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JUSTICE AND THE RULE OF LAW AT 250

As the United States marks 250 years of independence, a Duke University roundtable examines the rule of law, constitutional and civil rights, and how the nation's founding principles continue to shape debates about justice today.

With Kerry Abrams, Benjamin F. Chavis Jr., Jeanette Doran, Thavolia Glymph & John Hood

The United States' 250th anniversary has sparked conversations across the country about the nation's founding ideals and their continuing relevance to constitutional government and the rule of law. Those conversations are part of *We the People*, a Duke University-wide initiative developed in partnership with the City of Durham. Through public programs, exhibitions, and discussions, the initiative examines the country's complex history and evolving constitutional tradition.

This roundtable — "Justice and the Rule of Law: The Case of Constitutional Rights and Judicial Interpretation" — was a roundtable convened by Duke's Office of the Provost and the Provost's Initiative on Pluralism, Free Inquiry, and Belonging as part of that broader effort. Moderated by **KERRY ABRAMS**, James B. Duke and Benjamin N. Duke Dean of Duke University School of Law and Distinguished Professor of Law, the discussion brought together **BENJAMIN F. CHAVIS JR.**, fellow for Divinity and Interdisciplinary Studies at Duke Divinity School; **JEANETTE DORAN**, I. Beverly Lake Jr. Chair in Constitutional Studies and senior counsel at the John Locke Foundation; **THAVOLIA GLYMPH**, Peabody Family Distinguished Professor of History at Duke; and **JOHN HOOD**, president of the John William Pope Foundation.

What follows is an edited transcript of the conversation.

KERRY ABRAMS: This panel has an interesting title: "Justice and the Rule of Law: The Case of Constitutional

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Rights and Judicial Interpretation." I thought we could start with the concept of the rule of law. That is a concept people talk about a lot, but I'm not sure that we always clearly define what we mean by it.

One possibility is the definition offered by the World Justice Project, which rates the strength of the rule of law in countries worldwide. According to its definition on its website, "The rule of law is a durable system of laws, institutions, norms, and community commitment that delivers four universal principles: accountability, just laws, open government, and accessible and impartial justice."[1]

My first question to the panelists is: Does that definition resonate with you? What do you think of when you hear the phrase "the rule of law"?

John, let's start with you.

JOHN HOOD: I do think that definition captures what I imagine the rule of law is and what most people probably think of it as being. But how you get to it, sustain it, and expand it over time to reach universality is a question embedded in history. A useful way to consider the rule of law is that we know what it isn't: It isn't some monarch, self-appointed or inherited, who has absolute power and is not constrained by procedural safeguards.

THAVOLIA GLYMPH: The rule of law suggests the foundation for civic strength. There has to be a body of law that helps people to understand who they are, where they are, how they can and cannot behave, and what rules govern them.

When this country was framed during the process of revolution and then the process of creating a new government, I think there was a strong urge to create a nation where the rule of law was fundamental. I also think that the framers understood how difficult a task that was. So, when I think about the rule of law, I think about a body of legal doctrine that helps us build and maintain a democracy. We've been working really hard to give more and more meaning to the notions that were so fundamental in 1776 and 1783.

> "The rule of law [encompasses] the very concepts that constrain government and that are born of the natural rights of man to life and liberty . . . a commitment to our inherent rights as human beings."
>
> *– Jeanette Doran*

BENJAMIN F. CHAVIS JR.: I think the definition that you gave presupposes a universality that all people in all jurisdictions could commonly agree upon. The question is: How do we move toward perfecting the rule of law?

I don't think any of us would say that our judicial system, our legal system, is perfect. But if you compare the United States today with other nations and judicial systems, it would rank very high. In 1948, when the Universal Declaration of Human Rights was established by the United Nations, there was this concept of globality, the global reach of having a universal set of rules — laws that would apply to all of humanity.

My participation on this panel is not as a lawyer — rather, some could say, as a rulebreaker. I've been arrested 67 times because of my involvement in the Civil Rights Movement. I was always adjudicated not guilty or had charges dropped. I'm probably the only one in North Carolina history to serve time in jail for driving too slowly. Or because my signal light wasn't blinking fast enough for the patrol officer. But I must say, as I reflect back over the last 60 to 65 years, I've seen the rule of law favor those in power, but sometimes I've seen it favor those not in power. I don't think the quest for egalitarianism is a bad goal. But as we approach it, we should never suspend the recognition that there's always going to be some kind of injustice — racial, environmental, etc. And so people come to a point where they say, "I think this is as far as we can get," rather than continuing to push for what I think the world deserves, what humanity deserves.

