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Justice Futures

Access to Justice and the Future of Justice Work

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The United States faces an access-to-justice crisis of extraordinary scale. Decades of efforts to respond demonstrate a robust track record of failure. Each year, Americans will experience 150 to 250 million new civil justice issues, many involving basic human needs like having a place to live, making a living, and caring for those who depend on them.[1] As many as 120 million of those problems will go unresolved, with consequences like eviction, homelessness, lost wages, separated families, and impaired health.[2] For many years in the United States, access to justice has been understood as access to courts and lawyers. Accordingly, access-to-justice efforts have focused on expanding access to lawyers by pushing for increased funding for civil legal aid, exhorting and incentivizing pro bono work, and advocating for a civil right to counsel.

Yet while the American legal profession has quadrupled in size over the past fifty years, all evidence suggests that this crisis has only deepened. The most recent study of poor people's civil justice experiences found that this group of Americans received legal help for less than 10 percent of their civil justice issues.[3] The estrangement of Americans from their own law is not just a problem of social welfare policy or justice service delivery; it is a failure of democracy. Without meaningful access to justice, it is impossible to achieve equal justice.

The access-to-justice crisis affects every group in society, entrenching poverty and inequality. Our collective failure to address this crisis fundamentally threatens core democratic principles. Investment in more lawyers and advances in technology have failed to stem the tide, which continues to overwhelm courts, legal aid

[1] Inst. for the Advancement of the Am. L. Sys. (IAALS) & The Hague Inst. for Innovation of L. (HiiL), *Justice Needs and Satisfaction in the United States of America* (2021), https://iaals.du.edu/sites/default/files/documents/publications/justice-needs-and-satisfaction-us.pdf (last accessed Aug. 7, 2023) [hereinafter IAALS & HiiL]; Rebecca L. Sandefur & James Teufel, *Assessing America's Access to Civil Justice Crisis*, 11 U.C. Irvine L. Rev. 753 (2020).

[2] IAALS, *supra* note 1.

[3] L. Serv. Corp., *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans* (2022), https://justicegap.lsc.gov/resource/2022-justice-gap-report/ (last accessed Aug. 7, 2023).

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providers, and millions of everyday people with civil justice needs. The crisis is seemingly intractable.

While the crisis deepens, jurisdictions explore ways to re-regulate the delivery of legal services. Often justified by – though not necessarily motivated by – seeking to increase access to justice, reform projects follow two routes. One removes restrictions on who and what can practice law. The other permits people who are not lawyers and organizations that are not law firms to control or profit from law practice. The first route directly expands sources of meaningful legal assistance by increasing both the scale of the justice workforce and the scope of what justice workers are authorized to do. The impact of the second route would be indirect: Outside investment would permit law firms to expand into technology and take advantage of economies of scale to produce commodified legal services at reduced cost to consumers. Existing empirical evidence supports the first approach: Lawyerless legal services can and do expand access to justice. Evidence on the second is mixed at best.

These findings should inform our choice of strategies if the goal is actually to increase access to justice. The true good at stake is enabling poor and otherwise excluded people to use their rights under the law to act on problems that entrench their poverty and exclusion. Effective reform projects should begin with this end in mind. And they should design interventions based on what the evidence suggests will be effective in achieving it. Imagining justice futures, or a reality in which ordinary people have routine and meaningful access to justice, requires fundamentally reimagining the future of justice work.

This chapter outlines our approach to effective reform – one that responds to the call for new interventions by turning the conventional approach on its head. We start not with lawyers or courts but with ordinary people and the events in their lives that the civil law constitutes as "justiciable," or legally actionable and governed by authoritative legal norms.[4] In Section 1.1, we discuss what research teaches about peoples' legal needs and how they seek to resolve legal issues. Section 1.2 explains why traditional lawyer-centric models of legal services delivery fail. Section 1.3 offers examples of existing lawyerless access-to-justice interventions that meet people where they are. Section 1.4 calls for new research into effective access-to-justice solutions.

We highlight the need to toss out past orthodoxy as a guide for reform, and adopt approaches grounded in the growing body of empirical evidence about people's justice experiences and effective solutions to justice problems. And, most

[4] *See, for example*, Hazel Genn & Sarah Beinart, Paths to Justice: What People Do and Think about Going to Law (1999); Org. Econ. Cooperation & Dev. (OECD), *OECD Framework and Good Practice Principles for People-Centred Justice* (2021), https://www.oecd-ilibrary.org/governance/oecd-framework-and-good-practice-principles-for-people-centred-justice_cdc3bde7-en (last accessed Aug. 8, 2023).

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importantly, we begin with the end – access to justice – in mind. Regulatory reform is simply one means to that end.

