The Structural Foreclosure of Effective Protection and Remedy for Rights-Violating Judicial Conduct in the Courts of the United States of America

An Investigative Finding on Judicial Immunity, Good-Behaviour Accountability, and the Limits of Judicial Self-Regulation Across State and Federal Court Systems, Assessed Against International Human-Rights Standards

Institute for the Advancement of Justice & Human Rights

Executive Summary

This report is an investigative finding of the Institute for the Advancement of Justice and Human Rights (IAJ). The IAJ is an independent truth-finding body: it investigates, documents, and reports human-rights violations to a medico-legal evidentiary standard, in the manner of an independent investigator recording a determination rather than of an advocate arguing a cause. It performs, in the United States, the investigative function that a national human-rights institution would discharge — a function the United States has left unfilled, having established no institution meeting the Paris Principles. This report investigates one structural violation: the inversion of judicial independence into judicial sovereignty — through life tenure without functioning accountability, judge-made civil immunity, weak discipline, inert impeachment, self-administered disqualification, judicial control over constitutional meaning, attorney subordination, and manufactured public deference — and the resulting denial of an effective remedy to those whose rights are violated by the judicial power. Its method is investigation against a standard derived from the inherent rights of the human being and the true object and purpose of the Constitution; its conclusions are stated as findings, and the authorities it cites support those findings without supplying them.

Through a chain of judge-made common-law precedents — *Bradley v. Fisher* (1872), *Pierson v. Ray* (1967), *Stump v. Sparkman* (1978), and *Mireles v. Waco* (1991) — the Supreme Court received, expanded, and entrenched absolute civil damages immunity for judicial acts, including acts alleged to have been done "maliciously or corruptly," despite the absence of express constitutional text and despite serious tension with the "every person" language and Reconstruction-era purpose of 42 U.S.C. § 1983.

Criminal accountability is formally available and occasionally used, but the IAJ has found no documented example of a judge convicted under 18 U.S.C. § 242 or § 241 for the adjudicative content of a ruling itself. A prosecutor's decision not to charge is practically unreviewable (*Heckler v. Chaney*; *Inmates of Attica v. Rockefeller*). Known prosecutions of judges overwhelmingly concern bribery, fraud, racketeering, obstruction, sexual misconduct, or other non-adjudicative conduct. Federal self-policing rarely reaches adjudicative rights-deprivation, and impeachment has removed only eight federal judges in more than 235 years.

The controlling thesis of this report is that judicial independence becomes a human-rights defect when it is unpaired from an effective remedy. International standards tolerate personal judicial immunity only when it is paired with appeal, discipline, and compensation from the State (UN Basic Principles on the Independence of the Judiciary, Principle 16). Principle 16 is precise on its own terms: it extends personal immunity only "without prejudice to" the disciplinary procedures, rights of appeal, and State compensation that must remain available to the person wronged. United States doctrine supplies the personal immunity but systematically fails to supply those substitute remedies, claiming the protection the instrument permits while withholding the condition on which the permission depends. That combination — not immunity alone — is the human-rights defect. The sociological analysis in this report explains why this combination has remained publicly invisible: legal-consciousness, legitimacy, and professional-monopoly mechanisms keep a publicly available doctrine socially unexamined.

The crisis is not caused by judicial independence; it is caused by the inversion of judicial independence into judicial sovereignty. Article III good-Behaviour tenure began as an anti-monarchical protection for the people, designed to let judges resist arbitrary power. But when life tenure is combined with judge-made civil immunity, an inert impeachment mechanism, weak discipline, judicial control over constitutional meaning, attorney subordination, and manufactured public deference, the result is the quasi-monarchical judicial officer: independent of the people, insulated from consequence, and capable of turning rights-violating judgments into final, immune, and socially accepted exercises of power.

Stated more fully, the defect is the conversion of independence into sovereignty. Judicial independence was designed to protect the people from arbitrary power. But when good-Behaviour tenure is treated in practice as unconditional life tenure, when impeachment is inert, when judicial discipline excludes merits-related harm, when disqualification is self-administered, when judges define their own immunity, and when attorneys and litigants are socialized into deference, independence ceases to function as a safeguard for the people and becomes a shield for the judicial officer.

The Council of Europe states the principle in the same terms: judicial independence is “not a prerogative or privilege” held in the judge’s own interest, but a guarantee held in the interest of the rule of law and of those who seek and expect impartial justice (Committee of Ministers, Recommendation CM/Rec(2010)12, para. 11). Independence held on that understanding is a trust exercised for the governed; independence detached from any answer to the governed is the inversion this report describes.

The IAJ pursues that diagnosis through a deliberate two-tier posture. Domestically, it seeks State compensation that leaves the underlying judgment formally intact while requiring formal documentation and declaration of the systemic violation; internationally, it extends no deference to domestic finality and prioritizes exposure of the structural violation and a demand for systemic reform.

The report then measures that architecture against the standard the Constitution itself sets for judicial office. Article III conditions judicial tenure on “good Behaviour,” a standard this report defines at two levels — the common-law tradition of faithful, impartial, and uncorrupted conduct, and the human-rights articulation of the same duty — and shows to be drawn from the two historic traditions of judgment, justice and equity, so that good Behaviour requires both fidelity to law and the conscience that the courts of equity existed to supply. By that measure the IAJ finds that the immunity architecture inverts the condition of office: the servant exempts itself from the standard imposed on it, and, claiming the authority of a forum of conscience while immunizing its own malicious or corrupt acts, comes before the people with unclean hands.

The United States appears to be a comparative and international outlier. The parent common-law system, England, retained judicial independence while operating a visible, publicly reported disciplinary machinery. Civil-law democracies including France, Germany, Italy, and Spain channel judicial wrongs into State-liability or constrained recourse systems. International standards — including the UN Basic Principles on the Independence of the Judiciary, the Bangalore Principles, Council of Europe standards, ICCPR effective-remedy obligations, CAT-

aligned analysis of severe psychological suffering and State responsibility, and persuasive regional human-rights jurisprudence — treat judicial independence as a public trust paired with discipline, review, remedy, and State responsibility. The United States is anomalous not because it protects decisional independence, but because it combines broad personal immunity, sovereign-immunity barriers, weak substitute remedies, self-administered discipline, and no national human-rights institution to investigate the resulting violations.

The report further finds that no functioning method of accountability remains — civil suit barred by immunity, criminal enforcement absent for adjudicative acts, impeachment a practical nullity, discipline excluding the merits, and disqualification initially and often effectively controlled by the challenged judge himself — and that the legislative cure, though obstructable by the institution it would regulate, lies within Congress's power: the immunity doctrine's own founding case preserved accountability "in such other form as may be specially prescribed," and Congress already disciplines federal judges under a statute upheld against challenge. The IAJ accordingly documents the violation, identifies its systemic and policy-level character, and sets out the constitutional pathway and the graduated, severable statute by which it can be cured — entering its findings into the record whether or not the institutions it measures choose to act upon them.

The report additionally finds that the inversion occurred chronologically and by accretion. The Constitution's original safety engineering assumed that judicial independence would remain paired with good Behaviour, impeachment for abuse of public trust, reputational accountability, appellate correction, criminal liability, branch rivalry, legislative supervision, and the public morality of office. Over time, those safeguards were narrowed, displaced, internalized, or reclassified: impeachment was deprecated for judicial conduct; civil immunity was expanded even for acts alleged malicious or corrupt; discipline excluded merits-related harm; disqualification became self-administered; ethics were compressed into statutory defensibility; professional legal culture monopolized interpretation; and courtroom ritual preserved legitimacy while victims lost remedy. The result is not a single doctrinal error but a historical transformation: the moral, legal, and institutional conditions that made judicial independence safe were removed while the language of independence remained.

The IAJ names that transformation judicial self-enthronement. It is not a metaphor for ordinary judicial power. It is the conversion of every external accountability relation into an internal act of judicial permission: immunity defined by judges, misconduct screened by judges, recusal decided by judges, ethics written without consequence by judges, remedies narrowed by judges, congressional interventions construed by judges, and public confidence managed through judicial symbols rather than public remedy. The deeper constitutional wrong is a betrayal of trust: independence was delegated to the judiciary as sovereign trust held for the people, and the judiciary converted that trust into institutional self-ownership. The servant branch did not seize sovereignty by coup. It accumulated it by interpretation, accretion, professional deference, procedural control, and the conversion of checks into internally administered rituals.

Scope and Doctrinal Status

Scope. This report concerns civil damages immunity for judicial acts, the practical weakness of substitute remedies, and the gap between domestic immunity doctrine and international effective-

remedy norms. It does not argue that judges should be personally liable for good-faith legal error, unpopular decisions, or ordinary abuse-of-discretion rulings. The target is the narrower but grave category of intentional, malicious, corrupt, discriminatory, or bad-faith rights-deprivation for which appellate review, discipline, criminal enforcement, and state compensation are unavailable or ineffective. This category is identified by objective indicators external to mere disagreement with a ruling — documented bias or corruption, intentional discrimination, the knowing denial of clearly established rights, concealment or retaliation, ex parte misconduct, the fabrication or suppression of process, the refusal of legally required accommodation, or conduct that foreseeably forecloses any ordinary corrective review — and never by dissatisfaction with the outcome alone. Around that core the report investigates the full architecture in which the immunity sits: the constitutional standard of good Behaviour and its roots in justice and equity (Part VIII); the removal vacuum and the self-administered mechanisms that leave the standard unenforced (Part XII); the constitutional pathway to a legislative cure (Parts XII and XVII); and the human-rights framework against which the whole is measured (Part I and Part XIV). The unifying object is not academic commentary on these subjects but an investigative finding upon them: the report documents what the IAJ has found to be true of the structure, to the evidentiary standard set out in Part I. The report is written in four registers, kept distinct throughout. It states settled domestic doctrine where controlling cases or statutes govern; the Institute's investigative findings where it has examined the evidence and identified a recurring pattern; the Institute's interpretive synthesis where it connects doctrine, history, sociology, and human-rights law to explain the structure; and proposed reform where it identifies a legislative or institutional correction. These registers are related but not interchangeable: the IAJ does not present its interpretive synthesis as settled black-letter doctrine, and it does not reduce its investigative findings to advocacy positions. The criminal-accountability vacuum, in particular, is stated as an evidenced absence — no documented instance found — not as a proven universal. The term "finding" is used throughout to mean an institutional investigative determination drawn from documented doctrine, public institutional records, comparative materials, and human-rights standards; it is not a claim of adjudicative authority over any person, court, or pending case. The report condemns a structural condition of impunity; it does not invite personal hostility toward individual judicial officers, nor deny that decisional independence is necessary to lawful adjudication.

Reparation, not relitigation — and never finality above rights. The IAJ does not propose damages liability as a substitute appeal, a collateral attack on judgments, or a vehicle to reopen or overturn final decisions. The primary domestic remedy advanced in this report — compensation borne by the State — by design leaves the underlying judgment undisturbed: it repairs the wrong without relitigating the case. But the IAJ states plainly, and as a matter of first principle, what it will not concede: that the finality of a judicial outcome may stand above justice, above access to justice, or above the preservation of human rights. No principle of human rights, and no human-rights instrument, elevates finality to that supremacy. Finality is a prudential value — it conserves judicial economy and repose — and a prudential value does not outrank the inherent rights of the human being. The people-centred premise articulated by the Special Rapporteur on the independence of judges and lawyers is to the contrary: legal systems exist so that "no one is above the law, no one is outside the protection of the law and no one is excluded or harmed by the law," and an independent judiciary serves to check "unaccountable power." *Reimagining justice: confronting contemporary challenges to the independence of judges and lawyers*, U.N.

Doc. A/HRC/53/31 (13 Apr. 2023), paras. 5–6; see also id. paras. 11 (the prohibition on torture "clearly require[s] judicial independence" and its absence "raises serious concern about accountability"), 40–42 (affirming the Bangalore Principles of Judicial Conduct as a "non-binding but authoritative" framework for judicial integrity). A system that treated its own finality as a reason to leave a human-rights violation unremedied would invert that premise — it would make the law a thing that harms and then forecloses the protection of the harmed. The IAJ draws support for that position from the Special Rapporteur's identification of conviction-integrity review units as a promising corrective practice: such units reinvestigate even final cases "to uncover and remedy potential miscarriages of justice" and have produced "exonerations, the overturning of wrongful prosecutions and remedies." Id. para. 46. The IAJ cites that report only for the propositions it actually contains, and not for any holding that finality must yield to remedy, which it does not state; the IAJ's position that finality may not be elevated above justice and the preservation of human rights is its own principled framing, derived independently from first principles.

The IAJ therefore maintains a deliberate **two-tier posture**, and the distinction between the tiers is essential to understanding everything that follows. The first tier is domestic. Within the domestic legal order, and as a matter of prudence rather than principle, the IAJ accepts the repair-not-relitigate constraint: it seeks State compensation that leaves the judgment formally intact, because that is the remedy most readily available and least disruptive of legitimate repose. But the IAJ attaches to that constraint a condition it regards as non-negotiable: *the reparation must be accompanied by the documentation and declaration of the violation that required it.* To repair a rights-violation silently — to pay compensation while leaving unstated that a human right was violated, and that the violation was made possible by judicial policy and its systemic character — would be to purchase the concealment of the very concealed policy-level architecture this report exists to expose. Reparation without declaration conceals the wrong; reparation *with* declaration records it. The IAJ's domestic position is therefore not "repair and move on" but "repair and document": every act of reparation must formally identify the violation, and must identify that the violation was enabled by the systemic, policy-level architecture of unaccountability rather than by isolated error, so that the pattern the immunity doctrine conceals is entered into the record even where the judgment is left standing.

The second tier is international, and there the prudential constraint falls away. The reasons that counsel against disturbing a domestic judgment — comity, repose, the orderly administration of the domestic courts — have no application when the IAJ documents and reports human-rights violations to international mechanisms and to the public record. What falls away is the prudential restraint on documentation and reporting, not the legal force of the judgment: at the international tier domestic finality does not preclude the IAJ from establishing the violation, identifying the responsible conduct, finding State responsibility, and demanding systemic reform, even though the international mechanisms it addresses may not themselves vacate a domestic judgment. Before those forums the IAJ extends no protective deference to finality and none to the actors responsible for the violations. It names the violations, it identifies the responsible conduct, it establishes the systemic and policy-level pattern, and it presses for systemic reform as the priority — because the object at the international tier is not the repose of any particular judgment but the correction of the structure that produces rights-violations across all of them. Finality is a domestic prudential and institutional value; it is not a shield that travels to the international plane to protect

a State, or its judicial organs, from the documentation of what they have done. The IAJ's independence of all, declared in Part I, governs here: it owes no deference — not to the domestic courts whose finality it declines to treat as supreme, and not to any international body whose conclusions it tests against the root — and it prioritizes the exposure of the systemic violation and the demand for reform over every consideration of comity that finality represents. The distinction the IAJ maintains is therefore not between contesting and accepting outcomes; it is between the *domestic* repair-and-document tier, which leaves the judgment standing while recording the wrong, and the *international* exposure-and-reform tier, which treats no finality as a reason for silence and no perpetrator as beyond the reach of the record.

Doctrinal status. No controlling federal case holds that judicial immunity is unconstitutional because of its monarchical common-law origins, and this report does not claim otherwise. The controlling cases preserve civil damages immunity for genuinely judicial acts within jurisdiction. But the same cases support limiting the doctrine by function (*Forrester v. White*), by jurisdiction (*Stump*; *Mireles*), by remedy (*Supreme Court of Virginia v. Consumers Union*; *Pulliam v. Allen*, before its statutory reversal), and by the civil/criminal line (*Ex parte Virginia*; *United States v. Dugan*). The IAJ's analysis proceeds from what the cases actually hold, and identifies the reform space those holdings leave open. The structural and sociological significance of the 1996 amendment — the point that, by sealing the last civil avenue, Congress legislatively completed a vacuum the judiciary had built for itself — is developed in the Parts addressing the judge-made chain, the remedial architecture, the good-Behaviour inversion, and the congressional cure.

Key Findings

1. **Judicial immunity has no express constitutional text.** Unlike legislative immunity (Speech or Debate Clause, art. I, § 6), civil damages immunity is judge-made common law. The Supreme Court has acknowledged the point: its immunity decisions, it has explained, have been "guided by the Constitution, federal statutes, and history" and, "at least in the absence of explicit constitutional or congressional guidance," "informed by the common law" and by "concerns of public policy." *Nixon v. Fitzgerald*, 457 U.S. 731, 744–48 (1982). Judicial immunity in particular has no textual constitutional source; it descends from common law and rests on functional policy. Congress has directly altered § 1983's judicial-officer remedial framework only once, and only to *reinforce* the remedial barrier: the 1996 amendment to § 1983 limited injunctive relief against judicial officers, codifying part of the shield rather than narrowing it. The doctrine is therefore revisable by Congress — and the one time Congress legislated on this specific remedial question, it strengthened the immunity, which underscores that any narrowing will require deliberate statutory action and is contestable under constitutional structure, statutory text, and international effective-remedy norms.
2. **The doctrine protects bad-faith conduct by design.** *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347, 351 (1872), holds that judges of superior or general jurisdiction "are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly."

3. **The two escape hatches are nearly impossible to satisfy.** Immunity is lost only for (a) non-judicial acts or (b) acts taken in the "clear absence of all jurisdiction." *Stump* and *Mireles* show how broadly "judicial act" and "jurisdiction" are construed: sterilizing a minor by ex parte order and allegedly ordering police to use excessive force against an attorney both fell inside immunity.

4. **Section 1983's text and history point the other way.** The 1871 Ku Klux Klan Act says "every person"; its sponsors expressly contemplated reaching state judges. Justice Douglas's *Pierson* dissent and a substantial modern literature (Baude; Schwartz) argue the implied immunities are atextual judicial constructions.

5. **State and federal accountability routes converge on the same remedy void.** Section 1983 governs state judicial officers, subject to absolute damages immunity and the 1996 statutory bar on most injunctive relief. Federal judicial officers are not reachable under § 1983 at all; claims against them encounter the near-extinction of *Bivens* remedies, sovereign immunity, Federal Tort Claims Act exclusions, and circuit authority such as *Mullis* extending immunity even to declaratory and injunctive relief. The common feature is functional convergence: both systems leave intentional adjudicative rights-deprivation with no reliable damages remedy against the judicial actor and often no practical substitute.

6. **Criminal liability is formally available but, for adjudicative deprivations, practically unused.** *Ex parte Virginia* (1880) and *Mireles* footnote 1 confirm judges are "not absolutely immune from criminal liability," and *United States v. Dugan* (E.D. Wis. 2025) recently refused to extend civil immunity principles — or the logic of *Trump v. United States* — to the criminal prosecution of a judge. Yet the IAJ has found no documented example of a conviction under § 242 or § 241 for the content of a ruling; the prosecutions that occur target bribery, fraud, racketeering, obstruction, or personal crimes.

7. **Self-regulation rarely reaches adjudicative rights-deprivation.** The federal complaint system regulates some misconduct, but it structurally excludes complaints "directly related to the merits of decisions"; merits-related dismissals dominate the disposition data. The Supreme Court exempted itself from any code until a non-binding, unenforceable 2023 Code of Conduct, and impeachment is a practical nullity.

8. **Good-Behaviour tenure has been converted in practice into near-unconditional life tenure.** Article III conditions judicial office on "good Behaviour," a historically substantive standard. Yet the practical narrowing of impeachment after the Chase acquittal, the absence of any operational scire facias or forfeiture mechanism, and the rarity of judicial removal have left the tenure condition largely unenforced.

9. **Tenure, immunity, self-policing, and professional deference combine to produce the quasi-monarchical inversion.** Judicial independence was designed as a shield for the people against arbitrary power. When life tenure is combined with civil immunity, weak discipline, merits exclusions, self-administered recusal, inert impeachment, attorney subordination, and manufactured public deference, independence becomes sovereignty without accountability.

10. **The architecture leaves intentional adjudicative rights-deprivation without an effective remedy.** Those injured by intentional, malicious, corrupt, discriminatory, or bad-faith adjudicative acts have no avenue that immunity does not bar — the remedy gap that is the core consequence of the structure this report documents, in tension with ICCPR Article 2(3) and the UN Basic Principles on the Independence of the Judiciary (Principle 16).

11. **The United States has built no institution to investigate and document these violations.** Unlike more than 120 States, the United States maintains no national human-rights institution accredited under the Paris Principles, and none whose mandate reaches the administration of justice. The independent truth-finding function such a body would discharge does not cease to be necessary because the State has declined to create the body; until it does, that function must be performed by an independent civil-society institution capable of rigorous investigation, documentation, and reporting. The IAJ performs it here.

12. **The accountability gap is socially invisible** — a fact best explained sociologically (legal consciousness, legitimacy and positivity theory, Bourdieu's juridical field, professional-monopoly theory, agnotology) rather than legally.

13. **The United States appears to be a comparative and international outlier.** The parent common-law system, England, retained good-Behaviour tenure while operating a visible, publicly reported disciplinary machinery; other common-law democracies, Canada and Australia, pair the same tenure with independent conduct commissions and defined removal standards; and civil-law democracies including France, Germany, Italy, and Spain channel judicial wrongs into State-liability and constrained-recourse systems. International standards — the UN Basic Principles on the Independence of the Judiciary, the Bangalore Principles, Council of Europe standards, ICCPR effective-remedy doctrine, and the analysis of severe mental suffering and State responsibility aligned with the Committee against Torture — treat judicial independence as a public trust paired with discipline, review, and remedy. The United States is anomalous not because it protects decisional independence, but because it combines broad personal immunity, sovereign-immunity barriers, weak substitute remedies, self-administered discipline that excludes the merits, and no national human-rights institution to investigate the resulting violations.

14. **The inversion is reinforced by the occupational psychology of the office, not only by its doctrine.** The conditions of judicial work — repeated exposure to trauma, conflict, and deception, exercised from a position of durable power and near-total insulation from personal consequence — are, on a substantial cross-disciplinary literature, a recognized risk condition for secondary traumatic stress, compassion fatigue, empathy erosion, normalization of deviance, and moral disengagement, even among well-selected and well-intentioned judges. The effect is one of risk, not inevitability, and many judges remain humane across long careers; but because screening operates only at the point of entry and cannot neutralize the situational forces of a career, the preservation of judicial humanity cannot rest on selection alone. It requires the external accountability that immunity removes.

15. **The constitutional failure is chronological, not episodic.** Judicial impunity did not arise from one unconstitutional act. It developed through a sequence of social and doctrinal transformations: the moral deprecation of public-trust standards; the post-Chase narrowing of impeachment for judges; the judicial creation and expansion of civil immunity; the professionalization of law into a self-referential field; the merits exclusion that disables discipline; the conversion of ethics into statutory defensibility; and the cultural legitimacy mechanisms that made the resulting gap invisible. Each development removed one safety device while leaving the Constitution's original language intact.

16. **Checks and balances failed by internalization.** The constitutional checks on judicial excess were not abolished in a single event; they were internalized into institutions controlled by the judiciary itself. Immunity is defined by judges; recusal is first decided by the challenged judge; discipline is administered by judges and excludes the merits; criminal enforcement depends on unreviewable prosecutorial discretion; Congress's reform power is chilled by judicial supremacy; and public confidence is managed through ritual legitimacy rather than remedy. The result is a system in which every nominal check exists, but each fails at the point where intentional adjudicative rights-deprivation must be recognized and remedied.

17. **Judicial ethics have been compressed into statutory defensibility.** The Code of Conduct states broad ethical duties of office, while 28 U.S.C. § 455 supplies a minimum statutory disqualification floor. Modern practice often reverses that hierarchy: judges answer ethical challenges only as statutory recusal motions, construe the statutory duty narrowly, and ignore canons not represented in the statute. The result is canon-to-statute compression — the conversion of a broad public-trust ethic into a narrow litigation defense. This is not compliance with ethics but evidence of their functional extinction.

18. **The absence of accountability is itself evidence.** In a functioning accountability system, the public record would contain examples of the system correcting intentional adjudicative rights-deprivation: compensation for judicial wrongs, discipline for bad-faith adjudicative abuse, independent recusal review, public data on denied accommodations, criminal referrals in extreme cases, and institutional findings by a national human-rights body. Their absence across multiple mechanisms is not coincidence; read together, it is structural negative-space evidence of a system in which the decisive category of harm cannot become visible.

Contents

Executive Summary 2
Scope and Doctrinal Status 4
Key Findings 7
Part I. The Charter of Interpretation: Institutional Purpose, Independence, and the Universal Declaration as the Key to the Constitution's Unenumerated Rights 15
A. The Purpose of the Institute 15
B. The Independence of the Institute 15
C. The Universal Declaration as Root 17
D. The Universal Declaration as the Key to the Constitution's Unenumerated Rights 18
E. The Obstruction the Institute Exists to Correct 19
Part II. The English Origins and the Reception Problem 21
Part III. The Judge-Made Chain: Reception, Expansion, Entrenchment 22
Randall v. Brigham (1868) 22
Bradley v. Fisher, 80 U.S. (13 Wall.) 335 (1872) 22
Pierson v. Ray, 386 U.S. 547 (1967) 22
Stump v. Sparkman, 435 U.S. 349 (1978) 23
Mireles v. Waco, 502 U.S. 9 (1991) (per curiam) 23
Function, Prospective Relief, and the 1996 Sealing of the Crack 23
The Chain Measured Against the Standard 24
Part IV. State and Federal Judicial Actors: Distinct Doctrinal Routes, Convergent Remedy Void 27
Part V. The Circularity / Self-Dealing Problem 28
The Monarchical-Origin Critique, Framed Precisely 28
Self-Dealing Beyond Immunity: Judicial Supremacy and the Constitution's Lost Spirit 29
The Seven Acts of Judicial Self-Enthronement 30
Part VI. The Criminal Accountability Vacuum 33
Prosecutorial Discretion Is Practically Unreviewable 33
Criminal, Not Civil: The Formal Line Is Real 33
What Actually Gets Prosecuted 34
Part VII. Judicial Self-Policing 36
Federal: The Judicial Conduct and Disability Act of 1980 36
The Operation of the Merits Exclusion 36
The Supreme Court's Self-Exemption 37
Impeachment as Practical Nullity 38
Part VIII. The Robed Sovereign: Tenure Without Accountability and the Quasi-Monarchical Inversion 40

A. The Anti-Monarchical Device....40
B. The Founders Were Warned....41
C. The Conditional Grant and the Deprecation of “High Crimes and Misdemeanors”....42
D. The Meaning of Good Behaviour: A Bi-Level Definition....45
1. The Historical Common-Law Definition....45
2. The Human-Rights Definition....46
3. The Convergence — and What It Reveals....46
4. Justice and Equity: The Two Traditions of the Standard....47
5. The Standard Is Not Vague: The Self-Authored Codes of Judicial Conduct....49
6. The Judicial Act and the Negation of Good Behaviour....50
7. The Lost Enforcement Mechanism: Scire Facias and the Forfeiture of Office....51
E. The Constitution’s Safety Engineering and the Removal of the Fuses....52
F. The Inversion and the Accountability Vacuum....53
G. The Invariance Assumption: The Fiction of the Constant Judge....57
H. The Counter-Example of the Parent System: England’s Re-Pairing of Independence and Accountability....58
Part IX. An Institutional Comparison: Trump v. United States (2024)....61
Part X. Manufactured Deference: The Sociology and Psychology of Judicial Authority....62
A. The Juridical Field and Symbolic Violence....62
B. Manufactured Legitimacy....62
C. The Theater of Authority....63
D. Legal Socialization: The Training of the Public....64
E. The Capture of the Bar....64
F. Why the Governed Defend Their Governors....66
G. The Occupational Psychology of the Bench....66
H. The Measure of a Manufactured Legitimacy — and Its Failure....68
I. The Sociology of Failed Checks and Balances....69
Part XI. The Remedy Gap: A Right Without a Remedy....71
Part XII. The Removal Vacuum: What Method Remains When Judicial Misconduct Becomes Systemic....72
A. The Scale of the Question and the State-Court Reality....72
B. Disqualification Decided by the Disqualified....73
D. The Statutory Floor Converted into an Ethical Ceiling....75
E. The Burden Inversion and the Evidentiary Trap....75
F. What Remains: The Extraordinary Writs and the Supranational Wall....76
G. The Legislative Cure and the Self-Judging Circularity....77
H. The Constitutional Pathway: Congress Already Holds the Power....79

I. Process Without Recognition 81
Part XIII. Comparative Perspective 82
A. The Common-Law Comparators: England, Canada, and Australia — Independence Paired with Accountability 82
B. The Civil-Law State-Liability Model 84
C. The Pattern: The United States as Outlier 84
Part XIV. International Human Rights Framing 86
A. The Normative Baseline: Independence as a Public Trust, Not a Privilege 86
B. Effective Remedy and the Attribution of Judicial Acts to the State 87
C. The Convention against Torture: A Bounded Analysis and the 2014 Alignment 87
D. A Factor-Based Severity Framework (Persuasive, Not Binding) 87
E. The Compliance-Monitoring Gap 89
Part XV. The Strongest Counterarguments — Taken Seriously 91
The Objections of a Sympathetic Court 93
Part XVI. The Affirmative Case and the Measured Reply 97
Part XVII. Recommendations: A Staged Accountability Architecture 103
Foundational Recommendation — Establish a National Human-Rights Institution With Jurisdiction Over the Administration of Justice 103
Primary Recommendation — State-Liability Remedy (the Principle 16 Architecture) 104
Complementary Statutory Reform — A Bad-Faith Exception to § 1983 Immunity, With Safeguards 104
Enforceable Ethics and Conduct Reform (Parallel Track) 105
Systemic Transparency — Mandatory Reporting of Litigant-Affecting Patterns 105
The Legislative Recommendation: A Graduated, Severable Statute 105
Criminal Accountability for Rights-Depriving Conduct (Immediate Priority) 107
Civic-Knowledge Strategy (Continuous) 108
The Benchmark That Should Drive Urgency 108
What Would Be Different If the Checks Worked 109
The Failed Check Audit 109
Independent Recusal and Ethics Review 109
Transparency as a Remedy Against Archive Control 110
The Victim Pathway Map and Disability as the Stress Test 110
Public Confidence and Congressional Capacity 111
Appendix: Comparative and International Reference 112
A. International Standards on Judicial Independence and Accountability 112
B. Comparative Judicial Discipline and Removal Systems 112
Common-law good-Behaviour systems 112

Civil-law State-liability systems 113
The United States 113
C. European Court of Human Rights — Article 3 Factor Jurisprudence (Persuasive Only) ..113
D. Inter-American Court of Human Rights (Persuasive Only) 114
E. UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 114
F. The Failed Check Audit (Mechanism-by-Mechanism)....114
G. The Victim Pathway Map and the Negative-Space Proof Method 115
H. Twenty Mechanisms of Judicial Self-Enthronement 116

Part I. The Charter of Interpretation: Institutional Purpose, Independence, and the Universal Declaration as the Key to the Constitution's Unenumerated Rights

This report opens not with doctrine but with the ground on which the Institute for the Advancement of Justice & Human Rights stands and the method by which it reasons. What follows in the later Parts — the history of judicial tenure, the architecture of immunity, the sociology of deference — is intelligible only through the interpretive commitments stated here. The IAJ does not approach the American judiciary as a neutral observer cataloguing structural curiosities. It approaches the judiciary as an institution charged, above all other charges, with the protection of the inherent rights of the human being, and it measures the judiciary against that charge. This Part declares the standard by which the measurement is made.

A. The Purpose of the Institute

The Institute exists for the advancement and evolution of justice and human rights. That purpose is not ornamental; it is operative, and it governs everything in this report. The Preamble to the Constitution of the United States announces the document's true object and purpose in words that admit no narrowing: to "establish Justice," to "insure domestic Tranquility," to "promote the general Welfare," and to "secure the Blessings of Liberty to ourselves and our Posterity." These are not recitals. They are the stated ends for which all the powers that follow were constituted, and against which the exercise of those powers must be judged. The IAJ does not treat the Preamble as an ordinary cause of action or as self-executing remedial text; it treats it as the Constitution's statement of object and purpose, the declared ends against which the exercise of constitutional power must be interpreted and judged. A government that betrays those ends does not thereby amend the Preamble; it defaults on it. The IAJ writes to secure the Preamble to the people notwithstanding that default — to hold the constituted powers, and most particularly the judicial power, to the purposes for which the people ordained and established them. Where the government has betrayed the promise of the Preamble, the promise does not lapse. It survives in the people, and it is the IAJ's function to vindicate it on their behalf.

B. The Independence of the Institute

The IAJ is independent of all. It is anchored in root-derivation and truth-finding without boundaries, and it owes interpretive deference to no tribunal, no government, and no institution — domestic or international. This independence is not a posture; it is a method. The IAJ does not republish the pronouncements of human-rights mechanisms as gospel. When the International Court of Justice, the International Criminal Court, the Office of the High Commissioner for Human Rights, the treaty bodies, or the special procedures reason soundly and reach the truth, the IAJ confirms them — not because they have spoken, but because what they have said is true, and the IAJ has derived the same truth from the root. When those same bodies err — when they reason poorly, defer where they should not, or reach conclusions the evidence and first principles do not support — the IAJ will plainly state that they have erred, document the error, and report it. The authority of any pronouncement, in the IAJ's method, flows from its fidelity to truth and to the inherent rights of the human being, never from the identity or rank of the body that issued it. The IAJ defers to

no institution as such; it independently assesses every authority against the inherent rights of the human being, the evidentiary record, and the best available human-rights law, treating institutional rank as relevant but never conclusive. Truth, evidence, and the rights of the person supply the final measure.

That independence is not optional; it is the condition of the Institute's credibility, and the reason is structural. Formal human-rights institutions can be chilled, redirected, or quietly captured from the top: a government displeased with an institution's findings may appoint its own officials to direct it, withdraw its funding, or narrow its mandate, and the institution's truth-finding then bends to the very power it was created to check. An institution charged with investigating the conduct of the State cannot permit courts, governments, political appointees, funders, advisors, treaty bodies, or international mechanisms to substitute institutional rank for truth. Its independence must therefore be epistemic and not merely organizational — the refusal to accept any conclusion until it has been tested against the evidence, the method, human dignity, and the inherent rights of the human being. If the IAJ could not establish the truth independently, and to the highest standard, it would have no reason to exist. In that precise sense the IAJ follows no one and sets the standard: not by institutional title, political permission, or self-accreditation, but by refusing capture and measuring every authority against the truth it has independently established.

That independence is in the service of a particular function, and the nature of the function must be understood from the outset, because everything in this report proceeds from it. The IAJ is not an advocacy organization, and this report is not a brief. The IAJ is an investigative and truth-finding body. It observes, it investigates, it evaluates and determines the facts and the law against the standard derived from the root, and it documents and reports its findings — in the manner of an independent investigator recording a determination, not of a party arguing a cause. Its method is investigation to an evidentiary standard, not persuasion; its product is a record of what it has found to be true, not a demand framed to move a decision-maker. Where its findings later inform educational, academic, scientific, or legal work, that work rests upon the truth established through active investigation, and not the reverse: the IAJ does not begin with a position and assemble support for it. It begins with the case, the evidence, and the record, and it reports what they establish.

The standard to which the IAJ investigates and documents is exacting and deliberately chosen. It works to a medico-legal standard of proof and documentation — the standard that international practice has developed for the investigation of grave human-rights violations, exemplified by the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Istanbul Protocol (OHCHR, endorsed 1999, rev. 2022), which sets the international standard for investigating alleged violations and reporting the findings to the judiciary or other competent bodies. The IAJ holds its own findings to that standard: each case is investigated as a forensic matter, the evidence is assembled and weighed, and the conclusion is recorded as an independent medico-legal investigator would record a finding — reasoned, sourced, and answerable to the record. The investigative publications of the IAJ are the reports of those findings; the present report is one of them.

This function fills a vacuum the United States has left unfilled. More than 120 States maintain a national human-rights institution, and the United Nations General Assembly, through the Paris

Principles it endorsed in 1993, has established the standards such institutions must meet: a broad mandate to protect and promote all human rights, independence from government, and the capacity to investigate, document, and report violations. The United States has no such institution — none that is accredited, and none that meets the Paris Principles — despite decades of calls to establish one. The IAJ does not claim to be a national human-rights institution; that status requires action by the State, which only the State can supply. But the truth-finding function that such an institution would discharge — the independent investigation, documentation, and reporting of human-rights violations to a rigorous evidentiary standard — is the function the IAJ performs, in a country whose government has declined to establish a body to perform it. That is the perspective from which this report is written, and the charter under which the IAJ acts: it investigates, evaluates, and records findings concerning the conduct of the constituted powers against the rights of the human being, and it enters those findings into the record where the State has provided no institution to do so.