Because of my career in civil rights and racial justice, I believe there's only one race, and that's the human race. I think we're all part of one human family. And I thank the provost's initiative because before you get to belonging and knowledge, you have to deal with the equality of humanity — the oneness of humanity.

JEANETTE DORAN: The four-point definition that the World Justice Project throws out — I think that's a really good starting point, but I don't think it encompasses everything.

When we talk about the rule of law, we're talking about the very concepts that constrain government and that are born of the natural rights of man to life and liberty. And we should view the rule of law not as a document and not as a theory but as a commitment to our inherent rights as human beings. I see

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the rule of law really as the constraint of government to allow each of us at least the opportunity to life, liberty, property, prosperity, joy, happiness, and all of those good things.

ABRAMS: Thank you all for those very helpful opening remarks. I like the idea of the rule of law as a floor, a bare minimum. That might take us to the part of the title of our panel about justice.

I could imagine a legal system in which everyone knows what the law is. It's clear; it's transparent. But maybe that monarch is completely in charge? Or maybe we don't feel that we have reached a system that is both legal and just?

So my next question for all of you is: What makes a law just? What does justice mean within this context of having a rule of law?

CHAVIS: Well, a very simple answer is: A law is just to the extent to which that law is universally applied, enforced, and respected.

GLYMPH: And I would add, universal in its construction — that it's constructed in a way to ensure justice for everyone. You think back to the beginning: "We hold these truths to be self-evident." Well, they may be self-evident, but it takes more than that to make it real on the ground.

HOOD: They're not self-effectuating.

GLYMPH: That's right.

HOOD: Justice occurs when people in like situations are treated in like ways. It doesn't mean that everyone's going to be treated the same way, whether we're talking about a dispute in the courts or some sort of policy we're enacting at the local, state, or federal level.

Some people will be affected differently by that policy, even if it's just because they're in different situations. Some people may have committed an offense against the criminal law and others are falsely accused. Some may receive benefits from a government action, and others may have more costs than benefits, even if society as a whole has more benefits than costs. In none of these cases would there necessarily be injustice, but the application is going to differ according to the circumstances that you find yourself in.

The rule of law should also be predictable: People should have roughly similar access to justice and to appeal. Yet we also know that some amount of discretion on the part of a judge, lawmaker, or regulator is also necessary.

There's a bit of a balance between everything being perfectly predictable — everything clearly set out in law, everything written down, and I can look it up before I get to the hearing — versus some discretion on the part of people who are in a position to apply a law or adjudicate a dispute.

DORAN: I think there's broad consensus that a just law requires a certain equality of application. One of the things that I haven't heard discussed as much is the importance of transparency so that we have confidence that the laws have come to us not as a mechanism to advance a particular special interest but that they're designed for the broader public good and that they will be applied equally for the broad public.

That kind of light and transparency and openness is, I think, an important aspect of what constitutes a just law so that, again, we know that we're dealing with laws of consensus born from the appropriate legal processes and not decrees from the sovereign. ▸

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GLYMPH: I also wonder how we make laws that do all of that — that permit both transparency and embrace everyone. There's a break between what we see and assert and what people experience. And in terms of transparency, I wonder what we would say to people who encounter the law but have no way to know the law.

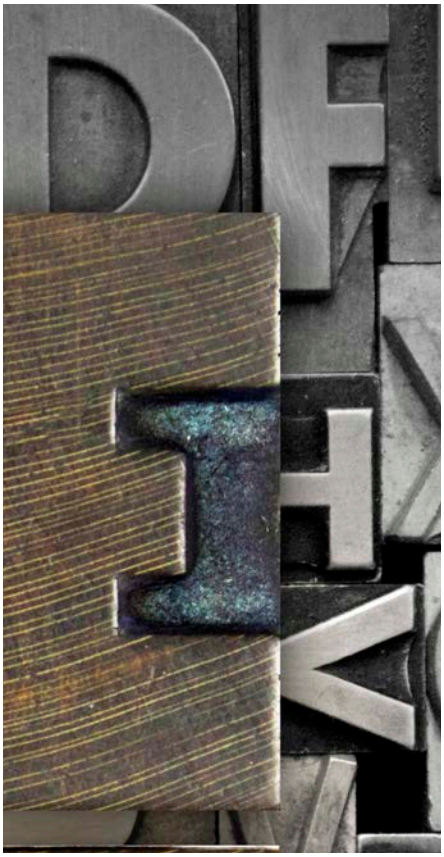
Part of the justness of law comes from understanding it. We are all very educated in this room, and if we have a problem, we can Google it or use whatever resources we have to find an attorney to answer a legal question.

