7

Beyond Access to Justice

Power, Organizing, and Civil Legal Inequality

Jamila Michener

In the United States, access to legal representation in civil courts is constrained and inequitable. Most people who have justiciable civil legal problems cannot or do not obtain legal assistance.[1] Americans living in and near poverty are disproportionately in need of civil legal protections. In 2022, 74 percent of low-income households experienced at least one civil legal problem, and 39 percent experienced five or more problems – including challenges with health care, housing, disability access, public benefits, domestic violence, and more.[2] Despite grappling with such an extensive range of legal problems, low-income Americans lacked adequate help for 92 percent of them.[3]

The "justice gap" – this rift between legal needs and legal assistance – is driven by both supply and demand. Concerns about the former have understandably dominated approaches to addressing civil legal inequality. Underfunding at the federal, state, and local levels restricts the supply of lawyers available to meet the needs of people facing civil legal problems. For example, legal organizations funded by the Legal Services Corporation – a core institution undergirding the US civil legal infrastructure – are unable to provide enough legal help for 71 percent of the legal problems brought to their doors.[4] Notwithstanding this underfunding, delivering access to legal advice or representation for low-income Americans has long been upheld as a crucial imperative. In 1970, Senator Walter Mondale dubbed legal services, "the most effective poverty program, dollar for dollar."[5] Contemporary evidence supports Mondale's contention. Access to civil legal representation can

[1] Rebecca L. Sandefur, *Bridging the Gap: Rethinking Outreach for Greater Access to Justice*, 37 U. Ark. Little Rock L. Rev. 721, 724 (2015); Deborah L. Rhode, Access to Justice (2004).

[2] Legal Serv. Corp., The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans 8 (2022).

[3] *Id.* at 7.

[4] *Id.* at 9.

[5] *Legal Services Program of the Office of Economic Opportunity, Hearings before the Subcommittee on Employment, Manpower, and Poverty of the Committee on Labor and Public Welfare, United States Senate*, 91st Cong. 110 (1970) (statement of Sen. Mondale, Member, S. Comm. On Labor and Public Welfare).

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narrow health disparities, improve communication between public institutions and impoverished communities, and increase property values and wealth in black communities.[6]

Recognizing these and other benefits, governments have invested in broadening access to legal services. Though the methods for achieving this end have been varied, most have emphasized the supply side of the justice gap: providing lawyers, legal information, and legal help.[7] This chapter begins with a discussion of such supply-side interventions, including (1) right to counsel, (2) legal technologies, and (3) the use of nonlawyers. Each of these has shown promise and attracted public resources. Each also confronts limitations that underscore the imperative of attending to the demand side of the justice gap.

After outlining the limits of supply-side approaches, this chapter turns to the drivers of demand. Most fundamentally, civil legal needs are a product of political processes. Demand for legal help is propelled by a politics of scarcity, inequality, and welfare state retrenchment.[8] Addressing the demand side of the "justice gap" therefore requires the redistribution and reconfiguration of power in American political life. Supply-side approaches to civil legal inequality do not sufficiently account for power. Bringing power to the foreground complements and usefully balances the prevailing preoccupation with increasing the supply of legal resources.

Moving beyond a supply-side emphasis on civil legal systems and toward a demand-side attentiveness to power dynamics within political systems opens a broader horizon of possibilities for change. A demand-side approach posits that when legal interventions lay the groundwork for collective action and facilitate the exercise of power, they can mitigate the demands that necessitate access to justice in the first place. By drawing on in-depth interviews with organized tenants and key examples of legal interventions that catalyze political action, this chapter makes the case that power should be a core concern for anyone seeking to redress civil legal inequality.

7.1 SUPPLY-SIDE APPROACHES: RIGHT TO COUNSEL

To motivate the case for a demand-side focus on power, it's worth considering some of the most salient supply-side approaches. Right to counsel (RTC) is foremost among them. In cities as wide ranging as New York, San Francisco, Boulder,

[6] Jamien P. Cunningham, *An Evaluation of the Federal Legal Services Program: Evidence from Crime Rates and Property Values*, 92 J. Urban Econ., 76 (2016); Jamien P. Cunningham & Rob Gillezeau, *The Effects of the Neighborhood Legal Services Program on Riots and the Wealth of African Americans*, 4 RSF: The Russell Sage Found. J. Soc. Sci. 6, 144–57 (2018); James Teufel et al., *Legal Aid Inequities Predict Health Disparities*, 38 Hamline L. Rev. 329 (2015).