That standard is offered to the United States in full: to the judiciary, to be adopted and followed; to every branch of government, to be adopted and followed; and to all people, to be secured by. The IAJ does not ask permission to hold the positions stated in this report, nor does it await the concurrence of the institutions it measures. It states the standard openly, derives it rigorously, and submits it for adoption — confident that a standard anchored in the inherent rights of the human being and in the true object and purpose of the Constitution requires no external license to be authoritative.

C. The Universal Declaration as Root

The Universal Declaration of Human Rights occupies, in the IAJ's method, a place that is foundational and prior. To understand why requires recalling the moment of its making. The Declaration was written and adopted in 1948, in the immediate shadow of the only two world wars in the history of the species — the nearest humanity has come in its recent history to the end of its own civilization, a horror reported by every nation and feared, above all, as the prelude to a third and final catastrophe. From the ashes of those two wars the nations of the world gathered, formed the United Nations to prevent the recurrence of such conflict, and in the same gathering wrote and adopted the Universal Declaration as their common statement of what the human being inherently is and is inherently owed. The Declaration was the product of the world assembled at the moment of its maximum horror and its maximum clarity, setting down the truths it had paid for in blood.

The significance of that origin cannot be overstated, and the IAJ states it plainly: the Universal Declaration came *first*. It preceded the human-rights treaties, the covenants, the conventions, the mechanisms, the procedures, and the structures of international cooperation that the world has since built. Those instruments are its descendants. The International Covenant on Civil and Political Rights, the Convention against Torture, and the entire apparatus of modern human-rights law are codifications, elaborations, and derivations of the truths the Declaration first proclaimed. The root is not lesser than the branches that grew from it. The Declaration's authority does not depend upon, and is not diminished by, the fact that it took the form of a declaration rather than a treaty; its authority is *foundational*: it is normatively prior to the treaty form, the source from which the treaty form is downstream, even as the later covenants and conventions codified,

specified, and made binding many of the principles it first proclaimed. To say of the Universal Declaration that "it is only a declaration, not a treaty" is to mistake the foundation for something lesser than what was built upon it — to elevate the derivative above the source.

The later instruments do not narrow the Declaration; they confirm it, particularize it, and progressively translate its universal principles into binding legal obligations, institutional duties, reporting systems, and remedial expectations.

The ICCPR, ICESCR, CAT, CRPD, CERD, CEDAW, and CRC are not isolated treaty silos but domain-specific architectures designed to move States, step by step, from declaration toward implementation and the preeminence of human rights in government; each act of signature, ratification, and reporting confirms anew the universal relevance of the baseline the Declaration laid. The Declaration remains the root interpretive standard of the human-rights order, while the treaties supply binding, specific, and progressively enforceable obligations within particular fields.

The Declaration's adoption without dissent, and its subsequent near-universal acceptance, give it exceptional normative authority: in the IAJ's understanding it is the closest the community of nations has yet come to a common and universal standard of the inherent rights of the human being. When the nations of the world — of every continent, creed, political system, and stage of development — gathered and assented to a common statement of the inherent rights of the human being, that assent was not a diplomatic convenience. It was the closest thing the community of nations has produced to a universal recognition of a governing human-rights baseline: that these rights inhere in every human being everywhere, by virtue of humanity alone, and are owed to all. The IAJ treats the Declaration accordingly — as carrying its own confirmatory, guiding, and authoritative weight, a weight grounded not in any tribunal's enforcement but in the root-truth the world recognized when it adopted the Declaration and built the treaty architecture upon it.

D. The Universal Declaration as the Key to the Constitution's Unenumerated Rights

From these premises follows the IAJ's signature interpretive position, stated here as the foundational method of this report and of the Institute's work. The Constitution of the United States is rich in rights it does not enumerate. The Ninth Amendment says so in terms: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The Framers did not purport to catalogue the rights of the human being; they enumerated some and expressly preserved the rest. The courts themselves have conceded as much in decisions recognizing previously unenumerated rights, including the right to marry without regard to the sex of one's partner: there they have acknowledged that the Constitution's liberty is broader than its catalogue, and that rights remain within it awaiting recognition. To this day the accreted body of precedent has extracted only a fraction of the rights the Constitution retains for the people. The great body of those rights remains latent, unrealized, awaiting the interpretive key that will draw them out.

The IAJ's position is that the Universal Declaration of Human Rights is that key. Read in its proper historical context, the Constitution is the work of a generation that had already declared, in 1776, that human beings "are endowed by their Creator with certain unalienable Rights" — a natural-

rights tradition that locates rights in the inherent dignity of the person, antecedent to and independent of any government's grant. The Universal Declaration is the modern, universal, and far more complete articulation of that very tradition: the same conviction that rights inhere in the human being as such, drawn out in full and ratified by the assembled world. The two documents are not foreign to one another; they are one tradition, separated by a hundred and seventy-two years and joined by a single premise. The Declaration therefore aligns naturally with the Constitution's founding spirit, with the natural-rights commitments of the Declaration of Independence, and with the object and purpose proclaimed in the Preamble. Where the Constitution retains unenumerated rights for the people, and the Declaration names the inherent rights of the human being, the Declaration supplies the key by which the Constitution's latent rights are to be identified, extracted, and realized. This is the lens through which the IAJ reads the Constitution, and through which the remainder of this report should be read.

This interpretive commitment has a direct consequence for the subject of this report, stated here and developed in the Parts that follow. If the rights of the human being are the measure of legitimate governmental action, then the standard of "good Behaviour" by which the Constitution conditions judicial tenure is itself bounded by those rights. A judge who violates the human rights of those who come before him does not, by definition, behave well. "Good Behaviour" is not a license measured by the judge's own estimation of his conduct; it is a standard measured against the inherent rights the judicial office exists to protect. A judiciary that violates human rights while claiming the protection of good-Behaviour tenure has inverted the very condition of its tenure — a proposition this report demonstrates in detail.

E. The Obstruction the Institute Exists to Correct

The IAJ states openly the objection its position will meet, and diagnoses it for what it is. It will be said that the Universal Declaration is "merely" a declaration and not a treaty; that it has not been incorporated into domestic law; that the Supreme Court, in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), confined even customary-international-law claims to a narrow class and treated the Declaration as without binding domestic force; and that, absent precedent, no court reads the Constitution through the lens of the Declaration. The IAJ does not dispute that this is the present posture of the courts. The IAJ disputes that the present posture of the courts is the measure of truth.

The objection is itself a judicial invention — a product of the very judicial system whose arrested development on the question of human rights this report exists to diagnose and to help correct. That a body of precedent has not yet drawn the unenumerated rights of the Constitution out into the light is not evidence that those rights are absent; it is evidence that the work of extraction has been obstructed, slowed, and left undone. That the courts have declined to read the Constitution through the Declaration is not a limit the IAJ is bound to honor; it is a symptom of the artificially obstructed and slowed progress of human rights within a judicial system that must evolve. The IAJ's core function is precisely that evolution: the advancement of justice and human rights past the obstructions that presently confine them. To treat the obstruction as authority — to say that because the courts have not yet done the work, the IAJ must be cautious about holding the position that the work requires — would be to surrender the Institute's reason for existing. The IAJ therefore holds the interpretive position stated in this Part as fundamental, normative, and

necessary, and it declines to soften it merely because the institutions it measures have not yet caught up to it.

The IAJ is candid about the status of what it asserts. The position that the Universal Declaration is the key to the Constitution's unenumerated rights is the IAJ's own principled and original jurisprudential contribution — a standard the Institute sets and submits for adoption, not a description of present black-letter doctrine. That candor is not a retreat from the position; it is the source of its strength. The IAJ does not misstate the law as it is. It states the law as the inherent rights of the human being and the true object and purpose of the Constitution require it to become, and it identifies the present contrary doctrine not as an authority to be obeyed but as the obstruction this thesis is written to move. This is what it means for an institution to lead rather than to follow: to make the associations that lie waiting in the open, to derive from the root the conclusions the assembled materials compel, and to set the standard that the law, properly evolving toward the protection of human life and inherent rights, will in time be brought to meet — most demonstrably possible in a constitutional republic whose legitimacy rests on the promise that public power exists to secure liberty, justice, and the rights retained by the people.

Part II. The English Origins and the Reception Problem

The doctrine traces to Sir Edward Coke's Star Chamber-era jurisprudence: *Floyd v. Barker*, 77 Eng. Rep. 1305 (Star Chamber 1607), and *The Case of the Marshalsea*, 77 Eng. Rep. 1027 (C.P. 1612). Coke's rationale rested on four public-policy grounds: finality of judgment, judicial independence, freedom from "continual calumniations," and public confidence in the judiciary. Crucially, the English doctrine was **bifurcated and limited**: judges of superior courts of record were protected for judicial acts, but judges of inferior courts were liable for acts outside their jurisdiction, and *Marshalsea* itself denied immunity where "the Court has not jurisdiction of the cause." Coke also located the forum for judicial wrongdoing in Parliament, not in fellow judges — and noted that in earlier eras corrupt judges (e.g., Chief Justice Thomas Weyland, Justice Ralph Hengham) had been banished, fined, or imprisoned. Nor did the common law ever treat damages immunity as total insulation: the King's Bench exercised considerable collateral control over inferior and rival courts through prerogative writs, a history the Supreme Court itself canvassed in *Pulliam v. Allen*.

This matters analytically: the doctrine was forged for a **unified Crown court system** in which the King was the ultimate font of justice and the separation-of-powers premise of the American constitutional order did not exist. When American courts received the doctrine — first in *Randall v. Brigham*, 74 U.S. (7 Wall.) 523 (1868), then definitively in *Bradley* — they imported a Crown-era shield into a republic premised on the proposition that no person is above the law and that every official is the servant, not the master, of the people.

Part III. The Judge-Made Chain: Reception, Expansion, Entrenchment

The doctrine's American career is not a single act of self-invention; it is a sequence of judicial choices, each available to be made otherwise, by which the courts received, expanded, and entrenched a common-law shield as a federal civil-rights defense. The structural significance — developed in Part V — is that at every fork, the institution choosing the doctrine's breadth was the institution protected by it.

Randall v. Brigham (1868)

The Court first stated that judges are not liable for judicial acts "unless perhaps where the acts in excess of jurisdiction are done maliciously or corruptly" — preserving a malice exception.

Bradley v. Fisher, 80 U.S. (13 Wall.) 335 (1872)

Justice Field, writing for the Court, deliberately *deleted Randall*'s malice qualifier, declaring that the "qualifying words used were not necessary to a correct statement of the law," id. at 351, and holding that superior-court judges are immune "even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly," id. *Bradley* drew the central distinction — between "excess of jurisdiction" (immune) and "the clear absence of all jurisdiction over the subject matter" (not immune) — and offered the famous illustration: a probate judge trying a criminal case acts in clear absence of jurisdiction; a criminal-court judge who convicts of a non-existent crime merely exceeds jurisdiction and remains immune. The case arose from the disbarment of an attorney (Joseph Bradley, counsel to Lincoln-assassination conspirator John Surratt). The Court conceded that judges might be reached "by public prosecution in the form of impeachment, or in such other form as may be specially prescribed," but not by civil suit. Justice Davis, dissenting, would have held a judge "subject to suit the same as a private person would be" where he "acted maliciously and corruptly," id. at 357 — the road not taken.

Pierson v. Ray, 386 U.S. 547 (1967)

The Court read judicial immunity into 42 U.S.C. § 1983 despite the statute's text. Chief Justice Warren reasoned that "the legislative record gives no clear indication that Congress meant to abolish wholesale all common-law immunities" and "we presume that Congress would have specifically so provided had it wished to abolish the doctrine." *Pierson v. Ray*, 386 U.S. 547, 554–55 (1967). The majority itself acknowledged the doctrine's monarchical genealogy: because the King could do no wrong, the judges, "his delegates for dispensing justice, 'ought not to be drawn into question.'" **Justice Douglas dissented**, the linchpin of the critique: "I do not think that all judges, under all circumstances, no matter how outrageous their conduct, are immune from suit under [§ 1983]." He observed: "To most, 'every person' would mean every person, not every person except judges." Id. at 559 (Douglas, J., dissenting). Douglas marshaled the legislative history of the 1871 Ku Klux Klan Act, showing that "every member of Congress who spoke to the issue assumed that the words of the statute meant what they said and that judges would be liable," id. at 561 — indeed, **members objected to the bill precisely because it imposed liability on the judiciary** (Representative Arthur of Kentucky warned that every state judge would proceed

"with the sword of Damocles suspended over him," id. at 562 (quoting Cong. Globe, 42d Cong., 1st Sess., 365–66 (1871))). The statute was a direct response to Southern state judges complicit in denying civil rights; reading judges out of "every person" inverts the statute's purpose.

Stump v. Sparkman, 435 U.S. 349 (1978)

The doctrine's nadir. Judge Harold Stump of DeKalb County, Indiana, granted a mother's ex parte petition to sterilize her 15-year-old daughter, Linda Spitler (later Sparkman), described as "somewhat retarded," the same day it was filed — no hearing, no notice, no guardian ad litem, no appointed counsel for the child. Linda was told she was having an appendectomy; she discovered the tubal ligation years later when she could not conceive. The Court (5–3, White, J.) held Judge Stump absolutely immune: the Indiana circuit court's broad general-jurisdiction grant meant there was no "clear absence of all jurisdiction," and approving the petition was a "judicial act" because it was "a function normally performed by a judge" and the parties dealt with him in his judicial capacity. Justice White wrote: "A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors." *Stump v. Sparkman*, 435 U.S. 349, 359 (1978); see id. at 362 (immunity turns on whether the act is "a function normally performed by a judge"). Justice Stewart (joined by Justices Marshall and Powell) dissented, arguing the act was not "judicial"; Justice Powell separately stressed that Judge Stump's conduct "precluded any possibility for the vindication of respondents' rights elsewhere in the judicial system," id. at 369 (Powell, J., dissenting) — precisely the situation in which the *Bradley* rationale (appellate review as the alternative remedy) collapses.

Mireles v. Waco, 502 U.S. 9 (1991) (per curiam)

Judge Raymond Mireles allegedly ordered police to seize a public defender, Howard Waco, "forcibly and with excessive force" — dragging him from another courtroom into Judge Mireles's — after Waco failed to appear for the morning calendar call. The Court conceded that "a judge's direction to police officers to carry out a judicial order with excessive force is not a 'function normally performed by a judge,'" yet held him immune because the act bore a "relation to a general function normally performed by a judge." If only the specific act were scrutinized, the Court reasoned, "any mistake of a judge in excess of his authority would become a 'nonjudicial' act." Justice Stevens dissented; Justices Scalia and Kennedy dissented from the summary disposition. *Mireles* thus established that even allegedly authorizing a battery is shielded, and that immunity is "an immunity from suit, not just from ultimate assessment of damages." *Mireles v. Waco*, 502 U.S. 9, 11 (1991) (per curiam).

Function, Prospective Relief, and the 1996 Sealing of the Crack

Forrester v. White, 484 U.S. 219 (1988), held that a judge's *administrative* acts (firing a probation officer) are not protected — confirming that immunity attaches to function, not status. The history of prospective relief is layered and should be stated precisely. The Supreme Court never held that judicial immunity barred all forward-looking remedies: *Supreme Court of Virginia v. Consumers Union of the United States, Inc.*, 446 U.S. 719 (1980), held that judges acting in an *enforcement* capacity were proper defendants for declaratory and injunctive relief, and *Pulliam v. Allen*, 466 U.S. 522, 536 (1984), held that judicial immunity did not bar prospective injunctive relief

or statutory attorney's fees — observing that "[w]e never have had a rule of absolute judicial immunity from prospective relief, and there is no evidence that the absence of that immunity has had a chilling effect on judicial independence." Id. at 536. Congress then narrowed that route through the **Federal Courts Improvement Act of 1996**, which amended § 1983 to bar injunctive relief against a judicial officer "unless a declaratory decree was violated or declaratory relief was unavailable" and to preclude fee awards. In the federal-judge context, circuit authority such as *Mullis v. U.S. Bankruptcy Court for the District of Nevada*, 828 F.2d 1385 (9th Cir. 1987), makes prospective relief especially difficult, extending immunity to declaratory and injunctive relief outright. The result is not that prospective relief never existed; it is that the modern remedial architecture has narrowed it sharply.

That sequence is more than a doctrinal chronology; it is, in effect, a natural experiment, and its result cuts against the prediction the doctrine rests on. For the twelve years between *Pulliam* and the 1996 Act, judicial immunity did not bar prospective relief or attorney's fees under § 1983, and the federal system therefore operated without the very protection the immunity cases describe as indispensable. The forecast catastrophe — a flood of harassing suits, a judiciary cowed into timidity — did not arrive. The Court had already recorded the absence of any evidence of a chilling effect, and scholarship later examining the interval found that the predicted deluge of litigation against enjoined judges never materialized (Alexandra Nickerson & Kellen Funk, "When Judges Were Enjoined," 111 Cal. L. Rev. 1763 (2023)). When Congress closed the window in 1996, it did so on the strength of the same prediction rather than a demonstration of harm: the committee report invoked a chilling effect and the burden of defending suits, but rested on the forecast itself rather than on evidence that either had occurred (S. Rep. No. 104-366 (1996)). The point is carefully bounded. The window concerned prospective relief and fees, not damages, so it does not establish that a damages regime would be costless, and the absence of recorded harm is not the same as proof of its impossibility. But it is not nothing: the one interval in which the predicted harm could have been observed produced no record of it, and the legislative correction rested on the identical untested forecast — that judges must be free to act "without apprehension of personal consequences" — which *Bradley* had announced in 1872. A structural choice defended for a century and a half by confident prediction of consequences has, in the only period available to test the prediction, gone unconfirmed.

The Chain Measured Against the Standard

The preceding account is genealogical: it traces how each link was forged. This closing section measures the chain against the standard the Charter of this report establishes as preeminent — the Universal Declaration as the root of the rights adjudication exists to protect — and asks of each precedent two questions the courts that decided them did not. First, what right, now codified, did the immunity leave unprotected? Second, had that right been textually preeminent in domestic law — as the IAJ argues it should be, through the Universal Declaration read as the key to the Constitution's unenumerated rights — could the immunity defense have survived contact with it? The exercise is not a claim that any tribunal has held these cases to violate international law, nor that the Declaration was self-executing domestic law when they were decided; the cure for that gap belongs to Congress and the political branches, as the legislative-remedy Parts of this report

explain. It is the IAJ's evaluative reading, offered to show what the chain cost when measured by the standard that should have governed it.

Two clarifications keep the measure honest. The lens is applied where the facts engage a core right, not indiscriminately: *Randall* and *Bradley* are links in the doctrine's construction rather than episodes of rights-violation, and *Forrester*'s administrative-acts holding and the prospective-relief history are doctrinally load-bearing without carrying a human-rights charge. And the counterfactual is conditional throughout — it asks what a regime of preeminent, codified rights would have required, not what the law of the time in fact commanded.

Pierson v. Ray (1967) is the most instructive starting point, because the right and the violation are inseparable from the moment. The plaintiffs were clergy arrested for using a segregated waiting room; the immunity the Court read into § 1983 shielded the judge who enforced the segregation. Measured against the standard, *Pierson* engaged the guarantee of equality before the law and equal protection against discrimination (Universal Declaration, arts. 1, 2, and 7) and the right to an effective remedy for acts violating fundamental rights (art. 8). The Court's own reasoning — that Congress cannot be presumed to have abolished common-law immunities silently — is a canon of statutory construction; it is not a reason grounded in the rights at stake, and it operated to deny the art. 8 remedy to the very persons the Reconstruction statute was enacted to protect. Had the equality guarantee and the right to a remedy been textually preeminent, an immunity that extinguished the remedy for racially discriminatory enforcement could not have been sustained: a right to an effective remedy that yields to the immunity of the official who violated the right is not an effective remedy at all.

Stump v. Sparkman (1978) is the case in which the gap between the doctrine and the standard is widest. A fifteen-year-old girl was sterilized on an ex parte petition granted the day it was filed — no notice, no hearing, no guardian, no counsel — and was told it was an appendectomy. Measured against the standard, the conduct engaged the prohibition of cruel, inhuman, or degrading treatment (Universal Declaration, art. 5), the right to security of the person and bodily integrity (art. 3), the right to a fair hearing before an impartial tribunal (art. 10), and, in its subject, the protections a child is owed against such an intrusion upon bodily integrity. Later human-rights law confirms the gravity of that violation: the Convention on the Rights of the Child, which the United States signed in 1995 and whose object-and-purpose principle is reflected in Vienna Convention on the Law of Treaties article 18 and is commonly invoked as a customary-law guide to the obligations of signatories pending ratification, articulates the standard against which the conduct is measured here. Because the United States signed the Convention in 1995, seventeen years after the decision, the IAJ invokes it not as a legal obligation governing the 1978 ruling but as a later-confirming benchmark of the rights the ruling disregarded. The Court held the judge absolutely immune because issuing the order was "a function normally performed by a judge." Under a regime in which art. 5 and art. 3 were textually preeminent, that analysis could not have reached the result it did: at the severity this conduct reaches — the threshold this report defines throughout — the prohibition of degrading treatment and the right to bodily integrity admit no immunity for their breach, and a "function normally performed by a judge" cannot include the destruction of a child's bodily integrity without process. Justice Powell's dissent already saw the decisive point in domestic terms — that the procedure "precluded any possibility for the vindication

of respondents' rights elsewhere" — which is the art. 8 effective-remedy failure stated in the Court's own idiom.

Mireles v. Waco (1991) completes the measure by exposing what the function test protects once detached from any rights constraint. A judge allegedly ordered officers to seize a public defender and bring him to the courtroom "with excessive force." The Court held the order immune because directing officers is a judicial function, the alleged excess of force notwithstanding. Measured against the standard, the conduct engaged the right to security of the person (Universal Declaration, art. 3) and the prohibition of degrading treatment (art. 5). Had those rights been preeminent, the function characterization could not have absorbed the violence: an order to use excessive force against a person is not rendered rightful by the judicial status of the person who gave it, because the prohibition of such treatment binds the act regardless of the office of the actor — the precise principle the international standard expresses and the function test, as applied, defeats.

Read together under the standard, the chain discloses a single pattern. At each link where a core right was engaged, the immunity operated to extinguish the remedy that the right requires, and it did so on reasoning drawn from the internal logic of the doctrine — malice qualifiers deleted, statutory silences presumed, functions characterized — rather than from any confrontation with the right at stake. That is the Charter's diagnosis made concrete: a system that places the finality of the judicial act above the rights the act destroys has inverted the relation between the two. The right to an effective remedy (art. 8) is the thread that runs through every link, because immunity is precisely the doctrine that severs it. Whether the severance is cured is a question for the political branches and for the legislative remedy this report proposes in Parts XII and XVII; that it occurred, and occurred against the standard that should have governed, is what the measure establishes.

Part IV. State and Federal Judicial Actors: Distinct Doctrinal Routes, Convergent Remedy Void

State and federal judicial actors must be kept analytically separate, because the law governing them differs — and because the difference makes the convergence more damning, not less.

State judicial officers. Section 1983 supplies the principal civil-rights vehicle against state judges, subject to absolute judicial immunity for damages (*Pierson*; *Stump*; *Mireles*) and the 1996 statutory limits on injunctive relief described in Part III. State-law tort routes are typically foreclosed by parallel state immunity doctrines and state sovereign immunity.

Federal judicial officers. Federal judges are not suable under § 1983 at all, because they do not act under color of *state* law. The alternative routes are each independently blocked. *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), once supplied an implied damages remedy against federal officers, but the Supreme Court has confined it to near-extinction: under *Egbert v. Boule*, 596 U.S. 482 (2022), recognizing a *Bivens* remedy in any new context is disfavored "in all but the most unusual circumstances," and no court has extended *Bivens* to adjudicative conduct. Official-capacity claims are barred by sovereign immunity absent waiver. The Federal Tort Claims Act supplies no reliable remedy for adjudicative wrongs, given its discretionary-function and intentional-tort limitations and the courts' uniform refusal to treat adjudication as actionable. Mandamus and the extraordinary writs are tightly channeled into appellate supervision of legal error, not redress for injury. And in the Ninth Circuit, *Mullis* extends judicial immunity to bar even declaratory and injunctive relief against federal judicial officers.

The convergence. The common feature is not identical doctrine but functional convergence: both the state and federal systems leave intentional adjudicative rights-deprivation with no reliable damages remedy against the judicial actor and often no practical substitute remedy. A claimant injured by a state judge meets *Stump*; a claimant injured by a federal judge meets *Egbert*, sovereign immunity, and *Mullis*. Different walls; same enclosure. This convergence is the domestic predicate for the international-law analysis in Part XIV: ICCPR Article 2(3) asks whether the State as a whole supplies an effective remedy, and on the question of adjudicative bad-faith deprivation, both American routes return the same answer.

Part V. The Circularity / Self-Dealing Problem

The structural pathology is that **judges define the scope of judges' immunity.** No other profession or institution sets the terms of its own liability shield through its own binding pronouncements. The comparison set sharpens the point:

- **Executive officers** receive only *qualified* immunity (police, officials) — itself controversial, but at least defeasible by "clearly established law." *Butz v. Economou*, 438 U.S. 478 (1978), expressly confined federal executive officials to qualified immunity while reserving absolute immunity for judges and prosecutors "functioning in the judicial system."
- **Prosecutors** received *absolute* immunity in *Imbler v. Pachtman*, 424 U.S. 409 (1976) — but that immunity is itself **derived from judicial immunity** ("quasi-judicial"), meaning the judiciary extended its own shield outward to allied courtroom actors. *Imbler* conceded that absolute immunity "does leave the genuinely wronged defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty." 424 U.S. at 427.
- **Legislators** enjoy immunity under the **Speech or Debate Clause** — but that has an actual *textual constitutional basis*. Judicial immunity has none; as the Court has explained, its immunity decisions are "informed by the common law" and "concerns of public policy" rather than constitutional command. *Nixon v. Fitzgerald*, 457 U.S. 731, 747–48 (1982).

The conflict of interest is institutional, not personal: the body adjudicating the proper reach of immunity is the same body that benefits from its breadth. Principal-agent theory (Part X below) names this an unmonitored-agent problem; regulatory-capture theory names it a regulator captured by, and identical to, the regulated. The incoherence has a doctrinal monument: in *Dennis v. Sparks*, 449 U.S. 24 (1980), the Court held that **private parties who conspire with a judge are liable under § 1983 even though the judge himself is immune.** The same corrupt transaction produces liability for everyone in the room except its judicial author — a result no liability architecture designed from outside the judiciary would produce.

The Monarchical-Origin Critique, Framed Precisely

Federal law does not presently abolish judicial immunity because of its English or monarchical origins, and the IAJ does not contend otherwise. The controlling cases preserve civil damages immunity for genuinely judicial acts within jurisdiction. The better argument is narrower and stronger: judicial immunity is not constitutionally text-mandated; it is a judge-made common-law doctrine later re-justified by functional policy — judicial independence, avoidance of harassment, appellate correction, separation of powers. Because the United States is a constitutional republic rather than a monarchy, the doctrine should be limited to what its modern functional justifications can actually support. The monarchical origin matters because it shows the doctrine did not arise from republican constitutional text and is therefore revisable; modern doctrine does not rest on divine-right monarchy, but the functional replacement has preserved much of the monarchical *effect*: a rights-depriving judicial actor may remain civilly unreachable even when malice, corruption, discrimination, or bad faith is alleged.

Forrester v. White is the most important doctrinal limiting case precisely because it rejects status-based immunity: "[i]t is the nature of the function performed — adjudication — rather than the identity of the actor who performed it — a judge — that determines whether absolute immunity attaches to the act." *Forrester v. White*, 484 U.S. 219, 229 (1988). That functional rule is the doctrinal bridge between republican accountability and judicial independence: a judge is not immune because the judge is sovereign, sacred, or institutionally untouchable; immunity exists only insofar as the act is genuinely adjudicative and the policy justifications apply. Lower-court commentary points the same direction: the concurrence in *Stevens v. U.S. Attorney General*, 877 F.3d 1293 (11th Cir. 2017), warned that expanding the category of "truly judicial acts" can itself threaten constitutional rights, including open access to judicial proceedings — supporting a narrow construction of the judicial-act category even while absolute immunity governs core adjudication. The reform target that emerges is therefore twofold: pair the immunity with substitute remedies, and constrain what counts as judicial.

Self-Dealing Beyond Immunity: Judicial Supremacy and the Constitution's Lost Spirit

The self-conferral of immunity is the most acute instance of a more general pattern: the judiciary's assumption of authority over the very instrument that defines and limits its power. Judicial review itself — the power to declare the meaning of the Constitution — appears nowhere in the constitutional text; it was claimed by the Court in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). Whatever the merits of that claim, the Court did not stop at the power to interpret the Constitution in the cases before it. In *Cooper v. Aaron*, 358 U.S. 1 (1958), the Court used language that, in the IAJ's reading, moved beyond ordinary judicial review toward judicial supremacy: it treated its own interpretation of the Constitution as binding constitutional meaning for every other actor. (The IAJ's critique is not that constitutional adjudication is illegitimate, but that a judicial monopoly over constitutional meaning becomes structurally dangerous when held by a life-tenured, self-immunized, and effectively irremovable institution.) Earlier in the same line the Court had asserted that its reading of the Constitution *is* the Constitution — that the judicial gloss and the supreme law are one and the same — a doctrine of *judicial supremacy* that exceeds judicial review as the founders understood it. A substantial body of scholarship has contested this conflation of the Court's word with the people's charter: Larry Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (Oxford University Press 2004), recovers the founding understanding that constitutional meaning belongs to "the people themselves" rather than to a judicial monopoly; Mark Tushnet, *Taking the Constitution Away from the Courts* (Princeton University Press 1999), and Jeremy Waldron, "The Core of the Case Against Judicial Review," 115 Yale L.J. 1346 (2006), develop the democratic case against treating the judiciary as the sole and final expositor of fundamental law.

The IAJ's contribution is to connect this critique of judicial supremacy to the immunity architecture and to the Charter of Interpretation set out in Part I. A Constitution whose meaning is monopolized by a life-tenured, self-immunized, and effectively irremovable judiciary is no longer, in any meaningful operational sense, the people's Constitution; its "original spirit" — the popular sovereignty of the Preamble, the principle that no person is above the law, the conception of every official as the servant and not the master of the people — has been displaced by a juridical

sovereignty the founders did not intend and the Anti-Federalists expressly feared. This is the phenomenon that comparative scholarship has named *juristocracy*: Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Harvard University Press 2004), documents the transfer of fundamental political and moral questions "from representative institutions to judiciaries," and the consequent elevation of judicial elites. The displacement is precisely what allows the unenumerated rights the Constitution retains for the people — the rights the Charter of this report identifies the Universal Declaration as the key to realizing — to remain unrealized: a judiciary that monopolizes constitutional meaning, and that is structurally insulated from the people whose rights are at stake, has neither the incentive nor the accountability to draw those rights into the light. The monopoly over meaning and the immunity from consequence are two faces of a single self-dealing.

The literary and artistic imagination grasped this condition long before the social science named it. Franz Kafka's parable "Before the Law" — the man from the country who waits a lifetime at a door to the law that was meant for him alone, and is admitted only as it closes — is the enduring image of law as an authority at once omnipresent and inaccessible, demanding submission while withholding justice. Dickens's *Bleak House* rendered the Court of Chancery, through the eternal suit of *Jarndyce v. Jarndyce*, as an institution that consumes the very people it purports to serve. Honoré Daumier's lithographs of robed magistrates, *Les Gens de Justice*, fixed in caricature the arrogance and theater of a bench grown remote from those it judges. These are not decorations on the argument; they are independent witnesses to it, drawn from the experience of subjects across two centuries and several nations who perceived, without the vocabulary of doctrine, the same gap between the law's majestic self-presentation and its treatment of the human beings before it. Lord Acton's axiom that "power tends to corrupt, and absolute power corrupts absolutely" (Lord Acton, letter to Bishop Mandell Creighton, Apr. 5, 1887) was offered as a comment on precisely such unaccountable authority; Hannah Arendt's account of bureaucratic domination as "rule by Nobody" (*On Violence* (1970)) names the diffusion of responsibility by which a system can oppress while no one within it is answerable. The IAJ assembles these witnesses not to substitute literature for analysis but to insist that the structure this report describes has been seen, and named, and feared, across the long human experience of law — and that its correction, in the service of the inherent rights of the human being, is overdue.

The self-dealing has a further dimension that the equity tradition makes visible. A court of conscience withholds its aid from any suitor whose own hands are unclean; the judiciary, in conferring immunity upon its own malicious and corrupt acts, exempts itself from the first condition it imposes on everyone who comes before it. The circularity thus reappears in equity's register — the institution claims the authority of a forum of conscience while failing the threshold that forum sets for all others. This point is developed as part of the definition of good Behaviour in Part VIII, § D.

The Seven Acts of Judicial Self-Enthronement

The circularity described in this Part is not confined to immunity doctrine. Immunity is the most visible instance of a broader architecture by which the judicial branch converted independence into self-protective sovereignty. The IAJ identifies seven acts of judicial self-enthronement. They

are not isolated abuses. They are the recurring forms by which every external accountability relation is drawn back inside the institution it was meant to check.

Act One — Self-Definition. The judge-protected institution defines the shield protecting judges. *Bradley*, *Pierson*, *Stump*, and *Mireles* do not merely announce immunity; they authorize the judiciary to define what counts as a judicial act, what counts as jurisdiction, and when malice or corruption remain civilly immune. The branch protected by the doctrine becomes the author of the doctrine.

Act Two — Self-Exemption. The judiciary announces standards while withholding consequence. It publishes canons of conduct, invokes dignity and independence, and describes itself as bound by ethical ideals; yet the enforcement architecture leaves the most powerful actors either outside the code, outside meaningful discipline, or inside a system that cannot reach the merits-related exercise of power.

Act Three — Self-Adjudication. The officer whose impartiality is challenged decides, in the first instance, whether the challenge has merit. Recusal and disqualification thereby reproduce the very contradiction they were designed to cure: the judge whose continued authority is at issue becomes the judge of whether that authority may continue.

Act Four — Self-Policing. The institution creates a complaint system that excludes the form in which judicial abuse most commonly appears. The merits exclusion does not simply prevent collateral attack on rulings. In practice it launders misconduct into adjudication: when bias, retaliation, denial of accommodation, or knowing rights-deprivation is expressed through rulings, the complaint is dismissed as merits-related; when the complainant lacks extrinsic proof independent of those rulings, the complaint is dismissed as unsupported.

Act Five — Self-Legitimation. The institution uses the symbols of justice to preserve confidence while withholding remedy. Robes, architecture, honorifics, ritual deference, appellate formality, and public-confidence language do not merely decorate judicial authority. They help make power appear as neutrality and make the absence of remedy appear as law.

Act Six — Self-Insulation from Review. The system permits challenge in form while denying meaningful review in operation. Prosecutorial non-enforcement is practically unreviewable; judicial-conduct dispositions are internally reviewed and statutorily final; recusal denials are reviewed only later and deferentially; finality converts unresolved harm into institutional memory loss; and civil immunity bars the ordinary damages action before it can test the truth.

Act Seven — Self-Preservation Against Reform. When Congress intervenes, the judiciary construes, administers, or absorbs the intervention so that the institutional balance remains unchanged. A statutory recusal duty is routed back through the challenged judge. A conduct statute excludes the merits. A code is adopted without enforcement. A remedy preserved by *Pulliam* is narrowed by statute. A legislative proposal for ethics is met by judicial-supremacy rhetoric. The branch does not need openly to reject accountability when it can translate accountability into a form it controls; judicial supremacy is the ideology that makes that translation appear lawful, because the branch becomes the final interpreter of the checks directed against it.

These seven acts are the architecture of self-enthronement. The judicial branch did not become quasi-monarchical because it possesses independence. It became quasi-monarchical because it converted the checks upon independence into occasions for judicial permission. A check is not a check when the checked officer decides whether the check applies.