In my academic life, I encounter people who have to figure out what the law is in a very disadvantaged way. This is the law — but how do you access it? How do you access the courts and the judges? That's a very important part of your point about transparency — that it's not transparent to all of us.

CHAVIS: I think transparency's a two-way street. How does the law look compared to the people? I think that's where the infringement of equality takes place. But I agree that's something we should seek: total transparency.

And if I could just make a point to bring it to today: If you look at Congress — who are supposed to be the lawmakers — the Supreme Court interpreting the laws, and the executive branch to execute the law, it's kind of hard to find those lines of division where transparency is totally exposed.

ABRAMS: **This panel is part of a series commemorating the founding and the Declaration of Independence, so it's a bit strange to have a conversation about the rule of law centered on marking a moment in which the founding members of this country broke from the existing ruler and rule of law and said, "We don't think this law is legitimate and we're creating our own new system." Let's put the Declaration of Independence into this rule-of-law conversation and think about what people were doing in taking that action. What values from the Declaration have made this country what it is?**



HOOD: You bring up a fascinating potential tension. Though of course the patriots thought they were standing up for and executing the rule of law, the Tories — the loyalists — also thought they were standing up for the rule of law.

The Declaration of Independence wasn't just a theoretical, abstract discussion of what government ought to be. It was a list of complaints: "Here's what the king did, and he did this too, and by the way he did this too." One of the complaints was actually about North Carolina. It had to do with what was then called foreign attachment. Basically if you were living in the province of North Carolina and you had a legal dispute, you could go to court and adjudicate it.

But what if the person who owned the property in question, or was involved in the enterprise that injured you, lived in England? The traditional rule was that person had to come to North Carolina where the offense occurred or send someone to represent him there. And if no one showed up, in theory that person's property could be attached and ultimately confiscated as compensation for the injury.

The landlords in England didn't like this very much. They leaned on the royal governor to stop this. "We don't want to have to go to court," they said. "We're not coming to America, and you can't take our property."

North Carolinians were understandably outraged. They thought they were not being treated equally: "We live in

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North Carolina, you live in England, but we are both subject to the same crown. We're supposed to have the same rights. You have the right to have a dispute adjudicated in your neck of the woods. We have an equal right to do that here."

The royal governor disagreed. He vetoed the bill to authorize the courts and, for three years, North Carolina basically had no judges. And in the Declaration of Independence there is a specific complaint that the king has denied us the administration of justice — referring to that North Carolina case where the colonists insisted they did not have equal access to the courts and the rule of law. That was one of the justifications for declaring independence, not as a statement *against* law, *against* lawful government, but as a statement *for* it — to try to accomplish it, to redress what they considered to be an obvious and egregious violation of the rule of law.

DORAN: When we think of the Declaration of Independence, one of the grievances that most stands out in my memory, and this has been percolating through my career since I started with the Federal Public Defender's Office, is that we were really riled up about not having juries — that the crown had abused its discretion in denying us our well-established right to jury trials. That same complaint continues today when we see coercive indictments, where we've got impoverished criminal defendants who are overcharged in order to coerce a plea. We've got complaints continuing in civil matters with arbitration clauses and people on the ground really being denied those legal options.

It's the 2026 version of the 1776 complaints about having a right on paper to a trial by jury, but in reality not getting that. That's just to name one of the many grievances from the Declaration of Independence. It happened to be one that was particularly noteworthy for North Carolinians.

> "I'm obsessed with the greatness of the Declaration and the Constitution – and I think this is somewhat controversial – as documents that allow for change in the interest of the original goal."
> *– Thavolia Glymph*

GLYMPH: When I think of the Declaration of Independence, I think of the consent of the governed. And at that moment, there was a great desire to make that real somehow — that unlike in England, where there was the notion that rule was by divine law, so it passed from king to king to queen. Here, there was an effort to jettison that.

