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The Play's the Thing: A Response to Judge Benjamin Beaton

Aaron J. Walayat[*]

Abstract

In a recent speech, later published as an essay, the Hon. Benjamin Beaton of the United States District Court for the Western District of Kentucky shared his critical suggestions against the use of the honorific "Your Honor," preferring instead the more neutral title "judge." Judge Beaton's reason for this preference stems from a fear that the current practice of judicial titles emphasizes status over function, which may inflate the individual judge's ego while miscommunicating to the public that judges make, rather than find, law.

This position, however, is misguided. Judicial titles emphasize the authority of the law through the authority of the judge. This Essay suggests that the law's rhetoric is not merely a project of reason, but of aesthetics. That is to say: whether we are persuaded that a determination has the quality of law is not only made by our rational decision-making, but also by the aesthetics of the decision-making process.

Titles, like other forms of what Confucius called li *and what John Adams described as "signs," communicate the roles tied to the legal process while also evoking the qualities necessary for the role in order for the passion for recognition to be exercised and, hopefully, satisfied by the exercise of the public office for the public benefit. The point of titles, then, is to persuade all the participants in the legal process of the authority of the law and that the legal drama—the legal "play"—is, indeed, the thing.*

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TABLE OF CONTENTS

INTRODUCTION 103
I. MORE THAN REASON 104
II. PROCEDURAL AESTHETICS 106
III. CONFUCIAN *LI* AND THE AESTHETICS OF THE LEGAL PROCESS 107
A. *Legal* Li 108
B. *John Adams and the Concept of* Li*, Americanized* 110
IV. BLACK-ROBITIS: THE CHICKEN OR THE EGG? 111
V. CONCLUSION 114

Is a judge still a judge when not judging,
Or has he merged into the judge?
Is chocolate called fudge when not fudging,
And retain its honor as fudge?
Has a man gone the way of the dodo,
In a robe he dons to wear?
When Pilate proclaims "Ecche Homo,"
Does he ponder to wonder who's there?
Is a man still the Court when he's speaking,
Or does the Court speak on its own?
Is the judge still the Court when he's sleeping,
Or in the high bench all alone?
Oh, a man is a judge when he's touching
The power, so warm, in his hand.
So beware, the pow'r from clutching,
For a man is a man is a man.

– Aaron J. Walayat

INTRODUCTION

In a recent speech, later published as an essay in the *Harvard Journal of Law and Public Policy Per Curiam*, the Hon. Benjamin Beaton, a judge of the United States District Court for the Western District of Kentucky, shared his critical suggestions against the use of the honorific "Your Honor."[1] Judge Beaton's preferred honorific is the more neutral title "judge," a title that Judge Beaton prefers because it reflects the judicial function ("judging") rather than the judicial status ("honorable").[2] Judge Beaton fears that our current practice, emphasizing status over function, inflates the individual judge's ego while miscommunicating to the public that judges make, rather than find, law.

Perhaps Judge Beaton's argument can be described as an appeal to judicial common sense, advocating for a "democratical" model by abandoning grandiose titles of "nobility." I fear, however, that Judge Beaton is misguided in the position that titles hurt the public's perception of our legal system.[3] Indeed, I think this position gets it backwards. Judicial titles are necessary because they emphasize the authority of the law *through* the authority of the judge. As such, the "legal" quality of the law—the quality that makes law "law"—is given its due weight when it is communicated through the judge.

1. Benjamin Beaton, *Judging Titles*, 29 HARV. J. L. & PUB. POL'Y PER CURIAM 1 (2022).
2. *Id*.
3. *Id*. at 5.

The law's rhetoric—that is, how the law persuades the public that its determination is authoritative—is not merely a project of reason, but of aesthetics. That is to say: whether we are persuaded that a determination has the quality of law is not only made by our rational decision-making, but also by the aesthetics of the decision-making process.