The same convergence appears one rung below the bench, and the defenders' answer to it fails in the same way. That the litigation privilege protects candid advocacy the IAJ accepts; that it must be absolute — proof against even the knowing and the malicious — does not follow from the need to protect the honest, any more than the honest judge's protection requires that the torturer in a robe go unanswered. And the backstops the defenders name are the negative-space proof in miniature: Rule 11 sanctions are discretionary and sparingly imposed; malicious prosecution and abuse of process almost never succeed, hedged as they are by elements a wronged party can seldom prove; and bar discipline, self-administered by a guild dependent on the very judges it would have to police and aimed by its own docket at the looted account rather than the privileged falsehood, does not reach the conduct at all. The civil channel is closed by the privilege, the professional channel by the bar's misdirection, and the judicial channel by immunity — three empty rooms around a single wrong. The officer of the court thus enjoys, on the defenders' own account, immunity without loss of license; and where his conduct crosses the threshold this report defines, that arrangement collapses, for no privilege reaches a peremptory wrong, and he answers in person beside the State, exactly as the judge does.

Part VI. The Criminal Accountability Vacuum

Prosecutorial Discretion Is Practically Unreviewable

Three authorities lock the door:

- *United States v. Nixon*, 418 U.S. 683, 693 (1974) (dictum): "the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case."
- *Inmates of Attica Correctional Facility v. Rockefeller*, 477 F.2d 375, 380 (2d Cir. 1973): courts will not compel prosecution lest they become "superprosecutors"; even mandatory-sounding statutory language "has never been thought to preclude the exercise of prosecutorial discretion."
- *Heckler v. Chaney*, 470 U.S. 821, 831–32 (1985): an agency's (or prosecutor's) non-enforcement decision is "presumed immune from judicial review," sharing "the characteristics of the decision of a prosecutor in the Executive Branch not to indict."

Together these mean a decision *not* to prosecute a judge is essentially unchallengeable.

Criminal, Not Civil: The Formal Line Is Real

18 U.S.C. § 242 criminalizes willful deprivation of rights "under color of any law," and the Department of Justice Civil Rights Division expressly lists "judges" among covered actors; penalties scale from one year up to life imprisonment or the death penalty where death results. *Ex parte Virginia*, 100 U.S. 339, 348–49 (1880), upheld the criminal prosecution of a county judge for racially excluding Black jurors, reasoning that the discriminatory exclusion was outside any legitimate judicial discretion: "It is idle, therefore, to say that the act of Congress is unconstitutional because it inflicts penalties upon State judges for their judicial action. It does no such thing." *Mireles* footnote 1 reaffirms that judges are "not absolutely immune from criminal liability," citing *Ex parte Virginia*, 100 U.S. at 348–49.

Recent authority confirms the orthodox distinction in live litigation. In *United States v. Dugan*, No. 2:25-cr-00089 (E.D. Wis.), a sitting Wisconsin state judge prosecuted for obstructing a federal immigration proceeding moved to dismiss on absolute judicial immunity grounds; the court refused to extend the civil framework of judicial immunity to criminal prosecution, holding that "there is no firmly established absolute judicial immunity barring criminal prosecution of judges for judicial acts," and rejecting the argument that *Trump v. United States* supplied such authority. *See United States v. Dugan*, 2025 WL 1870854 (E.D. Wis. July 7, 2025) (report and recommendation), adopted, 2025 WL 2452678 (E.D. Wis. Aug. 26, 2025). A jury subsequently convicted Judge Dugan of felony obstruction in December 2025, acquitting her on a misdemeanor concealment count; she resigned shortly afterward. As of June 2026 the matter remains active and non-final: the district court denied post-trial motions for acquittal or a new trial on April 6, 2026; a sentencing scheduled for June 3, 2026 was postponed while the court considered a renewed challenge to the conviction; on June 16, 2026 the district court declined to overturn the conviction, which stands; and no sentencing date had been set. The IAJ relies on *Dugan* only for the limited proposition that civil judicial immunity does not bar criminal prosecution — a proposition independently grounded in *Ex parte Virginia* and *Mireles* footnote 1 — and not as settled or final

authority. The problem the IAJ identifies is therefore not formal criminal immunity; it is practical non-enforcement for adjudicative deprivations.[1]

What Actually Gets Prosecuted

Operation Greylord (Cook County, 1980s) indicted 92–93 officials including 17 judges, with 15 judges convicted — of **bribery, mail fraud, racketeering, and tax violations**, never of deprivation of rights through their rulings. Judge Thomas Maloney took bribes to fix three murder cases and received 16 years; Judge Richard LeFevour received 12 years on 59 counts. The one modern § 242 conviction of a sitting judge, *United States v. Lanier*, 520 U.S. 259 (1997), involved sexual assaults in chambers — personal crime, not adjudication. And *Dugan* itself fits the pattern: the charge was obstruction of a federal proceeding, not deprivation of rights through a ruling. On the documented record the IAJ has reviewed, the pattern is without exception — a conviction for the adjudicative content of a ruling is not merely rare but unlocated — and the IAJ states the finding as an evidenced absence rather than a categorical impossibility: no documented instance, not a proof that none could ever exist.

The **"Kids for Cash"** scandal (Luzerne County, Pennsylvania) is the most vivid illustration. Judges **Mark Ciavarella** and **Michael Conahan** accepted $2.8 million in illegal payments to send children to for-profit detention; the Pennsylvania Supreme Court threw out some 4,000 juvenile convictions involving more than 2,300 children, and Ciavarella ordered children as young as eight to detention, many of them first-time offenders. Ciavarella is serving a 28-year federal prison sentence with a projected release date of 2035; Conahan was sentenced to 17.5 years (commuted by President Biden in December 2024). In 2022, U.S. District Judge Christopher Conner awarded the victims $106 million in compensatory and $100 million in punitive damages in the consolidated civil litigation, *Wallace v. Powell* (M.D. Pa.). Critically, Pennsylvania's Judicial Conduct Board had received four complaints about Conahan between 2004 and 2008 and **admitted it failed to investigate any of them.**

Two precision points prevent this episode from over-proving the thesis. First, Kids-for-Cash is not evidence that judicial immunity yields in corruption cases: in the civil litigation, Ciavarella *retained* judicial immunity for his courtroom adjudications — the very rulings that shackled children without counsel — and was held liable only for the non-judicial conspiracy conduct. The $206 million flowed around the immunity, not through it; the children's compensable injury was legally located in the bribe, not in the rulings. Second, the criminal convictions were for racketeering, fraud, and tax offenses — the money — not for the adjudicative deprivations. The episode proves a narrower and more important point: **when adjudicative abuse is chargeable as bribery, racketeering, fraud, or honest-services corruption, the system can act; when the same deprivation**

[1]As of the time of this writing (June 2026), the *Dugan* matter is non-final: the December 2025 jury verdict — conviction on the felony obstruction count and acquittal on the misdemeanor concealment count — was followed by denial of post-trial motions on April 6, 2026; a sentencing scheduled for June 3, 2026 was postponed while the court weighed a renewed challenge to the conviction; on June 16, 2026 the district court declined to overturn the conviction, which stands, and no sentencing date had been set. This report cites *Dugan* only for the narrow, independently supported proposition that civil judicial immunity does not bar criminal prosecution, and not as settled or final authority.

appears only as a judicial decision, without an independently provable corruption transaction, the accountability architecture largely fails.

Part VII. Judicial Self-Policing

Federal: The Judicial Conduct and Disability Act of 1980

The Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 351–364) lets "any person" file a misconduct complaint — but **expressly excludes Supreme Court Justices** and authorizes dismissal of any complaint "directly related to the merits of a decision or procedural ruling." The mechanism regulates some misconduct, but it is structurally closed to adjudicative wrongs: per the Administrative Office's *Judicial Business 2023*, chief judges dismissed 1,286 complaints in whole or in part, and the single most frequent dismissal ground was that the complaint was directly related to the merits of decisions (1,065 of them). The **2006 Breyer Committee Report** examined dispositions and, while pronouncing the system sound overall (estimating chief judges' processing error rate at about 2% to 3%), found a troubling concentration of "problematic" dispositions in the small set of high-visibility cases. The structure is decentralized self-judging: judges evaluate complaints against fellow judges, and removal remains reserved to Congress.

The Operation of the Merits Exclusion

The statutory ground is narrow on its face; its administration is not. The provision authorizes dismissal only of a complaint "directly related to the merits of a decision or procedural ruling" (§ 352(b)(1)(A)(ii)), but the operative gloss, supplied by the same Breyer Committee that pronounced the system sound, is sweeping: under its Standard 2 (Appendix E, 239 F.R.D. at 145), "any allegation that calls into question the correctness of an official action of a judge … is merits related" (*Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 145 (2006)), and the Commentary on the national Rules confirms that a decision or procedural ruling, "without more," is merits-related, and that the category is not even confined to rulings in Article III cases (Commentary on Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings). The exclusion has a legitimate core, and the IAJ concedes it: the conduct process is, in the councils' standard formulation, "not a substitute for the normal appellate review process," and the merits bar exists, in the words of the court that upheld the Act, "to protect the independence of a judge in making decisions by precluding use of the complaint mechanism to collaterally attack rulings" (*McBryde v. Committee to Review Circuit Council Conduct & Disability Orders*, 83 F. Supp. 2d 135 (D.D.C. 1999)). A litigant who has merely lost should not be able to discipline the judge who ruled against him. The defect is not the existence of the bar but the width of Standard 2: an allegation whose gravamen is not error but misconduct — bias, retaliation, the knowing denial of a clearly established right — is swept into the excluded category for no reason other than that the misconduct was expressed through a ruling. The legitimate purpose of preventing collateral attack is thereby stretched to immunize the precise conduct this report exists to reach.

The two dismissal grounds then operate together as a pincer, and their joint operation is what closes the category. A complaint that points to the rulings themselves as the evidence of bias is dismissed under ground (ii) as merits-related. A complaint that alleges bias but offers nothing beyond the rulings is dismissed under ground (iii) for lack of "sufficient evidence to raise an inference that misconduct has occurred" (§ 352(b)(1)(A)(iii)); the councils require "objectively verifiable evidence" of an improper motive independent of the decisions before such an allegation

becomes cognizable. There is, in principle, a path between the two — bias shown by conduct or statements extrinsic to the rulings can survive — but it demands exactly what the ordinary litigant, and above all the self-represented litigant, almost never holds: proof of the judge's motive that does not consist of the rulings and courtroom conduct themselves. For the litigant whose only evidence of bias is the pattern of what the judge did on the record, the complaint cannot be stated in any form that escapes both screens. This is the self-dealing circularity that Part V located in the immunity cases, reappearing in the disciplinary register: the institution defines the most natural evidence of judicial misconduct — the rulings — as the one thing a misconduct complaint may not rest upon.

Two consequences follow, and a third answers the institution's defense. First, the line the system can cross is the judge's manner, not the judge's decisions: the machinery is not inert, for a judge may be disciplined for behavioral abuse separable from any ruling — Judge McBryde himself was sanctioned for a years-long "pattern of abusive behavior" toward the lawyers who appeared before him — but that reached his demeanor, not his decisions, and only through a two-year investigation, nine days of hearings, and a 159-page report, an extraordinary mobilization reserved for the most flagrant interpersonal conduct (*McBryde v. Committee to Review Circuit Council Conduct & Disability Orders*, 264 F.3d 52 (D.C. Cir. 2001); see Part XII). The category the system is structurally built not to reach is the biased or rights-violating ruling itself. Second, the merits-related dismissal is, for the complainant, effectively unreviewable: 28 U.S.C. § 357(c) provides that the orders and determinations of the councils and the Conference, including denials of petitions for review, "shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise," a preclusion the District of Columbia Circuit sustained in *McBryde* and which Part XII examines from the disciplined judge's side. The chief judge's characterization of a complaint as merits-related is thus both the first word and, in practice, the last. Third — and this disposes of the institution's principal answer — the Breyer Committee's finding that chief judges err in only two to three percent of dispositions measures compliance with the rule, not the coverage of the rule. (The same Committee found a far higher error rate — close to thirty percent, in five of seventeen — among the small set of high-visibility complaints it separately examined; the low aggregate rate reflects the ordinary run of cases, not the reach of the standard.) A system that faithfully applies Standard 2 will post a near-perfect compliance score while remaining categorically incapable of addressing a biased ruling, because Standard 2 has already defined the biased ruling out of "misconduct." The low error rate is not a refutation of the vacuum; it is the mechanism by which the vacuum is maintained. Fidelity to the standard is precisely how the decisive category disappears.

The Supreme Court's Self-Exemption

Until November 2023 — for more than two centuries — the Court operated under *no* ethics code at all, then adopted one only as external pressure mounted. The 2023 Code of Conduct it produced is **widely criticized as non-binding and unenforceable**: it contains no enforcement mechanism, leaves recusal to each Justice, and — critics note — softens the federal recusal statute's mandatory "shall" to "should." The IAJ reads the timing and the toothlessness together: a code adopted only under pressure, after two hundred years of refusal, and drafted so as to bind no one, functions as legitimation rather than accountability — it answers the demand for a

standard while declining the consequence of one. It followed ProPublica's April 6, 2023 revelation that for more than twenty years Justice Clarence Thomas had been treated to luxury vacations by billionaire Republican donor Harlan Crow, including a 2019 Indonesia trip aboard Crow's private jet and 162-foot yacht estimated to exceed $500,000 in value — gifts whose extent and frequency have no known precedent in the modern history of the Court. Subsequent ProPublica reporting in 2023 disclosed that Crow had also purchased the Savannah home in which Justice Thomas's mother lived and had paid private-school tuition for a grandnephew Justice Thomas was raising (potentially exceeding $150,000). Further reporting revealed that Justice Alito took an undisclosed private-jet fishing trip to Alaska provided by hedge-fund billionaire Paul Singer, who later had matters before the Court. The **Supreme Court Ethics, Recusal, and Transparency (SCERT) Act**, which would have created an enforcement mechanism, advanced out of the Senate Judiciary Committee in 2023 on a party-line vote but stalled; it was reintroduced in 2025 (H.R. 3513, 119th Cong.) and remains stalled.

The recusal commentary of that same Code is the clearest textual instance of the inversion this report traces. Where the federal disqualification statute commands that a judge step aside whenever impartiality might reasonably be questioned (28 U.S.C. § 455), the Court's commentary tilts the balance the other way, invoking a Justice's "duty to sit" and the "rule of necessity" as reasons to decline recusal. Its rationale is the irreplaceability of a Justice and the stakes of the Court's work: because no other jurist may sit in a recused Justice's place, the commentary reasons, the loss of even one Justice may undermine the Court's work and the administration of justice, and "the rule of necessity may override the rule of disqualification"; the recusal rules are to be "construed narrowly" in light of the broad scope of the Court's cases and the nationwide impact of its decisions. Quoting a memorandum of Justice Scalia, the commentary adds that a Justice's recusal is "effectively the same as casting a vote against the petitioner." The difficulty is that both grounds are infirm in law. The "duty to sit" was abolished by the 1974 amendment to § 455 — as Chief Justice Rehnquist acknowledged, the amendment "had the effect of removing the so-called duty to sit" (*Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 871 (1988) (Rehnquist, J., dissenting)) — and the rule of necessity, by its terms, applies only where no qualified tribunal is otherwise available, not to a Court sitting with a quorum. The IAJ reads the commentary accordingly, as its own evaluative position: the Court has exempted itself from the disqualification law that binds every other judge, and has done so by invoking a duty Congress repealed and a doctrine that does not reach a quorate Court, on the strength of its own asserted indispensability. That move — the office-holder declaring that the institution cannot proceed without him, and on that ground claiming exemption from the law that governs all his fellows — is the quasi-monarchical register named in Part VIII, stated not by the IAJ but in the Court's own ethics code. The same self-judging structure examined in Part XII operates here at its most concrete: the Court is at once the author of the recusal standard, the party it governs, and the only judge of whether it has been met.

Impeachment as Practical Nullity

In more than 235 years, the House has impeached only **15 federal judges**; the Senate convicted and removed only **8** — roughly one removal every 29 years. Only one Justice (Samuel Chase, 1804) was ever impeached, and his 1805 acquittal established the durable norm that judicial

rulings are not impeachable. Chief Justice Roberts reaffirmed in 2025: “impeachment is not an appropriate response to disagreement concerning a judicial decision.”

Part VIII. The Robed Sovereign: Tenure Without Accountability and the Quasi-Monarchical Inversion

The preceding Parts established that the judiciary conferred immunity upon itself and that the criminal and disciplinary checks are practically inert. This Part supplies the structural keystone that converts those findings into a single diagnosis. The American judge holds an office unlike any other in the constitutional order: life tenure, conferred by constitutional text, paired with no functioning mechanism of removal or liability. That combination was not the design. It is an inversion of the design — and it reproduces the precise evil the founding generation legislated against. The argument of this Part is therefore historical before it is normative: tenure was an anti-monarchical instrument, a shield forged for the people against the Crown; through the atrophy of its paired accountability and the accretion of self-conferred immunity, it has become a shield for judges against the people.

A. The Anti-Monarchical Device

Before 1701, the senior judges of England held office *durante bene placito* — "at the King's pleasure" — and could be dismissed at will. The phrase was not a formality; it was the mechanism by which the Stuart Crown bent the bench to its purposes. When the judges of the realm displeased the sovereign, they were removed. Sir Edward Coke, Chief Justice of the King's Bench, was dismissed by James I in November 1616 after he resisted royal pressure in the *Case of Commendams*; when the King demanded that the judges consult the Crown before deciding cases touching royal interests, the other judges knelt, and Coke alone answered that he would do "that which should be fit for a judge to do." Sir John Walter, Chief Baron of the Exchequer, was ordered off the bench by Charles I in 1630; because his patent ran *quamdiu se bene gesserit* — during good Behaviour — he refused to surrender it without a *scire facias*, and kept his title until his death. James II, before the decision in *Godden v. Hales* (1686) upholding the royal dispensing power, dismissed those of the twelve royal judges who would not endorse it and reconstituted the bench until it ruled as he wished. The dispensing power was declared illegal in the Bill of Rights 1689.

The remedy for this pattern was structural. The **Act of Settlement 1701** (12 & 13 Will. 3, c. 2) provided that judges' commissions be granted *quamdiu se bene gesserint* — during good Behaviour — and that they be removable only upon the address of both Houses of Parliament. Blackstone recognized the significance: judges were thereby "not removeable at pleasure, by the crown," a change he called "one main preservative of the public liberty." Tenure during good Behaviour was the device that pried the judiciary out of the Crown's hand. Its entire purpose was to make judges independent *of the sovereign* so that they could protect the subject *against* the sovereign.

The American founders inherited this understanding as a grievance and then as a guarantee. Among the charges against George III, the Declaration of Independence lists that "He has made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and payment of their Salaries." The colonial complaint was precisely that the Crown had denied Americans the good-Behaviour tenure that English judges had secured in 1701. Article III, Section 1 of the Constitution answered the grievance: federal judges "shall hold their Offices during good

Behaviour." In Federalist No. 78, Hamilton defended the provision as "one of the most valuable of the modern improvements in the practice of government," calling permanent tenure during good Behaviour "the citadel of the public justice and the public security" and "an excellent barrier to the despotism of the prince" and "to the encroachments and oppressions of the representative body." Tenure, in the founding design, was a barrier to despotism — not a license for it.

B. The Founders Were Warned

The danger that this barrier might itself become a fortress was not discovered late. It was named at the founding, in detail, by the Constitution's most penetrating critic. Writing as **Brutus** in the New-York Journal in 1788, the Anti-Federalist (generally identified as Robert Yates) devoted essays XI through XV to the proposed judiciary, and his warning reads today as prophecy. Because the federal judges would hold office during good Behaviour with no power above them to correct their judgments, Brutus argued, "there is no power above them that can controul their decisions, or correct their errors." The consequence he foresaw was a tribunal answerable to no one: the judges would be "independent of the people, of the legislature, and of every power under heaven," and "men placed in this situation will generally soon feel themselves independent of heaven itself." He pressed the point that the ordinary check — removal — would not reach them, because civil officers were removable "for crimes," but the judges could not be touched "for errors in judgment, or want of capacity." The Federalists answered that the judiciary would be "the least dangerous" branch, possessing "neither force nor will, but merely judgment." Brutus's rejoinder — that a body which authoritatively says what the law is, and cannot be corrected or removed, is not the least dangerous branch but potentially the most — is the hypothesis this report submits has been confirmed by experience.

It is essential to be explicit about *why* Brutus's warning matters to the IAJ, for the reason is not antiquarian and not merely structural. An actor who is "independent of every power under heaven" is, by that very independence, positioned to violate the rights of those who come before him with impunity — and the catalogue of ills that judicial independence from the Crown was designed to prevent is, in the modern vocabulary, a catalogue of human-rights violations. The judge made dependent on the King's will was the instrument of arbitrary detention, of trials before a partial tribunal, of punishment without law, of the denial of a fair hearing — the very wrongs the Stuart bench was made to commit. Each of these is today a recognized violation of the inherent rights of the human being: the right to liberty and security of person and freedom from arbitrary detention (Universal Declaration, arts. 3 and 9; ICCPR art. 9); the right to a fair and public hearing before an independent and impartial tribunal (Universal Declaration, arts. 10 and 11; ICCPR art. 14); the right not to be subjected to cruel, inhuman, or degrading treatment (Universal Declaration, art. 5; ICCPR art. 7). Tenure independent of the sovereign was, in its origin and its purpose, a *human-rights instrument* — a device to protect the person against precisely these violations by removing the judge from the hand of the power most likely to demand them. That is the point of the whole history: the founders did not secure judicial independence for its own sake or for the judges' benefit; they secured it to protect the people's rights against arbitrary power. Brutus's prophecy, read through the IAJ's lens, is therefore a prophecy about human rights: that an irremovable, uncontrollable judiciary would become capable of committing, with impunity, the very rights-violations its independence was meant to prevent — no longer the people's shield against the

sovereign, but a sovereign in its own right against whom the people have no shield. The remainder of this Part demonstrates that the prophecy was fulfilled, and the mechanism by which it was fulfilled.

C. The Conditional Grant and the Deprecation of "High Crimes and Misdemeanors"

The crucial feature of the founding design — the feature whose loss produces the inversion — is that good-Behaviour tenure was **conditional**. It was not a grant of life tenure simpliciter; it was tenure for so long as the holder *behaved well*. The condition implied a mechanism for determining and acting upon misBehaviour. The orthodox modern understanding treats that mechanism as impeachment alone. But a substantial body of originalist scholarship contends that "good Behaviour" was a term of art carrying its own, separate removal mechanism. Saikrishna Prakash and Steven D. Smith, in "How To Remove a Federal Judge," 116 Yale L.J. 72 (2006), argue that good-Behaviour tenure at common law was forfeitable upon a judicial finding of misBehaviour through the writ of *scire facias*, and that "impeachment and good-behavior tenure were entirely different concepts" — so that the Constitution preserved a means of removing misbehaving judges distinct from, and in addition to, impeachment. That reading is contested: Martin H. Redish maintains that impeachment is the exclusive route, though he concedes the good-Behaviour standard "must stand at a point that is distinctly lower than that set by the 'high Crimes and Misdemeanors' language" (116 Yale L.J. 139 (2006)). Prakash and Smith answered that critique in reply, "(Mis)Understanding Good-Behavior Tenure," 116 Yale L.J. 159 (2006). The IAJ does not need to resolve the debate to make its point. Whether the lost counterweight was *scire facias* or a vigorous impeachment practice, the design plainly contemplated that misBehaviour would have a consequence. What history demonstrates is that the consequence evaporated — and it evaporated through a specific mechanism the IAJ now identifies: the deprecation of the constitutional standard of removal from its original meaning.

"High Crimes and Misdemeanors" was not, at the founding, a synonym for indictable crime. It was a term of art with a four-hundred-year pedigree in English parliamentary practice, reaching back to the impeachment of the Earl of Suffolk in 1386 and running through the impeachment of Warren Hastings then unfolding before the eyes of the framers. In that tradition the phrase reached *political* offenses — the abuse of office, the betrayal of public trust, the maladministration of power, the oppression of the subject — conduct that was very often no crime at all. Blackstone identified "the first and principal high misdemeanor" as "the mal-administration of such high officers, as are in public trust and employment." The framers chose the phrase deliberately and with this meaning in view. At the Convention on September 8, 1787, when George Mason proposed adding "maladministration" to treason and bribery, James Madison objected that "so vague a term will be equivalent to a tenure during pleasure of the Senate"; Mason then substituted "other high crimes and misdemesnors agst. the State" — not to *narrow* the ground to criminality, but to fix it to the established parliamentary category of abuses of public trust while avoiding a standard so open-ended as to destroy independence. Hamilton confirmed the meaning in Federalist No. 65: the subjects of impeachment "are those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust," offenses "of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done

immediately to the society itself." Joseph Story's Commentaries (1833) confirmed that impeachment reaches "political offences, growing out of personal misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests." The original standard, in short, was broad enough to reach a judge who abused his office and oppressed those before him, whether or not he committed a crime.

The meaning of the phrase cannot be recovered by semantics alone. It must be read against the moral and social ecology in which the Constitution was drafted. The founding generation inhabited a public culture in which reputation, honor, visible restraint, religious and civic seriousness, and conformity to the expected demeanor of public trust carried consequences modern public life has largely lost. That culture was not morally pure: it was hierarchical, exclusionary, racialized, patriarchal, and often hypocritical. The IAJ does not adopt its exclusions. But the standard of office must still be understood within the seriousness that world attached to public trust. A public officer did not merely perform a technical function; he held a character-dependent trust. Conduct that exposed corruption, dishonor, oppression, partiality, cruelty, contempt for the governed, or betrayal of the office was not treated as a private defect irrelevant to tenure. It marked the officer as unfit for the trust he held. The historical literature on this public-trust and honor culture is substantial and supports the premise along three distinct lines. The founding republican literature supports the public-trust and corruption-anxiety premise: Gordon S. Wood, *The Radicalism of the American Revolution* ch. 6 (Vintage Books 1993) (1992), and *The Creation of the American Republic, 1776–1787*, at 46–90 (Univ. of N.C. Press 1998) (1969); Bernard Bailyn, *The Ideological Origins of the American Revolution* 55–143 (Harvard Univ. Press enlarged ed. 1992) (1967); and J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* 506–52 (Princeton Univ. Press 1975). The honor literature supports the role of reputation and standing in early national politics: Joanne B. Freeman, *Affairs of Honor: National Politics in the New Republic* xv (Yale Univ. Press 2001). And Elias's account of the civilizing process supports the broader point that thresholds of shame, restraint, and social repugnance change over historical time: Norbert Elias, *The Civilizing Process* 414–21 (Edmund Jephcott trans., Blackwell rev. ed. 2000) (1939).

This is the missing calibration. "High Crimes and Misdemeanors" and "good Behaviour" did not arise in a culture that treated public vice as personal branding, official malice as temperament, contempt for the vulnerable as style, or corruption as tolerable unless captured by a penal statute. They arose in a world in which the appearance of virtue mattered because public authority itself depended upon the public's belief that office was held by persons capable of restraint, conscience, fidelity, and shame. The point is not that every breach of manners was constitutionally removable. The point is that the moral threshold for public unfitness was far more exacting than modern practice assumes: a departure that revealed betrayal of trust could become politically and socially disqualifying even where it was not indictable. None of this is to say that modern changes in manners are themselves constitutional defects. The historical claim is narrower and sharper: conduct revealing betrayal of public trust once carried a reputational and political consequence that modern legal culture often no longer imposes. What earlier public-trust vocabulary would have recognized as dishonor, corruption, oppression, or unfitness is now frequently absorbed into technical categories — discretion, merits, finality, docket control, immunity, or statutory defensibility — unless the conduct can be reduced to indictable criminality.

The modern narrowing of impeachment to crime, and the modern transformation of good-Behaviour tenure into practical life tenure, therefore represent not only legal deprecation but moral deprecation: the loss of the original public-trust sensibility that made abuse of office an offense against the society itself. The modern judiciary benefits from that loss. Conduct that the founding vocabulary would have recognized as evidence of unfitness — intentional unfairness, conscious partiality, retaliation, humiliation of the powerless, refusal to hear, refusal to accommodate, knowing deprivation of rights, or use of office to oppress rather than judge — is now recharacterized as the ordinary exercise of adjudicative discretion, beyond the reach of any external standard. The constitutional words remain, but the moral world that gave them force has been evacuated. A judge may now do, under color of adjudication, what the original standard was designed to make disqualifying: betray the public trust while retaining the office and the shield.

That standard was then deprecated — narrowed, in practice, almost to the vanishing point, and narrowed first and most consequentially for judges. The instrument of the narrowing was the impeachment and 1805 acquittal of Justice Samuel Chase. Chase, a sitting Justice, was impeached for arbitrary, oppressive, and nakedly partisan conduct on the bench — his handling of the Callender and Fries trials, his refusal to dismiss a biased venire, his inflammatory charge to a Baltimore grand jury. The articles alleged misconduct in office, not crime. His acquittal by the Senate established the durable constitutional convention that a judge may not be removed for the manner of his judging, for his rulings, or for partisan conduct on the bench — that “bad judging,” however oppressive, is not impeachable. The convention had a legitimate and valuable rationale, which the IAJ acknowledges without reservation: it protected the judiciary against removal for unpopular or erroneous decisions, and so protected the independence essential to impartial adjudication and to judicial review against transient political majorities. But its effect, compounded over two centuries, was to deprecate “high Crimes and Misdemeanors” as applied to judges into something approaching indictable criminality — to read the broad original category of *abuse of the judicial office* out of the operative standard, leaving only the narrow residue of personal crime.

The record of two centuries proves the deprecation beyond argument. In more than 235 years the House has impeached only fifteen federal judges and the Senate has removed only eight — roughly one removal every three decades. And the grounds are uniform: every removal has been for ordinary criminality or its functional equivalent — joining the Confederacy (Humphreys), tax fraud (Claiborne, Ritter), bribery and perjury (Hastings, Nixon), corrupt financial dealings with litigants (Archbald, Porteous). Not one judge in the history of the Republic has been removed for the *content* of his decisions, for bias, or for the deprivation of the rights of those who came before him. The two impeachments that came closest to reaching abuse of the judicial function — Peck (1831) and Swayne (1905), both for oppressive use of the contempt and judicial powers — ended in acquittal. The conditional grant became, in operation, an unconditional one. “Good Behaviour” ceased to function as a condition and survives only as a synonym for life. And here the complementarity of the two clauses becomes decisive: if “good Behaviour” was meant, as Redish concedes, to set a removal threshold *lower* than “high Crimes and Misdemeanors,” but the only enforcement mechanism actually used — impeachment — operates at the *higher* and now-deprecated threshold, then the lower condition is enforced at the higher standard, which is to say it is not enforced at all. The deprecation of the impeachment standard read the good-Behaviour condition out of the Constitution.

D. The Meaning of Good Behaviour: A Bi-Level Definition

The preceding subsection established that the grant of tenure was conditional and that the condition — good Behaviour — carried with it, at the founding, a contemplated consequence for its breach. What the subsection did not yet supply is the content of the condition itself. The orthodox objection to giving good Behaviour any operative force is that the phrase is too indefinite to administer — the very objection James Madison raised at Philadelphia against "maladministration," which he warned would be "so vague a term" as to make tenure depend on the pleasure of the Senate. The IAJ answers that objection directly, and it does so by defining good Behaviour with the precision the question demands. The definition is built on two independent foundations — the historical common law from which the phrase was drawn, and the human-rights instruments that articulate the content of judicial duty today — and the two are then compared. The comparison is the point: two bodies of law, separated by seven centuries and developed in complete independence of one another, converge on substantially the same standard. That convergence is what makes the definition not an IAJ invention but an IAJ recovery.

1. The Historical Common-Law Definition

The phrase "during good Behaviour" — in the Latin of the patents, *quamdiu se bene gesserit* — is far older than the Act of Settlement 1701 with which it is usually associated. It was a recognized form of tenure, distinct from tenure *durante bene placito* ("at the King's pleasure"), by the late thirteenth century; the legal-historical research traces it as a distinct, individual form of tenure as early as 1274, its application to a court officer by 1280, and its application to an actual judge — the Chief Baron of the Exchequer in Ireland — by 1335. (The scholarship dates the earliest grant to a *judge* to the fourteenth century, the earlier instances being grants of ministerial and other offices; the distinction is preserved here deliberately.) The form was never a synonym for life tenure simpliciter. It was a conditional grant: the holder retained the office unless and until a forfeiture for misBehaviour was established. Coke identified the grounds of forfeiture of such an office as abuse of the office, non-use of the office, and refusal to exercise the office — in substance, corruption and abuse of power, neglect or non-performance, and any act inconsistent with the office. The record of the medieval and early-modern grants fills in the content: the conduct that forfeited a judicial office included bribery, maintenance, abuse of judicial power and discretion, tampering with records, extortion, and complicity in or concealment of a colleague's wrongdoing. From these authorities the common-law definition may be stated with confidence: good Behaviour was the faithful, honest, impartial, and diligent execution of the judicial office, free from corruption, abuse of power, neglect, or acts inconsistent with the office; misBehaviour was its breach.

Two qualifications keep this precise. First, the common-law standard of good Behaviour was distinct from, and lower than, the standard of "high Crimes and Misdemeanors" that governs impeachment: the former reached official misconduct that need not amount to a high crime, while the latter was reserved for grave, often non-indictable, offences against the state. That the two standards are substantively distinct is settled as a matter of English history; whether the United States Constitution preserves any route other than impeachment to enforce the good-Behaviour condition against a federal judge is genuinely contested. Saikrishna Prakash and Steven D. Smith have argued that good-Behaviour tenure was historically forfeitable upon a judicial finding of

misBehaviour through the writ of *scire facias*, distinct from impeachment ("How To Remove a Federal Judge," 116 Yale L.J. 72 (2006)); Martin H. Redish has argued that the good-Behaviour Clause functions as nothing more than a cross-reference to impeachment (116 Yale L.J. 139 (2006)). The IAJ does not need to resolve that dispute to establish the *content* of the standard, which both sides accept; the IAJ develops both the historical enforcement mechanism and the modern debate over it in subsection 7 below, and the design that would revive it in Part XVII. Second, the operative American threshold for *removal*, as distinct from the aspirational standard of *conduct*, was bounded by the 1805 acquittal of Justice Samuel Chase, which established the durable convention that mere legal error or partisan disagreement does not breach the constitutional minimum. The definition advanced here is a definition of the standard of conduct, not a claim that every departure from it forfeits office today.

2. The Human-Rights Definition

Defined by the content of the international human-rights instruments, good Behaviour for a judge means the discharge of the office in a manner that secures every person's right to a fair and public hearing by a competent, independent, and impartial tribunal, with equality before the law, integrity and propriety, the protection of human dignity and of each person's physical and psychological integrity, freedom from injury and oppression, and the further protections that reason, equity, and justice require of a public trust. The Universal Declaration of Human Rights guarantees, in Article 10, that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of rights and obligations and of any criminal charge, together with equality before the law and the right to an effective remedy (arts. 7 and 8) and the prohibition of cruel, inhuman, or degrading treatment (art. 5). The International Covenant on Civil and Political Rights, in Article 14(1), guarantees equality before the courts and a fair and public hearing by a competent, independent, and impartial tribunal established by law. The United Nations Basic Principles on the Independence of the Judiciary (1985) provide, in Principle 18, that judges shall be subject to suspension or removal only for reasons of incapacity or Behaviour that renders them unfit to discharge their duties — a removal standard, expressed in the language of fitness, that closely tracks the common-law concept of misBehaviour. And the Bangalore Principles of Judicial Conduct (2002), whose preamble expressly invokes the Universal Declaration and the Covenant, distill the content of judicial duty into six values: independence, impartiality, integrity, propriety, equality, and competence and diligence. From these instruments the human-rights definition may be stated: a judge behaves well who upholds independence, impartiality, integrity, propriety, equality, and competence and diligence, secures the fair-hearing and equal-treatment rights of every person who comes before the court, and protects human dignity — including through the prohibition of cruel treatment and the guarantee of access to justice for persons with disabilities (Convention on the Rights of Persons with Disabilities, art. 13) and the protections of the Convention against Torture.

3. The Convergence — and What It Reveals

Set the two definitions side by side and the convergence is striking. The common law forfeited a judicial office for bribery, corruption, maintenance, and abuse of judicial power and discretion; the Bangalore Principles enjoin precisely those vices under the values of impartiality and integrity. The common law forfeited an office for non-use, refusal to perform, and failure to report for duty;

the Bangalore Principles require competence and diligence, and the Basic Principles make unfitness to discharge duties the removal standard. The common law forfeited an office for "any act inconsistent with the office"; the Bangalore Principles require propriety. The common law insisted that misBehaviour be established by a judicial process — a trial, the hearing of witnesses, the introduction of evidence — and that no officer be removed without just and reasonable cause; the Basic Principles require that discipline and removal proceed by fair process subject to independent review. Two bodies of law, developed seven centuries apart and in complete independence, define the standard of judicial good Behaviour in substantially the same terms.