1.1 BEGIN WITH THE END IN MIND: REDEFINING ACCESS TO JUSTICE

The past two decades have seen an explosion of empirical research around the world that is transforming the way that access to justice is understood. The centerpiece is a wide range of "legal needs studies" from across the globe.[5] The central method of this work is population surveys in which ordinary people are asked about concrete events in their lives that are justiciable, or that have civil legal aspects or raise civil legal issues. In this people-centered method of understanding public experience, surveyed people do not need to understand the legal aspects of their issues at all. They simply need to report on whether they have encountered specific circumstances, such as an employer not paying them overtime pay; being one or more months behind on paying their rent or mortgage; or taking responsibility for the care of a grandchild. They do not need to diagnose, for example, that they are experiencing wage theft; that they are in breach of contract and at risk of eviction or foreclosure; or that they will need legal guardianship or power of attorney to take basic actions like enrolling a grandchild in school or getting them onto health insurance. In these surveys, people are typically asked how they responded to the situation, including where they sought help (if at all) and whether and how the problem was resolved. Some surveys also ask about "problem characterization" – how people understand their justiciable issues – for example as legal, moral, personal, or bureaucratic problems, or simply as bad luck.[6] This research has produced a range of transformative discoveries.

A key finding of this research is that civil justice problems are common and widespread, and affect every group in every studied society.[7] These problems fall in core areas of life and threaten basic human needs, like having a place to live, making a living, getting access to medical care, and caring for dependent children and adults. Justice issues are often clustered or cascading. For example, job loss can lead to application for unemployment insurance. Lost income from lost employment can lead to inability to pay rent and routine debts, resulting in other justice issues such as

[5] OECD & Open Soc'y Found., *Legal Needs Surveys and Access to Justice* (2019), https://www.oecd-ilibrary.org/governance/legal-needs-surveys-and-access-to-justice_g2g9a36c-en (last accessed Aug. 8, 2023).

[6] Pascoe Pleasence et al., *What Really Drives Advice Seeking Behaviour? Looking beyond the Subject of Legal Disputes*, 1 Oñati Socio-Legal Series 1 (2011).

[7] For the United States, see IAALS & HiiL, *supra* note 1; Rebecca L. Sandefur, *What We Know and Need to Know about the Legal Needs of the Public*, 67 S.C. L. Rev. 443 (2016). Globally, see World Just. Project, *Global Insights on Access to Justice* (2019), http://data.worldjusticeproject.org/accesstojustice (last accessed Aug. 9, 2023).

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eviction and debt collection lawsuits.[8] Justice issues often have life-altering collateral consequences. For example, a study based on data collected shortly before the onset of the COVID-19 pandemic estimates that in 2019, 19.5 million Americans' civil justice problems resulted in impaired health and 18 million led to lost employment, income, or housing.[9]

When facing these issues, people show enormous creativity in their search for solutions and assistance. They reach widely, yet they rarely reach out to lawyers or courts.[10] Turning to law is only a small part of a richly textured terrain of experience with civil justice problems. People simply attempt to handle many of these issues on their own. Indeed, at times they do nothing at all to try to resolve some of the more significant civil justice issues.[11] And when they do seek help, their first and sometimes only stop is friends and family. They also reach out to a range of sources in their communities and beyond, such as religious and community organizations, physicians, or membership organizations like the AARP or trade unions.

The central reason why people seek assistance for legal issues outside the formal law is that they do not understand their issues to be legal, and thus do not see them as proper objects of legal action or help. Indeed, one study in the United States finds that the most common way in which people understand the justiciable events of their lives is as "bad luck" or "God's will for me."[12] Almost always, when people seek assistance with legal issues, they seek help from people who are not authorized to offer legal advice. All U.S. states prohibit the "unauthorized practice of law" (UPL) by people who are not licensed, and most actually criminalize it.[13] This inability to access meaningful help is a central reason that over 120 million civil justice problems go unresolved in the United States each year.[14] While the United States is not unique in these prohibitions, it affords lawyers a more robust and punitive monopoly on the law than is granted to lawyers in many other contexts, restricting not only rights of appearance but even the ability to offer legal advice. And, as we noted above, it in many instances criminalizes UPL.[15]

[8] Pascoe Pleasence et al., *Multiple Justiciable Problems: Common Clusters and Their Social and Demographic Indicators*, 1 J. Empirical Legal Stud. 301 (2004).

[9] Sandefur & Teufel, *supra* note 1.

[10] Sandefur, *supra* note 7.

[11] Genn & Beinart, *supra* note 4; Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, *in* Transforming Lives: Law and Social Process 112 (Pascoe Pleasence et al. eds., 2007).

[12] Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study* (2014), https://www.ssrn.com/abstract=2478040 (last accessed Aug. 8, 2023); Sandefur, *supra* note 7.