At the same time, they still at that moment built a system in which not everyone had the right to a trial by jury. I keep going back to this because I'm obsessed with the greatness of the Declaration and the Constitution — and I think this is somewhat controversial — as documents that allow for change in the interest of the original goal. The original goal was the consent of the governed. It doesn't happen immediately: Even white men without property couldn't vote. I think about those kinds of issues as constraints on the one hand but also as avenues for growth, for change. Since then, we've been striving continuously to build a nation based on the consent of the governed, and that's the beauty of what we have to start with. And we keep working with it.

DORAN: I think juries terrify government because they operate — or have the potential to operate — as a distributive veto. Jurors walk into that deliberation room, that door closes, and you've got 12 people who can say to the government: "Not him, not her, not in my name." That is a tremendous amount of power to give 12 random people from the street. That has, for the last 250 years, terrified government.

And that's also why it has been so important to us as a nation, going back to the very long list of grievances in the Declaration of Independence.

HOOD: May I pick up a point about the nature of the people who were writing the Constitution and Declaration at that time? We're very familiar with the evocative — and I think entirely appropriate — phrase of Dr. King about the promissory note.[2]

Another analogy captures at least what some of the framers were doing at the time: They were consciously introducing termites into a structure. At least some of them knew that the promises made that were not initially kept would ultimately create a demand for more.

More people would demand rights, the slave power would be weakened, the power of other kinds of interest groups would be weakened. I think some of them knew exactly what they were doing. They knew the termites would eventually eat through. And others figured out, either in that generation or two or three generations later, "Oh wait a minute — there's too many ▸

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termites here, we better do something radical," which of course is one way of thinking about the secessionists.

They cloaked their actions in defending the rule of law, but what they were really trying to say was we're dropping all the "all people created equal" stuff. That's another way of thinking about the founding era and how it interacts with some of these definitions of the rule of law.

Some of the people in question knew very well that these broad truths were not actually self-evident — that not everybody accepted them. They fully anticipated that the system they were creating would put pressure on that and develop over time.

CHAVIS: Fundamentally, the framers — the writers of the Declaration of Independence and of the Constitution — were slave owners. But at that time, slaves were considered property and were not considered full human beings.

Looking back at the 250th anniversary of the United States of America is a healthy thing to do. I would hope that we will not wait another 250 years to try to perfect the imperfection of what started. North Carolina has some great contributions — both positive and negative — to this period of time.

My great-great-great-great-grandfather was Reverend John Chavis from Granville County, North Carolina, the first Black Presbyterian minister in the young church in the United States. He fought in the Revolutionary War. He was an officer. How was he able to do that, as an African American? He was a landowner. Black landowners who fought against the king, fought in the Revolutionary War, a lot of them were from North Carolina.

But when it came time for the deliberations in Philadelphia, many Southern landowners said "no, they cannot participate." So a lot of people who fought and died for America's freedom were not allowed to participate in the framing of the Declaration of Independence or the Constitution. Frederick Douglass probably said it best. When he thought about July the Fourth, he thought about what our nation could have been, could be, and should be — not what it really was. In 2026, we celebrated July Fourth before the midterm elections.[3] And I want to know: Are we really going to come together?

> "You can't have the rule of law without a constitution that divides powers in ways that make it hard to abuse."
> *– John Hood*

I'm a minister. I believe that repentance is good for the heart and soul. I think the nation has an opportunity not only to reflect, but also to repent.

GLYMPH: I've been thinking about your analogy about termites. I think you're right in this respect — that the framers understood that some of what they put in the Constitution would be challenged. Because you can't say we're creating this nation based on freedom and democracy and then say we're not going to have a complete or full democracy. One example is the election of senators.

We take for granted today that we go to the polls and elect the senators from our state, but people could not do that originally. It took an amendment to the Constitution to make that possible. Ordinary people didn't vote directly for the president. I can see those little termites eating at the fabric. But at the same time, you have had these countervailing forces trying to take that fabric and make it stronger and weave it together again.

DORAN: That's a great visual. Many of the founding generation recognized that our natural rights are pre-political. They exist in us as a fundamental aspect of our humanity. They do not arise from the political state. But they also recognized at the founding that they didn't all agree on how that was playing out. The termites went in, and we have Article V as the pesticide for those termites. That's the amendment process. They were making up a lot as they went along.

HOOD: They were striking compromises. Even in the Declaration, there were compromises about the language. In the Constitution, there were compromises about the structure. And to be sure they didn't think the compromises would all stick or that they would solve the problems in the long run. Some said, "I'll go along with this for now, but some future set of leaders is going to redo this." Some of them wanted that, and some of them feared that.