The deepest convergence is structural, and it is the truth the comparison was built to reveal. In both regimes the standard is *bilateral*. Secure tenure is granted not as a private endowment to the judge but as a public trust, conditioned on faithful service to justice, and forfeitable only for conduct that betrays that trust. The common law expressed this from the side of the office — the grant was conditional, the condition was good Behaviour. The human-rights instruments express the same bargain from the side of the rights-holder — the litigant's right to an independent, impartial, and competent tribunal. They are two faces of one principle: judicial independence and judicial accountability are not in tension but are co-constitutive, each defined by, and each in service of, the public's right to impartial adjudication. The system errs profoundly when it treats tenure as the judge's possession rather than the public's guarantee; the convergence of the common law and the human-rights standard exposes that error by showing that both traditions understood tenure as conditional all along.

Where the two diverge, the divergence is itself instructive, and it favors the human-rights articulation on the point that matters most to this report. The common-law conception, for all its developed sense of corruption, neglect, and abuse, had no developed norm of equality: it did not conceive of discrimination, of cruel or degrading treatment of the litigant, or of the denial of access to justice to the disabled as breaches of good Behaviour, because the equality norm had not yet been born. The human-rights instruments supply exactly that dimension — the equality and non-discrimination guarantees of the Universal Declaration (arts. 1, 2, 7), the prohibition of cruel, inhuman, and degrading treatment (art. 5; Convention against Torture), and the guarantee of access to justice for persons with disabilities (Convention on the Rights of Persons with Disabilities, art. 13). The IAJ's definition therefore takes the common-law core and completes it with the human-rights extension: good Behaviour, fully understood, is the faithful, impartial, honest, competent, and diligent discharge of the judicial office in service of every person's right to a fair hearing before an independent and impartial tribunal — and, with the equality dimension the common law lacked and the human-rights instruments supply, free of discrimination, of cruel or degrading treatment, and of the denial of equal access to justice. This is the definition the IAJ advances, derived from both traditions and owned by neither.

4. Justice and Equity: The Two Traditions of the Standard

The good Behaviour the foregoing subsections describe answers to two distinct traditions of judgment that the Anglo-American legal order long kept in separate hands. On one side stood justice in the older sense — the law administered by the common-law courts through general rules applied uniformly, where the judge's virtue was fidelity to law: impartiality, consistency, the application of the rule without fear or favour. Montesquieu fixed the ideal in the image of the judge

as “la bouche de la loi,” the mouth that pronounces the words of the law (*De l’esprit des lois* (1748), bk. XI, ch. 6). On the other side stood equity — the jurisdiction of conscience, administered in England by the Lord Chancellor as the keeper of the King’s conscience, which existed to correct the law where its very generality worked injustice in the particular case. Its philosophical root is Aristotle’s *epieikeia*: equity, he wrote, is “a correction of law where it is defective owing to its universality” (*Nicomachean Ethics*, bk. V, ch. 10 (Bekker 1137b), W. D. Ross trans.) — not a rival to justice but a higher form of it, doing what the lawgiver would have done had he foreseen the case. Equity did not come to abolish the law; as Maitland put it, it “came not to destroy the law, but to fulfil it” (*Equity: A Course of Lectures* (1909)).

Two features of that tradition bear directly on the standard of office. The first is that where the rules of law and the demands of conscience conflicted, equity prevailed: the principle settled in the *Earl of Oxford’s Case* (1615) 1 Ch. Rep. 1; 21 Eng. Rep. 485 (Ch.), and later codified in the Judicature Act 1873, § 25(11). The second is that the two systems, once administered by separate courts, were fused — in England by the Supreme Court of Judicature Acts 1873—1875, and in the United States by the Federal Rules of Civil Procedure (1938), establishing “one form of action — the civil action” (Fed. R. Civ. P. 2). The long scholarly debate over whether that fusion merged the two bodies of doctrine or only their administration need not be resolved here; the administrative fusion alone settles the point that matters. The modern judge sits as heir to both offices at once, wielding the powers of law and of equity in a single proceeding, and therefore bound by the duties of both traditions.

From this the IAJ draws a synthesis it advances as its own interpretive position, not as the holding of any court. Good Behaviour, fully understood, is answerable to both traditions at once. The judge who applies a rule rigidly, heedless of the injustice it works upon the person before him, fails the duty of equity — the duty of conscience that the law of Chancery existed to supply. The judge who indulges his own discretion untethered from the governing rule fails the duty of justice — the fidelity to law that the common-law courts existed to guarantee. Good Behaviour lies at their intersection: fidelity to law disciplined by conscience, and conscience disciplined by fidelity to law. This is why the bi-level definition of the preceding subsections is not two standards but one. The common-law and human-rights articulations both describe a single judge, bound at once to the rule and to the human being the rule governs.

The equity tradition supplies one further measure, and it is the sharpest. Equity conditioned its aid on the conscience of the one who sought it: he who comes into equity must come with clean hands, and a court of conscience would refuse, in the Supreme Court’s phrase, to be “the abettor of iniquity” (*Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 814 (1945)). Turned upon the judiciary itself, the maxim states a proposition the IAJ advances as an equity-internal critique, not as existing law: a court that claims the authority of a forum of conscience while immunizing its own malicious or corrupt acts has, by equity’s own measure, unclean hands, and forfeits the moral standing the tradition demands of those who administer it. And absolute immunity, by allowing a rigid rule of law to defeat the remedy that conscience would supply to the injured party, inverts the very rule the *Earl of Oxford’s Case* settled — that where law and equity conflict, equity prevails. The IAJ states the limits of the argument as plainly as the argument itself. Absolute immunity has its own common-law lineage and its own public-good rationale (Part III); it bars damages, not the prospective and administrative remedies

the doctrine still permits (*Pulliam v. Allen*; *Forrester v. White*); and the *Earl of Oxford's Case* concerned the rules of decision in a private dispute, not a structural immunity of the judges themselves, so the inversion is an argument from equity's logic and not a claim that any tribunal has so held. What survives those limits is a normative indictment in equity's own voice: the institution that built the court of conscience has exempted itself from the first condition that court imposed on everyone else.

5. The Standard Is Not Vague: The Self-Authored Codes of Judicial Conduct

There remains the objection that good Behaviour, however defined in principle, is too indefinite to administer in practice. That objection is refuted not by argument but by the judiciary's own conduct, because the American judiciary has already reduced the standard to operational detail — and has done so, across every jurisdiction, in substantially identical terms. The federal Code of Conduct for United States Judges, the judicial-conduct codes of the several States, and the codes of professional conduct that govern the bar are not independent inventions; they descend from common ancestors — on the judicial side, the American Bar Association's Model Code of Judicial Conduct (first promulgated in 1972 and substantially revised in 1990 and 2007, itself succeeding the 1924 Canons of Judicial Ethics); on the attorney side, the ABA Model Rules of Professional Conduct (1983). Because they share these ancestors, the codes are, in their substantive core, practically identical from one jurisdiction to the next: they differ in numbering, in local procedure, and in occasional jurisdiction-specific provisions, but they articulate the same governing values — independence, integrity, impartiality, propriety, competence, and diligence — everywhere. These are the same values the Bangalore Principles distill at the international level, and the same values the common law enforced through forfeiture. The convergence established in the preceding subsection is therefore not double but triple: the common-law standard, the human-rights standard, and the American ethics codes — three independently developed bodies of authority — define judicial good Behaviour in substantially the same terms.

The consequence for the vagueness objection is decisive. Good Behaviour is not an empty or unknowable standard whose content must be guessed; its content has already been written down, in justiciable detail, by the very institution whose conduct it governs, and written down in materially the same form in every American jurisdiction. The judiciary cannot consistently maintain both that good Behaviour is too vague to enforce as a condition of tenure and that it has authored detailed canons specifying exactly how judges must behave, adopted in near-uniform terms nationwide. The codes are an admission against the vagueness defense. They are the judiciary's own operational definition of the constitutional condition — and the IAJ reads a serious, sustained breach of their core values not as a mere ethical lapse but as evidence of the failure of the constitutional condition of tenure itself, in the manner the disqualification record developed elsewhere in the IAJ's work makes concrete.

Yet the codes also expose, with unusual clarity, the precise architecture of the accountability vacuum that the next subsection anatomizes. For the judiciary has authored a complete and uniform definition of good Behaviour and then severed it from the one consequence the Constitution attaches to its breach. The enforcement mechanisms for these codes are designed to exclude the merits of judicial decisions: the federal Judicial Conduct and Disability Act excludes complaints "directly related to the merits of a decision or procedural ruling," and the Supreme

Court's own Code of Conduct, adopted in November 2023, contains no enforcement mechanism at all. The definition thus exists, is uniform, and is self-authored; and it is walled off from the loss of office that Article III makes the consequence of misBehaviour. The codes prove that the content of good Behaviour is knowable and known. The enforcement architecture proves that the content is left unenforced precisely where a rights-violating exercise of the judicial function is concerned. That severance — a defined standard deliberately detached from its constitutional consequence — is the accountability vacuum stated in the judiciary's own instruments, and it is to that vacuum, assembled from every direction at once, that the argument now turns.

6. The Judicial Act and the Negation of Good Behaviour

The definition of good Behaviour assembled above has a corollary the modern doctrine cannot withstand. Judges have refined their own account of the judicial role until it consists of nothing but the interpretation and application of law — a process, faithfully executed, with no acknowledged duty beyond it. On that account the judge is a deliverer of legal process and nothing more. The account proves too much. If it is true — if the judicial function is only the mechanical application of rules, carrying no duty of care, no obligation of dignity toward the person it acts upon — then the function claims no quality that justifies its extraordinary privileges, and is in principle replaceable by any faithful executor of rules, human or otherwise. A purely mechanical function earns neither life tenure nor absolute immunity, because neither independence nor immunity is needed to protect the integrity of a process that has no human-judgment content to protect. If, on the other hand, the account is false — if the judicial office does carry a duty of care, of dignity, of equal and humane treatment toward the sovereign person who comes before it — then that duty is precisely the content of good Behaviour, and its breach is precisely misBehaviour. The reductive self-definition is therefore a trap of the judiciary's own making: either it justifies the office's replaceability, or it exposes the duty whose violation forfeits the office. There is no third reading on which a mechanical function deserves a sovereign's immunity.

The constitutional relation makes the duty unavoidable. In the American order the People are sovereign and the judge is their servant, holding a delegated and conditional authority. The dignity of the person who stands before the court is not a courtesy the court may extend or withhold; it is the very interest the office was created to serve. A public court is a public institution, owed to the people and bound to be conducted according to their needs, their safety, and their inherent rights and dignity. When a judge, secure in the knowledge of immunity, treats the person before the court as an object of process rather than as the sovereign whose rights the court exists to vindicate, the servant-sovereign relation is inverted — the served becomes the subject, the servant becomes the master. That inversion is the same one this Part has traced from the other direction: the reassumption, by the robed officer, of the unaccountable station the Crown once held and the Constitution was written to abolish.

Seen this way, the reduction of the judicial role to "the judicial act," paired with absolute immunity for "the judicial act," is not a neutral doctrine of judicial administration. It is the structural negation of good Behaviour. It hollows the court of its historic character as a forum of conscience and equitable remedy, converting it into a process immune from the consequences of its own injustice; and it does so by the very device — the characterization of conduct as a "judicial act" — that the immunity cases use to absorb even malicious and corrupt conduct. The doctrine defines the

function down to a mechanism precisely so that the mechanism may be held blameless. Good Behaviour, properly defined, is the answer to that maneuver: it reaches into the duty of dignity and humane, equal treatment that the human-rights standard makes explicit and the common law assumed, and it holds the judge to that duty as the condition of the office.

The gravest form of the breach is the one in which the judge ceases to apply the law and begins to make and enforce it on his own authority, answerable to no one. A judge who legislates through the accretion of self-serving precedent — most acutely the precedent by which the judiciary conferred immunity upon itself — and who exercises an enforcement and gatekeeping discretion policed by no one but other judges, has stepped outside the interpretive role the Constitution assigned and assumed powers it withheld. This is not the ordinary development of the common law, which proceeds case by case under the discipline of review; it is the usurpation that occurs when the power to say what the law is becomes, through judicial supremacy and unreviewable discretion, the power to be the law without check. The Framers' word for an officer who reassumed such power was not a term of art the IAJ needs to borrow from the criminal law; the precise charge is the one the structure itself supplies — usurpation of powers withheld, and the betrayal of the public trust that defines misBehaviour. It is the quasi-monarchical inversion named at the head of this Part, stated now as what it is: the negation, by the servant, of the sovereign's good Behaviour standard, turned by the servant against the sovereign he was bound to serve.

7. The Lost Enforcement Mechanism: Scire Facias and the Forfeiture of Office

A condition implies a means of enforcing it. If tenure was granted only during good Behaviour, there had to be some way to determine that good Behaviour had ceased and to act on that determination; otherwise the condition was words without consequence. At common law that means existed and was well understood. An office held "during good Behaviour" was forfeitable upon a judicial finding of misBehaviour, and the instrument of forfeiture was ordinarily the writ of scire facias — a proceeding in a court, on evidence, with the burden of proving misBehaviour resting on the party seeking removal and the office-holder entitled to answer. Two episodes from the era the founders studied make the point concretely. When Charles I sought to be rid of Sir John Walter, Chief Baron of the Exchequer, in 1629, Walter — holding during good Behaviour — refused to surrender his patent and demanded a trial of his conduct; the King, unable or unwilling to prove misBehaviour, could only bar him from sitting, not remove him. When Charles II pressed Sir John Archer to resign from the Common Pleas in 1672, Archer likewise refused to yield his patent without a scire facias. Even the Stuart Crown, then, conceded that a judge holding during good Behaviour could be ousted only through a judicial proceeding on proof of misBehaviour — not by the will of the sovereign.

The mechanism was not peculiar to judges, and that generality is what proves it. Good-Behaviour tenure was a generic form of holding: clerks, ministers, professors, and tenants could hold during good Behaviour, and none of them could be "impeached." The forfeiture of such an office was therefore necessarily a matter for the ordinary courts, not for any legislative process. This is the foundation of the originalist argument, advanced by Saikrishna Prakash and Steven D. Smith, that the Constitution preserved a means of removing a misbehaving federal judge distinct from, and in addition to, impeachment, and that Congress may by statute provide for a judicial determination of forfeiture under the Necessary and Proper Clause ("How To Remove a Federal

Judge," 116 Yale L.J. 72 (2006)). Martin H. Redish answered that impeachment is the exclusive route and that any lower, court-enforced standard of removal would expose judges to intimidation and gut the independence the Constitution secures, while conceding that the good-Behaviour standard "must stand at a point that is distinctly lower than that set by the "high Crimes and Misdemeanors" language" (116 Yale L.J. 139 (2006)). Prakash and Smith replied that the objection has the matter backwards: a forfeiture adjudicated in a court, with full procedural protection and appeal to the Supreme Court, affords an accused judge more protection than impeachment by a political body acting under a standard that, as one Speaker-to-be candidly observed, can mean whatever a majority of the House says it means; and that removal for misBehaviour was never removal for disagreement, since a judge could be removed for deciding by corrupt or improper means but never for the substance of a ruling honestly reached ("(Mis)Understanding Good-Behavior Tenure," 116 Yale L.J. 159 (2006)). The reading is confirmed by two founding-era statutes that the orthodox view cannot easily explain: the Northwest Ordinance of 1787 granted territorial judges good-Behaviour tenure although the Confederation had no impeachment mechanism at all, and the Crimes Act of 1790 provided that a judge convicted of bribery would be removed from and disqualified for office — removal without impeachment, enacted by the First Congress.

The IAJ states its position on this contested question with care. No court has adopted the forfeiture reading, and able scholarship resists it; the orthodox view that reserves removal to impeachment remains the prevailing one, and the IAJ does not assert that the question is settled. But as a matter of original meaning the IAJ finds the forfeiture account the more persuasive, for the reason the generality of the tenure supplies: a condition that applied to clerks and tenants cannot have depended for its enforcement on a remedy — impeachment — available against neither. The significance for this Part is narrower than the academic debate and does not depend on resolving it. Whatever the precise mechanism, the founding design plainly contemplated that misBehaviour in a good-Behaviour office would have a consequence determined through a fair process. That is the feature whose loss completes the inversion. For the practical result of the modern orthodoxy is that an Article III judge enjoys a security of tenure greater than the Stuart Crown could claim over its own judges: where even Charles I had to prove misBehaviour in a court to remove a Chief Baron, the modern federal judge is, as a practical matter, removable by no one, impeachment having become the near-dead letter the next Part documents. The robe has been given what the Crown was denied. The mechanism by which that security might once again be paired with accountability — a statutory, court-adjudicated forfeiture for defined misBehaviour, with full procedural safeguards — is set out, as a severable and expressly contested proposal, in Part XVII.

E. The Constitution's Safety Engineering and the Removal of the Fuses

The Constitution did not rely on judicial virtue alone. It engineered safety through overlapping restraints: good-Behaviour tenure, impeachment for abuse of public trust, public reputation, branch rivalry, appellate correction, criminal liability, legislative control over inferior courts and jurisdiction, disqualification, and the moral expectation that public officers who betrayed trust would be publicly condemned. Judicial independence was made safe because it was not meant to stand alone; it was paired with safeguards. The founding design rested on a structural premise

stated in *The Federalist* No. 51 (James Madison) (Jacob E. Cooke ed., Wesleyan Univ. Press 1961): “Ambition must be made to counteract ambition.” The design assumed that no department would become the judge of the reach of its own power. That premise identifies the precise point of failure here — checks and balances fail when the checked branch becomes the final judge of the check.

The severity of modern judicial self-immunization lies in the way those safeguards were removed without being formally repealed. Impeachment remains in the text, but is practically inert for adjudicative misconduct. Good Behaviour remains in Article III, but is treated as unconditional life tenure. Discipline exists, but excludes the merits-related exercise of judicial power. Disqualification exists, but is first decided by the disqualified judge. Criminal liability is formally available, but practically unused for adjudicative deprivations. Codes of conduct exist, but are severed from consequence. Appellate review exists, but corrects some legal errors rather than acknowledging or remedying judicial bad faith. The safety devices remain visible as constitutional forms while their corrective function disappears — the fuses were pulled while left in their sockets.

The resulting failure is chronological, not episodic. What began as a conditional grant of independence became, through accretion, an architecture of sovereignty. The words remained; the checks did not. Judicial self-enthronement is therefore best understood as constitutional capture without coup: not the open overthrow of the Constitution, but the gradual conversion of the Constitution’s safety engineering into internally administered ritual.

F. The Inversion and the Accountability Vacuum

Seen from the bench, the accountability vacuum has a practical face the doctrine obscures. At trial the judge is the finder of fact — that is his privilege, and it is nearly unreviewable. A finding of fact is disturbed on appeal only for clear error, on a record the trial judge himself shaped, so in practice appellate review rarely reconstructs the truth from the beginning or tests the factual narrative with the immediacy available at trial. That insulation is the opening, and the conditions of the modern docket walk through it. A judge measured by throughput and clearance metrics, with cases to move and benchmarks to meet, can decide the direction of a verdict first and then assemble the findings of fact to fit it — reasoning backward from the disposition he has chosen rather than forward from the evidence before him. In any case that demanded genuine care, diligence, and compassion, findings produced that way protect not the truth but the appearance of factfinding, because care was never the operative input; clearing the case was. And because the result is pronounced with the authority of law and shielded by the deference that review extends to findings it will not disturb, the pronouncement *becomes* the truth at law while the truth itself is set aside. The judge bears no consequence either way. The litigant bears all of it.

This risk is especially acute for the self-represented litigant. Counsel, trained in the rules and disciplined by professional habit, is more likely to state objections on the record and preserve each point for appeal; the judge, facing a represented party, must reckon with that preserved record. The self-represented litigant, unfamiliar with rules of preservation he was never taught, does not object — not from acquiescence but from ignorance of the contemporaneous-objection requirement — and his silence forfeits the issue on appeal under the very same rule. The result is a structural asymmetry: the identical judicial maneuver draws a correcting objection from

counsel and passes unchallenged against the unrepresented, and the rules of preservation, whatever their origin, operate in practice to the systematic advantage of the bench and of repeat-player counsel and to the systematic disadvantage of the one-shot self-represented litigant. The rules, whatever their legitimate purposes in ordinary litigation, can therefore operate as a structural convenience for the bench rather than a protection for the unrepresented person before it.

This asymmetry is not anecdotal; it is the courtroom instance of a structural pattern the empirical literature has long described. Marc Galanter's classic account of why the "haves" come out ahead distinguishes the repeat player, who litigates often, knows the rules, and plays for long-term position, from the one-shotter, for whom the case is a single, high-stakes event; the repeat player's structural advantages compound across cases (Galanter, "Why the 'Haves' Come Out Ahead," 9 Law & Soc'y Rev. 95 (1974)). The bar is the paradigmatic repeat player, and the sociology of the courtroom workgroup — the judge, the prosecutor, and the regular attorneys who appear together day after day — describes a working community oriented toward cooperation, predictability, and the efficient movement of cases (Eisenstein & Jacob, *Felony Justice* (1977)). The self-represented litigant is the paradigmatic one-shotter and the outsider to that community, and the outcome record tracks the asymmetry: in federal district courts, pro se plaintiffs opposed by counsel prevail in roughly four percent of cases (Levy, "Empirical Patterns of Pro Se Litigation in Federal District Courts," 85 U. Chi. L. Rev. 1819 (2018)), and self-represented parties appear in about twenty-seven percent of federal civil cases (Administrative Office of the United States Courts, 2000–2019). Those figures do not, by themselves, prove mistreatment — win rates omit settlement and reflect the screening of stronger claims into representation — but they establish that self-representation is severely and structurally disadvantaged before any individual judge acts. Judge Richard Posner, who left the Seventh Circuit in 2017 over its handling of unrepresented appeals, told the New York Times, in a September 11, 2017 exit interview, that most judges regard such litigants as "kind of trash not worth the time of a federal judge," and said they deserved better. The point for this report is structural, not personal: where the disadvantaged party is also the party least able to invoke what little accountability exists, the vacuum described above falls hardest on the litigant least equipped to survive it.

That this is not abstraction is shown by the investigative record. The Institute's conclusions do not rest on a single complainant, a single court, or a single episode; they rest on documented recurrence across cases, forums, actors, procedural settings, and harm patterns. The Institute opened public complaint intake only after preliminary investigation had already identified numerous matters in which substantially similar patterns appeared across different litigants, forums, rights categories, and procedural settings. One foundational matter supplies an unusually high-resolution institutional map because of its breadth: more than eight years of proceedings across ten state and federal forums, in which more than fifty judicial officers were implicated in a repeating pattern of denied accommodation, self-administered disqualification, merits-avoidance, and consequent injury. In that matter the documented pattern reached beyond isolated rulings and isolated judges, extending across multiple trial and appellate forums in both the federal and state systems. The point is not the identity of any complainant or any single forum; it is the recurrence of the same institutional response across every level of the judiciary at which redress was sought. The matter is not offered as a personal grievance and is not the ground on which the

thesis stands; it is an exemplar — a longitudinal stress test showing how the structure permits, and in documented cases may reward, deciding the direction of the outcome first and constructing the facts backward. The proof lies not in the single case but in the recurrence: the broader investigative caseload supplies the corroborating field, and it is recurrence across forums and actors that gives the pattern its systemic and predictive force.

The documented responses were consistent with the accountability vacuum this Part describes: the ordinary mechanisms did not arrest the pattern, and at the apex of the hierarchy the absence of any answer became part of the evidence. Presented with a motion to disqualify the entire Court keyed to the Article III "good Behaviour" standard the Court had itself just codified, the Justices neither answered the motion nor recused; the petitions that would have arrested the documented harm in the courts below were denied, and the disqualification question — whether a court presided over by a judge whose impartiality is challenged may rule on the merits before resolving the challenge — went unaddressed. The Justices do not find facts, and the indictment here is not that they do; it is narrower and graver. The one institution with the authority to correct the pattern across every forum below it declined to answer whether it was obliged to, and no mechanism existed to compel even a response. The accountability vacuum is therefore not a feature of the trial bench alone. It is closed at the top.

Assemble the elements and the inversion is complete. Tenure that was conditional in design is unconditional in practice. The removal counterweight — whether by *scire facias* or impeachment — is inert. And onto this unaccountable tenure the judiciary has grafted the immunity it conferred upon itself. The structural result is an accountability vacuum precisely coextensive with the category of conduct that matters most to the IAJ: the abuse of the judicial office to violate the rights of those who come before it. Consider the same conduct — a malicious, corrupt, biased, or rights-depriving judicial act — as it meets each check in turn. It cannot be reached in civil damages, because absolute immunity shields judicial acts done even "maliciously or corruptly" (*Bradley*; *Stump*; *Mireles*). It cannot in practice be reached by criminal prosecution, because the decision not to prosecute is unreviewable and no judge has been convicted under the civil-rights statutes for the content of a ruling. It cannot be reached by impeachment, because the deprecation of "high Crimes and Misdemeanors" and the Chase convention have placed abuse of the judicial function below the operative threshold. And it cannot be reached by judicial discipline, because the disciplinary system excludes the merits of decisions. Nor can the conflicted judge be displaced from the case by the litigant, because disqualification is, in the federal courts and in most States, decided by the challenged judge himself — the self-administered recusal examined in Part XII. Every mechanism of accountability exempts the identical category of conduct. The result is an officer who cannot be sued, cannot in practice be prosecuted for his rulings, cannot be disciplined for them, cannot be displaced by a recusal he himself decides, and cannot be removed — functionally irremovable and immune, the precise combination the Act of Settlement was enacted to abolish. The device built to end judging "at the King's pleasure" now produces judging answerable to no one's pleasure at all.

One seam of that vacuum was sealed not by the judiciary but by Congress, and the distinction sharpens rather than softens the diagnosis. When *Pulliam v. Allen*, 466 U.S. 522, 536 (1984), held that judicial immunity did not bar prospective injunctive relief against a judicial officer, it left one civil avenue open: a litigant could not recover damages, but could at least seek to stop an

ongoing violation going forward. The Federal Courts Improvement Act of 1996 closed it, amending 42 U.S.C. § 1983 to bar injunctive relief against a judicial officer for acts taken in a judicial capacity unless a declaratory decree was violated or declaratory relief was unavailable. The amendment did not narrow the shield; it codified it, and in doing so it extinguished the last civil mechanism by which a court could be ordered, prospectively, to cease a rights-violating course of conduct. The IAJ reads this as a structural element of the accountability vacuum, and reads it carefully. The amendment does not render the underlying conduct rightful — a rights-violating judicial act remains wrongful — but it insulates that conduct from prospective correction, removing the deterrent that the availability of injunctive relief would otherwise supply. Its operation, whatever its purpose, predictably emboldens the conduct it leaves unremediable: an officer who knows he can be neither sued, prosecuted, disciplined, nor enjoined for the content of his acts faces no material consequence for them. Measured against the standard of Part III, the amendment deepens the effective-remedy deficit (Universal Declaration, art. 8) at its final seam. And it connects the structural vacuum to the sociological one developed in Part X: when the last material check is removed, the judiciary's practical unanswerability becomes a structural fact, and an authority that rests on no answerability must rest instead on the manufactured deference that Part X anatomizes — the symbolic apparatus supplying the legitimacy that the absent check would otherwise have had to earn. Two further points follow. First, because this seam was sealed by statute, the vacuum at its completion is not purely judge-made but legislatively endorsed — which locates the cure, consistent with Parts XII and XVII, in the body that built the seam. Second, the IAJ advances the human-rights characterization as its own evaluative reading: that the 1996 amendment functions as a structural element fostering and unremedying rights violations by the judiciary is the IAJ's considered conclusion, drawn from the amendment's operation and from the effective-remedy principle, not a holding of any tribunal.

It is here that the IAJ states the proposition that is its reason for writing. When a single category of conduct escapes every check at once, the escape is not an accident of separate doctrines; it is, in operation, a *policy* — an unlegislated, unannounced, but perfectly effective policy of impunity for the abuse of judicial power. The IAJ names this the **de facto policy**: the immunity, the deprecated removal standard, and the disciplinary merits-exclusion are not, in isolation, presented as a license to violate rights, but in combination they operate as exactly that, and they do so beneath the surface of a system that proclaims itself the guardian of rights. Judges are organs of the State; their conduct is the conduct of the State (International Law Commission, Articles on State Responsibility, art. 4). When the State's judicial organs violate the inherent rights of the human being — detaining arbitrarily, denying a fair hearing, punishing without law, subjecting persons to degrading treatment — and when every mechanism that might hold them to account has been disabled for that precise category of conduct, the State has not merely failed to remedy a wrong; it has constructed, through the accretion of self-protective doctrine, a standing architecture within which its judicial organs may violate human rights and answer to no one. That architecture is the de facto policy, and the systemic violation of human rights it enables is the subject this report exists to expose.

The anomaly is sharpened by a fact too rarely stated plainly: **no other office conferred by the Constitution carries life tenure.** The President is term-limited and removable; members of Congress stand for election; executive officers serve at pleasure and answer in damages. Only

the Article III judge holds power for life. And the duration of that power has grown as its accountability has shrunk. Calabresi and Lindgren documented that the average tenure of a Supreme Court Justice, 14.9 years for those who left the Court between 1789 and 1970, rose to 26.1 years for those retiring after 1970 — life tenure lengthening into a genuine generational reign even as the mechanisms to check it fell dormant. An office that is unique in its permanence, unique in its immunity, and unique in its freedom from correction is not described by the founders' phrase "the least dangerous branch." It is described by the office the founders overthrew. This report names the resulting figure the **robed sovereign**: a magistrate who wears the visible insignia of a power the Constitution was written to abolish, and who exercises, in the aggregate, its substance — including the capacity, which the de facto policy protects, to violate the rights the office exists to secure.

G. The Invariance Assumption: The Fiction of the Constant Judge

The robed sovereign rests on a premise the design never stated and never examined: that the person who takes the oath remains, across decades of tenure, a functionally invariant instrument of judgment — that empathy, perspective, patience, and moral attention are fixed endowments rather than capacities the office can erode. Good-Behaviour tenure, conceived to secure independence, silently assumes constancy of function as its companion. Part X has set out why that assumption is unsafe: the conditions of the office — repeated exposure, durable power, and weak correction — are a documented risk condition for the erosion of precisely those capacities. The founders did not account for this because the relevant science did not exist; but the assumption is no less a fiction for having been an innocent one. A constitution that vests irreversible power for life on the premise that its holder will not change is not a design for human government; it is a wager against human nature, made without acknowledging the stakes. The design did not even rest on a belief in invariance; its own chief defender conceded the opposite. In Federalist No. 79, Hamilton allowed that insanity "may be safely pronounced to be a virtual disqualification," and acknowledged that the absence of any provision for removing judges on account of inability had drawn complaint — declining such a provision only because fixing the boundary between ability and inability would, in his account, be "arbitrary" and more open to abuse than to use. Hamilton thus assumed that judicial capacity could fail; he merely wagered that its failure would resolve itself without a mechanism. The wager, not the invariance, was the premise — and it is the wager this Part contests.

The decisive point is that the system's own law has already abandoned the assumption — but only at its extreme. The Judicial Conduct and Disability Act makes a judge's inability "to discharge all the duties of office by reason of mental or physical disability" a cognizable ground for complaint, and its rules name impaired cognition and the inability to remain awake on the bench among the examples (28 U.S.C. §§ 351-364; see Part XII). The recusal statute requires a judge to step aside where his "impartiality might reasonably be questioned" (28 U.S.C. § 455). The disability-retirement statute goes further still: it authorizes the appointment of an additional judge when a sitting judge, holding office during good Behaviour, has become unable to discharge his duties by reason of permanent mental or physical disability and will not retire — a mechanism built for the very case of a judge whose capacity has failed but who remains on the bench (28 U.S.C. § 372). These provisions concede the principle the invariance assumption denies: that judicial function is

not constant, that it can degrade, and that its degradation bears on the right to decide. The Newman litigation, examined in Part XII, is the live proof that the federal system already treats a judge's capacity as a question the institution may ask. What the system lacks is not the principle but its honest application. It recognizes impairment only once it has become gross, visible, and individual — a judge who cannot stay awake — while the evidence assembled in Part X describes an erosion that is ordinary, gradual, and population-wide, and that the institution's doctrines are structurally unequipped to detect. The IAJ does not equate occupational erosion, burnout, or compassion fatigue with the statutory disability these provisions address, nor does it propose to label individual judges as disabled or to remove them on the strength of a diagnosis; the point is functional, not stigmatic, and is not a program of removal — what matters is whether the capacities the office presupposes remain intact, and whether the system is willing to notice when they do not. The IAJ does not contend that judges are uniquely fallible; it contends that the system is built on the pretense that they are uniquely invariant — a pretense the system's own disability and recusal law is best read to deny. To insist on that pretense, against both the evidence and the law's own concessions, is not to protect independence. It is to protect the inversion.

This selective recognition has a precise institutional signature: the federal judiciary subjects its members to no forward-looking verification of the fitness it presupposes. There is no assessment of functional capacity at appointment to fix a baseline, no periodic reassessment across a tenure that may run forty years or more, and no routine psychological, cognitive, or medical fitness review of any kind — only the reactive disability inquiry that engages, adversarially, after impairment has already become gross and visible. The contrast with other roles entrusted with public safety is exact: commercial airline pilots undergo recurrent medical certification and must retire from the cockpit at sixty-five, and federal agents face mandatory retirement ages decades before the bench imposes any limit at all, while the United States remains the only Western democracy that subjects its federal judges to neither an age limit nor any fitness review. A profession empowered to end a person's liberty, custody, or livelihood thus verifies the continuing capacity of its decision-makers less than one that flies an aircraft. The invariance assumption is, in operation, a fuse the design left out — and the erosion it declines to measure is borne, in the first instance, by the litigant before the judge.

H. The Counter-Example of the Parent System: England's Re-Pairing of Independence and Accountability

That the inversion was avoidable — that independence and accountability can be paired without destroying either — is demonstrated by the one system best positioned to teach the lesson: England, the very nation whose Act of Settlement the American framers inherited. The United States took the 1701 settlement's good-Behaviour tenure and its parliamentary-address removal, wrote them into Article III, and then let the accountability half atrophy. England did the opposite. It kept the tenure protection and *modernized the accountability*. The Constitutional Reform Act 2005 (c. 4), which received Royal Assent on 24 March 2005, reconstituted the architecture of judicial governance: it created an independent United Kingdom Supreme Court (operational 1 October 2009), established a Judicial Appointments Commission, imposed a statutory duty to uphold judicial independence (s. 3), and — decisively for present purposes — built a functioning system of judicial discipline. The Act made the Lord (now Lady) Chief Justice and the Lord

Chancellor jointly responsible for judicial conduct, and set out in section 108 a graduated ladder of sanctions: formal advice, formal warning, reprimand, and removal from office. Complaints are investigated through the Judicial Conduct Investigations Office (established 1 October 2013, succeeding the Office for Judicial Complaints of 2006), with nominated and investigating judges and, in serious cases, judicially chaired disciplinary panels making findings and recommending sanctions.

The contrast with the American system is not rhetorical; it is measurable, and the IAJ states it with the precision the comparison requires. England retains, for its most senior judges, the same legislature-only removal that America reserves to impeachment: a Justice of the United Kingdom Supreme Court holds office "during good Behaviour" but is removable on an address of both Houses of Parliament (Constitutional Reform Act 2005, s. 33), as are the judges of the High Court and Court of Appeal (Senior Courts Act 1981, s. 11(3)) — the direct lineal descendant of the Act of Settlement, and a power that has never been exercised against an English senior judge. At that highest tier the two systems are alike. The divergence is at every tier below it. Circuit judges and the broad body of judicial office-holders are removable for incapacity or misBehaviour through the disciplinary process (Courts Act 1971, s. 17(4)), and that process *operates*: in the year 2024–25 the Judicial Conduct Investigations Office reported eighty-nine disciplinary sanctions, including nineteen removals from judicial office — a figure that, as Part XIII explains, must be read with care, since most of those removals involved magistrates or tribunal members and many arise from failure to meet minimum sitting requirements rather than from adjudicative misconduct. The point is not that England removes its senior judges for adjudicative misconduct at scale; it is that the parent system operates a visible disciplinary machinery, with real sanctions, below the address-protected senior tier where most judicial business is transacted. The United States, by contrast, possesses an administrative disciplinary mechanism of its own — the Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 351–364) — but that Act, by its own terms, may under no circumstances order the removal of a judge appointed during good Behaviour (28 U.S.C. § 354(a)(3)(A)), and in practice it produces only a handful of censures or reprimands a year and not a single removal of an Article III judge in its history. The English lesson is therefore exact and damning: confronted with the same inherited design, the parent system built an accountability apparatus that publicly disciplines judicial office-holders and, in appropriate lower-tier cases, removes them through a visible process, while preserving the independence of its senior bench, and the American system did not. The inversion was a choice, not a necessity, and the comparison forecloses the defense that accountability and independence cannot coexist.

