN RACE REBELS, AND BLACK POWER 1–3 (2011).

deep goals in new ways. Judges are setting examples of a more humanistic kind of legal reasoning that enables advocates and jurists to express more of themselves through their work while still remaining on sure positivist footing. For example, in *Jamison v. McClendon*,¹²¹ Judge Reeves wrote a thirty-four page opinion describing in an evocative, literary style the deadly consequences for Black men of unwanted law-enforcement interactions,¹²² yet still granted qualified immunity because of the clear positive law requiring it.¹²³ And, dissenting in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*,¹²⁴ Justice Sotomayor ended with an ambitious, nonlegal prophecy:

Notwithstanding this Court's actions, however, society's progress toward equality cannot be permanently halted. Diversity is now a fundamental American value, housed in our varied and multicultural American community that only continues to grow. The pursuit of racial diversity will go on. Although the Court has stripped out almost all uses of race in college admissions, universities can and should continue to use all available tools to meet society's needs for diversity in education. Despite the Court's unjustified exercise of power, the opinion today will serve only to highlight the Court's own impotence in the face of an America whose cries for equality resound. As has been the case before in the history of American democracy, "the arc of the moral universe" will bend toward racial justice despite the Court's efforts today to impede its progress.¹²⁵

Such efforts are reviving an earlier tradition of judging and scholarship that permitted authors to bring more holistic perspectives to their analysis, even if at the end of the day they still decided cases based on positive law.¹²⁶ Scholars, too, are committed to this more "comprehensive"¹²⁷ vision of law.¹²⁸ If alienation can arise from having to use an

¹²¹ 476 F. Supp. 3d 386 (S.D. Miss. 2020).

¹²² See *id.* at 390–91, 397–400, 406–07, 413–15.

¹²³ *Id.* at 423–24.

¹²⁴ 143 S. Ct. 2141 (2023).

¹²⁵ *Id.* at 2263 (Sotomayor, J., dissenting) (quoting Martin Luther King, Jr., Our God is Marching On! (Mar. 25, 1965)).

¹²⁶ For example, Justice Douglas's words in *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972):

Persons "wandering or strolling" from place to place have been extolled by Walt Whitman and Vachel Lindsay. . . . [T]hese activities are historically part of the amenities of life as we have known them. They are not mentioned in the Constitution or in the Bill of Rights. These unwritten amenities have been in part responsible for giving our people the feeling of independence and self-confidence, the feeling of creativity. These amenities have dignified the right of dissent and have honored the right to be nonconformists and the right to defy submissiveness. They have encouraged lives of high spirits rather than hushed, suffocating silence.

Id. at 164 (footnote omitted).

¹²⁷ See generally SUSAN SWAIM DAICOFF, *COMPREHENSIVE LAW PRACTICE* (2011).

¹²⁸ E.g., John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129, 2137 (1992) (using Archie Shepp's free-jazz innovations as a model for a new approach by "legal scholars of color . . .

inadequate or unfamiliar vocabulary to explain why something matters, the possibility of advocacy within our current legal system that preserves a person's own voice and commitments is a powerful potential response to it.

CONCLUSION

This Note has been concerned neither with whether law school's structure is in need of change, nor whether it ever will change. Rather, it has claimed that as long as students come in with dreams of a life in the law that they are unable to fulfill when they graduate, they may experience feelings of alienation from the life they live. This feeling of alienation is worth naming and taking seriously, because simply acknowledging its presence and the process by which it functions can empower students to limit its impact and make more considered choices. Law students, like all people, should be happy with the version of themselves that they see reflected back in the choices they have made. For those who feel that the legal profession is not living up to the "something more" of which they hoped to become a part, hope is not lost. They — we — can answer Professors Amna Akbar, Sameer Ashar, and Jocelyn Simonson's call for a "solidaristic stance[,] . . . commit[ted] to experimentation, transformation, and collectivity[,] . . . both more humble and more bold."¹²⁹ We can make our own way of being in the law.

[to] voic[e] our dissent from many of the law's underlying assumptions"); Capers, *supra* note 53, at 43–44 (“I want to reimagine the law school as truly a ‘cosmopolitan canopy’ where students of different backgrounds can ‘relax their guard and go about their business more casually,’ where it is accepted that the law school space belongs ‘to all kinds of people.’” (quoting ELIJAH ANDERSON, *THE COSMOPOLITAN CANOPY* 3 (2011))); David A. Skeel, Jr., *Practicing Poetry, Teaching Law*, 92 MICH. L. REV. 1754, 1773–74 (1994) (book review) (discussing the professional and personal selves as they mix in the work of law professor and poet Lawrence Joseph); Sidney W. DeLong, *The Poetry of Law*, 58 J. LEGAL EDUC. 141, 141–43 (2008) (praising the prosody of statutory drafters).

¹²⁹ Akbar, Ashar & Simonson, *supra* note 39, at 864.