[7] Alissa Rubin Gomez, *Demand Side Justice*, 28 Geo. J. On Poverty L. & Pol'y 411, 412–13 (2021).

[8] Jamila Michener, *Legal Aid and Social Policy: Managing a Political Economy of Scarcity*, 706 Annals Am. Acad. Pol. & Soc. Sci. 137, 138 (2023).

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Minneapolis, Kansas City, and Philadelphia, legislators, judges, community organizations, and denizens have fought for, and won, increased funds for free or low-cost legal counsel in civil proceedings.[9]

These RTC policies take numerous forms. Some are means-tested, and others universal. Some pertain specifically to legal representation in eviction proceedings; a few are broader.[10] Some RTC policies come to fruition through legislative action, others via judicial decisions, still others by executive action.[11] The common thread that runs through all RTC efforts is a mandate to increase the supply of lawyers available to represent or advise people with civil legal needs.

RTC policies can be very effective. In 2017, New York City enacted "Intro 214-B," a pathbreaking expansion of civil legal access.[12] Intro 214-B was intended to provide legal counsel for low-income tenants facing eviction. Prior to the passage of this legislation, roughly 1 percent of New York City tenants were represented by an attorney in eviction cases.[13] Within five years (by the fourth quarter of 2022), 63 percent of tenants in eviction court received legal assistance.[14] Among that group, 78 percent were able to remain in their homes.[15]

[9] *See* Nat'l Coal. for a Civil Right to Counsel, *State Status Map*, https://civilrighttocounsel.org/map/ (last accessed Feb. 14, 2025), http://civilrighttocounsel.org/legislative_developments/20232024_civil_right_to_counsel_bills (last accessed Feb. 2, 2024).

[10] For example, in 2018, San Francisco voters passed a proposition creating a universal RTC for tenants in eviction cases. *See* S.F. Mayor's Off. of Housing & Cmty. Dev., *Eviction Prevention & Housing Stabilization, Tenant Right to Counsel, Strategy Description*, https://sfmohcd.org/sites/default/files/5.%20Tenant%20Right%20to%20Counsel.pdf (last accessed Mar. 29, 2024). Denver provides free legal representation for "low to moderate income individuals experiencing eviction." Den. Code of Ordinances, § 27-211 et seq. (2024), https://library.municode.com/co/denver/codes/code_of_ordinances?nodeId=TITIIREMUCO_CH27HO_ARTIXTELESE_S27-211LEIN (last accessed Feb. 14, 2025). Other legal areas in which a RTC has been created include parental rights, children's rights, and asset forfeiture. *See* Nat'l Coal. for a Civil Right to Counsel, *supra* note 9.

[11] *See* Wash. Rev. Code § 59.18.640 (2021) (RTC for indigent tenants); In the matter of the adoption of A.W.S. and K.R.S., Minor Children, 339 P.3d 413 (2014) (finding a RTC for parent facing involuntary termination of parental rights); Press Release, Phila. Health and Hum. Servs. Managing Director's Off., *City Launches Right to Counsel for Eligible Philadelphia Tenants* (Jan. 21, 2022), https://www.phila.gov/2022-01-31-city-launches-right-to-counsel-for-eligible-philadelphia-tenants/ (last accessed Feb. 14, 2025).

[12] Int. 0214-2014, N.Y.C. Council, Comm. on Cts. & L. Servs. (codified at N.Y.C. Admin. Code §§ 26-1301-06), https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1687978&GUID=29A4594B-9E8A-4C5E-A797-96BDC4F64F80 (last accessed Feb. 14, 2025). *See also* Jamila Michener, *Power from the Margins: Grassroots Mobilization and Urban Expansions of Civil Legal Rights*, 56 Urb. Aff. Rev. 1390, (2020).