There remains the deepest measure of the inversion, and it returns the argument to the purpose for which good-Behaviour tenure was created. Tenure independent of the Crown was instituted, in 1701 and again in 1787, to secure *public confidence* in the impartiality of justice — Hamilton's "citadel of the public justice and the public security." It was a bargain: the people would grant the judge an extraordinary security of office, and in exchange the judge, freed from fear and favor, would render justice the people could trust. The bargain has failed on its own founding terms. Public confidence in the American judicial system has not merely declined; it has collapsed to a record low of 35 percent (Gallup, December 2024), a fall documented in detail in Part X of this report. The device justified entirely by the public confidence it was meant to secure now presides over the disappearance of that confidence. When the instrument created to produce trust has

produced, instead, the lowest trust ever recorded — lower than the people's trust in the honesty of their elections — the instrument has not merely underperformed; it has been turned against its own purpose. The robed sovereign is not only the betrayal of the founders' design; he is the refutation, in the people's own judgment, of the bargain that justified his tenure. Tenure was the price the people paid for confidence in justice. They are no longer receiving what they paid for.

The IAJ states the characterization precisely, to keep it defensible. The claim is not that any individual judge is a tyrant, nor that judicial independence is illegitimate — independence is a real and valuable thing, and Federalist No. 78's "barrier to despotism" states a genuine good. Nor is the claim that judges should be removable for unpopular or erroneous rulings; that would vindicate Madison's fear and subordinate the judiciary to the passions of the moment. The claim is narrower, and for that reason harder to answer: independence was meant to come *paired* with accountability for the *abuse* of office — as it did in 1701 — and the American system has retained the independence while discarding the pairing, precisely for the category of conduct in which abuse of office violates human rights. The founding design distinguished "bad judging," which independence rightly protects, from "abuse of the judicial office," which the original "good Behaviour" and "high Crimes and Misdemeanors" standards were meant to reach. The deprecation collapsed that distinction, immunizing the second along with the first. The defect, consistent with this report's controlling thesis, is not independence; it is **independence without an effective remedy** — here raised to its constitutional maximum, because the independent actor is also irremovable, also immune, also the final judge of the law that defines his own power, and therefore free, within the de facto policy, to violate with impunity the rights the office was created to protect.

Part IX. An Institutional Comparison: Trump v. United States (2024)

Trump v. United States is not part of judicial-immunity doctrine, and this report does not treat it as such. It is included only as an institutional comparison — an analytical extension, in the IAJ's disciplinary taxonomy — because it illuminates the Court's general method of deriving immunities. In *Trump v. United States*, 603 U.S. 593 (2024), the Court (6–3, Roberts, C.J.) held that a former President enjoys *absolute* immunity from criminal prosecution for acts within his "core" constitutional powers, "at least presumptive" immunity for all other "official acts," and no immunity for unofficial acts — and barred courts from inquiring into the President's *motives* in dividing official from unofficial conduct. The immunity recognized is not expressly specified in constitutional text; the majority derived it from Article II structure and functional necessity ("bold and unhesitating action"), explicitly drawing on the civil-immunity reasoning of *Nixon v. Fitzgerald*. Justice Sotomayor's dissent warned that the decision "reshapes the institution of the Presidency" and that, "[i]n every use of official power, the President is now a king above the law."

The comparative observation — offered as the IAJ's interpretive position, not as doctrine — is that the same Court that created and expanded judge-made immunity for itself (*Bradley*/*Stump*/*Mireles*) and its courtroom allies (*Imbler*) has shown itself willing to derive broad immunity rules from functional necessity in other institutional contexts, each time substituting judicially perceived institutional need for democratic enactment. Notably, when a litigant attempted to carry *Trump*'s logic back into the judicial context as a *criminal* shield, the *Dugan* court refused — confirming that the civil/criminal line, at least, still holds.

Part X. Manufactured Deference: The Sociology and Psychology of Judicial Authority

An office this unaccountable could not endure on force; it commands almost none. It endures on belief. The robed sovereign is sustained not primarily by his powers but by a public and a profession conditioned to defer to him — to rise when he enters, to address him as "Your Honor," to accept his word as the law, and to experience all of this as natural, neutral, and just rather than as the operation of power. This Part examines how that deference is produced. The thesis is that deference to courts is to a substantial degree a *manufactured* condition — socialized from childhood, reinforced by ritual, secured by professional discipline, and internalized so deeply that even those the system harms defend it. For the IAJ this inquiry is not a detour into sociology for its own sake; it is essential to the human-rights diagnosis. The de facto policy described in the preceding Part — the architecture of impunity for rights-violating judicial conduct — could not survive exposure if the public perceived it plainly. Manufactured deference is what keeps it from being perceived. The conditioning of public and professional belief is, in the IAJ's analysis, the social mechanism that sustains the rights-violating structure: it is the reason a system that systematically denies effective remedy for judicial rights-violations is nonetheless experienced by its subjects as the very embodiment of justice. The frameworks below are drawn from mainstream sociology, political science, and social psychology; the IAJ deploys them as analytic lenses, identified as such, and not as clinical findings about any individual.

A. The Juridical Field and Symbolic Violence

The foundational analysis is Pierre Bourdieu's. In "The Force of Law: Toward a Sociology of the Juridical Field," 38 Hastings L.J. 805 (1987), Bourdieu describes law as a relatively autonomous "field" that possesses the power to make its own contingent, historically produced arrangements appear natural, necessary, and universal. The juridical field, he writes, exercises a "specific power" to impose its categories of perception, and judicial authority represents "the quintessential form of legitimized symbolic violence" — *symbolic* because it operates not by physical coercion but by securing the misrecognition of power as justice, so that those subject to it accept its impositions as the simple requirements of law. This is the deepest level of the mechanism: the legal order's greatest achievement is to make its own authority invisible *as* authority, to present the outcome of social and political struggle as the neutral application of pre-existing right. Max Weber had already located the modern form of this legitimacy in "legal-rational authority" (*Economy and Society* (1922)) — obedience grounded in belief in the legality of enacted rules and the right of those elevated under them to command — and in the monopolization of specialized legal knowledge by a trained professional class, which removes law from lay comprehension and control. Antonio Gramsci's concept of hegemony, developed in the *Prison Notebooks* (1971 ed.) (domination that operates as consented-to "common sense") and Louis Althusser's account of the legal apparatus as an institution that "interpellates" subjects and reproduces their submission ("Ideology and Ideological State Apparatuses" (1970)) supply the broader social theory: law is among the principal means by which a social order secures not merely compliance but belief in its own rightness.

B. Manufactured Legitimacy

Empirical political science has measured the mechanism Bourdieu theorized. Tom R. Tyler's *Why People Obey the Law* (1990) established, across a body of survey research, that people obey legal authority chiefly because they regard it as **legitimate**, and that perceived legitimacy turns far more on the *procedural fairness* of how authority behaves — whether it appears neutral, respectful, and trustworthy — than on the substantive justice of its outcomes. The implication is double-edged and, for this thesis, decisive: an institution can secure obedience and the *belief* in its fairness by performing the rituals of fair process, independent of whether it actually delivers just results. Legitimacy, in Tyler's account, is what allows authority to function without coercion — and what insulates it from the consequences of its failures.

James Gibson and Gregory Caldeira mapped how courts in particular accumulate this insulation. Their "positivity theory," developed in *Citizens, Courts, and Confirmations* (2009) and related work, holds that exposure to the "legitimizing symbols" that courts assiduously cultivate — the robes, the temple-like architecture, the solemn rituals — builds in citizens a "reservoir of goodwill," a reserve of *diffuse support* that is not contingent on approval of particular decisions and that protects the institution when it disappoints. Strikingly, they find that "to be aware of a court is to be supportive of it": mere exposure to the symbols produces loyalty. This is the courts' own defenders describing, in approving terms, exactly the manufacture of deference this report identifies. The robe is not a costume; it is infrastructure. The temple is not architecture; it is an instrument of legitimacy.

C. The Theater of Authority

The instruments are concrete and deliberate. The courtroom is built as a place of awe: the elevated bench, the judge enthroned above the parties, the railing that separates the public from the well of the court, the flags and seals, the demand that all present rise on the judge's entrance and remain standing until permitted to sit, the honorific "Your Honor," the black robe. Scholars of legal architecture and ritual have long noted that the courthouse is constructed as a secular cathedral and the proceeding staged as a liturgy — the bench an altar, the witness stand a lectern, the robe a vestment that, in one law review's phrase, "with its priestly flutterings, inspires excessive awe" and brushes its wearer "with divinity." Peter Goodrich has analyzed legal discourse as a quasi-sacred text mediated by a priestly profession; Erving Goffman, in his work on deference and demeanor, showed how such ritual performances of status produce, in those who enact them, genuine feelings of the superior's entitlement and the inferior's obligation.

What the theater conceals is the substance of judicial power, which is violence. Robert Cover put it without euphemism in "Violence and the Word," 95 Yale L.J. 1601 (1986): "Legal interpretation takes place in a field of pain and death." When a judge interprets a text, Cover wrote, "somebody loses his freedom, his property, his children, even his life." The ceremony of the courtroom — its calm, its decorum, its Latin and its honorifics — is in part the means by which that violence is rendered orderly and acceptable, the velvet over the iron. Social psychology supplies the link between ritual authority and obedience. Stanley Milgram's obedience experiments demonstrated that ordinary people will inflict grave harm at the direction of an authority they perceive as legitimate, entering what Milgram called an "agentic state" in which they cede moral responsibility to the authority; obedience collapsed when the authority's legitimacy cues were removed. Philip Zimbardo's work underscored the power of uniforms, titles, and assigned roles to transform

behavior. The IAJ invokes these as analytic lenses, not as clinical claims about courtroom participants, and notes the methodological criticism each body of work has attracted; their value here is to illuminate how the authority cues a courtroom is engineered to broadcast — robe, bench, title, ritual — are precisely the cues that social psychology associates with habituated obedience.

D. Legal Socialization: The Training of the Public

Deference of this depth is not acquired in adulthood; it is taught from childhood. The field of "legal socialization," opened by June Tapp and Felice Levine ("Legal Socialization," 27 Stan. L. Rev. 1 (1974)) and extended by Tyler and collaborators, studies how children and citizens internalize orientations toward law and legal authority — how they learn, long before any encounter with a court, to regard the judge as a figure of legitimate and rightful command. The cultural reinforcement is continuous and ambient: the civic instruction that courts deliver justice; the depiction of the wise and impartial judge across popular media; the expectation, taught early, that one stands in a courtroom and obeys its officer. By the time a citizen first stands before a judge, the disposition to defer has been decades in the making. This is the answer to the question of why the public does not perceive the structure this report describes: the disposition not to perceive it has been cultivated since childhood, and a disposition that deep does not present itself to its holder as a disposition at all. It presents itself as respect for justice.

E. The Capture of the Bar

If the public is socialized into deference, the legal profession is *disciplined* into it. The attorney occupies a structurally captured position, and the capture is not subtle. The judiciary, directly or through bodies it controls, admits attorneys to practice, licenses them, promulgates the rules of professional conduct that govern them, and holds the powers to sanction, to hold in contempt, to fine, to suspend, and to disbar — over the very advocates who appear before it. An attorney's livelihood depends on the goodwill of the judges before whom that attorney must practice for a career. Layered atop this economic dependence is a sworn role-conflict: the attorney is an "officer of the court," obligated to the institution and its tribunals, *and* an advocate obligated to the client — and the duty of candor to the tribunal and the prohibitions on impugning the judiciary mean that, at the margin, institutional loyalty is structured to prevail over the client's cause. The advocate who appears to be the client's champion is simultaneously an officer sworn to a system administered by the official across the bench.

This disciplining begins before practice, in legal education. Duncan Kennedy's *Legal Education and the Reproduction of Hierarchy* (1983) argues that law school functions as "ideological training for willing service in the hierarchies of the corporate welfare state," and that its methods — the Socratic interrogation, the manufactured uncertainty, the rewarding of doctrinal facility over moral judgment — instill conformity and deference to authority and reproduce the profession's hierarchies in the students who pass through it. The training teaches the future advocate to "think like a lawyer," which is in part to subordinate untutored moral intuition to the authority of doctrine and of those who pronounce it. And the discipline is enforced against dissent: attorneys who publicly impugn the integrity of judges face professional sanction, so that criticism of the judiciary

is policed by the judiciary's own licensing power. The profession that the public imagines as the check on judicial power is, in its formation and its regulation, an instrument of judicial authority.

That same licensing power has a mirror that runs the other way. Where the bar's dependence disciplines the advocate into deference, the litigation privilege immunizes the advocate's words against the persons those words harm. The privilege — the absolute privilege attaching to statements made in or preliminary to a judicial proceeding — protects judges, attorneys, parties, and witnesses alike against civil liability for what they publish in the course of litigation, provided the statement bears some relation to it (Restatement (Second) of Torts §§ 585–588). Two features, both the work of the courts that administer it, give the doctrine its present reach. It is absolute rather than qualified: it applies without regard to malice, to knowledge of falsity, or to bad faith, so that the speaker's state of mind is removed from the inquiry altogether. And its relevance test is generous to the point of formality, with doubts resolved in favor of the privilege and its protection extended, in many jurisdictions, beyond defamation to the related torts that arise from the same words. The justification offered is the justification offered for immunity itself — that participants must be free to speak without fear of derivative suits, and that a malice exception would invite every disappointed litigant to plead malice and so reintroduce the harassment the privilege exists to prevent.

The consequence is that the doctrine licenses the very conduct it declines to deter. Because the privilege is absolute, the knowingly false accusation, the fabricated narrative, the degrading and gratuitous charge leveled at a vulnerable or self-represented opponent — the privileged statement that is itself the instrument of the injury — carries no civil consequence for the person who makes it. And the person who makes it is, by the law's own designation, an officer of the court. The status said to impose heightened duty — candor to the tribunal, integrity, the obligations rehearsed above — operates here as the source of a shield rather than a source of answerability: the officer of the court receives the court's protection without the accountability the title is supposed to carry. He is immune in the civil courts by the privilege, and he does not lose his license at the bar, because the disciplinary apparatus does not reach him — immunity, that is, without loss of license.

That the bar does not reach him is less an accident of enforcement than a feature of design. Attorney discipline is self-regulation by the profession, administered under the authority of the same judiciary that licenses it, so that the guild polices itself and its own dependence on the bench it would otherwise have to indict. Its docket is built for the discrete and provable breach — the looted trust account, the abandoned client, the criminal conviction — and not for conduct that wears the costume of zealous advocacy and is, in any event, civilly privileged; the disciplinary system thus inherits, in its own form, the merits-exclusion that empties the judicial-conduct process. And the repeat player will not report, neither colleague nor judge, because all must return to the same forums. The three channels through which such a wrong might be answered are therefore empty at once: the civil channel, closed by the privilege; the professional channel, closed by a disciplinary body that does not aim at this conduct; and the judicial channel, closed by the immunity of the judge who presided over it. A single empty channel is consistent with rarity. Three empty channels, converging on the same wrong and set against its documented recurrence, are the architecture of impunity, not the evidence of its absence.

The privilege, like the immunity it mirrors, is to be measured by the same threshold that governs this report throughout, and not condemned entire. Below that threshold it does proper work: the honest advocate, like the honest judge, must be free to argue, and the candid witness free to testify, while the State bears what reparation is owed for the injuries that honest advocacy occasions. The defect is the absolute form, which lends the protection of good faith to the knowing and the malicious. And at the

threshold the privilege yields exactly as immunity yields: where the in-proceeding conduct of an officer of the court crosses into the instrumentation of torture or cruel, inhuman, or degrading treatment, no privilege shields it, because a privilege over a peremptory wrong was never the law's to confer, and the officer answers in his own person, concurrently with the State whose process he turned to that end. The bench and the bar are governed by one line, and it is the same line.

F. Why the Governed Defend Their Governors

There remains the deepest question, the one that the fact of a 35% confidence rating only sharpens: if the structure is as this report describes, why has it provoked so little revolt — why do even those the courts have harmed so often rise to the system's defense? Social psychology offers a disquieting answer. John Jost's system justification theory (developed with Mahzarin Banaji from 1994; *A Theory of System Justification*, 2020) holds that people are motivated to defend, bolster, and rationalize the social systems on which they depend — *even systems that disadvantage them* — because believing that one's institutions are fair and legitimate serves powerful psychological needs for certainty, security, and order. The corollary "status-legitimacy" hypothesis — that the disadvantaged may justify the system even more than the advantaged — is empirically contested and the IAJ flags it as such, but the core finding is robust and well replicated: human beings tend to defend the legitimacy of the very arrangements that constrain them. Melvin Lerner's "just-world" hypothesis (*The Belief in a Just World*, 1980) supplies the complementary mechanism: the need to believe the world is fair leads observers to assume that legal outcomes are deserved — that those the courts punish must have earned it. Together these explain the phenomenon that would otherwise be inexplicable: a manufactured deference so complete that its subjects experience their own subordination as justice, and defend the robe even as it falls on them.

G. The Occupational Psychology of the Bench

The deference described in the preceding sections operates on the governed; a separate body of evidence concerns the governor. It is set out here not to excuse judicial conduct but to explain why external accountability is a structural necessity rather than a preference: the internal restraints on which any self-policing model depends are, under the conditions of the office, predictably degraded. The claim is deliberately bounded. It is a statement of risk, not an iron law; it does not assert that power produces malice in any particular judge, and many judges remain humane and conscientious across long careers. But the risk is real, it is documented across several disciplines, and it bears directly on the thesis of this report, because the one thing the conditions of the office cannot supply from within is the correction that immunity removes from without.

Judging is, for a great many judges, a repeated-exposure occupation. The same forums, the same procedural conflicts, the same adversarial performances protected by litigation privilege, the same contested experts, the same accounts of violence and trauma, and the same pressure to decide and move the docket recur without end. A judge-specific literature documents the consequences. Jaffe and colleagues (2003), surveying 105 judges, found that 63 percent reported at least one symptom of vicarious trauma, with symptoms more frequent among women and among judges of longer service. Chamberlain and Miller (2009) found that every judge in their study showed at

least a low level of secondary traumatic stress, safety concern, or burnout. Australia's first empirical measurement of judicial stress — Schrever, Hulbert, and Sourdin, surveying 152 judicial officers — found 52.9 percent in the moderate-to-very-high range of psychological distress against roughly a third of the general population, 83.6 percent reporting at least one symptom of secondary traumatic stress in the preceding week, and 30.4 percent at a level at which formal assessment for post-traumatic stress would be warranted. A study of United States immigration judges (Lustig and colleagues, 2008) found secondary traumatic stress and burnout exceeding that reported by prison wardens and hospital physicians. The constructs are not improvised: compassion fatigue, as defined by Figley, and burnout, as measured by Maslach and classified by the World Health Organization as an occupational phenomenon, locate the source of the injury in the conditions of the work rather than the character of the worker.

Two mechanisms convert that exposure into a change of perception. The first is habituation. Judges perform what the literature calls emotional labor — the managed display of calm, neutrality, and control — and the surface acting it requires is associated with depersonalization and exhaustion (Barry et al., "The Emotional Labour of Judges in Jury Trials," 50(4) J. Law & Soc'y 477 (2023)). Over a career, the abnormal can become ordinary: the process the sociologist Diane Vaughan named the normalization of deviance (*The Challenger Launch Decision* (1996)), by which conduct once seen as alarming is reclassified as routine when it recurs without sanction. The vocabulary of the role supplies the means — "case management," "docket control," "finality" — by which a harm can be redescribed as a procedure, an instance of the moral disengagement Albert Bandura anatomized ("Moral Disengagement in the Perpetration of Inhumanities," 3 Personality & Soc. Psych. Rev. 193 (1999)): euphemistic labeling, the displacement and diffusion of responsibility, and the minimizing of consequences. The second mechanism is power itself. In a series of experiments, Galinsky and colleagues ("Power and Perspectives Not Taken," 17 Psych. Sci. 1068 (2006)) found that induced power reduced spontaneous perspective-taking and the accurate reading of others' emotions; van Kleef and colleagues ("Power, Distress, and Compassion," 19 Psych. Sci. 1315 (2008)) found that a heightened sense of power reduced compassion and distress at another person's suffering. These are laboratory studies of general populations, not of judges, and are offered only as evidence of a mechanism — but the judicial office concentrates, in durable and unusually pure form, precisely the variable those experiments manipulate.

What determines whether these tendencies remain a manageable hazard or become a structural danger is accountability. The research is consistent that anticipated consequences make judgment more careful and self-critical, while their absence makes it more defensive and rigid (Lerner and Tetlock, 1999). Immunity removes exactly that external corrective. And the remedy most often proposed in its place — better screening and confirmation — cannot bear the weight. Selection can identify who is initially capable, conscientious, and temperate; it cannot forecast what a person will become after years of exposure, power, and insulation, and the predictive validity of even the best selection methods is bounded and, on the most recent meta-analytic correction, materially lower than the field long believed (Schmidt and Hunter, 1998, as revised by Sackett and colleagues, 2022). That the correction climate within the institution is itself weak is suggested by the federal judiciary's own 2023 workplace-conduct survey, which found that 34.7 percent of employees had experienced inappropriate workplace behavior, 8.3 percent conduct

the survey classified as wrongful, and only about 42 percent willing to report misconduct. That survey measures workplace rather than adjudicative conduct, and is cited only for the narrower point it establishes: that a high-status judicial environment can under-report and under-correct the wrongs within it.

None of this shows that judges become callous, still less malicious, and it would be a misuse of the evidence to claim so. The samples are often small, the measures self-reported, and the respondents self-selected; the same Australian study that recorded high distress also recorded high job satisfaction and active, effective coping; resilience is real and common, and many of the conditions can be mitigated by support, rotation, and training. The honest claim is the narrower one, and it is the harder to refute for being narrow: the office places conscientious people in conditions that predictably erode the very capacities — empathy, perspective, moral attention — that the office presupposes, and then removes the external correction that might otherwise restore them. That is why the remedies this report proposes are structural rather than hortatory. The answer to a risk produced by exposure, power, and insulation is not an exhortation to individual virtue but the institutional design — State liability, independent monitoring, and enforceable discipline — that supplies the correction the office cannot generate from within. Screening guards the threshold; the inversion is a condition of the whole tenure.

H. The Measure of a Manufactured Legitimacy — and Its Failure

If judicial legitimacy is manufactured, it can also fail — and the instrument that measures the manufacture can measure the failure. Positivity theory predicts that the reservoir of goodwill, though deep, is not bottomless; sustained displeasure can drain it. The data suggest the draining is underway. Gallup's December 2024 finding that confidence in the nation's judicial system and courts fell to a record-low 35% — a 24-point collapse in four years, leaving the United States twenty points below the median of OECD nations — is, on this report's analysis, not a fact to be explained away but the central diagnostic finding. It is the manufactured legitimacy ceasing to hold. Gallup observed that four-year confidence declines of comparable magnitude have occurred, in its global trend, alongside the political crises of Myanmar, Venezuela, and Syria — a comparison the IAJ offers not for sensation but for scale. The 35% is not, as some would frame it, a failure of public understanding to be corrected by better civics. It is, this report submits, the public's belated perception of the structure these Parts describe — the dawning recognition that the institution conditioned to appear as the guardian of rights can, under the de facto policy, violate them without answer. The conditioning is failing because the thing it concealed has become too large to conceal.

The IAJ does not lament this collapse; it reads it as the beginning of the awakening its own work is meant to serve. A manufactured deference that is failing is a population beginning to see clearly. But the IAJ is equally clear that the answer to the collapse is not the destruction of the judiciary or of judicial independence, which would return the people to the rightless condition the Crown imposed. The answer is the *evolution* the Charter of this report describes: the restoration of accountability for the abuse of judicial office, paired with the preservation of independence for the honest exercise of it; the re-pairing that the Act of Settlement achieved and the American system discarded; and the realization, through the Universal Declaration as the key to the Constitution's unenumerated rights, of the rights the judicial office was created to secure and the de facto policy

was permitted to deny. This is the affirmative purpose toward which the whole of this report is directed. The diagnosis of unaccountability is in the service of the advancement of justice and human rights — of the proposition that the inherent rights of the human being are real, that they are owed to every person, and that they may be more fully secured, more completely realized, and more faithfully protected in a constitutional republic founded on the promise that public power exists to secure the rights retained by the people. The robed sovereign is the betrayal of that experiment. The recovery of accountability, in the service of human rights, is its redemption.

I. The Sociology of Failed Checks and Balances

The preceding sections explain how deference is manufactured. The next question is what that deference does to checks and balances over time. The IAJ finds that judicial self-enthronement depends on a social transformation from public-trust morality to professional legality — a movement that may be named directly: from shame to legality. Under the older public-trust model, corruption, dishonor, cruelty, oppression, and betrayal of office were morally legible as unfitness. Under the modern professional-legal model, the same conduct may disappear into technical categories: merits, discretion, docket control, preservation, harmless error, finality, standing, immunity, or insufficient evidence. The point is not that shame culture was good; it is that public-trust betrayal once carried disqualifying social consequence, and modern legality proceduralizes the same betrayal into terms that foreclose remedy.

This transformation is not merely cultural; it is institutional. Law professionalized around insider competence, jurisdictional monopoly, and deference to credentialed legal actors. The more law became a profession speaking to itself, the less public-trust betrayal remained visible to non-lawyers as betrayal. The citizen harmed by judicial conduct must translate injury into categories the legal field recognizes; yet those categories are authored by the same field whose conduct is challenged. Legal consciousness is therefore part of the injury: the person knows he has been wronged, but the system instructs him that the wrong is not cognizable.

The courtroom workgroup intensifies the problem. Judges, clerks, court staff, repeat attorneys, institutional litigants, and local bar networks form a professional ecosystem. Insiders learn how to preserve relationships, speak the right language, avoid provoking the bench, and survive repeated appearances. Self-represented litigants and other one-shotters encounter the same ecosystem as arbitrary power. What the repeat player experiences as informal administration, the vulnerable litigant experiences as exclusion, humiliation, and non-remedy.

The modern system also reverses the status-degradation function. In a public-trust regime, exposure of official oppression degraded the officer. In the judicial-immunity regime, accusation of oppression often degrades the victim: the complainant becomes disgruntled, vexatious, frivolous, unstable, disrespectful, or unable to accept an adverse ruling, while the judge’s status remains presumptively intact. This inversion is not incidental; it is one of the ways judicial dignity is preserved. The mechanism may be named dignity extraction: the system preserves the dignity of the office by extracting dignity from the person harmed by the office — through humiliation, sanctions, adverse credibility labels, forced performance despite disability, and the treatment of distress as proof of unreasonableness.

The same inversion arms the institution. Tools designed for orderly adjudication become counter-accountability weapons when turned against those who seek accountability: sanctions, vexatious-litigant orders, contempt, filing restrictions, denial of accommodation, adverse credibility findings, “frivolous” designations, and refusal to stay proceedings. In the self-enthroned system, the instruments that should preserve order become instruments that punish challenge.

The process also operates organizationally. What begins as an exception becomes a tolerated practice; what becomes tolerated becomes routine; what becomes routine becomes doctrine; what becomes doctrine becomes immunity. Organizational sociology describes this as normalization of deviance. The judiciary’s version is distinctive because the harm is distributed among litigants rather than experienced as a single institutional catastrophe. Each denied accommodation, unexplained emergency denial, recusal refusal, merits-related complaint dismissal, or sanction may appear isolated; the victim experiences the cumulative effect while the institution experiences no crash.

That mismatch is central. Judicial abuse is often cumulative, procedural, and distributed; the accountability system is episodic, categorical, and event-based. The system asks whether one ruling was wrong, one motion preserved, one complaint cognizable, one judge clearly biased, one error reversible. The human-rights injury often lies in the accumulation: repeated denial, forced participation, humiliation, exclusion from meaningful access, and foreclosure of every corrective path. This is lawful cruelty in its bounded sense. The IAJ does not characterize ordinary adverse rulings, good-faith error, or ordinary delay as cruel, inhuman, or degrading treatment. But a system can inflict grave suffering through lawful forms — delay, denial, compelled participation, refusal to accommodate, public humiliation, retaliatory sanctions, finality, and non-remedy. The gravest judicial harms are often not lawless in form; they are lawful in form and cruel in effect.

Part XI. The Remedy Gap: A Right Without a Remedy

The doctrine collides with one of the foundational maxims of Anglo-American law, *ubi jus ibi remedium* — where there is a right, there is a remedy — announced in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803): “The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.” A robust “right-remedy gap” literature (John C. Jeffries; Daryl Levinson) documents how constitutional rights are routinely under-remedied. Judicial immunity is the gap in its most acute form: a litigant maliciously or corruptly deprived of liberty by a judge holds a right with *no civil remedy against the wrongdoer* — whether the judge is a state officer behind *Stump* or a federal officer behind *Egbert* and sovereign immunity — and, because of the enforcement vacuum, effectively no criminal remedy either. The same Court that proclaims “where there is a legal right, there is also a legal remedy” has constructed the edifice that defeats it.

Part XII. The Removal Vacuum: What Method Remains When Judicial Misconduct Becomes Systemic

Part VIII established that every avenue of accountability exempts the same category of conduct, and Part XI established that the injured litigant is left without a remedy. This Part asks the question those analyses imply and answers it directly: when a judge's malice or corruption has been encouraged, by immunity, into a settled habit of practice, what method exists today to remove or even to displace that judge? The answer is that no ordinary method functions. The mechanisms that nominally exist — impeachment, conduct discipline, disqualification, and the contested good-Behaviour forfeiture examined in Part VIII — are each foreclosed at the precise point where systemic abuse of the judicial office would have to be reached. What remains is a residue of extraordinary remedies that are either statistically negligible or, at the supranational level, non-binding. The vacuum is therefore not merely doctrinal; it is practical, and it is closed.

A. The Scale of the Question and the State-Court Reality

The first correction the analysis requires is one of scale. This report, like most of the immunity literature, has spoken largely of federal judges; but there are fewer than nine hundred Article III judges and roughly thirty thousand state judges, so the systemic norm of immunized misconduct is overwhelmingly a state-court phenomenon, and the state machinery of accountability is where the question must principally be tested. Every State maintains a judicial-conduct commission, generally modeled on the same template and coordinated through the National Center for State Courts. Yet these commissions reproduce the federal defect rather than curing it. Like the federal Judicial Conduct and Disability Act, which requires dismissal of any complaint — in its words — "directly related to the merits of a decision or procedural ruling" (28 U.S.C. § 352(b)(1)(A)(ii)), the state commissions cannot review the correctness of a ruling; and the aggregate outcomes, while drawn from advocacy and press compilations and therefore best treated as orders of magnitude rather than precise figures, are stark. Reviews of state commission data indicate that on the order of one percent of complaints result in public discipline, that roughly ten state judges were removed from office in 2024, and that across a multi-year sample nine of every ten sanctioned judges returned to the bench. As one scholar of the field has put it, the recurring problem is judges judging judges, ultimately in control of judging their own.

Disqualification practice diverges across the States in one consequential respect. Roughly seventeen to twenty States — the precise count varies by source and over time — permit a party to remove an assigned judge by peremptory challenge, without proof of cause; California's procedure, under which the substitution is automatic and may not be contested, is the leading example (Cal. Civ. Proc. Code § 170.6). Where it exists, the peremptory challenge is the one device that actually works, precisely because it does not ask the challenged judge to rule on his own fitness. But in the remaining majority — on the order of thirty-five States for their highest courts — the challenged justice decides his own recusal, and the constitutional floor is narrow: Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009), required recusal only where the probability of bias was, in the Court's words, too high to be constitutionally tolerable, and the Court took pains to describe the case as extreme by any measure and the standard as rare. Caperton is a floor against the most flagrant pay-to-play, not a working tool against systemic bias.

B. Disqualification Decided by the Disqualified

The defect at the center of the litigant's experience is the self-administered recusal. In the federal courts, a motion to disqualify under 28 U.S.C. §§ 144 and 455 — the latter requiring disqualification wherever a judge's "impartiality might reasonably be questioned" — is, in the first instance, decided by the very judge whose impartiality is challenged. There is no general federal rule referring the motion to a different judge. Review comes only later and deferentially: a denied motion is tested on appeal for abuse of discretion or, mid-litigation, by the extraordinary writ of mandamus, and even a proven violation is subject to the harmless-error and equitable balancing the Supreme Court prescribed in Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988). The structural principle and the operative practice are thus in open contradiction. The principle is ancient and absolute — no person may be judge in his own cause, and a judge disqualified for cause may not preside, least of all over the question of his own disqualification. The practice is that judges routinely decide their own disqualification motions and deny them, and the IAJ's investigative record documents the form the denial takes: a conclusory order that recites and narrows the governing canons and then pronounces that none has been violated, followed by an instruction that the litigant continue under the same judge's authority — compliance with which the judge is then free to characterize as the litigant's tacit consent to the withdrawal of the challenge.

The IAJ states the human-rights characterization of this practice as its own considered conclusion, not as the holding of any tribunal. A self-represented litigant, often unwell and without counsel, is made to litigate before a judge whose disqualification the litigant has formally and meritoriously sought; is denied any neutral decision-maker on that threshold question; and is then coerced, on pain of default and sanction, into continued submission to the challenged authority, with that very submission turned against him as evidence of consent. Visited repeatedly upon a weak and dependent party, this is, in the IAJ's reading, conduct that crosses from procedural unfairness into cruel, inhuman, or degrading treatment within the meaning of Article 5 of the Universal Declaration and Articles 1 and 16 of the Convention against Torture — and it is conduct that the self-administered structure of recusal does not merely permit but invites. To the question that opens this Part — what method exists today to remove such a judge — the disqualification mechanism returns the same answer as every other: none that the litigant can invoke and the judge cannot defeat. This characterization does not attach to every denied recusal motion, every adverse ruling, or every self-represented litigant's disagreement with a judge; it applies only where the denial is part of a documented pattern of objectively supported disqualification, forced continued submission to the challenged authority, foreseeable vulnerability, foreclosure of neutral review, and serious mental suffering or degradation.

C. The No-Neutral-Forum Trap: When the Whole Forum Is Disqualified

The self-administered recusal described above is the single-judge form of a deeper defect, and the defect shows its full shape only when the conflict is not confined to one judge but reaches the whole forum — when every judge of a court, or of an entire circuit, is disqualified, or simply declines to answer the disqualification put to them. A system genuinely committed to the maxim that no person may judge his own cause would, at that point, supply a neutral substitute forum as of right: a transfer to judges who are not themselves the subject of the challenge. Federal law

supplies no such right. The mechanism that exists, intercircuit assignment under 28 U.S.C. § 291(a), permits the Chief Justice of the United States to assign a judge from another circuit, but only "in the public interest" and only "upon request by the chief judge or circuit justice" of the affected circuit. It is discretionary; it is triggered not by the litigant but by the very officers of the conflicted hierarchy; and the litigant has no power to invoke it. The one door that might lead to a neutral decision-maker is locked from the inside, and the key is held by the same institution whose neutrality is in question.

What fills the resulting void is not neutrality but its doctrinal opposite. Under the Rule of Necessity, when the judges who would ordinarily hear a matter are all disqualified, they may hear it nonetheless, on the reasoning that a litigant must not be denied any decision at all. The Supreme Court applied the rule in *United States v. Will*, 449 U.S. 200 (1980), to permit financially interested Article III judges to decide a challenge to their own compensation, holding the necessity of a forum superior to the obligation to step aside. Courts have extended the same reasoning to mass disqualification: in *In re Complaint of John Doe*, 2 F.3d 308 (8th Cir. 1993), a proceeding under the federal judicial-conduct statute (then 28 U.S.C. § 372(c), now §§ 351–364) in which most members of a judicial council were named as respondents, the court found the statute silent on what happens when the body is collectively disqualified, observed that transfer of the matter to another circuit's body "is not authorized by statute," and invoked the Rule of Necessity to retain and decide the case itself. The lesson of the doctrine is precise and, for the litigant, devastating: the law's settled answer to "every available judge is disqualified" is not "then a neutral judge must be found" but "then the disqualified judges decide anyway." Disqualification decided by the disqualified, which the preceding subsection described at the scale of a single courtroom, is thus not an aberration but a principle, operating all the way up to the disqualification of an entire bench.