DORAN: We have an amendment process, we have a whole new convention process, but there's no divorce clause if a state wants to leave the union.

I think that is an often-overlooked aspect of our commitment to this concept of the nation and the rule of law — the constraint of government power and the recognition that natural rights are pre-political.

GLYMPH: Well, it does make it a problem when the Declaration of Independence

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declares that if you become unhappy, just leave.

DORAN: Oh, there's definitely tension.

ABRAMS: **What about the role of the rights that are enumerated in the Constitution?**

I'm thinking about this as a chronological set of events. You have the Declaration. You have war. You have the initial Constitution without the Bill of Rights. Then you get the Bill of Rights. Then you have another war years later, and you have the Reconstruction Amendments, which add more rights. Are the rights necessary for the Constitution to be just and truly create a rule of law?

HOOD: It is apparently my role to center our conversation in our state, so let me do this again.

We get the Constitutional Convention in Philadelphia in the very hot summer of 1787. Then the sellers of the deal — the Federalists — go out and start taking on the complicated political problems of getting these things ratified in the various provinces that became states. They get to North Carolina, and it's the first time they fail.

North Carolina has a convention in Hillsborough. Delegates go there. There's a lot of resistance, and the main resistance is: "We have rights specified in our state constitution. Massachusetts has rights in theirs, Virginia has rights in theirs. Why don't we have them in the U.S. Constitution? We don't trust this. We smell a rat. We're not going to go along." North Carolina was the first place that had a convention and said, "We're not going to ratify." They didn't vote that they would never ratify; they just chose not to ratify. So we were not in the union in the 1788 presidential election.

I sometimes ask my students who North Carolina and Rhode Island voted for president in the first election. The answer is nobody, because neither of them was in the union at the time. They resisted and didn't want to come in until they knew there was going to be a Bill of Rights.

Alexander Hamilton and company argued: "You don't know how bad a Bill of Rights would be. We've created a structure with separation of powers, checks and balances, and constitutional limitations. If you start specifying rights — freedom of this, right to that — what that suggests is that if it's not listed, you don't have that right."

Their argument was that a Bill of Rights could actually limit your freedoms because if you make a list of rights, you're going to leave things off, and judges will say those things aren't rights.

Now, I don't think Hamilton actually meant that, but it was a clever argument. The way they solved it was the Ninth and Tenth amendments. The Ninth Amendment says, "Yes, we listed some rights, but there are others we didn't list." And the Tenth says, "Any power not given to the federal government goes to the states or the people." Those were designed to solve Hamilton's challenge. I think that was the right answer.

You can't have a just society — you cannot have the rule of law — without a constitution that spells things out and divides power in ways that make it hard to abuse. And you need the suspenders of protections — freedom of speech, freedom of religion, trial by jury — that even majorities can't take away. Those protections were necessary in order to genuinely have a just government. But again, at the time it wasn't universally accepted. And because some stubborn coots from North Carolina said, "We're ▸

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not coming in," James Madison began to devise the Bill of Rights.

CHAVIS: I agree with that. I don't think you can have the rule of law without rights. And that's why we call it the Civil Rights Movement.

We were asking the nation to respond back to that promissory note in the Declaration of Independence and the Constitution. But the Constitution grows. Those amendments still grow depending on the consent of a number of states.

This is another providential time not just to reflect but also to make sure that our rule of law ensures and protects the civil rights and human rights of all the people who live in the United States.

"This is another providential time not just to reflect but also to make sure that our rule of law ensures and protects the civil rights and human rights of all the people who live in the U.S."

– Benjamin F. Chavis Jr.

DORAN: I'm really moved by your observations and your comments.

The recognition of our natural rights is so fundamental. When state drafters got together in 1776, before we got to our constitution, we started with a Declaration of Rights that spelled out these basic rights like freedom of press and trial by jury. That was ratified the day before we got to our state constitution that established the architecture for state government.

We frontloaded it with a recognition and preservation of individual rights that existed before the creation of government. As a state, we said, "We are joining this undertaking but, before we really dive in, we're going to recognize at a minimum these rights."

And that was well before we got to the U.S. Constitution and the Bill of Rights.

It's one of the things that makes it so painful when we look through history — and we need to recognize that pain and not ignore it. We need to look at those periods of time when we have fallen grotesquely and unconscionably short of those promises. I think some of the genius of successful reformers and advocates is that they highlight the difference between the promise — the promissory note — and the actual goods that have been delivered.