[13] Task Force to Expand Access to Civ. Legal Servs. in N.Y., *Report to the Chief Judge of the State of New York* 1 (Nov. 2010), https://ww2.nycourts.gov/sites/default/files/document/files/2018-04/CLS-TaskForceREPORT.pdf (last accessed Feb. 24, 2025) (finding that 99 percent of tenants are unrepresented in eviction cases in New York City).

[14] N.Y. City Dept. of Soc. Servs., Off. of Civil Just., *Universal Access to Legal Services: A Report on Year Five Implementation in New York City* 5 (Winter 2022), https://a860-gpp.nyc.gov/concern/nyc_government_publications/3t945t63b?locale=en (last accessed Feb. 14 2025).

[15] *Id.*

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Intro 214-B is just one example of the profound benefits of legal representation for low-income Americans. Nevertheless, even this pivotal RTC legislation has proven insufficient to meet the demand for legal services.[16] Sharp increases in eviction filings in the aftermath of the pandemic were met with a floundering civil legal infrastructure that could not meet the bar set by Intro 214-B. Legal services providers in New York City estimate that they would need roughly $461 million dollars per year to fairly execute current contracts for legal services as well as cover anticipated cases.[17] At present, New York City provides $110 million in funding, falling far short of the target.[18] Despite having a historic RTC law on the books, New York City Mayor Eric Adams has hesitated to bridge this gap.[19]

Funding deficits are only one challenge facing RTC. As widely touted as Intro 2014-B has been, beneficiaries of the law sometimes do not know that they have access to free legal representation, do not understand how to obtain such representation, or are alienated from the legal system altogether. Even proponents and implementers of RTC acknowledge its complexity, difficulty, and cost. Adriene Holder, chief attorney for civil practice at the New York Legal Aid Society, aptly admitted to a NYC reporter that "Right to Counsel is in its infancy stages. . . . [E]veryone wants us to run and twirl but we're barely out of the crawling stage. So, people need to understand that we're going to need to continue to refine how this work is done, but we need resources to do it."[20]

As an attorney, Holder articulates the problem as one of resources, accentuating the supply side of the justice gap. However, it's clear that many people at the racial and economic margins of society face problems that are technically "legal" but cannot ultimately be resolved through legal processes. For example, there were 69,440 residential eviction petitions filed in NYC between July 1, 2021, and June 30, 2022.[21] Among those eviction filings, 54,806 (about 79 percent) were for nonpayment of rent.[22] Though there are legitimate legal issues that prompt nonpayment of rent (e.g., withholding rent due to substandard conditions), a common reason for doing so is not having the money to pay. This holds true for a broad spectrum of civil legal problems that are fundamentally rooted in economic and political systems that do not provide denizens with sufficient material resources to meet basic needs.[23] Legal services providers are inundated by cases because they deal

[16] *Attorney Access*, Nat'l Ctr. for Access to Just., https://ncaj.org/state-rankings/justice-index/attorney-access (last accessed Feb. 3, 2024).
[17] Emma Whitford, *What Would It Take To Fully Fund Right to Counsel for NYC Tenants?*, City Limits (Apr. 10, 2023), https://citylimits.org/2023/04/10/what-would-it-take-to-fully-fund-right-to-counsel-for-nyc-tenants/ (last accessed Feb. 14, 2025).
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *See* N.Y. City Dept. of Soc. Servs., *supra* note 14, at 10.
[22] *Id.*
[23] *See* Michener, *supra* note 8, at 139.

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with the fallout from such structural deficits. Colleen Shanahan and colleagues make this point as follows.