The IAJ does not contend that the Rule of Necessity is illegitimate at its root. A litigant denied every forum is denied justice altogether, and a conflicted judge who must decide because no other can is, in a genuine emergency of unavailability, the lesser failure. The defect lies in the gap between that genuine necessity and the necessity the present structure manufactures. The rule is invoked to justify self-judging in the very system that has declined to build, and declines to operate, the neutral alternative that would dissolve the necessity. The assignment power of § 291 is real; the circuit justice and the Chief Justice of the United States can summon a judge from outside the conflicted circuit; and where such an actor could be called and is not, the "necessity" that returns the case to the disqualified is a chosen necessity, not an unavoidable one. A doctrine designed for the rare case in which no neutral judge exists anywhere is, in operation, allowed to govern the ordinary case in which a neutral judge exists one circuit away but no one with the power to summon him will do so.

This is where the foreclosure of neutral review, named at the close of the preceding subsection as one factor in the bounded characterization this Part advances, reaches its limit. When the conflict is confined to a single judge, the litigant retains at least the theoretical prospect of relief from another. When the conflict extends to the forum and the Rule of Necessity returns the matter to the conflicted, the foreclosure is no longer a matter of who happens to sit; it is supplied by the structure itself. The IAJ states, again as its own considered conclusion and not as the holding of any tribunal, that where this whole-forum foreclosure is visited upon a documented pattern of objectively supported disqualification, foreseeable vulnerability, and serious suffering — and the

neutral substitute that the law permits is withheld by the discretion of the conflicted hierarchy — the foreclosure factor is satisfied not by accident but by design, and the conduct falls within the same bounded reading of cruel, inhuman, or degrading treatment set out above. The trap is not that the system occasionally fails to find a neutral judge. It is that, when the whole forum is the cause, the system is built to return the litigant to it.

D. The Statutory Floor Converted into an Ethical Ceiling

The self-authored codes expose one further truth. The Code of Conduct is not merely an aspirational document separate from the Constitution; it is the judiciary's own operational definition of good Behaviour. Its canons state the ethical conditions of office in the language of integrity, impartiality, propriety, competence, diligence, respect, restraint, equality, and preservation of public confidence. Section 455 does not replace those duties. It supplies a minimum statutory floor for one category of ethical failure: circumstances in which impartiality might reasonably be questioned or a specific conflict requires disqualification.

Modern practice reverses that hierarchy. A judge confronted with an ethical challenge often responds only in the language of § 455, as though the statute were the whole of the ethical obligation and as though every canon not reducible to the statutory test had vanished from the office. The move is subtle but decisive: the statutory floor becomes an ethical ceiling. What Congress supplied as a minimum safeguard is treated as permission to ignore the broader standard. This reflects a deeper institutional drift in which ethics became compliance, compliance became litigation posture, and litigation posture became immunity. The Code remains published; the judge's order answers only the statute; and in that moment the Code is not enforced, interpreted, or honored, but extinguished by narrowing.

In a public-trust regime, the question would not have been whether the officer could defeat a motion under the narrowest legal test. It would have been why a judge whose conduct had made his ethical fitness reasonably questionable claimed entitlement to continue judging at all. Congress's intervention through disqualification law therefore reveals both the need for a check and the failure of the check: the statute was required because self-restraint was insufficient, yet the intervention was routed back through the very officer whose conduct it was meant to restrain. A statute is not an ethics code when the officer uses it to make the code disappear.

E. The Burden Inversion and the Evidentiary Trap

Self-administered disqualification creates a burden inversion. In a public-trust office, the officer bears the burden to preserve confidence in the office. In modern recusal practice, the harmed party bears the burden to prove why the judge should not continue exercising power. The question is no longer whether the judge has affirmatively preserved the ethical conditions of office; it becomes whether the litigant can prove a narrow statutory or procedural ground strong enough to overcome the judge's presumptive entitlement to continue.

This produces an evidentiary trap. The harmed person must prove bias, malice, retaliation, or rights-deprivation, but the evidence usually consists of judicial acts: orders, denials, timing, tone, procedural treatment, refusal to accommodate, sanctions, inconsistent rulings, and the shaping of the record. The system then says those acts are merits, case management, discretion, or

insufficient evidence. It demands proof of misconduct independent of the very conduct through which judicial misconduct is committed. The same trap appears in judicial-conduct complaints: rulings as evidence are excluded as merits-related, and allegations without extrinsic proof are dismissed as unsupported. This is not merely under-enforcement; it is epistemic foreclosure — the legal categories themselves prevent the harm from becoming knowable as misconduct.

The pattern can be stated as a constitutional black box. The harmed person submits an input — a rights claim, an accommodation request, a recusal motion, an emergency motion, a misconduct complaint — and the institution returns a status label: denied, merits-related, unsupported, frivolous, no basis, no misconduct. The label forecloses remedy without exposing the reasoning necessary for public accountability. The institutional defense that "the remedy is appeal" does not answer this, because appeal is a decisional-correction mechanism, not a misconduct-accountability mechanism: it reviews a record shaped by the same judge, under deferential standards, and supplies neither discipline, nor compensation, nor any finding of bad faith.

Finality completes the foreclosure. Finality does not merely end a case; it controls institutional memory. Once finality attaches, unresolved harm is treated as settled rather than as evidence of possible rights-deprivation. That is why the IAJ's repair-and-document model is indispensable: a remedy that pays without naming the violation purchases silence; a remedy that documents the violation restores memory.

F. What Remains: The Extraordinary Writs and the Supranational Wall

When the ordinary mechanisms are foreclosed, two categories of recourse remain, and the magnitude of the corruption the IAJ documents is precisely why only extraordinary cases can reach them. The first is domestic: the prerogative writs of mandamus and prohibition, sought from the court of appeals to arrest an egregious refusal to recuse or comparable abuse before final judgment. But the writ is governed by the demanding standard of Cheney v. United States District Court, 542 U.S. 367 (2004) — the petitioner must show no other adequate means of relief and a right to the writ that is "clear and indisputable" — and it is granted, across the federal courts of appeals, on the order of once or twice a year. (One specialized court's far higher grant rate is an artifact of patent venue practice and must not be mistaken for a general figure.) Worse, for the systemic case the writ suffers a structural defect that makes it nearly worthless: it is sought from, and decided by, the same judicial hierarchy whose members are the subject of the complaint. The extraordinary writ, under the control of the same authority whose conduct is challenged, offers the oppressed litigant an infinitesimal prospect of relief.

The second category is supranational, and for the United States it runs into a wall. Communications may be addressed to the United Nations Special Procedures — the Special Rapporteur on the Independence of Judges and Lawyers and the Special Rapporteur on Torture — but these mandates issue no binding decisions and can compel no remedy; their value is the creation of an international record and the application of diplomatic pressure. The most direct individual-complaint route, the Committee against Torture under Article 22 of the Convention, is unavailable against the United States, which has never accepted the Article 22 individual-complaint competence. The Inter-American Commission on Human Rights will receive a petition against the United States under the American Declaration of the Rights and Duties of Man, and

— significantly — will excuse the ordinary requirement of exhausting domestic remedies where those remedies are shown to be unavailable or ineffective, which is exactly the showing this Part establishes; but the Commission issues only non-binding recommendations and, because the United States has not ratified the American Convention, cannot refer the matter to the Inter-American Court. The supranational layer thus furnishes a forum and a normative judgment, but no enforceable relief.

This is the structural explanation for the posture the IAJ has adopted. Because no ordinary method of removal functions, because the extraordinary writs are statistically negligible and controlled by the implicated hierarchy, and because the supranational mechanisms are either foreclosed or non-binding, the rational and indeed the only remaining course is the one the IAJ pursues: the preservation of a complete documentary record, the pressing of that record into the international forums that will at least receive it — as in the December 2024 communications to United Nations Special Procedures since adopted into the IAJ's institutional record — and the pursuit of anticipatory, quia timet relief aimed at preventing threatened harm rather than redressing it after the fact, since redress after the fact is precisely what the vacuum forecloses. The magnitude of the constitutional and human-rights corruption the IAJ has documented requires extraordinary cases because the system has left nothing ordinary with which to meet it.

G. The Legislative Cure and the Self-Judging Circularity

One avenue has not yet been tested in this Part: legislation. If the courts cannot or will not police themselves, the constitutional design contemplates that Congress will. This report's remedial analysis rests on that premise — the cure for the United States' treaty and constitutional deficits belongs, under *Medellín v. Texas*, to the political branches, and Part XVII sets out what Congress should enact. But the premise must be stated together with the structural obstacle that makes it precarious, or the recommendation reads as naive. The obstacle is not, as polemic would have it, that Congress is too foolish or too captured to act, though the political will has so far been absent; it is that legislation regulating the conduct and tenure of the judiciary — and of the Supreme Court above all — runs into a circularity at the heart of the constitutional structure. The body to be regulated is the body that holds the final word on whether the regulation is constitutional.

The mechanism is the one this report has already identified in another setting: judicial review. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), established that it is the province of the courts to say what the law is, including the power to declare an Act of Congress unconstitutional. Turned upon a statute that would discipline, constrain, or remove judges, that power makes the Supreme Court the judge of the validity of its own regulation. A statute imposing an enforceable ethics regime on the Justices, or creating a non-impeachment mechanism to remove a misbehaving judge, would itself be subject to review by the very Justices it bound — the self-dealing circularity that Part V identified in the immunity cases, raised here to the level of legislative reform. The IAJ advances this as its considered interpretive position, not as settled doctrine, and it states the strongest contrary view fairly — a view that, on inspection, the immunity doctrine's own founding case supplies. When the Court in *Bradley v. Fisher* immunized judges from civil suit, it did not claim that judges were therefore unaccountable; it preserved accountability in the same breath, holding that a judge acting with malice or corruption "can only be reached by public prosecution

in the form of impeachment, or in such other form as may be specially prescribed" (80 U.S. (13 Wall.) 335, 354 (1872)). The phrase is decisive, and it has gone largely unremarked. "Specially prescribed" means prescribed by positive law — by statute. The very Court that authored judicial immunity thus contemplated, and expressly reserved, a legislatively prescribed mechanism of accountability beyond impeachment. A statute imposing an enforceable ethics regime, or a non-impeachment forfeiture for misBehaviour of the kind Part VIII identifies, is therefore not an intrusion the immunity doctrine resists; it is the very channel the doctrine's foundational case held open. To that extent the separation-of-powers objection to congressional regulation largely collapses: the objection supposes that the Constitution commits the judiciary's governance to the judiciary alone, but *Bradley* — the cornerstone of the immunity the objection is meant to protect — says otherwise, and says it in the immunity Court's own voice. The New York City Bar Association has made the same point in constitutional terms, arguing, in support of a binding Supreme Court code, that Congress's authority is well grounded in the interplay of the Necessary and Proper Clause, the impeachment power, and the good-Behaviour condition, and that the existing federal ethics and recusal statutes already apply to the Justices by their terms and have never been held unconstitutional by any court. That position has real force, and the IAJ does not claim that all judicial-regulatory legislation is doomed; the Judicial Conduct and Disability Act has governed the lower courts for more than four decades without successful constitutional challenge. The narrower and defensible claim is this: legislation regulating the Supreme Court's own conduct or tenure is uniquely vulnerable, because its constitutionality would be adjudicated by the only tribunal that cannot be made to answer to any other, and because the Court has signaled — through its self-exemption from every code until 2023, its softening of the recusal statute's mandatory command, and its invocation of institutional necessity — that it regards its own governance as a domain Congress may not reach.

This is not merely the IAJ's surmise. Jeremy Fogel — a former United States District Judge, former Director of the Federal Judicial Center, and a judicial-ethics authority who has testified to Congress on the question — has identified the same barrier, observing that the Supreme Court's decisional and institutional independence from Congress is precisely what has prevented the formal imposition of an ethics code, and proposing, with the watchdog Citizens for Responsibility and Ethics in Washington, a three-member panel to advise the Justices and to entertain challenges to a Justice's qualification to sit. That a respected former judge and the organized bar must petition the Court to bind itself — rather than simply rely on a statute — is itself evidence of the circularity. And here the Justices' own words are turned to account. Two members of the Court, Justices Kagan and Jackson, have publicly said they would support an enforceable code, and Justice Kagan has suggested that a panel of lower-court judges might enforce it. Their concession is significant precisely because it has changed nothing: even when members of the Court agree that the standard should bind them, the institution has adopted no mechanism to make it so. The admission that the standard ought to bind, coupled with the refusal to be bound, is the self-judging privilege stated in the Court's own voice.

The vacuum is therefore complete across all three of its axes, and the completion is the point. The injured litigant has no remedy, because immunity bars the suit (Part XI). The misbehaving judge faces no functioning method of removal, because impeachment is deprecated, discipline excludes the merits, and disqualification is self-administered (Parts VIII and XII). And the

legislative cure that the constitutional design holds in reserve is obstructable by the institution it would regulate, which sits as the final judge of its own accountability. This does not relieve Congress of the duty Part XVII describes; the cure formally belongs to it, and the recommendations stand. But it explains why the IAJ does not rest on the prospect of domestic legislative reform alone, and why its posture is the preservation of a complete record and its submission to the international forums that will receive it. When the institution to be held accountable holds the final word on every instrument of its own accountability — civil, criminal, disciplinary, electoral, and now legislative — the only recourse that remains outside its control is the judgment of a forum beyond the nation's own courts, and the verdict of history that a faithful record preserves.

H. The Constitutional Pathway: Congress Already Holds the Power

If *Bradley* authorizes the legislative cure in principle, the next question is whether Congress in fact possesses the power to enact it. It does, and the proof is that Congress has already done so. The argument proceeds from settled authority to its contested edge, and the IAJ is careful to mark where the firm ground ends.

The affirmative power rests first on the Necessary and Proper Clause (Art. I, § 8, cl. 18), which authorizes legislation to carry into execution the powers vested in any department of the government, the judicial department included. The New York City Bar Association identifies that clause as the clearest basis for a binding judicial-ethics statute, reinforced by the impeachment power and the good-Behaviour condition. To it may be added Congress's recognized authority over the structure and jurisdiction of the courts: the power to ordain and establish the inferior courts (Art. III, § 1), the power to make exceptions to the Supreme Court's appellate jurisdiction (Art. III, § 2, cl. 2; *Ex parte McCardle*, 74 U.S. (7 Wall.) 506 (1869)), the appropriations power, and the power to fix by statute the number of Justices. These are not novel theories; they are the ordinary incidents of the legislative power over a coordinate branch's administration.

The decisive answer to the objection that impeachment is the *only* route is that the courts have already rejected it. A sitting federal judge may be criminally indicted and tried without first being impeached — a proposition adopted by every court of appeals to consider it (*United States v. Hastings*, 681 F.2d 706 (11th Cir. 1982); *United States v. Isaacs*, 493 F.2d 1124 (7th Cir. 1974); see *Claiborne v. United States*, 465 U.S. 1305 (1984) (Rehnquist, J., in chambers)). Impeachment is therefore not the exclusive mechanism by which a judge may be held to account through positive law; it is one mechanism among those the Constitution permits, exactly as *Bradley* "or in such other form as may be specially prescribed" contemplated.

The proof of concept is the Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 351–364). Through it, Congress already regulates the conduct of Article III judges of the inferior courts — authorizing complaints, investigation by judicial councils, and sanctions including censure and the temporary suspension of case assignments — and the Act has survived constitutional challenge: the District of Columbia Circuit, in *McBryde v. Committee to Review Circuit Council Conduct & Disability Orders*, 264 F.3d 52 (D.C. Cir. 2001), cert. denied, 537 U.S. 821 (2002), rejected the very separation-of-powers and impeachment-exclusivity arguments that would be raised against the IAJ's proposal. Two features of the Act are instructive. First, it confirms that statutory

regulation and discipline of life-tenured judges is constitutional. Second, it shows Congress drawing the constitutional line precisely where the contested frontier begins: the Act expressly forbids using its machinery to *remove* an Article III judge (§ 354(a)(3)(A)), reserving removal to impeachment. The recusal statute (§ 455) and the financial-disclosure requirements of the Ethics in Government Act go further still — they apply by their terms to the Justices of the Supreme Court and have never been held unconstitutional by any court. The legislative cure is thus not a hypothetical intrusion; it is an existing architecture whose extension is the only question.

Recent events sharpen both the proof and the gap. In *Newman v. Moore*, No. 25-1101, the Supreme Court denied certiorari on 15 June 2026, with no noted dissent, leaving undisturbed the indefinite suspension of a ninety-eight-year-old Article III judge of the Federal Circuit from all new case assignments — a suspension imposed and repeatedly renewed by a council of her own colleagues, which the District of Columbia Circuit held, on the authority of *McBryde*, the Judicial Conduct and Disability Act shielded from review on the merits. The case is doubly instructive. It confirms, first, that the existing machinery can sideline a life-tenured judge for years on end — a result close to a de facto removal — while the Act forbids the council from ordering the genuine article; the line Congress drew at § 354(a)(3)(A) is therefore a statutory choice, not a constitutional ceiling, for nothing in *McBryde* holds that a court-adjudicated removal for proven misBehaviour would be unconstitutional. It demonstrates, second, the very vacuum this report documents from the other side: a judge subjected to discipline by her peers was left, in the words of counsel, without any merits decision from an Article III court — no remedy for the disciplined judge, just as the litigants in this report found no remedy against the disciplining one. The same structure that leaves the wronged litigant without redress leaves even the wronged judge without review. What the architecture lacks, at every point, is an independent forum and a fair process — precisely what a statutory forfeiture mechanism, adjudicated under Article III with full safeguards and appeal, would supply.

That question — how far the architecture may be extended — is where the firm ground ends, and the IAJ marks the boundary honestly. Statutory definition of the standard of conduct, enforceable discipline short of removal, mandatory recusal, and disclosure rest on settled authority and existing precedent, and may be applied to the Justices as § 455 already is. A statute that purported to *remove* a life-tenured judge by a non-impeachment process is the contested frontier: it is the aggressive reading of the good-Behaviour clause advanced by Prakash and Smith and resisted by Redish (Part VIII), it is the measure the orthodox view regards as reserved to impeachment, and it is qualified even at the international level, where UN Basic Principle 20 carves the highest court and impeachment proceedings out of its ordinary requirement of independent review of removal. These limits are real, and they constrain the form a domestic removal mechanism may take — not the existence of the obligation such a mechanism would serve, and not the accountability the disciplinary core and the State-liability remedy already supply. So bounded, the IAJ does not minimize them. The Compensation Clause forbids diminishing a sitting judge's salary (United States v. Will, 449 U.S. 200 (1980); United States v. Hatter, 532 U.S. 557 (2001)), so a removal mechanism must preserve salary and title as the Act's suspension sanction does; the "one supreme Court" structure cautions against subordinating the Justices to a lower-court tribunal; and the Marbury circularity (subsection G, above) means a statute reaching the Court would be reviewed by the Court. These are limits on the domestic

instrument, not on the peremptory norm it would vindicate: nothing in the Compensation Clause, the structure of the one supreme Court, or judicial review can extinguish the State's obligation to provide an effective remedy, or the individual accountability that torture and cruel, inhuman, or degrading treatment carry under the jus cogens prohibition and the Convention against Torture. None of these defeats the disciplinary core. Each cautions only that the removal tier is reserved, contested, and to be advanced, if at all, as a severable provision the rest of the statute can survive without.

I. Process Without Recognition

The system often gives the harmed person process without recognition. The litigant receives orders, denials, docket entries, complaint dispositions, appellate mandates, and sometimes explanations. But none recognizes the rights violation. A process that produces orders but never recognition is not a remedy; it is administrative closure.

This distinction matters because courts often invoke process as proof that remedy existed. The IAJ rejects that substitution. A remedy must repair, acknowledge, and make recurrence less likely. A process that merely routes the victim through successive denials while preserving the judge's authority and the institution's dignity does not remedy the wrong; it records the institution's refusal to see it.

Part XIII. Comparative Perspective

Comparative claims in this area require humility. The systems surveyed here differ materially from the United States: England is the parent common-law system but no longer shares the Article III structure; Canada and Australia retain common-law good-Behaviour traditions under different constitutional arrangements; and France, Germany, Italy, and Spain operate career judiciaries, administrative-court systems, and State-liability models structurally unlike the United States bench. No foreign model can be transplanted wholesale, and the comparative lesson is not institutional copying but proof that judicial independence can be paired with discipline, transparency, State responsibility, and remedy — the *availability of a remedy* above all. With that caveat, peer democracies reconcile independence with accountability rather than choosing unpaired absolute immunity:

A. The Common-Law Comparators: England, Canada, and Australia — Independence Paired with Accountability

The most direct comparator is not a civil-law system at all but the common-law parent from which Article III's good-Behaviour tenure was drawn. England retained the security of judicial tenure it settled in 1701 and, through the Constitutional Reform Act 2005, built around it a structured, independent, and publicly reported disciplinary apparatus — the very accountability half the American system allowed to atrophy (Part VIII, §F). Complaints against judicial office-holders are investigated through the Judicial Conduct Investigations Office, and the sanctions available, in ascending order of severity, are formal advice, formal warning, reprimand, and removal from office.

The contrast is measurable, and the IAJ states it with the precision the comparison requires — neither understating nor inflating it. In its 2024–25 reporting year the Judicial Conduct Investigations Office upheld eighty-nine complaints and recorded nineteen removals from judicial office. That figure must be read with care: thirteen of the nineteen removed were magistrates — lay, part-time office-holders — only two were courts judges, and four were tribunal members; and the Office's own report records that a substantial majority of removals in any year follow from an office-holder's failure, without reasonable excuse, to meet minimum sitting requirements, an administrative default rather than misconduct. England's most senior judges, moreover, remain removable only on an address of both Houses of Parliament, the lineal descendant of the Act of Settlement (Constitutional Reform Act 2005, s. 33; Senior Courts Act 1981, s. 11(3)). The honest comparative point is therefore narrow but real: England operates a visible, independent, and publicly reported disciplinary machinery whose sanctions reach the levels at which most judicial business is transacted, and whose ultimate sanction is removal — whereas the United States maintains, in the Judicial Conduct and Disability Act, a self-administered track that by its own terms can never remove an Article III judge and that excludes from review the merits-related conduct most likely to injure litigants (Part XII). The parent system kept the tenure and supplied the accountability; the United States kept the tenure and did not.

The same pattern of independence paired with accountability appears across the other major common-law democracies, which keep good-Behaviour tenure yet have built standing machinery to enforce it. In Canada, the judges of the superior courts hold office "during good Behaviour" until

the age of seventy-five but are removable by the Governor General on an address of the Senate and House of Commons (Constitution Act, 1867, s. 99) — a legislature-only removal at the apex that mirrors the impeachment route the United States reserves and, like it, has gone effectively unused, so that Canada's working accountability lies not in that apex address but in the machinery below it. Below that apex, however, the Canadian Judicial Council, established in 1971, independently investigates complaints of misconduct against federally appointed judges and may recommend removal to the Minister of Justice; and in 2023 Parliament reformed that process (An Act to amend the Judges Act, S.C. 2023, c. 18) to impose mandatory sanctions for misconduct not serious enough to warrant removal, to seat members of the public on its review and hearing panels, and to define removal as justified only where a judge's continuation in office would so undermine public confidence in the impartiality, integrity, or independence of the office as to render the judge incapable of performing it. Canada thus treats accountability for less serious but consequential misconduct as compatible with, not corrosive of, judicial independence.

Australia follows the same architecture. Federal judges "shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misBehaviour or incapacity" (Commonwealth Constitution, s. 72(ii)) — a standard that, unlike Article III's bare "good Behaviour," names the grounds expressly — a clarification of the standard, not a removal route distinct from the legislative address — and that has never been used to remove a federal judge, the disuse confirming that the address apex, here as elsewhere, does not function as a working enforcement mechanism. To structure the inquiry that must precede any such address, the Judicial MisBehaviour and Incapacity (Parliamentary Commissions) Act 2012 (Cth) lets Parliament convene an independent commission to investigate a specified allegation and report its findings. At the State level the machinery is permanent rather than ad hoc: the Judicial Commission of New South Wales, established under the Judicial Officers Act 1986, receives and examines complaints, and section 41(1) of that Act forbids the removal of a judicial officer unless its Conduct Division has first reported that the matter could justify parliamentary consideration of removal. Here too, independence at the senior tier coexists with a visible, institutionalized process for everything below it.

India completes the common-law picture from the cautionary side. Its Constitution states the formal standard at least as demandingly as Australia's: a judge of the Supreme Court or a High Court may be removed only by order of the President, following an address of each House of Parliament supported both by a majority of that House's total membership and by a two-thirds majority of those present and voting, on the ground of "proved misBehaviour or incapacity," with the investigative procedure supplied by the Judges (Inquiry) Act, 1968 (India Const. arts. 124(4)–(5), 217(1)(b), 218). Yet in more than seven decades that process has never once removed a judge. The motion against Justice V. Ramaswami failed in the Lok Sabha in May 1993 even after the statutory inquiry committee found him guilty, defeated when the governing party abstained en bloc; and Justices Soumitra Sen and P.D. Dinakaran each resigned in 2011 before Parliament could complete the proceeding — the resignation in each case forestalling a verdict the process was too slow, or too political, to deliver. The gap between standard and enforcement has driven reliance on a non-statutory "in-house procedure," itself widely criticized as opaque and as offering no enforceable sanction short of the removal route that never succeeds. India is therefore not a

model to emulate but a warning: a formal accountability standard, however robust on its face, does not by itself produce a working mechanism — confirming that the deficiency this report documents is not unique to the United States, even as the United States compounds it by declining to name the grounds, preserve a State remedy, or institutionalize the process below the removal tier.

B. The Civil-Law State-Liability Model

A second family of peer systems — the civil-law states of continental Europe — reconciles independence with accountability not chiefly through discipline but through State liability: the individual judge is shielded from personal damages for adjudicative acts, while the State answers for the wrong. This is the architecture the international standard contemplates (Part XIV, §A): personal immunity paired with a remedy borne by the State.

- **France** channels judicial wrongdoing into **State liability**: the State is answerable for damage caused by the defective functioning of the justice system, with liability engaged for *faute lourde* (gross fault) or *déni de justice* (denial of justice), and only a constrained recourse action against the individual magistrate. Code de l'organisation judiciaire art. L. 141-1 (Fr.) (formerly art. L781-1, recodified in 2006). The State, not the individual judge, bears the cost, preserving independence while guaranteeing a remedy.
- **Italy**, after the wrongful detention of the television presenter Enzo Tortora galvanized a referendum held on 8 November 1987, enacted Law No. 117 of 13 April 1988 (the *Legge Vassalli*), amended by Law No. 18 of 27 February 2015, establishing civil liability of the State for judicial fault and a constrained recourse action against the magistrate for "gross negligence" or "manifest violation" of law or of European Union law. L. 13 aprile 1988, n. 117 (It.), as amended by L. 27 febbraio 2015, n. 18 (It.).
- **Germany** routes official-fault liability to the State by operation of § 839 of the Civil Code (Bürgerliches Gesetzbuch) read together with Article 34 of the Basic Law (Grundgesetz), subject to the judicial privilege (*Spruchrichterprivileg*) of § 839(2) BGB, which limits personal liability for a judgment in a legal matter to cases in which the breach of duty is itself a criminal offence. § 839 BGB; Grundgesetz [GG] art. 34 (Ger.).
- **Spain** provides State liability for judicial error and for the abnormal functioning of the administration of justice, with the claim directed against the State. Ley Orgánica 6/1985 del Poder Judicial arts. 292–297 (Spain). Notably, Ley Orgánica 7/2015 (of 21 July 2015) abolished the prior regime of *direct* personal civil liability of judges and magistrates, channeling claims to the State — a reform that moved Spain further *toward* the Principle 16 architecture of State compensation, not away from it.

C. The Pattern: The United States as Outlier

The pattern: peer democracies treat a judicial wrong as a wrong requiring a remedy, typically borne by the state. **The United States appears to be a comparative outlier among peer democracies in the combined effect of absolute personal immunity, sovereign-immunity barriers, limited state-liability substitutes, and weak discipline for adjudicative rights-deprivations** — a combination that leaves the injured party with nothing.

Two cautions complete the comparison, and both protect the IAJ's own coherence. The lesson the comparators teach keeps standard, process, and remedy distinct. They clarify the standard — "proved misBehaviour or incapacity" names what "good Behaviour" leaves bare — and they model the working machinery: non-legislative discipline short of removal, and, in the civil-law states, a State-borne remedy. What they do not model is a non-impeachment route to removal at the apex; each reserves apex removal to a legislative address, and that address is, in Australia, Canada, and England alike, effectively never used — confirming the diagnosis of Part VIII that an apex condition enforced only through a near-dead legislative process is not enforced at all. The comparative record therefore supports the disciplinary core and the State-liability remedy this report recommends; it supplies no warrant for the legislative-address apex as an enforcement mechanism. For that reason the report does not rest its contested proposal — an Article III-adjudicated forfeiture for proven misBehaviour, short of impeachment — on foreign practice, which does not contain it. That proposal stands or falls on the domestic constitutional argument of Parts VIII and XII. The comparators show that independence and accountability coexist everywhere but here; they are not offered as authority for the one reform the report marks as its contested frontier.

Part XIV. International Human Rights Framing

Two framing disciplines govern this Part. First, international responsibility must be distinguished from domestic enforceability: the ICCPR does not itself create an ordinary domestic damages action in United States courts, because of the United States' ratification posture (including its non-self-execution declaration) and domestic doctrine. Article 2(3) nonetheless remains a binding international obligation of the United States and an interpretive benchmark for assessing whether domestic law supplies an effective remedy. Second, the UNCAT analysis is bounded: not every erroneous or abusive judicial ruling is torture or cruel, inhuman, or degrading treatment. UNCAT analysis requires severity, purpose, official involvement or acquiescence, and careful attention to the lawful-sanctions clause and to the difference between ordinary legal error and intentional rights-deprivation causing severe pain or suffering. With those disciplines stated:

A. The Normative Baseline: Independence as a Public Trust, Not a Privilege

- The **UN Basic Principles on the Independence of the Judiciary** (1985) contemplate *both* independence and discipline. Principle 16 endorses personal immunity "from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions" — but expressly "[w]ithout prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State." The international standard thus tolerates personal judicial immunity only when paired with appeal, discipline, and a *state* remedy — exactly the architecture the United States lacks. Principle 17 further requires that complaints against judges "be processed expeditiously and fairly."

The same instrument carries the accountability obligations through. Principle 18 permits suspension or removal only "for reasons of incapacity or Behaviour that renders [judges] unfit to discharge their duties"; Principle 19 requires that such proceedings be determined "in accordance with established standards of judicial conduct"; and Principle 20 provides that disciplinary, suspension, or removal decisions "should be subject to an independent review." Principle 20 expressly excepts "the decisions of the highest court and those of the legislature in impeachment or similar proceedings" — the single mechanism on which the United States almost wholly relies, and which Part XII shows to be a practical nullity for adjudicative misconduct.

The point is not peculiar to one instrument. The Bangalore Principles of Judicial Conduct (2002), drawn from judicial traditions across the common-law and civil-law worlds and brought to the attention of States by the United Nations Commission on Human Rights in 2003, rest on six values — independence, impartiality, integrity, propriety, equality, and competence and diligence — and provide in the sixth that "[c]ompetence and diligence are prerequisites to the due performance of judicial office." Their official Commentary is explicit that "[j]udicial independence is not a privilege or prerogative of the individual judge," but a responsibility held in trust for those who seek impartial justice; accountability, on this view, is the companion of independence, not its enemy. The Council of Europe states the same in Recommendation CM/Rec(2010)12 (Part I). Across these instruments the international standard is uniform: independence is conferred for the litigant's benefit and is paired with discipline, review, and a remedy — the architecture the United States has left unbuilt.

B. Effective Remedy and the Attribution of Judicial Acts to the State

- **ICCPR Article 2(3)** guarantees an "effective remedy" for violations "notwithstanding that the violation has been committed by persons acting in an official capacity," and **Article 14** guarantees fair-trial rights; the Human Rights Committee's **General Comment 31** (effective remedy) and **General Comment 32** (Article 14) elaborate State obligations. A domestic architecture in which absolute personal immunity is unpaired with any state remedy is in tension with these obligations.
- The **ILC Articles on State Responsibility, Article 4**, make the conduct of judicial organs attributable to the State, grounding international responsibility for judicial acts.

C. The Convention against Torture: A Bounded Analysis and the 2014 Alignment

- **UNCAT** Articles 1 and 16 (torture and cruel, inhuman, or degrading treatment, including by official "acquiescence") and **regional jurisprudence** (the European Court of Human Rights and the Inter-American Court of Human Rights holding States responsible for the acts of their courts) reinforce that judicial conduct can, where the severity and intent thresholds are met, engage State responsibility even where domestic immunity bars individual suit.

On the interpretation of that Convention the IAJ aligns its analysis with the Committee against Torture rather than with the narrower understanding the United States lodged at ratification. In its 2014 Concluding Observations on the United States, the Committee regretted the State party's restrictive interpretation of the Convention and its refusal to withdraw its interpretative understandings, finding in particular that the domestic concept of "prolonged mental harm" introduces a subjective, non-measurable element that undermines the treaty's application; it recalled, as to both Article 1 and Article 16, that reservations contrary to a treaty's object and purpose are impermissible, and recommended that acts of psychological torture not be limited by the United States' domestic requirement of "prolonged mental harm". Committee against Torture, Concluding Observations on the United States, U.N. Doc. CAT/C/USA/CO/3-5, ¶ 9 (19 Dec. 2014). The Institute therefore does not adopt the ratification gloss that would confine cruel, inhuman, or degrading treatment to "prolonged" suffering; its controlling interpretive standard on this question is its own study, *UNCAT and Jus Cogens: A Contemporary Perspective*. Consistent with the framing of this Part and with Part XVI, the wrong so identified engages the State's responsibility — its judicial organ having acted (ILC Article 4), with reparation owed (UNCAT Article 14) — and, where the conduct crosses the threshold into torture or cruel, inhuman, or degrading treatment, the individual's responsibility as well: criminal accountability is then mandatory (UNCAT Articles 4–7; the peremptory norm), and personal civil liability lies where the law provides, concurrently with the State and with neither answer absolving the other (ILC Article 58).

D. A Factor-Based Severity Framework (Persuasive, Not Binding)

Where the threshold question arises — when does judicial conduct cross from ordinary, even erroneous, adjudication into treatment the Convention reaches — the regional human-rights

courts supply the most developed analytical apparatus, and the IAJ uses it under two strict limits. These courts do not bind United States courts; their judgments are cited as persuasive, factor-based reasoning about how severity is assessed, not as governing law. And nothing in that reasoning collapses ordinary legal error, adverse rulings, or isolated procedural mistakes into cruel, inhuman, or degrading treatment; the framework operates only at the bounded margin this report has defined throughout (Part XII).

The European Court of Human Rights asks, under Article 3 of the European Convention, whether treatment attains a "minimum level of severity," an assessment that turns on all the circumstances: the nature and context of the treatment, its duration, its physical and mental effects, the age and health of the person, and — decisively — the vulnerability of that person and the power imbalance between the person and the state agent (*Ireland v. United Kingdom*, App. No. 5310/71 (1978)). In *Bouyid v. Belgium* the Grand Chamber held that, where a person is under the control of state agents, any recourse to force "not strictly necessary" by reason of the person's own conduct diminishes human dignity and infringes Article 3 (App. No. 23380/09 (GC) (2015), §§ 100–101). These are custody cases, and the IAJ does not equate a courtroom with a police station; they are cited for the factors they isolate — dependency, vulnerability, humiliation, and the gravity of power exercised over a person who cannot escape it — which transfer by analogy to a litigant compelled to remain before a judge whose disqualification that judge has itself refused to order (Part XII).

The Inter-American Court of Human Rights reaches the same factors from a different tradition. In the "Street Children" case it held that the State violated the right to humane treatment (American Convention, Article 5) through the psychological suffering inflicted on victims in a position of acute vulnerability, and violated the rights to a fair trial and to judicial protection (Articles 8 and 25) through the ensuing denial of justice (*Villagrán Morales v. Guatemala*, Merits, Series C No. 63 (1999)). That case concerned state-security violence and a failure to investigate, not a judge's conduct toward a litigant, and the IAJ presents it as analogy, not authority. Its contribution is twofold: vulnerability lowers the threshold at which suffering becomes a violation, and the foreclosure of redress is not merely the absence of a remedy but part of the wrong itself — both features this report documents in the architecture of immunity and self-administered disqualification.