I. MORE THAN REASON

What gives a legislative or judicial determination its legal quality, or—perhaps more straightforwardly—what makes a law a law? The noted legal positivist philosopher H. L. A. Hart famously argued that a society recognizes that a rule has the effect of law if it is delivered through the proper procedural steps by which we expect laws will emerge.[4] Hart referred to these as "rules of recognition," or rules from which we recognize that laws emerge.[5] Certainly, we could imagine "rules of recognition" for legislation. One need only think of the ubiquitous "I'm Just a Bill" song from Schoolhouse Rock as an example.[6] But, in a common-law system, what gives judicial decisions the effect of law?

Judge Beaton acknowledges that the role of the judge, regardless of title, is still necessary, as we still need someone to resolve our disputes.[7] But there are many ways to resolve a dispute, such as mediation and other forms of alternative dispute resolution.[8] There are many different procedures that provide a way for conflicting parties to come to terms.[9] However, in what situations are the principles applied in these resolutions considered to have the effect of law? As Judge Beaton notes, a judge's duty is not to make, but to find, law.[10] But whether a judge makes or finds law, the question remains how the judge's finding has the *effect* of law. Regardless of whether one believes judges merely find law or whether they actively make law, it is clear from either perspective that judges are communicators of law and that the general public relies on judges as communicators—not merely to resolve their present dispute, but to identify which decisions contain the force of law for future application, both within the legal system and in daily practice.[11]

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4. *See* H.L.A. HART, THE CONCEPT OF LAW 91 (Joseph Raz & Penelope Bullock eds., 2d ed. 1994).

5. *Id.* at 94. In other words, Hart introduced the idea of "rules of recognition" as fundamental guidelines to determine what counts as law within a particular legal system—i.e., criteria for identifying valid laws and legal authority. *See id.* These rules represent social practices accepted by officials within a legal system, enabling them to differentiate between valid legal norms and mere rules or commands.

6. Dave Frishberg, *I'm Just a Bill*, SCHOOLHOUSE ROCK (ABC Television Network 1975).

7. Beaton, *supra* note 1, at 4 ("But we do need *some* way to refer to the people whose job it is to decide disputes . . . .").

8. *See generally* MARTIN A. FREY, ALTERNATIVE METHODS OF DISPUTE RESOLUTION (2002) (detailing an array of alternative dispute-resolution methods outside of litigation).

9. *See id.* at 6.

10. Beaton, *supra* note 1, at 6.

11. *See* CODE OF CONDUCT FOR U.S. JUDGES Canon 2(A) (JUDICIAL CONFERENCE 2019) ("A judge

All of this, I think, will be uncontroversial to Judge Beaton. Of course judges communicate law. Judge Beaton, however, might respond that a judge's role as communicator stems from duty and function, rather than status. What difference would it make whether the communicators of the law are referred to as "Your Honor" or "Judge"? For Judge Beaton, the only difference seems to be that overuse of "Your Honor" will create misunderstandings among the public and inflate an individual judge's sense of self-importance.

But I fear that Judge Beaton's conception of the judicial process is too tied to reason, mistakenly ignoring the aesthetic dimension of judging. It is a more stripped-down version of the legal ritual, focusing on functional titles and emphasizing the realities of resolving disputes, rather than convincing the public that judicial determinations constitute law. Further, I think that this view takes for granted the potency of reason alone.

There may well be reasons to accept that a judge's decision has the force of law, but the communication of a decision, the finding of the law, occurs not only through reason, but also aesthetically, through the passions. The law's authority does not only guide participants in the legal process by the threat of sanction (that is, through reason), but also through the way persons are attached to the law and through how they see themselves within the law.

A major theme of Judge Beaton's argument is that a judge's title should be attached to their role rather than their status.[12] In this way, he prioritizes a judge's function over a judge's status. Taken to an extreme, this prioritization suggests that a judge's role can be separated from a judge's status—that the act of judging can be separated from the judge's status as a judge.