[13] Nat'l Ctr. for Access to Just., *Working with Your Hands Tied behind Your Back: Non-Lawyer Perspectives on Legal Empowerment* (2021), https://ncaj.org/working-your-hands-tied-behind-your-back (last accessed Aug. 7, 2023).

[14] IAALS & HiiL, *supra* note 1.

[15] Laurel Terry, *Putting the Legal Profession's Monopoly on the Practice of Law in a Global Context*, 82 Fordham L. Rev. 2903 (2013).

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But while justice issues are widespread and many people suffer from the lack of access to meaningful support, such issues and their consequences do not fall equally across the population. Poor people and people of color are more likely to experience civil justice problems than white people and people of higher incomes, and they are also more likely to experience negative impacts of those problems, such as lost wages or housing.[16] These dynamics entrench and expand existing inequalities, and calcify the exclusion of vulnerable and marginalized groups from law and justice.[17] In a context like the United States, emerging solutions – such as websites and software that may assist people in learning about or using the law – are difficult for people to find. They also require technical literacy, hardware, and broadband access that many low-income and rural people may not have.[18] Using these solutions also often requires both reading proficiency and English-language literacy that many people in a diverse polity simply do not have.[19]

Inequalities in both exposure to justice problems and the ability to act on them are even more richly textured than this review implies.[20] In some contexts, for example, Jordan, gender is a critical line of division in the experience of a wide range of civil justice problems, reflecting women's lesser social power and greater vulnerability.[21] In contexts like the United States, women are much more likely to be victims of domestic violence, and therefore to need access to orders of protection and, often, legal supports for child custody and income maintenance. To take another example, American jurisdictions offer tremendous linguistic diversity: For example, within the United States, Alaska recognizes twenty different indigenous languages spoken throughout the state[22] while over 200 distinct languages are

[16] Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 Ann. Rev. Sociol. 339 (2008).

[17] *Id.*

[18] Rebecca L. Sandefur, *Legal Tech for Non-Lawyers: Report of the Survey of U.S. Legal Technologies*, Am. Bar Found. (2019), https://www.americanbarfoundation.org/wp-content/uploads/2023/04/report_us_digital_legal_tech_for_nonlawyers.pdf (last accessed Feb. 24, 2025); Tanina Rostain, *Techno-Optimism and Access to the Legal System*, 148 Daedalus 93 (2019).

[19] Margaret Hagan, *The Supply and Demand of Legal Help on the Internet*, *in* Legal Tech and the Future of Civil Justice 199 (David Freeman Engstrom ed., 2023), https://www.cambridge.org/core/product/identifier/9781009255301%23CN-bp-9/type/book_part (last accessed Feb. 24, 2025); Rostain, *supra* note 18; Rebecca L. Sandefur, *Access to What*, 148 Daedalus 49 (2019).

[20] Pascoe Pleasence & Nigel J. Balmer, *Justice & the Capability to Function in Society*, 148 Daedalus 140 (2019).

[21] Paul Scott Prettitore, *The Justice Gap and Poverty: Learning from Household Surveys in Jordan and Colombia*, World Bank (2014).

[22] *Alaska Native Language Preservation & Advisory Council*, Alaska Dep't of Comm. (2023), https://www.commerce.alaska.gov/web/dcra/AKNativeLanguagePreservationAdvisoryCouncil/Languages.aspx#:~:text=The%20two%20groupings%20include%20Inuit,and%20documented%20Alaska's%20Native%20languages (last accessed Mar. 23, 2024).

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spoken in the state of California.[23] Yet the language of the courts, for example, is often English-only.

Both who one is and where one is shape legal needs and capabilities. About one in five Americans lives in a rural area,[24] which presents distinctive challenges for access to justice. Lawyers are often not present in these communities, and challenges of distance and transportation may make it difficult for people to get to those lawyers who are available as well as to courthouses.[25] Providers in rural communities face distinctive pressures that arise from the critical importance of personal relationships and place in these small communities: "[P]eople may not wish to jeopardize important interpersonal relationships with family, friends, or business associates by assertive advocacy for a client, potential client's – or, indeed, their own – needs."[26]

Finally, different groups have different beliefs about the law and whether it is open, accessible, and fair for people like themselves. There are documented differences in the willingness of different groups of people to invoke or engage with the law.[27] Relationships between these beliefs and people's location on various axes of difference such as race, gender, income, or age are not straightforward. For example, social class shapes people's willingness to assert rights in hypothetical police encounters.[28] But the patterns are not that simple. To take a different example, a study of low-income African American women found that the behavior of calling the police reflects the dynamics of specific situations, such as whether they involve domestic violence, a child's addiction or mental health, or neighborhood illegal drug sales.[29] In contrast, a different study of poor women of color facing justice problems finds them expressing a sense of entitlement to help from the law and legal

[23] *The Most Spoken Languages in California*, World Atlas (2023), https://www.worldatlas.com/articles/the-most-spoken-languages-in-california.html (last accessed Aug. 9, 2023).