HOOD: They identify where the termites have finally eaten through, and then they push. I'm going to stick with my analogy.

ABRAMS: **I'm going to have to get you a Terminix hat.**

I have one final question.

We've been talking about both the Declaration of Independence and the Constitution in pretty glowing terms — acknowledging the termites and the stubborn North Carolinians.

But we've also acknowledged a lot of shortcomings: lack of access to justice, unequal application of the law, and the fact that many of the people declaring rights were also slave owners. So how do we think about interpreting these documents when they were so fundamentally flawed from the beginning and written by a narrow group of people? How should judges or the Supreme Court today understand the Constitution given these limitations?

HOOD: Dr. Chavis said earlier that an imperfect rule of law is better than no rule of law. I think that's a reasonable way to think about interpreting a constitution written by people who in many cases were hypocrites. Some were abolitionists. Some even owned slaves while opposing slavery. But many others were hypocrites, and some had no principles at all. Still, it's better to have principles stated — even imperfectly — than none at all.

The intentions of lawmakers might be interesting and informative, but it's fraught with peril to attempt to guess — particularly generations removed from the people who wrote a law — to say "I know what that person meant." I think it is best for judges to stick with what people commonly understood those words and phrases to mean when they were enacted, recognizing that doesn't mean the results are good.

Judges may want to rewrite them or throw them out entirely, but that's not their role. That's a legislative role or a referendum where you ask the public. I don't think judges through judicial interpretation should update this to mean something different from what it meant at the time. A judge's job is to preserve their role and the separate roles of lawmakers to make policy and of the voters, ultimately, to decide what the Constitution says.

GLYMPH: When they said, "all men are created equal," I think they believed it. That doesn't negate the fact that they owned slaves. What it says is that they believed in equality but still allowed slavery for economic reasons.

So, when I think about judicial review and what the framers thought, I take them at their word, whether they

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believed it or not. If the document says, "all men are created equal," then segregation cannot be justified. If I were a judge, I would say that segregated schools violate the founding principles. I really have trouble trying to discern how judicial review needs to compensate for what they said or what they didn't say. I look to the documents.

I struggle with the idea that judges should only ask what the framers intended. I look at the documents themselves and the promises they make.

CHAVIS: Judicial review is necessary, even in its imperfection. From local courts to the U.S. Supreme Court, people have a right to appeal. But you don't appeal based on innocence. You appeal based on whether something was done wrong in the trial, provided your lawyer objected.

So everyone has the right to appeal, but not everyone has the right to be heard. The writ of certiorari is discretionary. And where there is discretion, in my view, there can also be bias. But I also think bias can be overwhelmed by the preponderance of the evidence.

We need good judgment. We don't have a universal way that judges are selected, but I am in favor of judicial review. It gives more chances for those who have experienced injustice to try to get justice.

KERRY ABRAMS is the James B. Duke and Benjamin N. Duke Dean of Duke Law School and Distinguished Professor of Law. A scholar of immigration, citizenship, family, and constitutional law, she previously served on the University of Virginia law faculty and as the vice provost for faculty affairs.

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JOHN HOOD is president of the John William Pope Foundation and serves on the board of the John Locke Foundation, which he helped found. A longtime syndicated columnist, he teaches at Duke's Sanford School of Public Policy.

DORAN: Following up on different aspects you all pointed out, we need to apply the law as written. If we don't like what's written, we amend the Constitution; we don't invite courts to rewrite it the way we wish it was.

I also think judicial review has a particular importance in our checks and balances system. What's the point of having checks and balances written into the system if we don't use them?

Where we draw the line — at what point does judicial interpretation become rewriting? — can be a gray area. But that doesn't mean we abandon the structure and simply have judges rewrite the Constitution to make it more contemporary or more modern.

We have the toolkit in Article V to make those changes. It's a slow, tedious, and complicated process, but it exists And we also have a lot to work with that's already in the Constitution — we just need to actually mean it.

1 World Justice Project, *What Is the Rule of Law?*, https://duke.is/world-justice-project-rule-of-law (last visited Aug. 3, 2026).

2 Martin Luther King, Jr., *I Have a Dream*, (Aug. 28, 1963), https://duke.is/I-have-a-dream (stating, "When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir.").

3 Frederick Douglass, *What to the Slave Is the Fourth of July?* (July 5, 1852), https://duke.is/what-to-the-slave-is-the-fourth-of-july (last visited Aug. 3, 2026).