That assumption is mistaken. A judge's role is fundamentally linked to his status, and respect for a judge's status is necessary for a judge to perform his role. This is because the legal process is more than an exercise of pure reason. Instead, the aesthetic dimension of the legal process serves a purpose as much as legal reasoning.

Certainly, the legal process requires reason. Lawyers, of course, are expected to form arguments, exercising their practical reason by applying precedent to the relevant facts. Likewise, judges are also expected to exercise

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should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."); *see also* James B. Beam Distilling Co. v. Georgia, 501 U.S. 529, 549 (1991) (Scalia, J. concurring in the judgment) ("I am not so naive (nor do I think our forebears were) as to be unaware that judges in a real sense 'make' law. But they make it *as judges make it*, which is to say *as though* they were 'finding' it—discerning what the law *is*, rather than decreeing what it is today *changed to*, or what it will *tomorrow* be."); *cf.* Sarah M. R. Cravens, *Judges as Trustees: A Duty to Account and an Opportunity for Virtue*, 62 WASH. & LEE L. REV. 1637, 1639–40 (2005) (characterizing judges as "trustees of the law" who have an obligation to ensure the proper development of the law rather than acting as mere "umpires" between the parties).

12. Beaton, *supra* note 1, at 1. Judge Beaton argues that lawyers should "resist that ungrammatical and un-American honorific… [as] the title is factually dubious and legally misconceived." *Id.*

reason in making their decisions. All participants in the legal process are exercising reason in formulating arguments and reaching decisions. But it is a judge's *status* that makes their reasoning determinative over the reasoning of the lawyers and other participants in the process. A judge, after all, is imbued with a role which is attached to a status—a lawyer's status makes his reasoning argumentative while a judge's status makes his reasoning determinative.

Certainly, too, we can *reason* why *status* is necessary, for disputes need to be resolved. Decisions need to be made and somebody has to make them. Everyone can accept these premises and the necessity of someone to act as a judge. But it is not enough to provide reasons that such a person is needed. Rather, the role of the judge, and the recognition that the judge's decision is authoritative in the present legal case, needs to be communicated to participants in the legal process. This is where the aesthetics of the process comes in.

II. Procedural Aesthetics

When I think of the legal process, I sometimes think of a line from Shakespeare's play *As You Like It*: "All the world's a stage, /And all the men and women merely Players."[13] Comparisons between legal trials and stage plays have been made before. Judge Stephanos Bibas of the United States Court of Appeals for the Third Circuit, for example, has compared older models of criminal justice with "morality plays."[14]

Stage plays, like any literary medium, communicate a message to an audience. Unlike mediums such as novels and visual arts, stage plays require persons to take on roles, to act within the play. While we might pay attention to the message the play is communicating to a third-person audience, we should also pay attention to the message that the play is communicating to the first-person participants.

Drawing comparisons between plays and legal processes, participants in the legal process, like actors in plays, take on roles. Participants within the legal process also need a way of identifying the other roles in the process. This is because roles are attributed with certain statuses, statuses which are impinged with powers in relation to other participants within the process. Are these statuses real? They are certainly real to the participants of the process, within their respective roles, at that particular moment.

Consider another example from Shakespeare. In *The Merchant of Venice*, Antonio, a Christian merchant, borrows money from Shylock, a Jewish

13. WILLIAM SHAKESPEARE, AS YOU LIKE IT, act. 2, sc. 7, ll. 139–40.

14. Stephanos Bibas, *Harmonizing Substantive-Criminal-Law Values and Criminal Procedure: The Case of Alford and Nolo Contendere Pleas*, 88 CORNELL L. REV. 1361, 1364 (2003); *see also* Aaron J. Walayat, *Gnostic Criminal Justice*, 37 NOTRE DAME J. L. ETHICS & PUB. POL'Y 711, 715 (2023) (comparing legal trials to morality plays and discussing the potential "goods" that may be realized by the "performance" of a legal trial).