> The litigants in housing court do not end up behind that door by coincidence. Rather, this is a foreseeable consequence of the absence of affordable and adequate housing, health care, childcare, and education, the absence of fair and equal wages, and the presence of mass incarceration in our society. State civil cases involving debt, family relationships, and children have different names on the courtroom door but similar stories behind those doors.[24]

Economic and political structures engender, maintain, and deepen the deluge of inequalities that are flooding civil legal institutions.[25] Public policies enable housing insecurity, low and stagnating wages, predatory consumer practices, constrained access to public benefits, wage theft, and many other processes that induce precarity.[26] The civil legal system shoulders the resulting burdens, despite not being designed to do so. Colleen Shanahan and her coauthors trenchantly capture this dilemma:

> The work of state civil courts is a daily manifestation of the failure of the executive and legislative branches to disrupt structural inequality or invest in systems of care to mitigate it. These courts operate in the breach to address social needs because they cannot decline the cases presented to them. Thus, the social needs people bring to court are framed as disputes in order to access social provision. . . . This leaves state civil courts attempting to address – within the constraints of their dispute resolution design – the social needs of litigants.[27]

In such a context, demand for legal services soars. Right to counsel expansions are meant to mitigate this, and they are an indispensable tool for doing so. However, when deployed solely as a supply-side instrument, RTC has little bearing on larger political-economic conditions. It helps people to (perhaps) survive the "brutal

[24] Colleen F. Shanahan et al., *The Institutional Mismatch of State Civil Courts*, 122 Columbia L. Rev. 1471, 1473 (2022).

[25] *See* Michener, *supra* note 8, at 139; John Whitlow, *Gentrification and Countermovement: The Right to Counsel and New York City's Affordable Housing Crisis*, 46 Fordham Urb. L.J. 1081, 1085 (2019); Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants' Rights*, 27 Geo. J. on Poverty L. & Pol'y 97, 120 (2019); Tonya L. Brito et al., *Racial Capitalism in the Civil Courts*, 122 Colum. L. Rev. 1243, 1244–45 (2022).

[26] Daniel J. Galvin, *Deterring Wage Theft: Alt-labor, State Politics, and the Policy Determinants of Minimum Wage Compliance*, 14 Persps. on Pol. 324 (2016); Jamila Michener, Fragmented Democracy: Medicaid, Federalism, and Unequal Politics (2018); Keeanga-Yamahtta Taylor, Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership (2019); Mallory E. SoRelle, Democracy Declined: The Failed Politics of Consumer Financial Protection (2020); William W. Franko & Christopher Witko, The New Economic Populism: How States Respond to Economic Inequality (2018).

[27] Shanahan et al., *supra* note 24, at 1474–75.

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needs" that emerge from structural inequality but does not disrupt or transform that inequality.[28] This is a basic limitation of supply-side solutions.

7.2 SUPPLY-SIDE LIMITS: LEGAL TECHNOLOGIES

RTC is only one of numerous supply-side approaches. Legal technologies have also been hailed as a route to democratizing access to legal resources.[29] Rapid developments in machine learning and web-based capacities have engendered optimism around the hope that the justice gap can be bridged via low-cost, highly accessible technology-assisted legal service delivery.[30] More than a decade ago, the Legal Services Corporation declared technology "a powerful tool in narrowing the justice gap" and offered recommendations for technological pathways to facilitating access to justice.[31] Some legal scholars have viewed the "great disruption" sparked by swiftly emerging artificial or machine intelligence as a process that will undermine the monopoly of lawyers and "provide benefit to society and clients as legal services become more transparent and affordable to consumers, and access to justice thereby becomes more widely available."[32]

Notwithstanding such confident predictions, there are reasons to be skeptical about the equalizing effects of technological innovations.[33] Successfully leveraging technology to bridge civil legal gaps will be contingent on whether people with legal needs can access the internet, have adequate digital literacy, or have the capacity to adequately articulate their needs when required.[34]

Even further, legal technology cannot circumvent economic and social inequalities. Under some conditions, technology even has the potential to exacerbate disparities, for example, by creating a "two-tiered system" where low-income communities are "stuck with inferior AI-driven assistance."[35] All things considered, technology holds both promise and peril for civil legal inequality. This makes

[28] Martha F. Davis, Brutal Need: Lawyers and the Welfare Rights Movement, 1960–1973 (1995).

[29] Albert H. Yoon, *The Post-Modern Lawyer: Technology and the Democratization of Legal Representation*, 66 U. Toronto L.J. 456 (2016).

[30] Raymond H. Brescia et al., *Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice*, 78 Albany L. Rev. 553 (2014).