[24] America Counts Staff, U.S. Census Bureau, *One in Five Americans Live in Rural Areas*, Census.gov (Aug. 9, 2017), https://www.census.gov/library/stories/2017/08/rural-america.html (last accessed Feb. 24, 2025).

[25] Lisa R. Pruitt et al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 Harv. L. & Pol'y Rev. 15 (2018).

[26] Rebecca L. Sandefur & Matthew Burnett, *All Together Now: Building a Shared Access to Justice Research Framework for Theoretical Insight and Actionable Intelligence*, Oñati Socio-L. Ser. 1330, 1342 (July 28, 2024), https://opo.iisj.net/index.php/osls/article/view/1437 (last accessed Feb. 24, 2025); *see also* Robert C. Ellickson, Order without Law: How Neighbors Settle Disputes (1991); David M. Engel, *The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community*, 18 Law & Soc'y Rev. 551 (1984); Pruitt et al., *supra* note 25; Michele Statz, *On Shared Suffering: Judicial Intimacy in the Rural Northland*, 55 Law & Soc'y Rev. 5 (2021).

[27] Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 Iowa L. Rev. 1234 (2016).

[28] Kathryne M. Young & Katie R. Billings, *Legal Consciousness and Cultural Capital*, 54 Law & Soc'y Rev. 33 (2020).

[29] Monica C. Bell, *Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism*, 50 Law & Soc'y Rev. 314 (2016).

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professionals.[30] Intersectional experiences of disability, sexual identity, income, and race, among other factors, all interact to shape justice experiences.[31]

While our understanding of the ways in which people's identities, capabilities, and place shape their experience of justice is still developing, some clear findings emerge. One is that systematic inequalities in experience of the civil law can entrench or widen existing social and economic inequalities. Another is that people have a range of needs, beliefs, and capabilities that affect their ability and willingness to access, engage with, and use different kinds of services for legal issues. A third is that the contexts in which people live shape both their experience of justice issues and their willingness and ability to respond with different types of solutions. The design of effective solutions requires keeping all of these variables – and more, as these are only illustrations – in mind. Recognizing this, we should pursue a distributed approach, enabling and supporting locally designed and culturally responsive solutions that are evidence-based and outcome-focused.

1.2 JUST SOLUTIONS AND THE REIMAGINATION OF JUSTICE WORK

The first step in crafting effective solutions is an accurate understanding of the problem to be solved. Lawyer-centric models of legal services delivery have failed to meet critical needs because they fail to recognize and respond to people's experience of the law and how they respond (or do not respond) to justice issues. Lawyer-centric models of legal services regulation fail to create an environment that enables effective and responsive models of people-centered service delivery. The practice of law has been defined essentially as the work that lawyers do, and it is this current definition that guides the authorization of legal practice in most of the United States. The status quo reflects a history of American lawyers' attempts to gain control of legal practice. In the late nineteenth century, American lawyers, like English lawyers, held rights of appearance but little else.[32] By the middle of the twentieth century, American lawyers had successfully captured most of the tasks that today constitute the practice of law, including negotiation and legal advice.[33] They had also clawed back control of how legal services may be delivered so that membership organizations and other groups, from unions to automobile clubs, could no longer employ lawyers to serve their constituencies and members.[34]

[30] Diana Hernández, *"I'm Gonna Call My Lawyer:" Shifting Legal Consciousness at the Intersection of Inequality*, 51 Interdisc. L. Stud.: The Next Generation (Special Issue) 95 (2010).
[31] Kathryne M. Young & Katie R. Billings, *An Intersectional Examination of U.S. Civil Justice Problems*, 2023 Utah L. Rev. 487 (2023).
[32] Richard L. Abel, American Lawyers (1989).
[33] *Id.*
[34] Laurel Rigertas, *Lobbying and Litigating against "Legal Bootleggers" – The Role of the Organized Bar in the Expansion of the Courts' Inherent Powers in the Early Twentieth Century*, 46 Cal. W. L. Rev. 65 (2009).