merchant, promising a pound of his flesh as collateral for the loan.[15] In the climax of the play, Shylock attempts, and ultimately fails, to enforce the bond.[16] What is interesting about the dynamics of the play is that the residents of Venice treat Shylock with great disdain, calling him names and even spitting on him. In broader Venetian society, Shylock's status is lesser compared to his Christian peers. But within the legal process, Shylock's status is extended, as the law not only gives him a legal remedy, but empowers him to enforce a legal remedy to claim a pound of a Venetian Christian's flesh.[17] Though his motivations are morally dubious, Shylock's legal status is actually greater than his actual status, and in the moment of the legal process, this empowered legal status is reality.

Similarly, people are convinced that these statuses are accepted, and the decisions of judges are accepted, as real outside of the legal process, because the participants are persuaded by the reality of the determinations—not only by the reason of the decisions, but also through the aesthetic communications about the realities of the legal process through participation in the same process. As Shakespeare wrote elsewhere: "The play's the thing."[18]

III. CONFUCIAN *LI* AND THE AESTHETICS OF THE LEGAL PROCESS

The aesthetic dimension of the legal process is comparable with the Confucian conception of *li*, most often translated to "ritual."[19] *Li* is a complicated concept, made more difficult by the various translations from the original Chinese. It has been used to refer to religious rituals, the conduct and demeanor of the morally cultivated person, and the behavioral propriety of regular people in their day-to-day interactions.[20]

Elsewhere, I have compared *li* to individual laws, arguing that laws possess a *li*-quality in the sense that human beings accept certain assumptions within the laws when they participate in the legal process.[21] In this way, the laws persuade us of the truth of these assumptions by requiring people to share

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15. WILLIAM SHAKESPEARE, THE MERCHANT OF VENICE, act. 1, sc. 3, l. 5–80.

16. *Id.* act. 3, sc. 2, ll. 260–300.

17. For a greater elaboration on legal status in *The Merchant of Venice*, see Aaron J. Walayat, *Shakespeare's Legal Masks* (unpublished manuscript) (on file with author).

18. WILLIAM SHAKESPEARE, HAMLET, act 2, sc. 2 l. 633.

19. *See* MATT STEFON, *li*,, ENCYCLOPAEDIA BRITTANICA (online ed. 2019), https://www.britannica.com/topic/li-Chinese-philosophy.

20. *See* KARYN LAI, AN INTRODUCTION TO CHINESE PHILOSOPHY 28 (2d ed. 2017).

21. *See* Sophia Gao & Aaron J. Walayat, *The Compatibility of Confucianism and Law*, 41 PACE L. REV. 41 (2020); Aaron J. Walayat, *The Project of Law as a Rectification of Names*, 56 UIC L. Rev. 233 (2023); Aaron J. Walayat, *What Confucius's* Li *Can Teach the West about Law*, THE PUBLIC DISCOURSE (Sept. 22, 2021), https://www.thepublicdiscourse.com/2021/09/78004/#:~:text=One%20cannot%20simply%20coerce%20social,the%20value%20of%20that%20action.

these assumptions when utilizing the laws or participating in the legal process. Thus, a lawsuit to recover stolen property requires a person filing a lawsuit to assume that the concept of property exists, that there is such a thing as "stealing" someone else's property, and that the state's apparatus for recovering the property and punishing the thief can, in fact, do what the lawsuit filer is asking the state to do.