The European Court of Human Rights has developed the most articulated version of this factor analysis under Article 3, and the IAJ draws on it as persuasive reasoning, not as governing law. The threshold is a "minimum level of severity," assessed on all the circumstances — the duration of the treatment, its physical or mental effects, and, in some cases, the sex, age, and state of health of the victim (*Ireland v. United Kingdom*, App. No. 5310/71 (1978), § 162; *Jalloh v. Germany* [GC], App. No. 54810/00 (2006), § 67) — together with the purpose and intention behind it. Because the Convention is a living instrument, conduct once classified as merely inhuman or degrading may later be judged more gravely (*Selmouni v. France* [GC], App. No. 25803/94 (1999), §§ 95–97, 101). Two features of that jurisprudence bear directly on the judicial setting. First, treatment within the courtroom itself can violate Article 3: confining a defendant in a metal cage during trial is an affront to human dignity and degrading without more (*Svinarenko and Slyadnev v. Russia* [GC], App. Nos. 32541/08 and 43441/08 (2014), § 138). Second, the Court is careful to exclude ordinary hardship: suffering that does not exceed the unavoidable level inherent in a legitimate measure does not engage Article 3 (*Kudła v. Poland* [GC], App. No. 30210/96 (2000)).

That last limit is the IAJ's limit too: the framework reaches degradation directed at the vulnerable, not the ordinary friction of adversarial process.

The Inter-American Court of Human Rights supplies a parallel and, on the question of remedy, an even more pointed body of reasoning — again persuasive rather than binding, and drawn from state-violence cases whose facts differ from civil adjudication. From its first contentious judgment it has held that a State must prevent, investigate, and punish violations of the rights it guarantees, and that the failure of the State apparatus to do so is itself a breach engaging State responsibility (*Velásquez Rodríguez v. Honduras*, Merits, Series C No. 4 (1988), ¶ 181). It has treated the infliction of severe mental suffering on a person under the State's control as a violation of the right to humane treatment (*Loayza Tamayo v. Peru*, Merits, Series C No. 33 (1997); *Cantoral Benavides v. Peru*, Series C No. 69 (2000)), and has recognized denial of justice and the psychological suffering of the vulnerable as Convention wrongs (*Villagrán Morales ("Street Children") v. Guatemala*, Series C No. 63 (1999)). Most relevant to this report's remedial thesis, it has held that mechanisms designed to shield serious violations from accountability are incompatible with the State's duty to provide an effective remedy (*Barrios Altos v. Peru*, Series C No. 75 (2001)). The transferable principle is not that an adverse ruling is a human-rights violation, but that immunity engineered to foreclose all redress for grave official wrongdoing stands in tension with the State's own obligations.

The mandate of the UN Special Rapporteur on torture, whose reports are interpretive guidance rather than binding law, reinforces two points the IAJ relies on. The Rapporteur has explained that psychological torture and ill-treatment need not pass through the body at all, and that powerlessness — the condition of a person who has come under another's effective control and has lost the capacity to resist or escape — is a core feature of such treatment (Report on Psychological Torture, A/HRC/43/49 (2020)); and that the denial of reasonable accommodation to persons with disabilities can itself amount to ill-treatment (A/HRC/22/53 (2013)). Both map onto the position of a litigant who is wholly dependent on the court before her and cannot escape its rulings, and onto the denial of accommodation that this report documents as a recurring form of the wrong.

Read together, these sources yield the cumulative test the IAJ applies, and applies only at the margin Parts XII and XIV define: conduct crosses into cruel, inhuman, or degrading treatment where it inflicts severe mental suffering or humiliation; is intentional or recklessly indifferent to that effect; is directed at, or exploits, a litigant's structural vulnerability — self-representation, disability, indigence, incarceration, or a documented need for accommodation; and is attended by the foreseeable foreclosure of ordinary correction through the very mechanisms of immunity and self-administered disqualification this report describes. Ordinary delay, adverse rulings, good-faith error, and isolated procedural mistakes are not characterized this way, in this report or anywhere in the Institute's work.

E. The Compliance-Monitoring Gap

One further gap belongs to this framing. The international human-rights system presupposes that each State maintains an independent body — a national human-rights institution meeting the Paris Principles — to monitor compliance, receive complaints, and document violations, including

those of the judicial power. The United States maintains none. That absence is not a technicality: it removes the very mechanism through which the denial of an effective remedy documented in this report would ordinarily be surfaced, investigated, and reported. The IAJ performs that function in the interim, but the obligation to establish a permanent, accredited institution rests with the State, and its persistence is itself part of the compliance deficit this Part describes.

Part XV. The Strongest Counterarguments — Taken Seriously

1. **Judicial independence.** The core justification: judges must decide "without apprehension of personal consequences" (*Bradley*). *Response:* the argument proves too much — it would equally immunize every official who exercises judgment, yet the United States uniquely chose *absolute* personal immunity where peer systems achieve independence through *state* liability. The independence rationale is *asserted*, not *demonstrated*: there is little empirical evidence that the constrained-liability regimes of France, Italy, or Germany have produced timid or captured judiciaries, and the Supreme Court itself observed in *Pulliam* that "there is no evidence that the absence of that immunity [from prospective relief] has had a chilling effect on judicial independence." 466 U.S. at 536.
2. **Floodgates / vexatious litigation.** Disappointed litigants would harass judges. *Response:* this is plausible but empirically untested against comparative experience; ordinary procedural screens (heightened pleading, immunity for good-faith error, independent judicial assignment, fee-shifting, sanctions, state indemnification) could filter frivolous suits without an absolute bar protecting *malicious and corrupt* acts. The doctrine's defenders rarely confront why a malice/corruption exception (which *Randall* contained and *Bradley* deleted, and which Justice Davis's *Bradley* dissent would have preserved) would be unworkable.
3. **Appellate review is the remedy.** *Response:* this is the linchpin assumption — and *Stump* exposes its failure. Where a judge acts ex parte, off the record, or in a way that "precluded any possibility for the vindication of respondents' rights elsewhere in the judicial system" (Powell, J., dissenting in *Stump*), there *is* no appeal. The remedy the doctrine promises is precisely the remedy the worst cases lack.

Finality and comity. The objection holds that the orderly administration of justice depends on the repose of final judgments, that permitting collateral inquiry into judicial conduct would unsettle countless closed cases, and that respect among co-equal sovereigns and branches forbids one forum from sitting in judgment on another. Response: the interest in finality is real, but it is a domestic prudential value, and it does not travel to the plane on which this report principally operates. Documenting that a violation occurred, and pressing for structural reform and a remedy against the State, does not reopen any judgment or disturb any res judicata; the IAJ seeks the correction of the architecture that produces rights-violations, not the relitigation of particular cases. Finality is moreover a shield for the integrity of adjudication, not for its corruption: it cannot have been the purpose of repose to place the deliberate, bad-faith abuse of judicial power beyond not merely reversal but acknowledgment. And on the international plane finality yields by its own terms — a State may not invoke the repose of its domestic judgments to defeat its obligation to provide an effective remedy for a violation of fundamental rights.

The forfeiture mechanism. The strongest form of this objection, associated with Martin Redish, is that removal of an Article III judge otherwise than by impeachment is foreclosed by the Constitution; that the good-Behaviour Clause is a mere cross-reference to the impeachment power; that the Prakash–Smith forfeiture reading is a minority academic position no court has ever adopted; and that a lower, court-enforced removal standard would expose judges to exactly

the intimidation life tenure was meant to prevent. Response: the IAJ does not dispute that the reading is contested or that no court has adopted it — it says so plainly, and it places the forfeiture mechanism in the severable reserve tier precisely so that rejecting it leaves every other recommendation standing. But three points blunt the objection. First, the independence concern is met by design, not by faith: the mechanism the IAJ describes is adjudicated in an Article III court, with the burden on the moving party, full procedural protection, an elevated standard of proof, appeal as of right to the Supreme Court, and an absolute bar on any proceeding founded on the merits of a ruling — a structure that affords an accused judge more protection than impeachment by a political body, not less. Second, the charge that the reading is novel is answered by the First Congress itself: the Crimes Act of 1790 made a bribe-convicted judge removable without impeachment, and the Northwest Ordinance of 1787 granted good-Behaviour tenure where no impeachment mechanism existed at all. Third, and most important, the objection misstates what the IAJ asks of it. The forfeiture tier is offered as the contested frontier of a graduated proposal, not its foundation; the load-bearing recommendation is the State-liability remedy, which depends on no theory of removal whatever.

The torture characterization. A hostile reader will say that characterizing judicial conduct as cruel, inhuman, or degrading treatment cheapens a grave word, that litigation is adversarial and stressful by nature, and that recasting ordinary judicial hardship in the vocabulary of the Convention against Torture is the tell of a work driven by grievance rather than analysis. Response: the IAJ does not characterize delay or adverse rulings as cruel, inhuman, or degrading treatment, and the report should be read for what it actually says. The characterization is stated conditionally and is tethered throughout to the defined thresholds of the instruments themselves — the severity and official-involvement elements of UDHR Article 5 and Articles 1 and 16 of the Convention, together with the prohibited-purpose element that Article 1 alone supplies — and it is reserved for conduct that meets them: intentional or recklessly indifferent conduct that inflicts severe mental suffering or humiliation on an identified person through the misuse of judicial power — whether by a single grave act or a cumulative pattern — not the ordinary friction of adversarial process. The discipline is the answer to the charge: a claim made only where the threshold elements are met is not hyperbole but the application of a legal standard, and the report states it precisely so that it cannot fairly be read as the indiscriminate claim the objection attacks.

The messenger. Perhaps the most predictable response is not to the argument at all but to its source: that the institutional voice is a costume, that the work is the product of grievance, and that a body documenting wrongs in which it or its principals have an interest cannot be credited. Response: the objection is an ad hominem and, more revealingly, it is self-confirming. The IAJ has never claimed the detachment of a tribunal; it states openly that it is not a neutral bystander to the architecture it documents, that it performs in the present vacuum the investigative and documentary function a national human-rights institution would otherwise discharge, and that interested complainants are the ordinary and legitimate authors of human-rights records the world over. The argument in this report stands or falls on the authorities it cites and the facts it documents, every one of which is verifiable independently of who assembled them; an objection that declines to engage those authorities and instead disqualifies the messenger is not a rebuttal but an illustration. It is, in fact, the precise reflex this report anatomizes — the substitution of status

for accountability, the claim that the powerful need not answer the substance because they may dismiss the speaker. A reader who reaches for it has conceded the point.

Taken together, these counterarguments share a structure. Each is strongest as a reason to channel accountability — toward the State rather than the individual, toward compensation rather than reversal, toward a defined process rather than none — and weakest as a reason to deny that any accountability is due — a channeling that, on the civil plane, the IAJ accepts, and that does not reach the concurrent individual accountability the threshold requires. The doctrine's defenders have, for a century and a half, used arguments of the first kind to reach conclusions of the second. The distance between the two is the space this report occupies.

The Objections of a Sympathetic Court

The objections answered above can be answered, and the IAJ has answered them. But the objections that should trouble this report are not the ones a hostile judge would raise; they are the ones an independent and fair-minded judge would raise — a judge who grants the diagnosis, attacks the reasoning rather than the author, and presses hardest where the argument is weakest. Intellectual honesty requires the IAJ to record those objections in their strongest form and to concede where they land, for some of them are not fully answered, and a few are not answered at all. What follows is offered in that spirit, and it is kept apart from the foregoing for a reason: the rebuttals above can be met with confidence; these can only be met with candor.

The gap is not the wrong. The fair-minded judge would grant almost the whole of the descriptive case and then deny that it proves the conclusion. The existence of an accountability gap, she would say, does not establish that closing it would improve the system; immunity is a considered trade that accepts that some genuinely wronged litigants go uncompensated in exchange for judges who decide without fear of the losing party's suit, and this report documents one side of that ledger far more fully than the other. The IAJ concedes the force of this. The report demonstrates the cost of immunity more completely than it demonstrates the cost of abolishing it, and its comparative evidence — that the constrained-liability judiciaries of France, Germany, and Italy are not visibly timid — is suggestive rather than dispositive, given how much else differs between those systems and the American one: career judiciaries, inquisitorial procedure, no contingency-fee bar, no analog to Section 1983. What the IAJ does not concede is that the burden runs the other way. The trade is the doctrine's, and so is the burden of justifying it; the rationale of deciding "without apprehension of personal consequences" rests on no more evidence than the report assembles against it, and the report's primary proposal — the civil reparation owed by the State for the wrong of its organ, with a constrained recourse action against the judge (and without displacing the criminal and threshold-level individual accountability set out in Part XVI), rather than personal damages exposure for the honest judge — is designed precisely to preserve the benefit independence is said to secure while closing the gap, and it channels the civil remedy without displacing the individual accountability the peremptory threshold independently requires (Part XVI). The honest position is that the comparative case is open, not that it is won.

The two-plane framework promises more than it can deliver. The same judge would press the structure that lets the report preserve domestic finality while locating the remedy on the international plane. What, she would ask, does that second plane actually deliver? It yields no

judgment enforceable against the United States; the effective-remedy guarantee of ICCPR Article 2(3) is non-self-executing; the treaty bodies issue views, not decrees; and every proposal in this report that could actually be enforced lives on the domestic plane and requires the very political action the report concedes is unlikely. The IAJ concedes this squarely. The two-plane framework is a description of what each plane can and cannot do, not a concealed claim of remedy, and the report's posture is record-preservation and reform-pressure rather than vindication. But a reader who comes to the second plane expecting redress will find it thin, and the report should not be read to promise more than documentation, evaluation, and the pressure that an accurate record can exert when the political economy changes.

Separation of powers forbids the cure. The gravest objection is not to the diagnosis but to the remedy, and it is constitutional. The Constitution, the fair judge would say, did not drift into the present arrangement; it chose it. The framers gave Article III judges tenure during good Behaviour, protection against the diminution of salary, and removal by impeachment, and they did so deliberately, having weighed the English and state mechanism of removal by legislative address and rejected it on the floor of the Convention (2 Farrand 428-429). Hamilton, defending the design, placed the precautions for judicial responsibility in the impeachment power and called it the only provision on the point "consistent with the necessary independence of the judicial character" (Federalist No. 79). Absolute immunity, on this view, is not a stray policy choice but the structural condition of a court that cannot be made to answer in damages to every litigant it disappoints; and a report that would expose judges to suit, discipline them by statute, or define good Behaviour by legislation asks the political branches to supervise the one branch the Constitution placed beyond their reach. The IAJ concedes the force of this, and concedes it precisely. The design was deliberate, and a reform that exposed a judge to personal damages for the content of his rulings, or subjected him to a political review of his fitness to sit, would threaten the independence the Constitution secures. The report proposes neither.

What the report does propose survives the objection, because the objection, pressed to the end, marks the boundary the proposal already respects. Two answers meet it. The first: accountability short of removal is neither novel nor forbidden. Congress already regulates judicial recusal, discipline, ethics, and financial disclosure without offending the structure — through the Judicial Conduct and Disability Act, the disqualification statute, and the Ethics in Government Act — and the Convention's rejection of removal by address was a rejection of removal without trial, not of the principle that good Behaviour is a condition capable of breach. Gouverneur Morris objected that it was "a contradiction in terms" to hold office during good Behaviour and yet be removable without a trial (2 Farrand 428); the framers required that breach be adjudicated, not that it be unthinkable. That good Behaviour is a substantive standard rather than a synonym for tenure until impeachment is, at the least, a serious and contested reading, urged by careful scholarship even where no court has adopted its strongest form (Prakash and Smith). The second answer is decisive, and it meets the objection on its own ground: the load-bearing remedy of this report runs not against the judge but against the State. The leading comparative and international authorities pair the judge's personal immunity with a preserved remedy from the State — Spain's Constitution makes judicial error and the abnormal functioning of justice a ground for compensation by the State (Art. 121), and the UN Basic Principles extend personal immunity only "without prejudice to" the right to compensation from the State (Principle 16). A remedy directed at the State leaves

the judge unsued, the docket undisturbed, and decisional independence wholly intact; it answers the very harassment the immunity exists to prevent, because the harassment never reaches the judge. The Constitution secures judicial independence through the protections this report does not touch — tenure and salary (*United States v. Will*; *United States v. Hatter*) — and reserves removal to impeachment, which this report does not invoke. Narrowed to accountability short of removal and a remedy that runs against the State, the separation-of-powers objection does not forbid the cure. It describes the boundary the cure was drawn to respect.

Judge-made is not the same as illegitimate. The report leans on the fact that judicial immunity has no constitutional text and is the creature of common law. A fair judge would answer that a great deal of legitimate law is exactly that — qualified immunity, the cause of action in *Bivens*, the dormant Commerce Clause, much of standing doctrine, the whole edifice of federal common law — and that the common-law immunities of judges were part of the legal background against which Section 1983 was enacted and read into it by ordinary interpretive means. The IAJ concedes that atextuality alone condemns nothing, and that stated as a bare structural objection the point proves less than its rhetoric suggests. But the report's objection is not merely that the doctrine is judge-made; it is that the doctrine is judge-made, self-conferred, and absolute, expanded by the same institution that benefits from it and stripped of the malice qualifier the common-law background actually contained — the qualifier *Randall* preserved and *Bradley* deleted. Narrowed to that, the objection holds; broadened to atextuality as such, it does not, and the IAJ states it in the narrower form.

The hardest case has a rationale. The most rigorous version of the challenge would defend the hardest case on its reasoning. The functional test exists, the judge would say, precisely so that immunity does not evaporate every time a judge errs gravely, for an immunity that protected only correct decisions would protect nothing; what, then, is the report's line between grave error within the judicial function and conduct outside it, and how does that line avoid the objection that an intent-based exception is the easiest thing in the world to allege and the hardest to disprove — the very difficulty that led *Bradley* to delete the malice qualifier? The IAJ's line is the bad-faith-and-corruption exception, adjudicated with the procedural safeguards Part XVII specifies. It concedes that drawing the line on intent is genuinely difficult and that the concern about harassment is real, not feigned; heightened pleading, independent assignment, and substitution of the State for the individual mitigate the danger without abolishing it. What the concession does not yield is the premise that the only administrable rule is absolute immunity for corrupt acts. A difficult line is not the absence of a line, and the comparative systems demonstrate that liability confined to grave fault can be administered without collapse.

The gravest characterization is the weakest link. Even granting the conditional framing and the threshold discipline, the sympathetic judge would warn — as a friend of the project rather than an adversary — that the characterization of extreme judicial conduct as cruel, inhuman, or degrading treatment is where analysis is most likely to be read as advocacy, and that a single perceived overreach there licenses a neutral reader to discount the disciplined remainder. The IAJ takes the warning seriously and concedes its prudential force: the credibility of the whole is rate-limited by its most aggressive claim, and the vocabulary of the Convention applied to the conduct of litigation will strike many careful jurists as a category error however tightly it is hedged. The report's answer is not to retreat from the claim where the threshold is genuinely met, but to

confine it rigorously to those cases and to state it as the application of a legal standard rather than as rhetoric — while accepting that this is the point at which restraint costs the least and protects the most.

The lever cannot be designed away. On the forfeiture proposal the honest objection is not the political one but the structural one: even a perfectly designed mechanism, adjudicated under Article III with every safeguard, creates a standing instrument for removing judges that some future and less scrupulous actor — a captured prosecutor, an organized litigation campaign — might turn to ends its designers never intended, and the very cumbersomeness of impeachment that the report laments is, on this view, a feature: a lever hard to pull is a lever hard to abuse. The IAJ concedes that this risk cannot be designed out of existence, only reduced, and that the concession is real. It is precisely for this reason that the forfeiture mechanism is placed in the reserved and severable tier, advanced as the contested frontier rather than the foundation, and that the load-bearing recommendation depends on no theory of removal at all. The residual risk is acknowledged and weighed, not denied.

A report that concedes these things has not lost its argument; it has located it. What survives the sympathetic critique intact is the diagnosis: that absolute immunity for judicial wrongs is a choice rather than a necessity, that the choice has never been justified by its defenders with evidence rather than assertion, and that a structural gap of this magnitude demands, at minimum, that the justification be supplied. What the critique reaches is the prescription and the reach of the characterization — and there the IAJ states the residue plainly: the remedy is offered as the best and least intrusive available, not as proven; the gravest characterizations are confined to their thresholds; and the most contested mechanism is reserved and severable. The thesis that remains after every fair objection is granted is narrower than its boldest phrasing, but it is the part the IAJ most needs to be true. There is a last observation the report will make about its own reception, and it is not a flattering one for the system it examines: the objections in this subsection are the objections of the judge who engages. The report’s concern is not that such a judge will rule against it, for that judge it can answer and learn from; its concern is that too few of the judges whose conduct it documents will be that judge.

Part XVI. The Affirmative Case and the Measured Reply

This report has stated its diagnosis without softening it. An institution that asks to be believed, however, owes its readers the opposing case in full strength — not a convenient caricature, but the argument the judiciary's ablest defenders actually make, stated as they would state it. The IAJ sets that case out here, in its own voice and at its highest, and then answers it. The answer is neither a rout nor a capitulation. On the question the defenders press hardest — that an honest judge must be free to decide without fear of personal reprisal — the IAJ agrees, and says so plainly. But the defenders argue as though responsibility were a single seat that must be assigned to one occupant: either the State answers or the judge does. International law knows no such rule. For a grave wrong done through the judicial office, the State and the individual are responsible at once, concurrently and complementarily, and neither's answer absolves the other (ILC Articles on State Responsibility, art. 58). The whole work of this Part is to hold that double answer steady: to concede what protects the honest judge, and to refuse the false economy that would let the gravest wrongs be paid for by the State alone while the actor who committed them walks away unanswered.

A. The Affirmative Case, Stated at Its Strongest

The defenders begin where the Constitution begins. The founding grievance against the Crown was not that judges were too independent but that they were dependent — holding office and salary at the pleasure of a king. Article III's guarantee of tenure during good Behaviour and protection against the diminution of compensation was the deliberate correction of that abuse, and, in the words of the modern Year-End Reports, the arrangement "has served the country well." Independence, on this account, is not a privilege conferred on judges for their comfort; it is a structural protection of the public. A judge who must fear personal consequence each time he rules against a powerful official, an angry litigant, a political faction, or a popular movement cannot decide as the law requires. The Constitution protects judges not because they stand above the law but because the law must be applied by persons who can apply it without fear of reprisal.

From that premise the rest follows. Absolute immunity for judicial acts is not monarchy but functional engineering: judges resolve disputes that always produce a losing party, many of whom sincerely believe the judge was biased, corrupt, or cruel, and if the content of a ruling could expose the judge to a damages suit, every hard case would breed satellite litigation and every judge would feel the pull to decide for the litigant most able to retaliate. The doctrine is, moreover, carefully bounded: it reaches only judicial acts within jurisdiction; it does not touch administrative conduct, does not bar criminal prosecution, does not prevent impeachment, and does not displace appellate reversal or mandamus. The reason it cannot turn on a malice or bad-faith exception is precisely that allegations are free: if "malice" defeated immunity, every losing party would plead malice, and the protection would dissolve into the very harassment it exists to prevent.

The same engineering, the defenders add, protects the advocates and witnesses on whom adjudication depends. The litigation privilege gives absolute protection to what participants say in the course of a proceeding, and it must be absolute for the reason immunity must be: an advocate who could be sued over a pleading, or a witness who could be sued over testimony, would speak under a constraint fatal to candor, and a privilege defeasible by an allegation of malice would be

no privilege at all, since malice is the first thing a disappointed party pleads. Nor, the defenders say, does the privilege leave misconduct unanswered: it bars the derivative defamation suit, not the court's own sanctions under Rule 11 and § 1927, not its inherent power of contempt, not the surviving torts of malicious prosecution and abuse of process, and not the discipline of the bar. The bar, on this account, is the proper forum for an advocate's misconduct, and its self-regulation is the appropriate governance of a learned profession, as it is for medicine — administered by those competent to judge professional fault, and reserving its gravest sanctions, as it should, for clear and proven breaches rather than for the ordinary friction of adversarial practice.

Appeal, the defenders continue, is the right remedy because courts speak through judgments. When a judgment is wrong, the system corrects it through the appellate hierarchy — reversal, rehearing, mandamus in the extraordinary case — not through collateral accusations against the person who entered it. The merits exclusion in the conduct system follows from the same logic: it is not a laundering device but a boundary, preventing the disciplinary process from becoming a second appeal in which every denied motion is recast as bias and every brisk docket as predisposition. Recusal law reflects the same balance. That the challenged judge rules first on a recusal motion is the ordinary premise that a tribunal may determine its own competence subject to review; § 455 supplies enforceable standards while the broader canons guide conduct without making every aspirational principle a litigable ground for judge-shopping.

Good Behaviour, on the orthodox reading, fixes the duration of the office and reserves removal to impeachment, and the rarity of impeachment is its design, not its failure — the Chase acquittal established that judges cannot be unseated for their rulings, a settlement that protects the public from having constitutional interpretation disciplined by political majorities. Nor does the absence of damages judgments, criminal convictions for adjudicative rulings, or a State compensation scheme prove impunity: absence may equally mean that the category is genuinely rare, that the wrong was ordinary legal error properly cured by appeal, or that the system has rightly declined to make personal liability the measure of accountability. A State-compensation regime, however moderate it sounds, would in practice reopen the case in a new forum to decide whether the process that produced a final judgment was wrongful — relitigation by another name, purchased at the cost of finality.

International standards, the defenders note, favor independence, impartiality, discipline, and appeal; they are persuasive rather than governing, and they do not compel the United States to abandon immunity or to treat a denied recusal as cruel, inhuman, or degrading treatment. That last point they press hardest: CIDT is a grave category describing the deliberate infliction of severe suffering, and to stretch it over adverse rulings, denied continuances, and the ordinary stress of litigation is to drain it of meaning and to make every judge a moral defendant in every hard case. By the same measure, the judiciary is not a safety-critical engineering system to be audited by fuses, metrics, and near-miss reports; courts decide contested claims through adversarial process and public reasons, and a regime that ranked judges by complaint volume, pro se loss rates, or accommodation disputes would punish exactly the judges who handle the hardest dockets, where independence matters most. The annual workload reports are administrative summaries, not human-rights audits, and their silence on the dimensions a critic would demand reflects their purpose, not a concealment.

Finally, the defenders say, public confidence rests not on transient polling but on the lawful performance of the constitutional duty over time, and it is eroded as much by campaigns that brand every adverse ruling as malice as by any institutional failing. The system is not perfect, and no honest defender claims it is: disclosure can improve, recusal explanations can improve, workplace misconduct must be taken seriously, access to justice should expand. But reform is not indictment. The strongest form of the case ends on a single proposition: the constitutional settlement accepts that courts will sometimes err, disappoint, and wound, because the alternative — judges answerable, personally and institutionally, to every litigant's accusation of injustice — would end the rule of law in the very name of perfecting it.

B. The Measured Reply

The IAJ does not meet this case with denial. It meets it with a single correction that the defenders' framing conceals at every turn: responsibility is not a seat for one occupant. The State is responsible for what is done through its judicial organ, and the individual is responsible for what he himself does; the two answers run together, and the law refuses to treat either as a substitute for the other (ILC art. 58). With that correction in hand, the reply divides the defenders' case into what is true, which the IAJ adopts, and what overreaches, which the IAJ answers.

What the IAJ concedes

Independence is a public good, not a privilege of judges. That is the shared premise, and the IAJ does not merely accept it; the IAJ's entire argument is built to protect it. A judge who decides under fear of personal reprisal is the evil the founders guarded against, and nothing in this report seeks to reintroduce it for honest adjudication.

Appeal is the proper remedy for legal error. The IAJ does not ask that an erroneous ruling be converted into a damages claim or a misconduct charge; the appellate hierarchy is the correct instrument for correcting what is merely wrong, and the IAJ says so.

For ordinary adjudicative error — the honest judge who simply gets it wrong — judicial immunity legitimately shields the individual from a personal damages suit, and the reparation owed to the injured party runs against the State. This much the IAJ concedes, and it is what protects the bench the defenders rightly prize. But the concession is governed entirely by a threshold, and the threshold is the whole of the matter. It holds only for conduct that does not cross into torture or cruel, inhuman, or degrading treatment. It is not a general rule that "the State answers and the judge does not"; it is a rule that the honest or merely-mistaken judge is protected while the State repairs the injury. Below the line, immunity does its proper work. The line is where that work stops.

The human-rights characterization must be bounded. The IAJ does not contend that an adverse ruling, a denied continuance, or the stress of litigation is cruel, inhuman, or degrading treatment. The characterization is confined, in this report and in its governing interpretive standard, to documented, cumulative patterns meeting a defined threshold of severity, vulnerability, foreseeability, and the foreclosure of neutral review; it does not attach to ordinary error or disappointment, and any reading that suggests otherwise is a misreading the IAJ disclaims. Bounding the threshold is not retreat from it — it is the precondition of enforcing it, because a threshold that means everything binds nothing.

Measurement must be calibrated, and pro se disadvantage is not proof of malice. The IAJ does not propose crude judge-level dashboards that would punish those who carry the hardest dockets, and it does not infer hostility from a low pro se success rate. Its claim is structural, not accusatory: that there exists a class of genuine wrongs the present architecture cannot reach, and that a system unwilling even to measure that class cannot know whether it is rare or routine.

Conceding these things costs the thesis nothing, because each was already its position. What the concessions accomplish is to clear away the caricature — the honest judge sued for an error, the metric-ranked bench, the every-ruling-is-torture claim — so that the real disagreement can be seen at its true size and located where it belongs.

What the IAJ holds

That the common-law method lets courts define the law they apply does not answer the objection from circularity. The objection is not that courts make law; it is that the same actor controls the scope of his own immunity, the grant of his own recusal, the reach of his own discipline, and the merits exclusion that screens out whatever the other instruments miss. Ordinariness of method is not a defense to the convergence of every check in a single hand; a check is not a check when the checked officer decides whether the check applies.

That appeal corrects legal error does not reach the wrong this report documents. The defenders' reliance on appeal assumes the injury is a mistaken ruling visible on the face of the record. The injury the IAJ describes is the one expressed through rulings — bias, retaliation, the knowing denial of accommodation or of rights — which the conduct system then dismisses as "merits-related" and which deferential or foreclosed review never tests. The merits exclusion the defenders praise as a boundary is, at its operative edge, the mechanism by which misconduct wearing the costume of a ruling escapes every forum at once. The boundary is legitimate; its present breadth is the defect.

That absence may mean rarity does not survive the negative-space method. A single empty mechanism could indeed mean the wrong is rare. But the IAJ does not reason from one absence; it reads the absences together — no civil remedy against anyone, no criminal enforcement for adjudicative acts, no merits-reaching discipline, no completed removal, and no State compensation — and sets that convergence against a documented record of recurrence across multiple forums and actors. Absence in one channel is consistent with rarity; absence in every channel at once, paired with recurrence, is the signature of structural impunity. The defenders examine each mechanism in isolation and find each individually defensible; the IAJ's point is what they spell when read together.

That a State remedy would be relitigation is refuted by the systems that practice it — and the State remedy is owed regardless. Peer constitutional orders pair the judge's personal immunity for honest acts with a preserved remedy against the State: Spain's Constitution makes judicial error and the abnormal functioning of justice a ground for compensation by the State, and the UN Basic Principles extend personal immunity only without prejudice to the right to compensation from the State, while leaving the judgment final. What the defenders call relitigation by another name is, in those systems, finality and the State's own reparation duty coexisting. The State owes

that reparation because the wrong was worked through its organ; it owes it whether or not the individual is also pursued, and the availability of appeal does not discharge it.

And here the defenders' single-seat assumption fails completely. Where judicial conduct crosses the bounded threshold into torture or cruel, inhuman, or degrading treatment, the State's responsibility does not shrink — it remains, and the duty to repair under UNCAT Article 14 is at its strongest — but it no longer stands alone, because the individual is now answerable in his own person as well. The prohibition of torture is a peremptory norm of general international law, jus cogens, from which no derogation is permitted; the Convention against Torture obliges the State to make such conduct a criminal offense punishable by appropriate penalties and to investigate, prosecute, or extradite those responsible (UNCAT arts. 2, 4–7; for CIDT, art. 16 read with the IAJ's controlling interpretive standard in UNCAT and Jus Cogens: A Contemporary Perspective); and personal civil liability lies as well where the law provides for it, as the Torture Victim Protection Act provides in the United States. Neither official capacity, nor judicial office, nor the recharacterization of the act as a "judicial act" is a defense, because immunity over a jus cogens wrong was never the law's to grant. The result is not that liability moves from the State to the judge; it is that both are bound at once — the State to repair and to prosecute, the individual to answer in person, criminally and civilly — and the discharge of one obligation does not satisfy the other (ILC art. 58). This is the obligation the IAJ investigates and enforces. It is not negotiable, not severable, and not conceded, and any statement that the gravest wrongs may be paid for by the State alone while the actor walks free is an error against the IAJ's own mandate.

On Good Behaviour, finally, the defenders aim their hardest blow at ground the IAJ has already marked as contested. This report does not assert the forfeiture reading as settled law; it presents it as a reserved, severable frontier, drafted so that a court rejecting it leaves the rest of the architecture standing, and its core case does not depend on it. A blow that lands where the defender and the critic already agree the ground is uncertain settles nothing between them.

C. The Synthesis: Concurrent Responsibility and the Line That Does Not Move

When the shared ground is subtracted, the disagreement is governed by one threshold and one principle. The principle is that responsibility is concurrent: the State answers for what its judicial organ does, and the individual answers for what he himself does, and neither answer is a substitute for the other. The threshold decides what the individual's answer is. Below it — honest adjudication, ordinary error — the individual is shielded by an immunity that does its proper work, while the State remains liable to repair the injury its organ caused; there the quarrel reduces to a single structural question, whether the combination of absolute immunity, the merits exclusion, self-administered recusal, and the absence of any State remedy leaves a residual class of genuine, documented wrongs with no functioning remedy against anyone, and whether a system that declines even to measure that class can claim to know it is rare. Above the threshold — torture or CIDT — the State's liability remains and the individual's is added to it: the jus cogens prohibition and the Convention against Torture require that the actor answer in person, and no immunity may bar it. On that the IAJ seeks no one's agreement, because the obligation belongs to no party to waive.

On the structural question, the answer is reached from the defenders' own premises. If independence is a public good rather than a judicial privilege, and if immunity exists to protect the

judicial function rather than the individual judge, then a reparation owed by the State for the wrong of its organ does not threaten independence; it vindicates the very distinction the defenders draw, leaving the honest judge unsued while the injured party is made whole. Measurement of the residual class informs rather than harasses. Discipline bounded below removal, for conduct extrinsic to the protected merits, occupies the space the defenders concede is reformable. Each element of this structural cure is licensed by a premise the defense affirms — and none of it reaches the judge who decides honestly, because none of it reaches honest adjudication at all.

But the structural cure is a floor, and beneath it lies a line it cannot lower. The convergence just described governs adjudicative wrongs in general; it does not, and cannot, convert the gravest wrongs into a debt the State settles by itself. Where conduct crosses into torture or CIDT, the law binds the State and the actor together: the State to repair and to prosecute, the individual to answer in his own person. That double obligation does not wait on a settlement, a statute, or the defenders' assent; it is already binding law, and the office of this report is to identify where judicial conduct crosses into it and to insist that, at that threshold, immunity yields, the State's duty intensifies, and the actor answers — both, not either. A defender who accepts, as the defenders do, that the prohibition of torture binds the United States cannot consistently maintain that it binds the State's treasury but spares the State's officer. The robe does not change the law; it only postpones, for a time, the day the actor the law already reaches is made to answer.

The conclusion, then, is not that the defenders are wrong and the critics right. On the question of the honest judge they are right, and the truth that survives both cases keeps that judge unafraid: he is shielded for his honest work, and the State, not he, makes good the ordinary injuries of adjudication. On the gravest wrongs the law has already chosen, and it has chosen both answers at once — the State's and the individual's — because a wrong of that order is too serious for either to bear alone. The reader who holds the defenders' convictions in full is asked only to follow them honestly: to protect the honest judge by the threshold rather than by a blanket immunity, to let the State repair what its organ breaks, and to let the law reach the officer who tortures exactly as it would reach any other person who did the same thing. Independence was the founders' answer to a dependent judiciary. Concurrent responsibility — the State to repair, and, where the wrong is grave enough, the individual to answer beside it — is the answer to an unanswerable one. The two do not compete; one keeps the honest judge free, the other denies the perpetrator a hiding place.