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The capture of law by lawyers is not only a market monopoly but also a political capture that chills attempts to help people use their own law and relegates debate about solutions into narrow, unimaginative channels. What could be a thriving justice sector with a multiplicity of approaches to meeting people's justice needs where they are, through a variety of different kinds of service models, is instead a monolithic, money-seeking, and monopolistic guild that fails to meet even the basic justice needs of everyday Americans. Available evidence suggests that most complaints about UPL come not from aggrieved members of the public but rather from lawyers themselves.[35] By stopping people who are not lawyers from being able to assist, these complaints have been used as a tool to keep people from being *able* to take action on critical problems within the context of their rights, whether the issue is wage theft or environmental toxins.[36]

Attempts to make space for change have been largely lawyer-led and business-focused. For example, a marquee legal regulation event of the 1990s was the American Bar Association's dustup over multidisciplinary practice, one example of a model that would permit lawyers to share fees, profits, and investments with people who are not lawyers or organizations that are not lawyer-led. The traditionalists won that battle and continue to win. Since the 2000s, the rhetoric of change has been innovation, and again lawyer and business interests have crowded out meaningful access-to-justice reforms, arguing for outside investment in legal-services-producing organizations as a way to permit the kinds of capitalization that might allow for investments in technology, organizational growth, and economies of scale.[37] Evidence from jurisdictions where these kinds of "outside" investments are allowed is so far equivocal about impacts on access to justice; albeit, these experiments are in their early days.[38]

None of these activities, which focus on opening up who can make money from the practice of law, bear any necessary connection with the lives and needs of ordinary people who, in a democracy, are the final authors and true owners of the law. These attempts at reform by the legal profession reflect a long-standing pattern in how lawyers engage with justice. As the late Gary Bellow observed, lawyers, even passionate advocates for the poor and the otherwise disenfranchised, have had a

[35] Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 Fordham L. Rev. 2587 (2013).

[36] Rebecca L. Sandefur, *Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms*, 16 Stan. J. C.R. & C.L. 283 (2020).

[37] Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 Fordham Urb. L.J. 129 (2010); Gillian K. Hadfield, *The Cost of Law: Promoting Access to Justice through the (Un)Corporate Practice of Law*, 38 Int'l Rev. L. & Econ. 43 (2014).

[38] Rebecca L. Sandefur & Emily Denne, *Access to Justice and Legal Services Regulatory Reform*, 18 Ann. Rev. L. & Soc. Sci. 27 (2022); David Freeman Engstrom et al., *Legal Innovation after Reform: Evidence from Regulatory Change*, Deborah L. Rhode Center on the Legal Profession (Sept. 2022).

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strong tendency to design people's problems around the solutions that lawyers offer, rather than designing solutions around problems as people experience them.[39] By contrast, "just solutions," which are grounded in evidence and focused on the substantive outcomes achieved by people at the center of their own problems, decenter lawyers in an obvious way, privileging ordinary people's experiences and offering human alternatives in the form of other types of justice workers.[40] Perhaps this is why human examples of the "unauthorized practice of law" garner more opposition than law-practicing computer programs, which have already replaced much work that lawyers used to perform.

If the true goal is people being able to understand and engage with their own laws – access to justice – reform efforts should center that end, with the goal of creating just solutions. The evidence reviewed above makes clear that solutions designed around problems as people experience them would not be lawyer-centered; rather, they would be people-centered and designed to meet people where they are in order to address their everyday justice needs.

1.3 DISMANTLING BARRIERS TO EMPOWER EFFECTIVE JUSTICE WORK

An effective approach to regulating legal services for access to justice would change the terms of the conversation, dismantling conceptual, legal, and social barriers to justice work. The current model is such a robust failure that there is little point in tinkering with it around the edges; the magnitude of the problem requires wholesale change. The most basic need is to empower more people to provide more effective help. The current legal labor force is expensive to produce and maintain. It is also substantially less diverse than the people to whom it is supposed to be accountable. If we hope to make headway, it is imperative to reimagine fundamentally the future of justice work and the policy, program design, and implementation strategies required to realize justice futures.

American justice work has long been highly stratified. In the 1970s, lawyers were famously found to be divided into two "hemispheres" of roughly equal size, one serving personal clients and the other serving businesses and other large organizations.[41] The law schools, social backgrounds, and legal incomes of the lawyers working in each hemisphere were sharply different, with elite law schools,

[39] Gary Bellow, *Turning Solutions into Problems: The Legal Aid Experience*, 34 NLADA Briefcase 106 (1977).

[40] Matthew Burnett & Rebecca L. Sandefur, *Designing Just Solutions at Scale: Lawyerless Legal Services and Evidence-Based Regulation*, 19 Rev. Direito Público (2022), https://www.portaldeperiodicos.idp.edu.br/direitopublico/article/view/6604; Jeanne Charn, *Legal Services for All: Is the Profession Ready*, 42 Loy. L.A. L. Rev. 1021 (2008).

[41] John P. Heinz & Edward O. Laumann, Chicago Lawyers: The Social Structure of the Bar (1982).

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elite backgrounds, and high pay much more strongly represented in the business half of the bar and lower prestige law schools, working-class, immigrant, and ethnic minority backgrounds, and lower pay more strongly represented among lawyers working for people.[42] A follow-up study twenty years later found the profession even more unequal in pay, with continued differences in who had access to elite law positions.[43] That study also found that the size of the personal client sector had dwindled: A minority of lawyers were working for people; the vast majority were working for businesses and other large organizations.[44] Though lawyers today are more diverse in gender, race, ethnicity, and social class background than those of fifty years ago, the profession remains far less diverse than the people it serves.