However, while my previous discussion of the *li*-quality of law has focused on the laws themselves, I think the Confucian notions of *li* are equally relevant (if not more relevant) to the process of judging and the status of judges. Philosopher Karyn Lai, for example, has identified an "aesthetic dimension" to *li* , which "incorporates decorum in a person's interactions with others," working under the assumption that through observation and performance, individuals would slowly grasp the different obligations, appropriate emotions, and motivational reasons that underlie *li*-practices.[22] In this way, a function of *li* is to direct the right emotions in the right contexts. As the Chinese Confucian philosopher Xunzi wrote: "[*l*]*i* is human emotion expressed, harmonized, and beautified so as to become a pattern for all."[23] This would not only apply to laws, but would include, *inter alia*, features, voice, food, garments, dwellings, indicating the right amount of expression in order to elicit the right emotions in the right situations.[24] In this way, *li* is "the beautifying of man's original nature by means of acquired characteristics which could not be acquired by themselves."[25]

In practice, *li* has taken the form of mourning periods, dress codes, and rituals of respect, such as the infamous kowtow.[26] These ritual practices are meant to link motions with actions, communicating to people how they ought to feel in certain situations.

A. *Legal* Li

What are some examples of *li* in our own, Western world? I can think of an example from my personal life. A few years ago, I attended a concert performed by the Los Angeles Philharmonic Orchestra. While I have some musical background, I typically listened to music in less-formal school settings or in church, and I was not accustomed to the etiquette of listening to music in a formal setting. At the end of the performance, I clapped my hands like the rest of the audience and joined the standing ovation. The conductor bowed and stepped off the stage, yet the audience continued to clap. The conductor returned to the stage and bowed again, and then stepped off again. Eventually, the conductor returned, and the orchestra performed the encore. I

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22. LAI, *supra* note 20, at 29.
23. *See id.* at 62.
24. *Id.* at 29.
25. *Id*.
26. *See* ZHIHOU XIA, *kowtow*, ENCYCLOPAEDIA BRITTANICA (online ed. 2019), https://www.britannica.com/topic/kowtow.

was initially taken aback, but I was not too surprised, as I had heard of some musical performance traditions in passing; while I did not know the specifics, this kind of ritual was not completely unexpected.

But beyond the ritual of welcoming an encore, I had joined in other rituals that I had taken for granted. After all, what is a hand-clap? Is there anything inherently pleasing about the sound of hand-claps, or are we conditioned to associate the sound with affirmation? Hand-claps could be seen as an example of *li*: clapping channels emotion (affirmation of the performance) with an action (clapping) in order to properly direct emotions in the proper situations.

Indeed, there are many things we do that can be associated with *li*, such as business dress, handshakes, or a father walking the bride down the aisle at her wedding. But what would be the *li* associated with the legal process? I can think of several possibilities. For example, lawyers begin oral arguments with the famous "May it please the Court." During examination of witnesses, lawyers will ask permission to approach a witness ("May I approach?"). And, of course, there is Judge Beaton's much-despised honorific, "Your Honor."[27] These rituals seem antiquated—almost quaint—but they do have a purpose. They indicate that our legal process is different from other political processes. They create a mystique regarding legal practice, an almost-mystical quality.

These rituals are not created simply to inflate a judge's ego. In fact, they are not meant for an individual judge at all. These rituals are intended to elicit the right emotions toward the *office* of the judge, the judge as a character in the play of the legal process, not to the individual actor playing the role. A judge's decision is meant to be determinative, to be authoritative, and the ritual is designed to convince the participants in the legal process that the judge's role is to make determinative and authoritative decisions. This is done through ritual practices, from the black, anonymous robe worn by a judge to the titles used to address him.

Our legal process is not merely meant to resolve disputes. Rather, it is meant to develop the body of our laws.[28] A decision of a judge is not merely a resolution of a dispute, though it certainly has that effect. But there are numerous ways to resolve disputes, as discussed above. What makes a judicial decision special is the law-quality that it bears—the precedential value that it holds for future judicial decisions.

27. Beaton, *supra* note 1.

28. *See* 4 JOHN FINNIS, *Introduction* to PHILOSOPHY OF LAW: COLLECTED ESSAYS 1, 18 (2011); *cf.* Amul R. Thapar & Benjamin Beaton, *The Pragmatism of Interpretation: A Review of* RICHARD A. POSNER, THE FEDERAL JUDICIARY, 116 MICH. L. REV. 819, 827–28 (2018) (book review) (describing "the bench and bar's interest in a stable body of discernible federal caselaw" and explaining how that interest affects the way judges interpret the law).