[31] Legal Services Corp., *Report of the Summit on the Use of Technology to Expand Access to Justice* (Dec. 2013), https://www.lsc.gov/our-impact/publications/other-publications-and-reports/report-summit-use-technology-expand-access (last accessed Feb. 18, 2025).

[32] John O. McGinnis & Russell G. Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 Fordham L. Rev. 3041, 3065–66 (2014).

[33] Emily S. Taylor Poppe, *The Future Is Complicated: AI, Apps & Access to Justice*, 72 Okla. L. Rev. 185 (2019).

[34] *Id.*

[35] Drew Simshaw, *Access to A.I. Justice: Avoiding an Inequitable Two-Tiered System of Legal Services*, 24 Yale J.L. & Tech. 150 (2022).

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overreliance on expanding access via supply-side technological innovation an insufficient response to the justice gap.

7.3 SUPPLY-SIDE LIMITS: THE USE OF NONLAWYERS

The use of nonlawyers is another supply-side approach to addressing unmet legal need. Historically, the legal profession in the United States has had relatively high barriers to entry and widespread modes of "self-regulation" that limit who can legally practice law and under what conditions.[36] Lawyers must graduate from an accredited law school, pass the bar exam (in most states), obtain a (state specific) license to practice law, and more.[37] These and other regulations are meant to ensure the integrity of legal practice. But they also limit the supply of lawyers and increase their cost. In the context of high demand, this system creates a challenging context for those seeking access to civil legal resources.[38]

One solution is to increase the supply of practitioners who can address civil legal problems by allowing nonlawyers to practice law in some capacity.[39] For example, in 2014 New York City piloted several programs aimed at leveraging nonlawyer legal expertise to meet civil legal needs. One such program deployed legal navigators to assist self-represented litigants in housing court.[40] These navigators were permitted to perform a wide range of tasks, including substantive responsibilities like answering judges' questions regarding the facts of the case.[41]

Similar efforts have gone even further. In 2012, the Washington Supreme Court passed a rule paving the way for a new category of legal practitioner: Limited License Legal Technicians (LLLTs). Washington thus ushered in "the profession's first paraprofessional licensing scheme that allows nonlawyers to provide legal advice without the supervision of a lawyer."[42] These and other models for expanding the scope of who can provide legal services are encouraging but difficult to sustain. The Washington state program, for example, was sunset in 2023, with no new LLLT licenses being issued thereafter.[43] Though that program gained national recognition

[36] Stanley S. Arkin, *Self-Regulation and Approaches to Maintaining Standards of Professional Integrity*, 30 U. Miami L. Rev. 803 (1976).

[37] Clifford Winston & Quentin Karpilow, *Should the US Eliminate Entry Barriers to the Practice of Law? Perspectives Shaped by Industry Deregulation*, 106 Am. Econ. Rev. Papers & Proc. 171 (2016).

[38] Gillian K. Hadfield, *Higher Demand, Lower Supply – A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 Fordham Urban L.J. 129 (2010).

[39] Richard Zorza & David Udell, *New Roles for Non-Lawyers to Increase Access to Justice*, 41 Fordham Urban L. J. 1259 (2014).

[40] *Id.* at 1263.

[41] *Id.*

[42] Rebecca M. Donaldson, *Law by Non-Lawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice*, 42 Seattle U. L. Rev. 1 (2018).

[43] *Sunset of LLT Program*, Wash. State Bar Ass'n (updated Mar. 31, 2023), https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians/decision-to-sunset-lllt-program (last accessed Apr. 2, 2024).

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and the (fleeting) endorsement of the Washington State Bar Association, it floundered when the composition of bar's board and the state court changed.[44] Even more broadly, unauthorized practice of law (UPL) regulations across the country prohibit nonlawyers in varied and substantial ways.[45]

Though RTC, legal technologies, and nonlawyer assistance are innovative and important means of tackling civil legal inequality, an exclusive focus on supply-side solutions places a ceiling on the possibilities for transforming the justice landscape. A turn to the demand side – through an emphasis on political power – opens a different horizon of prospects.