The stratification of justice work extends out from lawyers. American lawyers have long had subsidiary occupations working under their supervision, most notably paralegals.[45] This is a classic strategy of professional control of work: keeping alternative providers subordinate to the main profession.[46] Regulatory reforms of recent years have included the expansion of independent paralegal occupations, permitting paraprofessionals to engage in limited practice outside the supervision of fully licensed attorneys. The regulatory models for these occupations parallel those for lawyers, requiring multiple years of higher education, certification, and licensing, all typically designed and administered by state bars to whom state supreme courts have often delegated their regulatory authority. These paraprofessional licensing models also often embrace discriminatory "character and fitness" requirements similar to those for lawyers, replicating and entrenching the same barriers to entry, particularly for groups that suffer from disproportionate criminal enforcement and despite a lack of evidence that these requirements have any bearing on ethical practice.

These highly credentialed paraprofessional law occupations have been slow to grow. The first such program in the twenty-first century, Washington State's Limited License Legal Technicians, never had more than forty active licensed practitioners.[47] A 2021 survey found fewer than eighty practitioners total around the country.[48] By 2022, the number of programs and practitioners across four states (Washington, Utah, Arizona, and Michigan) had grown to only 166.[49] Like lawyers, allied legal

[42] *Id.*
[43] John P. Heinz et al., Urban Lawyers: The New Social Structure of the Bar (2005).
[44] *Id.*
[45] Hilary Sommerlad et al., *Paralegals and the Casualisation of Legal Labour Markets*, *in* Lawyers in 21st-Century Societies (R. L. Abel et al. eds., 2022).
[46] Andrew Abbott, The System of Professions: An Essay on the Division of Expert Labor (1988).
[47] Sandefur & Denne, *supra* note 38.
[48] *Id.*
[49] IAALS, *The Landscape of Allied Legal Professional Programs in the United States* (2022), https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf (last accessed Aug. 7, 2023).

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professionals that are trained and certified in these traditional ways have difficulty scaling to meet the legal needs of a country of over 330 million people. And, as with lawyers, the many up-front barriers to entry into these paraprofessions may restrict access by those same groups currently locked out of the law.

Exceptions to these lawyer-centric models exist. Some have operated for many decades, yet rarely feature as examples of important access-to-justice solutions, in large part because they fall outside of these stratified norms and lawyer control. For example, the federal government permits individual representation by nonlawyers in a range of administrative hearings. In the context of both affirmative immigration filings and defensive cases, there are over 2,000 partially and fully accredited nonlawyer immigration representatives who represent clients in a wide range of complex matters, including in immigration court and before the Board of Immigration Appeals.[50] These justice workers are embedded in hundreds of nonprofit community and religious organizations across the country, authorized by the U.S. Executive Office for Immigration Review to offer legal advice and representation through nonlawyer staff and volunteers. Indeed, there exists a robust and well-coordinated network of nonprofit organizations that provide training and technical assistance to support these justice workers and programs. Similarly, the Social Security Administration clearly states that claimants have a right to representation in appealing determinations but does not require those representatives to be attorneys.[51] This is also true of other federal administrative agencies, ranging from the Veterans Administration to the Internal Revenue Service.

As discussed in Chapter 11,[52] another well-established yet underrecognized category of justice workers are Tribal lay advocates who work across the hundreds of Tribal courts in the United States, including as many as 300 trial courts and over 150 appellate courts.[53] They are required to meet the practice requirements of the tribes in which they practice, for example by taking a Tribal bar exam, and may handle both civil and criminal matters.[54] Tribal lay advocates are typically members of the same tribes in which they practice, which facilitates trust between providers and clients, and means that these advocates can offer critical cultural and linguistic expertise. For exactly these reasons, some legal aid providers serving Indian country

[50] Dep't of Just., *Recognized Organizations and Accredited Representatives Roster by State and City* (2023), https://www.justice.gov/eoir/recognized-organizations-and-accredited-representatives-roster-state-and-city (last accessed Aug. 9, 2023).

[51] *Your Right to Representation*, Soc. Sec. Admin (Sept. 2023), https://www.ssa.gov/pubs/EN-05-10075.pdf (last accessed Feb. 24, 2025).

[52] *See* Chapter 9 in this volume.

[53] Gregory D. Smith, *Native American Tribal Appellate Courts: Underestimated and Overlooked*, 19 J. App. Prac. & Process 25 (2018).