B. John Adams and the Concept of Li*, Americanized*

Introducing the Confucian concept of *li* to examine the role of judging in America runs the risk of being esoteric, or even inapplicable to our contemporary, Western context. In considering the notion of *li* in the American context, it may be helpful to compare *li* (as it relates to judging) with a political philosophy that may be more familiar to an American audience: the political theory of John Adams.

To preface, as part of Judge Beaton's critique of the title "Your Honor," he criticizes the title as undemocratic, writing: "For goodness sakes, this country fought a war and wrote a Constitution to blot out titles of nobility. It's right there in Article 1, Section 9, Clause 8: 'No Title of Nobility shall be granted by the United States.'"[29]

The reasons for the American allergy to titles of nobility are obvious.[30] However, there was an American founder who seems to have been more amenable to titles, and though rejecting titles of nobility, he acknowledged a purpose and even usefulness for titles. This man was John Adams, and his theory on titles was called the "language of signs."[31]

Students of American history will remember a rather unfortunate episode where Adams, as Vice President, was admonished for showing "monarchical" tendencies in his attention to the titles and style of the President.[32] Political theorist Brad Thompson, however, has challenged the charge that Adams was a monarchist, noting that Adams' theories regarding titles were informed by very different political concerns.[33] Adams believed that human beings, by nature, were motivated by a passion for distinction.[34] This passion, combined with a natural human deference toward accomplished individuals, meant that aristocracies were an inevitable part of human nature. Adams feared an aristocracy's ability to control politics, but also acknowledged the benefits that accomplished individuals could offer to a political community.

Influenced by the ancient Romans, Adams observed that "[d]istinctions of conditions, as well as of ages, were made by difference of clothing . . . The chairs of ivory; the lectors; the rods; the axes; the crowns of gold, of ivory, of flowers; . . . their ovations; and their triumphs; everything in religion, government and common life, was parade, representation and ceremony."[35] The purpose of these rewards was to "excite the emulation and active virtue of the

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29. Beaton*, supra* note 1, at 3.

30. *Cf.* THE FEDERALIST NO. 84 (Alexander Hamilton) ("Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner-stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people.").

31. C. BRADLEY THOMPSON, JOHN ADAMS & THE SPIRIT OF LIBERTY 222 (1998).

32. *Id.* at 84.

33. *Id*. at xvi (explaining how Adams was attuned to the changing American society and the political consequences that flowed from those changes).

34. *Id*. at 154.

35. *Id*. at 223.

citizens."[36] These distinctions, rewards, and titles were "mere frivolities, that . . . brought neither profit nor true pleasure," but were still helpful in "attract[ing] the attention of the most ambitious."[37] "Titles," for example, "like veneration, grace, excellence, honor, serenity, and majesty, . . . had meanings and ranking that were intended to symbolize and evoke certain qualities."[38]

Adams's political theory, to a great extent, was concerned with the dangers posed by growing aristocratic classes.[39] Counterintuitively, however, Adams believed that titles and honors could be used to curb the influence of aristocracy, or at least could direct the passions of these individuals into contributing to the public good. Titles and honors, Adams hoped, would attract the most ambitious to seek public service as a means of satisfying the passion for distinction. The exercise of titles, and of roles, is meant to channel individual passions, eliciting useful benefits for the society as a whole. A good law-giver, Adams argued, would "intimate" titles and honors with particular virtues.[40]

Here, Adams' examination of the "language of signs" can be compared to the Confucian notion of *li*. "Signs," as Adams describes them, are meant to channel passions and to elicit the right emotions in the right circumstances. Likewise, they are meant to attract ambitious people, in the sense that they are rewarded for great deeds. But there is an aesthetic communication within the sign as well. There are expectations of what someone who has achieved such a title should behave, in the hopes that the individual will act more like his role rather than transform the role to be more like him. The belief here is that titles would reward individuals for acting rightly. To be sure, this contention is subject to debate, as others would ably argue that titles have the opposite effect. Titles may, after all, "get to the person's head."