That is the measured conclusion this report has worked toward, offered in the spirit in which the IAJ understands its function: not to defeat an adversary, but to set every perspective fairly in view and to follow the reasoning to the position that is at once the most just and the most defensible — conceding all that candor requires, and holding, without apology and without exception, that for the gravest wrongs the State and the actor answer together, and neither answer is permitted to stand in for the other.

Part XVII. Recommendations: A Staged Accountability Architecture

The IAJ advances a **staged accountability architecture**, calibrated to the strength of the evidence and escalating as reform thresholds are met. Consistent with the controlling thesis — independence without an effective remedy is the defect — the first recommendation is institutional (a Paris-Principles national human-rights institution with jurisdiction over the administration of justice), and the primary remedial recommendation is the state-liability remedy, which international law supports more directly than personal damages liability.

These recommendations are deliberately structural, and it is worth stating at the outset why they are not, instead, recommendations for the care of judges. The conditions documented in Part X are real, and the institution has begun to respond to them — but almost entirely in one register. The 2019 National Judicial Stress and Resiliency Survey of more than a thousand judges, the Federal Judicial Center's materials on mindfulness and judging, the judicial-assistance and wellness programs now operating in many States, and the 2024 Nauru Declaration's affirmation that "judicial stress is not a weakness and must not be stigmatised" together mark a genuine and humane turn. But the turn has a direction, and the direction is telling. As the leading study of the field observes, the institution has deliberately moved its treatment of judicial impairment away from fitness and discipline and toward confidential, nonpunitive wellness (Maroney and colleagues, 2023). That movement is the evasion this report identifies, seen from the inside: the institution has built real machinery to care for the people who hold the power, and none to provide recourse to the people that power harms. Wellness addresses the cause, and to that extent the IAJ supports it. But wellness is prevention, not remedy. It does nothing for the litigant already injured, and nothing about the impunity — a judge restored to equanimity by counseling remains a judge who cannot be sued, prosecuted, disciplined, or displaced for the rights he has violated. An institution that offers its members confidential support while offering their victims no answer at all has not closed the accountability vacuum; it has furnished it more comfortably. The recommendations that follow are structural by necessity: prevention is the front of the problem, but recourse is the part the institution has been least willing to supply, and it is the part a human-rights remedy cannot omit.

Foundational Recommendation — Establish a National Human-Rights Institution With Jurisdiction Over the Administration of Justice

Establish, or designate and independently resource, a national human-rights institution compliant with the Paris Principles (G.A. Res. 48/134 (1993)), with a mandate that expressly reaches the administration of justice and judicial accountability. This recommendation is foundational because it addresses the deficit this report identifies at its outset: more than 120 States maintain a national human-rights institution, but the United States has established no accredited body of this kind, and the resulting vacuum is the reason the investigation, documentation, and reporting that such an institution would perform must, at present, be undertaken by independent civil society. The IAJ does not claim to be such an institution — that status requires action by the State, which only the State can supply — but it performs, in the vacuum, the truth-finding function such a body would discharge, and it is not a neutral bystander to the architecture it documents. An accredited

institution, independent of the judiciary and of the political branches, would supply what no self-administered mechanism can: a standing, independent and impartial body to receive and investigate complaints the courts' own procedures suppress, to document patterns across forums and over time, to monitor the State-liability and disciplinary reforms recommended below, and to report on compliance to the public and to the international mechanisms to which the United States answers. Until the United States establishes one, the function does not cease to be necessary; it must be performed by an independent civil-society institution capable of rigorous investigation, documentation, and reporting. The IAJ performs it now, and recommends that the State assume the responsibility that is properly its own. Such an institution need not exercise appellate or disciplinary power over the courts to be effective: its function would be to receive complaints, investigate patterns, document findings, report publicly, and recommend corrective action, leaving adjudicative revision, judicial discipline, and legislation to the competent domestic institutions.

Primary Recommendation — State-Liability Remedy (the Principle 16 Architecture)

Enact a federal and model-state scheme placing liability on the *government* (not the individual judge) for serious judicial wrongs, following the French, German, and Italian models, with a constrained recourse action against the judge for gross misconduct. This is the IAJ's primary recommendation because it guarantees a remedy (satisfying ICCPR art. 2(3)), tracks the architecture UN Basic Principle 16 expressly contemplates (immunity "[w]ithout prejudice to... compensation from the State"), protects decisional independence by removing the judge's personal exposure for good-faith acts, and answers the floodgates objection by directing suits to the State. To avoid simply relocating the accountability gap from judicial immunity to claims denial, the state-compensation remedy should be adjudicated by an independent tribunal or claims mechanism structurally separated from the judges whose conduct is challenged, with transparent published reasons and rights of appeal or review. The remedy requires legislative waiver or authorization; the IAJ does not contend that existing sovereign-immunity doctrine already supplies the cause of action. It should be structured to distinguish compensation for rights-violating conduct from reversal of the underlying judgment: the adjudicating body would declare and compensate the violation without vacating, altering, or collaterally reviewing the merits of the original judgment except as necessary to identify the violation.

Complementary Statutory Reform — A Bad-Faith Exception to § 1983 Immunity, With Safeguards

Congress should amend § 1983 to permit damages actions for judicial acts undertaken with proven corruption, intentional discrimination, knowing deprivation of clearly established constitutional rights, or bad-faith conduct that foreseeably precludes ordinary appellate correction — restoring, in disciplined form, the malice/corruption qualifier that *Randall* contained and *Bradley* deleted, and codifying Justice Douglas's reading of "every person." The statute should include procedural safeguards: heightened pleading, independent judicial assignment, exhaustion or futility rules where appellate remedies were available, sanctions for frivolous filings, and indemnification or state substitution for good-faith acts. A parallel mechanism should address the federal-judge route, where § 1983 does not reach. *Benchmark:* if courts construe "bad faith" so

narrowly as to replicate *Stump*'s near-impossible "clear absence of jurisdiction" test, the state-liability remedy carries the full weight.

Enforceable Ethics and Conduct Reform (Parallel Track)

- Enact the SCERT Act or its equivalent: a *binding* Supreme Court code with an enforcement mechanism (e.g., investigation by panels of lower-court judges or an independent inspector general), mandatory recusal standards, and gift and travel disclosure with teeth.
- Reform the Judicial Conduct and Disability Act to add independent (non-judge) members to conduct panels, publish disposition data with reasons, and create a narrow channel for review of pattern-and-practice rights deprivations distinct from "correctness of a decision."

Systemic Transparency — Mandatory Reporting of Litigant-Affecting Patterns

Require the federal judiciary, through the Administrative Office of the United States Courts, to collect and publish anonymized, system-level data on the patterns through which the accountability vacuum operates and bears on the people before the court: the rate and disposition of requests for disability accommodation and the grounds of any denial; outcomes and sanctions in matters involving self-represented litigants; the frequency with which a challenged judge denies his own disqualification; denials of emergency or interim relief entered without a statement of reasons sufficient to permit meaningful review; and the volume, category, and disposition of conduct complaints. The premise is modest and already familiar to federal law. Congress has long required the judiciary to make its own performance visible: under the Civil Justice Reform Act of 1990 (28 U.S.C. § 476), the Administrative Office must publish, twice a year and by individual judge, every motion pending more than six months and every civil case pending more than three years. Reporting the patterns that reveal denied accommodations, foreclosed review, and the systematic disadvantage of the unrepresented is a reform of the same kind and on the same settled ground. Its object is transparency in the service of accountability and the protection of litigants: the vacuum persists in part because its operation is invisible, and no external body — the human-rights institution recommended above, the legislature, or the public — can act on a pattern it cannot see. This recommendation authorizes no supervision of judicial thought, no clinical assessment of a judge's decisional capacity, and no removal on the strength of a diagnosis. It requires only that the institution surface, in the aggregate, the data its own conduct generates, so that the documentation, the bad-faith exception, and the disciplinary and compensatory mechanisms set out above have the factual record on which accountability depends.

The Legislative Recommendation: A Graduated, Severable Statute

The foregoing recommendations can be consolidated into a single legislative recommendation, which the IAJ addresses to Congress as its considered institutional recommendation. The recommendation rests on the constitutional pathway established in Part XII: Congress holds the power (the Necessary and Proper Clause, the structural and jurisdictional powers, and the good-Behaviour condition), the power is proven by the Judicial Conduct and Disability Act and its survival in *McBryde*, and the immunity doctrine's own founding case invited a legislatively

"specially prescribed" mechanism of accountability. Consistent with *Medellín v. Texas* — which assigns the domestic implementation of non-self-executing international obligations to the political branches — Congress is the proper body to translate the human-rights standard of judicial good Behaviour into enforceable domestic law, as it has translated other non-self-executing norms before (the Convention against Torture, implemented through the Foreign Affairs Reform and Restructuring Act of 1998, § 2242, and 18 U.S.C. ch. 113C; the Genocide Convention, implemented by 18 U.S.C. § 1091). The IAJ is under no illusion that enactment will be immediate. The recommendation is made so that the constitutional pathway and the drafted instrument are already on the table when the political economy of reform shifts — a shift already signaled by the record-low public confidence documented in this report.

The IAJ proposes a graduated statute drafted in severable tiers, so that a court invalidating one tier leaves the others standing:

- **Tier 1 — Conduct, recusal, and disclosure (firmest ground).** A binding, enforceable code of conduct, mandatory recusal standards with written explanation of recusal decisions, and gift and travel disclosure, applicable to all federal judges and to the Justices, with enforcement by a panel of federal judges and an inspector general — the SCERT model. This tier rests on the same authority as § 455 and the Ethics in Government Act, which already bind the Justices.
- **Tier 2 — Discipline short of removal (settled ground).** Statutory disciplinary sanctions — censure, reprimand, and suspension of new case assignments preserving salary and title — on the model the Judicial Conduct and Disability Act already supplies and that *McBryde* upheld, extended and strengthened with independent (non-judge) panel members and published reasons.
- **Tier 3 — A reserved, statutorily defined good-Behaviour forfeiture (contested frontier).** A non-impeachment mechanism to determine forfeiture of office for a defined breach of good Behaviour, adjudicated by an Article III court with full procedural safeguards, on the design recovered in Part VIII. Concretely, the statute would (i) authorize a forfeiture action initiated only through a defined public or institutional gatekeeper — the United States through the Attorney General, or an independent accountability body Congress designates — and not through any free-standing private suit for the removal of a judge; a person directly injured by the alleged breach may petition that gatekeeper and, on its declination, may seek leave of an Article III court to proceed on the relation of the United States, ex rel., upon a threshold showing of objective evidence external to the merits of any ruling, the action thereafter being prosecuted in the name of the United States and under the court's control, with no private party able to obtain removal, the reversal of any ruling, or any personal relief, and any petition shown to be retaliatory or frivolous subject to sanction; (ii) vest original jurisdiction in an Article III court rather than in any council of the judge's own colleagues; (iii) hard-code a procedural floor — a trial, the burden of proving misBehaviour on the moving party, notice, the assistance of counsel, the right to confront and cross-examine witnesses, and the presumption of innocence; (iv) guarantee appeal as of right to the Supreme Court; and (v) define misBehaviour by the bi-level standard below while expressly excluding the substance of

any ruling honestly reached, so that no proceeding may be founded on disagreement with a decision. Two founding-era precedents supply the template: the Crimes Act of 1790 (Act of Apr. 30, 1790, § 21, 1 Stat. 112), by which the First Congress made a bribe-convicted judge removable without impeachment, and the Northwest Ordinance of 1787, which granted good-Behaviour tenure where no impeachment mechanism existed. To meet the independence objection at its strongest, the statute should require proof by clear and convincing evidence, or beyond reasonable doubt, and should bar any initiation of proceedings grounded in the merits of a decision — converting the concern that such a mechanism could intimidate into a constraint of the mechanism's own design. The IAJ advances this tier expressly as the contested edge of the argument: it depends on the disputed reading of the good-Behaviour clause, it is resisted by the orthodox view that reserves removal to impeachment, and it is the tier most exposed to the *Marbury* circularity. No court has adopted the forfeiture reading on which it rests. Nothing in this tier authorizes a losing party to seek a judge's removal because the party disagrees with a ruling: the mechanism is reserved for defined breaches of good Behaviour proven by objective evidence external to the merits of any decision, and the petitioner gains nothing from it but the vindication of the public interest in the integrity of the office — the feature that, by removing any personal payoff, removes the tactical incentive to misuse it. It is proposed as a severable reserve provision, not as the load-bearing element of the recommendation. The relator option within it is, in turn, included only as an anti-inertia safeguard against the possibility that the public gatekeeper never acts, and may itself be omitted without impairing Tiers 1 and 2 or the State-liability remedy that carries the recommendation.

The statute's definition of good Behaviour should draw on the bi-level synthesis of Part VIII — the common-law standard of faithful, impartial, and diligent conduct free of corruption, completed by the human-rights articulation of the Universal Declaration (art. 10), the Bangalore Principles, and the UN Basic Principles on the Independence of the Judiciary (Principles 17–20). The IAJ states the limits of the recommendation candidly. As a recommendation addressed to Congress, it does not itself compel enactment; Congress is under no enforceable obligation to act on it. Its force is institutional, evidentiary, political, and documentary, not justiciable — which is precisely why it belongs to the IAJ's record-preservation and reform-pressure posture rather than to any expectation of compelled enactment. The recommendation is made so that the record will show it was made, and so that, when the political economy of reform shifts, the constitutional pathway and the drafted instrument are already on the table.

Criminal Accountability for Rights-Depriving Conduct (Immediate Priority)

Of all the reforms in this Part, criminal accountability is the most urgent, not the most distant. It is the single mechanism that civil immunity does not touch: where a judicial act rises to the willful, bad-faith deprivation of rights — and, in its gravest form, to conduct that crosses into the cruel, inhuman, or degrading treatment framework identified in Part XIV and applied to the remedial foreclosure described in Part XII — the criminal law is the only avenue through which the victim is not left wholly without redress and the actor is not left wholly without answer. A reform agenda that consigned that avenue to the long term would concede precisely what this report contests:

that the gravest abuses of judicial power may go unanswered while lesser ones are addressed first. The IAJ therefore treats this as an immediate priority. The Department of Justice should issue guidance affirming that 18 U.S.C. § 242 reaches willful, bad-faith deprivations of rights by judicial officers — a proposition already grounded in *Ex parte Virginia* and confirmed by the civil/criminal line in *Dugan* — so that the statute on the books becomes a statute in force. Congress should enact a statutory mechanism for independent review of declinations to prosecute officials, mitigating the *Heckler*/*Attica* unreviewability problem for the narrow category of credible official-misconduct referrals, so that the decision whether to hold a judge criminally accountable is not itself shielded from all scrutiny.

Civic-Knowledge Strategy (Continuous)

Because the IAJ's sociological analysis identifies public invisibility as one mechanism sustaining the unpaired-immunity architecture, the IAJ treats public legal literacy as a reform lever: commissioning and publicizing accessible explainers of *Bradley*, *Stump*, and *Mireles*, partnering with civics-education programs, and tracking public awareness as an outcome metric. The thresholds that would change the political economy of reform are (a) sustained majority public *awareness* of the unpaired-immunity architecture and (b) continued decline in court legitimacy that makes inaction costlier to the institution than reform.

The Benchmark That Should Drive Urgency

Public confidence in the judiciary is already at historic lows. Gallup's "Americans Pass Judgment on Their Courts" (released December 17, 2024) found that Americans' confidence in their nation's judicial system and courts dropped to a record-low 35% in 2024, after a sharp 24-percentage-point decline over the preceding four years, producing the largest gap (20 points) in the Gallup trend dating to 2006 between the United States and the OECD median (55%; the 55% appears in Gallup's accompanying chart, "United States Lags Behind OECD for Confidence in Courts," and is the value implied by the 35% United States reading and the stated 20-point gap). The decline is concentrated and partisan: Democrats' trust in the judicial branch headed by the Supreme Court fell 25 points between 2021 and 2022 (from 50% to 25%), recovered slightly to 34% in 2023, and sank to 24% in 2024. (The record-low 35% figure derives from Gallup's cross-national World Poll, which underlies the OECD comparison; the partisan figures come from Gallup's separate domestic survey of trust in the judicial branch headed by the Supreme Court, a distinct instrument Gallup notes measures a different sentiment.) Subsequent polling did not reverse the trend: Gallup's June 2025 Confidence in Institutions survey placed confidence in the Supreme Court at a record-low 25%. Positivity theory predicts that the "reservoir of goodwill" can be depleted — and once depleted, the unaccountability the reservoir concealed becomes politically untenable. Reform undertaken from a position of institutional strength is preferable to reform imposed after a legitimacy collapse.[2]

[2]The 35% figure is the most recent cross-national reading of its kind (Gallup World Poll, reported December 17, 2024). Gallup's separate domestic survey has since been updated: in a poll conducted September 1–23, 2025, 49% of Americans expressed "a great deal" (16%) or "a fair amount" (33%) of trust in the judicial branch of the federal government headed by the Supreme Court — among the lowest readings in Gallup's trend, essentially matching the 47% low of 2022 — with Democratic trust (23%) the

What Would Be Different If the Checks Worked

The recommendations that follow operationalize the failed-check analysis; they are not separate programs, but the minimum feedback, recusal, transparency, and documentation architecture required to restore the safety functions that Parts VIII, X, and XII show were removed. Before stating them, the IAJ identifies the trace evidence a functioning system would leave. If checks and balances operated, the public record would contain: independent review of recusal motions; public discipline for intentional judicial rights-deprivation; State compensation for judicial wrongs; public data on accommodation denials and on recusal denials; enforceable Supreme Court ethics; criminal referral in extreme cases; investigation by a national human-rights institution; and appellate correction accompanied by acknowledgment of harm. The recommendations below are addressed to the absence of each trace.

The Failed Check Audit

The recommendations in this Part should be understood as answers to a failed check audit. Each supposed mechanism of accountability must be assessed by the same questions: Who initiates it? Who decides it? What evidence counts? What evidence is excluded? What remedy exists? Is the result public? Does the mechanism reach intentional adjudicative rights-deprivation? On that audit, the existing architecture fails.

Appeal corrects some legal error, but does not supply discipline, compensation, public acknowledgment, or investigation of judicial bad faith. Recusal exists, but is first decided by the challenged judge. Judicial-conduct complaints exist, but exclude merits-related harm. Impeachment exists, but is practically inert for adjudicative misconduct. Criminal liability exists, but depends on unreviewable prosecutorial discretion and is practically unused for adjudicative deprivations; prosecutorial nonfeasance thereby converts formal criminal liability into practical judicial non-liability. Civil damages exist against many officials, but not against judges for judicial acts within jurisdiction. Ethics codes exist, but lack enforceable consequence. Congress possesses power, but its interventions are construed by the institution they regulate. A national human-rights institution does not exist. The checks exist in form; they fail in function.

The statute proposed here should therefore require an annual failed-check audit by an independent body, reporting in anonymized and aggregated form the number and disposition of recusal motions, self-decided recusal denials, judicial-conduct complaints by dismissal ground, disability-accommodation requests and denials, emergency and interim-relief denials issued without reasons sufficient to permit meaningful review, sanctions against self-represented litigants, mandamus petitions challenging judicial conduct, and complaints alleging retaliation, discrimination, or accommodation denial. The aim is not to supervise judicial thought, but to measure the places where the accountability architecture fails to recognize harm.

Independent Recusal and Ethics Review

lowest Gallup has recorded for any party group. The later domestic figure does not displace the cross-national 35% benchmark but confirms that confidence has not recovered.

A binding judicial-ethics statute must state expressly that statutory disqualification provisions are minimum enforceable floors, not ceilings. Compliance with § 455 does not establish compliance with the Code of Conduct, the Bangalore Principles, the UN Basic Principles, or the constitutional condition of good Behaviour. A judge whose conduct is challenged under § 455 may not be the final adjudicator of whether his own conduct satisfies the ethical duties of office.

The statute should require independent assignment of contested disqualification motions, written findings addressing both the statutory grounds and the relevant ethical canons, public reporting of denials, and preservation of the issue for meaningful review. Where a judge denies recusal despite a colorable ethical challenge, the order should state not only why § 455 does not compel disqualification, but why continued participation remains consistent with the broader ethical duties of integrity, impartiality, avoidance of impropriety, and preservation of public confidence.

Transparency as a Remedy Against Archive Control

Truth depends on records, and the judiciary controls the record. Judicial harm may be obscured through unpublished orders, summary denials, oral rulings, sealed proceedings, staff-screened complaints, minute entries without reasons, selective docketing, refusal to transcribe, and administrative dispositions that create no usable public account. The institution that creates the harm also controls the archive from which the harm must later be proven. The transparency recommendation is therefore not ancillary; it is a remedy against archive control. Refusal to measure is not judicial independence; it is feedback suppression — and a constitutional system cannot correct what it refuses to measure.

Modern safety-critical systems supply the comparison. Aviation, medicine, and nuclear safety distinguish ordinary error from reckless disregard, require incident reporting, study near misses, mandate disclosure, and separate safety investigation from institutional self-protection through independent boards. The judiciary claims the authority of a safety-critical institution while rejecting the feedback mechanisms safety-critical systems require. A system that exercises the power to deprive persons of liberty, property, and access to justice should be held to no lower standard of measured, independent safety review.

The Victim Pathway Map and Disability as the Stress Test

The IAJ recommends that every judicial-accountability report include a victim pathway map tracing what happens when a person harmed by judicial conduct attempts each available route: recusal, appeal, mandamus, judicial-conduct complaint, civil damages, criminal referral, congressional oversight, media exposure, State compensation, and international reporting. For each route, the map should identify the decision-maker, standard of review, evidence accepted, evidence excluded, remedy available, public record created, and the likelihood that intentional adjudicative rights-deprivation will be recognized. The pathway itself is evidence: if every route returns the victim to the judiciary, excludes the evidence, denies the remedy, depends on an actor who does not act, or produces only an unexplained closure, the structure has answered the question.

Disability is the stress test of this architecture. Denial of reasonable accommodation converts procedural control into exclusion from the forum itself; it is not merely one category of court error

but a proof point for whether access to justice is real. A system that cannot guarantee the disabled litigant a meaningful opportunity to be heard cannot claim to supply an effective remedy to anyone.

Public Confidence and Congressional Capacity

Two conditions govern whether reform is possible. The first is a correct understanding of public confidence. Public confidence is not preserved by concealing misconduct; it is destroyed when the public discovers that independence has been used to conceal misconduct. Accountability is therefore the condition of legitimate confidence, not its enemy. The second is congressional capacity. Congress's failure here is not mere inaction; it is a form of constitutional deskilling — the erosion of the institutional knowledge, confidence, and self-understanding required to supervise the judiciary as a coordinate branch without treating judicial disagreement as constitutional impropriety. A reform architecture must be accompanied by the recovery of that capacity, because a check the legislature has forgotten how to use is, in practice, no check at all.

Appendix: Comparative and International Reference

This appendix consolidates, for ease of reference and machine retrieval, the comparative and international authorities on which Parts XIII and XIV rely. The regional human-rights cases are persuasive and analogical only; they do not bind United States courts, and nothing in this appendix characterizes ordinary error, delay, or an adverse ruling as a human-rights violation.

A. International Standards on Judicial Independence and Accountability

- UN Basic Principles on the Independence of the Judiciary (1985), Principles 16–20: immunity from civil suit operates without prejudice to discipline, appeal, and State compensation (16); complaints are processed expeditiously and fairly (17); suspension or removal only for incapacity or Behaviour unfitting the office (18–19); subject to independent review, excepting the highest court and impeachment-type proceedings (20).
- Bangalore Principles of Judicial Conduct (2002): six values — independence, impartiality, integrity, propriety, equality, and competence and diligence (Value 6). Commentary: judicial independence is not a privilege or prerogative of the individual judge but a responsibility owed to the public; accountability complements independence.
- Council of Europe, Recommendation CM/Rec(2010)12, on judges: independence, efficiency and responsibilities — independence as a means to impartial decision, paired with accountability.
- ICCPR Articles 2(3) and 14, with Human Rights Committee General Comments 31 and 32: the right to an effective remedy and the attribution of judicial acts to the State.
- Convention against Torture, Articles 1 and 16; Committee against Torture, Concluding Observations on the United States, CAT/C/USA/CO/3-5, ¶ 9 (19 Dec. 2014): the domestic "prolonged mental harm" gloss introduces a subjective, non-measurable element that undermines the treaty.
- Paris Principles (1993): the criteria for a national human-rights institution — the monitoring body the United States lacks.

B. Comparative Judicial Discipline and Removal Systems

Common-law good-Behaviour systems

- England and the United Kingdom: senior judges hold office during good Behaviour, removable only by address of both Houses (Constitutional Reform Act 2005, s. 33; Senior Courts Act 1981, s. 11(3), descending from the Act of Settlement 1701, exercised once — against Sir Jonah Barrington in 1830, for corruption). Office-holders below the senior tier are disciplined and, where warranted, removed through the Judicial Conduct Investigations Office (Courts Act 1971, s. 17(4)); in 2024–25 the JCIO upheld 89 complaints and recorded 19 removals, most involving magistrates or tribunal members and many for failure to meet minimum sitting requirements.
- Canada: superior-court judges hold office during good Behaviour to age 75, removable by the Governor General on address of the Senate and House of Commons (Constitution

Act, 1867, s. 99). The Canadian Judicial Council (1971) investigates misconduct; the Judges Act, as amended (S.C. 2023, c. 18), adds mandatory sanctions for less-serious misconduct, lay participation on panels, and a defined removal standard.

- Australia: federal judges are removable only by the Governor-General in Council on an address of both Houses for proved misBehaviour or incapacity (Commonwealth Constitution, s. 72(ii)); the Judicial MisBehaviour and Incapacity (Parliamentary Commissions) Act 2012 (Cth) structures the inquiry. The Judicial Commission of New South Wales (Judicial Officers Act 1986, s. 41(1)) is a standing State conduct body whose Conduct Division must report before any removal.

Civil-law State-liability systems

- France, Germany, Italy, and Spain: career judiciaries that protect decisional independence while channeling judicial wrongs into State liability and tightly constrained personal-liability or recourse regimes, with disciplinary organs (e.g., conseils supérieurs de la magistrature and their analogues) distinct from the United States self-administered model.

The United States

- The Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 351–364) cannot order removal of an Article III judge (§ 354(a)(3)(A)) and excludes merits-related conduct; removal is reserved to impeachment, a practical nullity for adjudicative wrongs; and no national human-rights institution exists to monitor the resulting gap.

C. European Court of Human Rights — Article 3 Factor Jurisprudence (Persuasive Only)

- *Ireland v. United Kingdom*, App. No. 5310/71 (1978), §§ 162, 167: the minimum-severity threshold and the torture / inhuman / degrading gradation.
- *Jalloh v. Germany* [GC], App. No. 54810/00 (2006), § 67: severity assessed on all the circumstances — duration, physical and mental effects, sex, age, health.
- *Selmouni v. France* [GC], App. No. 25803/94 (1999), §§ 95–97, 101: the living-instrument principle and the purposive element; the absolute, non-derogable character of the prohibition.
- *Bouyid v. Belgium* [GC], App. No. 23380/09 (2015), §§ 100–101: force not made strictly necessary by a person's own conduct, against someone under State control, diminishes human dignity.
- *Svinarenko and Slyadnev v. Russia* [GC], App. Nos. 32541/08 and 43441/08 (2014), § 138: confinement in a metal cage during trial is degrading and an affront to human dignity — ill-treatment located in the courtroom itself.
- *Kudła v. Poland* [GC], App. No. 30210/96 (2000): Article 3 reaches only suffering exceeding the unavoidable level inherent in a legitimate measure — the limit that excludes ordinary process from the analysis.

D. Inter-American Court of Human Rights (Persuasive Only)

- *Velásquez Rodríguez v. Honduras*, Merits, Series C No. 4 (1988), ¶ 181: the State's duty to prevent, investigate, and punish; impunity as a breach engaging State responsibility.
- *Loayza Tamayo v. Peru*, Merits, Series C No. 33 (1997): severe mental suffering of a person under State control as a violation of the right to humane treatment (Article 5).
- *Cantoral Benavides v. Peru*, Series C No. 69 (2000): psychological mistreatment reaching the level of a personal-integrity violation.
- *Villagrán Morales ("Street Children") v. Guatemala*, Series C No. 63 (1999): psychological suffering of the vulnerable (Article 5); denial of justice (Articles 8 and 25).
- *Barrios Altos v. Peru*, Series C No. 75 (2001): measures that foreclose accountability for grave violations are incompatible with the duty to provide an effective remedy.

E. UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- Report on Psychological Torture, A/HRC/43/49 (2020): psychological torture need not pass through the body; powerlessness — effective loss of the capacity to resist or escape — is a core feature.
- Report on abuses in health-care settings, A/HRC/22/53 (1 Feb. 2013): denial of reasonable accommodation to persons with disabilities can amount to ill-treatment.

F. The Failed Check Audit (Mechanism-by-Mechanism)

Each accountability mechanism is assessed on the same dimensions — who initiates it, who decides it, what evidence counts, what is excluded, what remedy is available, whether public data exist, and whether it reaches intentional adjudicative bad faith.

- Appeal — initiated by a party; decided by appellate judges; counts preserved legal error in the record; excludes unpreserved process harm, much motive evidence, and cumulative trauma; remedy is reversal or remand, rarely compensation or discipline; limited public data; rarely reaches adjudicative bad faith.
- Mandamus — initiated by a party; decided by appellate judges; counts a clear and indisputable right; excludes ordinary abuse, cumulative harm, and most discretionary acts; remedy is an extraordinary order; limited public data; rarely reaches bad faith.
- Recusal under § 455 — initiated by a party or judge sua sponte; decided first by the challenged judge; counts statutory grounds and appearance of impartiality; excludes broader canons often passed over; remedy is disqualification if granted; no systematic public data; rarely reaches bad faith.
- Judicial-conduct complaint — initiated by any person; decided by chief judge or judicial council; counts conduct separable from the merits; excludes merits-related rulings and unsupported motive allegations; remedy is internal discipline, not compensation; limited aggregate data; structurally does not reach adjudicative bad faith.

- Impeachment — initiated by the House and tried by the Senate; counts grave public misconduct; practically excludes ordinary adjudicative abuse after the Chase convention; remedy is removal and disqualification; public but rare; practically does not reach adjudicative bad faith.
- Criminal prosecution — initiated by executive prosecutors; decided by prosecutors and courts; counts willful deprivation, corruption, bribery, obstruction; excludes non-charged adjudicative abuse and prosecutorial nonfeasance; remedy is punishment; public if charged; practically unused for adjudicative deprivations.
- Civil damages — initiated by the injured person; decided by courts; counts non-judicial acts or the clear absence of jurisdiction; excludes judicial acts within jurisdiction, even if malicious or corrupt; remedy is damages only if immunity is overcome; case-specific data; almost never reaches bad faith.
- State compensation — initiated by the injured person or a statutory process if one is created; decided by a State body or court; counts a rights violation by a judicial organ; currently unavailable in the U.S. federal system; remedy would be compensation and declaration if enacted; no current data; could reach bad faith if created.
- National human-rights institution — initiated by victim or institution; decided by an independent human-rights body; counts pattern, testimony, records, and human-rights standards; excludes nothing inherent if the mandate is broad; remedy is findings, recommendations, referrals; public if created; reaches bad faith. No such institution currently exists in the United States.
- International reporting — initiated by victim, NGO, or the IAJ; decided through international mechanisms and the public record; counts human-rights violations and State responsibility; treats domestic finality as a remedy barrier rather than a remedy; remedy is findings, pressure, and a demand for reform; public; reaches bad faith if documented.

G. The Victim Pathway Map and the Negative-Space Proof Method

A victim alleging intentional adjudicative rights-deprivation typically encounters the following pathway. First, the victim asks the judge to stop, accommodate, reconsider, or recuse; the judge denies or narrows the request. Second, the victim seeks appellate correction; the appellate court reviews a record shaped by the same judge, often under deferential standards, and may treat the harm as unpreserved, harmless, discretionary, or final. Third, the victim files a judicial-conduct complaint; it is dismissed as merits-related or unsupported because the evidence consists of judicial acts. Fourth, the victim considers civil suit; judicial immunity bars damages for judicial acts within jurisdiction. Fifth, the victim seeks criminal enforcement; prosecutorial discretion is practically unreviewable, and adjudicative deprivations are not charged. Sixth, the victim seeks legislative or media attention; the response is episodic, political, or nonexistent. Seventh, the victim turns to international or civil-society documentation; only there can the full pattern be recorded without deference to domestic finality. Where every domestic path ends in immunity, merits exclusion, self-review, non-prosecution, finality, or silence, the structure itself is the effective-remedy violation.

From this pathway the IAJ derives a method: negative-space proof. The IAJ treats absence as evidence when the absence appears across every mechanism where accountability would be expected — the absence of damages judgments for intentional adjudicative rights-deprivation, of criminal convictions for the content of rights-depriving rulings, of public discipline for merits-related judicial abuse, of independent recusal review, of State compensation, of accommodation-denial data, of a national human-rights institution, and of public recognition of victim harm. A functioning system would leave traces of correction. The repeated absence of those traces, across civil, criminal, disciplinary, legislative, and human-rights channels, is not a gap in the record; it is the record. The IAJ states this as an interpretive method, not as proof of any individual case.

H. Twenty Mechanisms of Judicial Self-Enthronement

The following twenty mechanisms consolidate the architecture this report documents. The first seven are the acts of self-enthronement set out in Part V; the remainder are the chronological, sociological, and structural mechanisms developed across Parts VIII, X, XII, and XVII. They are presented together so the complete architecture is legible in one place. They should not be read as isolated criticisms; they are cumulative. Each removes, narrows, internalizes, or neutralizes one safety device in the constitutional design, and together they show how judicial independence was converted into judicial sovereignty without formal amendment, open repeal, or public acknowledgment.

- 1. Self-definition — the judiciary defines the scope of its own immunity, and what counts as a “judicial act” and as “jurisdiction.”
- 2. Self-exemption — it proclaims ethical standards while withholding enforcement against itself.
- 3. Self-adjudication — the challenged judge decides, in the first instance, the challenge to his own impartiality.
- 4. Self-policing — the conduct system excludes the merits-related form in which adjudicative abuse most often appears.
- 5. Self-legitimation — the symbols of justice preserve public confidence while remedy is withheld.
- 6. Self-insulation from review — non-enforcement, internal finality, and deferential review foreclose meaningful correction.
- 7. Self-preservation against reform — external interventions are construed, narrowed, or absorbed by the institution they regulate.
- 8. Moral deprecation — the public-trust standard of office was hollowed as the surrounding honor-and-shame culture dissolved.
- 9. Canon-to-statute compression — the broad ethical duty is narrowed to the § 455 floor, which is then treated as a ceiling.
- 10. Burden inversion — the harmed party must prove disqualification rather than the officer prove fitness.

- 11. The evidentiary trap — the proof of misconduct consists of the very rulings the system reclassifies as merits.
- 12. Merits laundering — intentional rights-deprivation expressed through rulings is dismissed as merits-related.
- 13. The appellate-review myth — appeal corrects some legal error but is not a misconduct-accountability mechanism.
- 14. Prosecutorial nonfeasance — unreviewable non-charging converts formal criminal liability into practical non-liability.
- 15. Impeachment desuetude — the post-Chase narrowing left impeachment practically inert for adjudicative misconduct.
- 16. Judicial supremacy as anti-check ideology — the branch becomes the final interpreter of the checks directed against it.
- 17. Congressional deskilling — the legislature loses the capacity and confidence to supervise a coordinate branch.
- 18. Status degradation and dignity extraction — judicial dignity is preserved by degrading the credibility of the harmed person.
- 19. Counter-accountability weapons — sanctions, vexatious-litigant orders, contempt, and “frivolous” labels are turned against those who seek accountability.
- 20. Archive control and anti-metrics — the institution controls the record and resists measurement, so the failure cannot be proven or corrected.

The Structural Foreclosure of Effective Protection and Remedy for Rights-Violating Judicial Conduct in the Courts of the United States of America: An Investigative Finding on Judicial Immunity, Good-Behaviour Accountability, and the Limits of Judicial Self-Regulation Across State and Federal Court Systems, Assessed Against International Human-Rights Standards

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