[54] Judith M. Stinson et al., *Trusting Tribal Courts: More Lawyers Is Not Always the Answer*, 14 L.J. Soc. Just. Ariz. St. U. 130 (2021).

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have enthusiastically embraced Tribal lay advocates to provide culturally and linguistically competent services to their clients.[55]

Justice workers also represent individuals in some state courts. For example, both Delaware and Texas allow nonlawyer justice workers to represent both landlords and tenants in eviction proceedings.[56] For decades, domestic violence has been an area where advocates have called for expanded roles for nonlawyer victim advocates.[57] In 2020, the Arizona Supreme Court issued an administrative order authorizing a Licensed Legal Advocate program that allows domestic violence advocates to provide legal advice and support, including orders of protection and other related family law issues.[58]

In addition to these more targeted interventions, two states – Utah and Alaska – have made far more sweeping reforms to empower justice workers. Utah launched the first, and currently only, legal services regulatory sandbox in the United States in 2020. The Utah sandbox allows entities to seek waivers of existing blanket UPL prohibitions in favor of assessing applicants' risk of harming consumers and monitoring the impact of admitted entities' work on consumers.[59] These potential harms include: "achiev[ing] an inaccurate or inappropriate legal result," "fail[ing] to exercise legal rights through ignorance or bad advice," and "purchas[ing] an unnecessary or inappropriate legal service."[60] Each entity's risk of exposing consumers to these three harms is assessed when they apply to the sandbox, and entities are classified on a scale from low to high risk to consumers. The risk assessment affects the intensity of monitoring by the regulator, specifically the frequency and scope of the data about consumer experience that approved entities must submit for review and analysis. Consumers' outcomes from legal services received in the sandbox are monitored in more or less real time. Analysis of the data is published in a monthly Activity Report that includes information about the activities of admitted entities and an assessment of evidence that an entity's work is causing any of the three consumer harms. So far, across over 70,000 services, the Utah Office of Legal Services Innovation has received fewer than 10 complaints related to the

[55] *Tribal Advocacy Incubator Project*, Mont. L. Serv. Ass'n, https://www.mtlsa.org/tribal-advocate-incubator-project (last accessed Aug. 7, 2023); Annamarie Johnson, *Nevada Legal Services Tribal Court Advocate Training Project*, Nev. Lawyer 32 (2011).

[56] Del. S. Ct. R. 57.1; Tex. R. Civ. P. 500.4.

[57] *See, for example*, Catherine Klein & Leslye Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801 (1993); Margaret F. Brown, *Domestic Violence Advocates' Exposure to Liability for Engaging in the Unauthorized Practice of Law*, 34 Colum. J.L. & Soc. Probs. 279, 294 (2001); Suzanne Schmitz, *Whats the Harm?: Rethinking the Role of Domestic Violence Advocates and the Unauthorized Practice of Law*, 10 Wm. & Mary J. Race Gender & Soc. Just. 295 (2004).

[58] Ariz. S. Ct., Admin. Order No. 2020-84.

[59] Burnett & Sandefur, *supra* note 40.

[60] Utah Off. of Legal Servs. Innovation, *Innovation Office Manual 2024* 2–3 (updated Feb. 20, 2024), https://utahinnovationoffice.org/wp-content/uploads/2024/02/Innovation-Office-Manual.pdf (last accessed Feb. 24, 2025).

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three harms, all of which have been investigated and resolved satisfactorily from the perspective of both the affected consumer and the regulator.[61] In the Utah sandbox, nonprofits currently engage justice workers to help the public with a range of civil justice issues, including medical debt, domestic violence protection orders, and expungement. They also deploy innovative models such as embedding domestic violence legal advocates within municipal and county law enforcement and government agencies.

In Alaska, the Supreme Court last year was the first in the country to authorize a UPL waiver that allows Community Justice Workers trained and supervised by Alaska Legal Services Corporation (ALSC) to provide limited-scope legal advice and representation without a law license.[62] As part of their training, each justice worker must handle a case under the supervision of an ALSC attorney. Currently, over 400 Community Justice Workers are at work or in training, helping their neighbors in over 40 communities across the vast and rural state, most of which are not connected by roads.[63] Hundreds of cases have been handled by Community Justice Workers, the majority of whom work in remote Alaska Native communities, where there are no lawyers. The program currently boasts a 100 percent client success rate.