IV. BLACK-ROBITIS: THE CHICKEN OR THE EGG?

The debate then, would go as follows: does the title cause the person to act as someone in their role should act, or does the title cause the person to believe that any act they take is justified because they bear the title of their role? I think Judge Beaton is inclined to believe the latter, as he argues that "a daily dose of honorifics can't help but affect any judge, and not necessarily

36. *Id*.
37. *Id*.
38. *Id*.
39. For more infomration on John Adams's political theory, see Aaron J. Walayat, *John Adams's Constitutionalism: A Brief Introduction*, U. ST. THOMAS J. L. & PUB. POL'Y (forthcoming).
40. BRADLEY, *supra* note 31, at 225 (quoting and discussing Adams' statement that there is "a voice within us . . . which seems to intimate that real merit should govern the world; and that men ought to be respected only in proportion to their talents, virtues, and services")

in a good way."[41] But I think that he would agree that it does not necessarily have to be that way, and there is no clear answer to whether the daily use of honorifics will tip an individual judge in either direction. Judicial titles may very well have a way of getting into someone's head—"black-robitis"[42] as it is called—but the judicial title also bears an important depersonalizing quality. It is not that the judge is speaking *for* the judge, but that the judge is speaking *as* the judge. While we can recognize certain individuals who might throw their weight around based on their judicial title, we may also see those judges who craft their opinion with the recognition that they do not simply speak for themselves, but for the law as a whole.

Further, I think that the impulse to "democratize" the judicial title by moving away from status-based titles ("Your Honor") to function-based titles ("Judge") inadvertently clashes with another important point that Judge Beaton makes in his essay. Judge Beaton recommends that, in legal opinions, one should never refer to himself in the first-person singular.[43] Instead, he should do as many judges do by referring to himself as "the Court," a stylistic choice that I concur is good practice.[44] However, I think that Judge Beaton's advocacy for references to "the Court" clashes with his aversion to the title of "Your Honor," as both titles contain a depersonalized quality.

In this way, Judge Beaton's preferred spoken title—"Judge"—actually does the opposite of the honorific "Your Honor." The function of "judging" is inherently linked to the individual judge who is judging the case. By addressing the judge as "Judge," the reminder is that the individual hearing the case must take the action. The focus is specifically on the individual himself and the action that he will take. On the contrary, the title "Your Honor" scratches at a judicial role that is less personalized. "Your Honor" separates the judge from his action, hinting at the "judge's role" (as opposed to the "individual judge's role") in the process.

Contrary to Judge Beaton's position, I think it is good practice to remind judges of their role ("Your Honor") rather than their action ("Judge") in the process. A judge's role is not merely to resolve disputes, but to find the law.[45] It is important to remind that judge that his role takes place within a limited, internalized legal process, rather than an external political process. Decisions ought to be made according to what the law is, for the procedural "grammar" of the legal process, rather than for the external, substantive ends of the political process. In this sense, the title "Your Honor," even if counterintuitively,

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41. Beaton, *supra* note 1, at 4.
42. *See id.*
43. *See id.* at 9.
44. *Id*.
45. *See, e.g.*, 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *71 (1765) ("*The law*, and *the opinion of the judge*, therefore, are not always convertible terms, or one and the same thing; since it sometimes may happen that the judge may *mistake* the law . . . ."); Zechariah Chafee, Jr., *Do Judges Make or Discover Law?*, 91 PROC. AM. PHIL. SOC'Y 405 (1947) (addressing the question, "Exactly what part do judges play in the development of law?").

reminds judges of their limited role in finding the law of a dispute rather than the more general "judging" of the political dispute between parties. His Honor has a role in the drama of the legal process.