As the examples from immigration, federal benefits, and Tribal justice show, justice workers are not new. At the same time, the recent sweeping reforms to UPL rules that now allow justice workers to serve low-income and marginalized communities constitute profound changes in the landscape of justice work. The evidence from both the United States and other countries is clear. Justice workers who have not attended law school and are not licensed attorneys can be competent and effective across a wide range of justice issues that people face, both inside courts and other fora and upstream in the development of people's justice issues. Research shows that justice workers do not increase consumer harm; in fact, they bring other critical strengths and skills uncommon among lawyers, including community trust, linguistic expertise, and cultural competency.[64] When justice workers are available, people go to them for help.[65] And in jurisdictions where they are permitted, they show themselves capable of scaling. For example, the United Kingdom has for over seventy years had a network of Citizens Advice bureaus, where trained community volunteers assist people in understanding and using the law; these now exist in

[61] Utah Off. of Legal Servs. Innovation, *Activity Report: March 2023* (Apr. 20, 2023), https://utahinnovationoffice.org/wp-content/uploads/2023/05/2023.3-Public-Report.pdf (last accessed Feb. 24, 2025).

[62] S. C. of Alaska, Order No. 1994 (2022), https://www.alsc-law.org/wp-content/uploads/2022/12/sco1994.pdf (last accessed Feb. 24, 2025) (adopting Alaska Bar Rule 43.5).

[63] Alaska L. Serv. Corp., *About Alaska Bar Rule 43.5*, https://www.alsc-law.org/wp-content/uploads/2022/12/Alaska-Bar-Rule-43.5.pdf (last accessed Mar. 29, 2024).

[64] IAALS, *supra* note 49; Sandefur, *supra* note 36.

[65] Rebecca L. Sandefur, *The Fulcrum Point of Equal Access to Justice: Legal and Nonlegal Institutions of Remedy*, 42 Loy. L.A. L. Rev. 949 (2009); Sandefur, *supra* note 36.

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physical offices around the country and are available by internet and phone. In 2021 and 2022, Citizens Advice assisted over two and a half million people.[66]

1.4 DESIGNING JUSTICE FUTURES

Effectively designing justice futures requires incorporating three elements. The first is a solid understanding of people's lived experience of the law and the forces – including identity, capability, and place – that shape that experience. Responding to this richly textured experience requires an equally rich ecosystem of justice work and justice workers. To make that work possible, we must add the second element, the elimination of regulatory barriers to justice workers and justice work, just as other professions like education, psychology, and medicine have done. States like Alaska and Utah are leading the way, but reforms must go further, and be pursued with a greater sense of urgency.

The third critical element is a research agenda that looks beyond the effectiveness of services at achieving narrow goals. A growing body of evidence suggests that effective solutions have four qualities: (1) they are timely, in the sense that they are visible when people recognize that they have a problem; (2) they are targeted, in the sense that they are specific to the problem someone has and framed in terms that person understands; (3) they are trustworthy, in the sense that people believe the source of help is working for their good interest; and (4) they are transparent, in the sense that they make clear to people their decision points and the possible consequences of different courses of action.[67] If the ultimate goal is increasing people's capability to engage with their own law – or, legal empowerment – then research should explore whether these features actually support that objective.

In contexts where these experiments are underway, evidence to guide practice will come from a robust research program informed by a clear and shared agenda about two kinds of effectiveness: Effectiveness at solving people's problems, and effectiveness at changing people's relation to the law. For these solutions to increase access to justice in a country of over 330 million people, we must also understand the potential for sustainability and scalability of both justice workers and justice work.

The current lawyer-centric models have resulted in large numbers of people, and particularly people with low incomes and people of color, being systemically excluded, isolated, and estranged from their own law. Justice futures require an alternative vision of access to justice – a reimagining of access to justice – that

[66] *What We Do*, Citizens Advice, https://www.citizensadvice.org.uk/about-us/about-us1/introduction-to-the-citizens-advice-service/ (last accessed Aug. 7, 2023).

[67] Pascoe Pleasence et al., *Reshaping Legal Assistance Services: Building on the Evidence Base*, L. & Just. Found. of New South Wales (2014); Rebecca L. Sandefur, *Bridging the Gap: Rethinking Outreach for Greater Access to Justice*, 37 U. Ark. Little Rock L. Rev. 721 (2015).

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focuses on empowerment, agency, and action. That future requires a diverse and emboldened field of justice workers and an expansive view of justice work.

We can no longer abide by the status quo. Reforms must cease replicating failed models that perpetuate exclusionary and discriminatory barriers to engaging with law. Instead, they must place access to justice – rather than the potential for profit or the past prerogatives of a profession – at the forefront. Meaningful progress in addressing the access-to-justice crisis requires experimentation and a commitment to evidence-based strategies. This approach is exemplified in the models currently operating in Utah and Alaska and bolstered by learnings from the critical work already happening in immigration and other federal agency proceedings. This new approach is grounded in deep commitment to addressing individual and community needs and to shedding existing orthodoxy that centers lawyers and courts. An expansive and richly diverse field of justice work and justice workers requires not only regulatory reforms but also empowered individual and community action. So long as everyday people continue to be systemically estranged from their own law, it is not only just solutions to common legal problems but democracy itself that is ultimately at stake.

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