Judges should have titles that remind them that they are embedded within the legal process. Indeed, I think it is dangerous for judges to recognize the political quality of their roles. Take, for example, the announcements of Judges James Ho and Elizabeth Branch of the United States Court of Appeals for the Fifth Circuit and the Eleventh Circuit, respectively, regarding law clerk hiring.[46] Judges Ho and Branch both publicly announced that they would no longer hire law clerks from Yale Law School in protest of what they identify as Yale's failure to preserve the freedom of speech on campus.[47] Regardless of the correctness of the Judges' observations or the rightness of their decisions, it is clear that the decision to expressly stop hiring law clerks from a certain law school is certainly audacious.[48] The Judges' decisions were likely made with a realistic observation of their roles as federal judges, along with the power that the role holds within the legal profession. Clerkships are prestigious, and threatening to refuse hires from an entire law school certainly sends a message.[49]

Perhaps Judge Beaton might argue that Judges Ho and Branch have heard the title "Your Honor" too often, allowing the title to get to their heads. However, I am of a different opinion. I think that the title of "Your Honor" cements the judge into the limited world of the legal process, rather than taking them out of it. Instead, it is the realism of the judiciary's influence on the legal profession which, I think, motivates the Judges' decisions. Perhaps taking grandiose titles away may make a judge more realistic about the role they play, but too much realism might also lead to cynicism about the power a judge can flex within the political process or the professional community.

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46. *See* Madison Alder, *Stanford Law Added to Clerk Hire Boycott by US Judges Ho*, *Branch*, BLOOMBERG L. NEWS (Apr. 2, 2023, 4:19 PM), https://news.bloomberglaw.com/us-law-week/stanford-law-added-to-clerk-hire-boycott-by-us-judges-ho-branch.

47. Letter from Elizabeth L. Branch and James C. Ho to Heather K. Gerken (Oct. 13, 2022), accessible at David Lat, *Is Yale Law School Turning Over a New Leaf?*, ORIGINAL JURISDICTION (Oct. 20, 2022), https://davidlat.substack.com/api/v1/file/f9c39ba7-83d3-4bb6-8642-00254153206c.pdf.

48 Alder, *supra* note 42 ("Ho's initial boycott of Yale clerks, which Branch later joined, has received some pushback from lawyers and academics, some of whom argued it punishes students for grievances with the school administration. One fellow federal judge called the boycott 'ugly.'").

49 *See* Valerie Richardson, *Two Judges Extend Boycott on Yale Clerks to Stanford After Students Shout Down Conservative Jurist*, THE WASHINGTON TIMES (Apr. 3, 2023), https://www.washingtontimes.com/news/2023/apr/3/james-ho-elizabeth-branch-boycott-stanford-law-stu/ (quoting Judge Ho as stating that viewpoint discrimination is "rampant" at elite law schools and that "unless we take action to solve the problem—discrimination, not disruption—all we're doing is giving speeches.").

V. CONCLUSION

Titles, like other forms of what Confucius called *li* and what Adams described as "signs," are meant to communicate to observers of the process, and to the judges themselves, that their role is tied to the legal process. Further, by communicating the role to the judge, the titles are also meant to evoke the qualities necessary for the role in order for the passion for recognition to be exercised and, hopefully, satisfied by the exercise of the public office for the public benefit.

Certainly this may lead to titles "getting into the heads" of some individual judges, but this danger is counterpoised with an opposite danger - that the judge will see their role too "realistically" and overtly political. In this way, a title, when used correctly, not only reminds the public that a judicial determination has a quality of *law* rather than *arbitrariness*, but it also reminds the judge that their determinations are *legal* rather than *political* and that judges operate within the drama of the legal process, rather than operating to effectuate change in the wider, political fabric. The point of titles, then, is to persuade all the participants of the legal process of the authority of the law and that the legal drama—the legal "play"—is, indeed, the thing.