7.4 WHY POWER IS PIVOTAL

Power is a complex notion that has been widely theorized in terms of its various faces, forms, and dimensions. For the purposes of this chapter, I define power broadly as the capacity to influence the conditions that shape one's life and community.[46] *Political* power is specifically the capacity to wield influence through the state and other critical political actors (e.g., employers, landlords) as a means of changing the conditions that shape one's life and community.[47] The people and communities with the most inadequate access to civil legal resources – those who are economically and racially marginalized, struggling to survive onslaughts of deprivation and predation in their daily lives – are the very people who often lack political power. Such a dearth of power enables the circumstances that create civil legal problems. So long as power imbalances facilitate material inequities (as is the norm), legal needs (demand) will likely outpace the ability to meet them (supply).

To make concrete the relationships between power and legal need, consider Quiana, a young mother interviewed as a part of a larger research project.[48] After a local code enforcement officer found lead paint in Quiana's home, she tested her four children for lead exposure. Quiana then found out that three of her children had borderline high levels of lead, while her fourth and youngest child – a three-year-old boy – had severely high levels. Despite urging from public health officials,

[44] Lyle Moran, *How Washington Supreme Court's LLLT Program Met Its Demise*, ABA J. (July 9, 2020), https://www.abajournal.com/web/article/how-washingtons-limited-license-legal-technician-program-met-its-demise#:~:text=Meanwhile%2C%20in%20May%2C%20the%20state%20bar's%20treasurer,7%2D%20in%20June%20to%20sunset%20the%20program (last accessed Feb. 14, 2025).

[45] Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 Fordham L. Rev. 2581 (1999).

[46] Jamila Michener, *Racism, Power, and Health Equity: The Case of Tenant Organizing*, 42 Health Affs. 1318 (2023).

[47] Michael L. Rosino, *Boundaries and Barriers: Racialized Dynamics of Political Power*, 10 Socio. Compass 939 (2016).

[48] This project involved systematic in-depth qualitative interviews with tenants. Quiana was interviewed in New York in April 2023. The identities of research participants are protected by using pseudonyms.

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Quiana could not afford to relocate. She was unemployed and far down a long waiting list of people eligible to receive section 8 vouchers. Moreover, there was a dearth of affordable rental units in her city. The local department of health fined Quiana's landlord and ordered him to abate the lead, but he did not. When Quiana sought a lawyer to help her address the lead issue, she could not find one. Her local legal services organization focused mostly on eviction cases. They did not have the capacity to take on lead cases.

With her fear and frustration over the situation growing, Quiana stopped paying rent. Her landlord then promptly initiated eviction proceedings. She returned to legal services and only then was able to get an attorney to represent her in housing court. As a result, she was able to temporarily fend off eviction.

Despite receiving civil legal assistance for (some of) her legal problems, Quiana remains in a precarious, unsafe housing situation with an unaccountable landlord looking for a reason to kick her out. Given these circumstances, it would be unsurprising if additional legal problems emerged in her life. Quiana's most fundamental problems, however, are not legal. The primary reasons for her predicament are political-economic: inadequate regulation of predatory landlords, insufficient availability of affordable housing, and an underfunded and ill-equipped housing voucher program. All these issues are the result of political choices that reflect (among other things) the inability of Quiana and people in communities like hers to influence policy to their benefit.

Quiana recognized the problem of power at the core of her dilemma. Facing the double dangers of poisoning and displacement she confessed,

> When it comes to the judges and even code enforcement, I feel like they should be doing more. Because I'm quite sure this is not the only house that's going through situations. So, for [the landlord] to still be out here collecting his rent and half-ass doing his job, I feel like that's where the higher ups should come in … but it doesn't seem like they're doing anything about it really, and *what can we do*? Like me, for example, I'm trying. I been trying to contact these people and that people, and it's like, *I'm not getting nowhere … tenants like me, we need a voice, because we're not being heard*.

Though Quiana lived in a city experiencing an enduringly severe crisis of lead poisoning within impoverished communities of color, she was not part of any concerted effort to pressure public officials to address the lead issue or to build safe, affordable housing. By her own account, Quiana lacked the power to change the circumstances that produced her legal problems. Though she did not live in a city with a "right to counsel" in eviction court, it's unlikely that the outcome of her situation would have been different if she had (given that she did have representation in her eviction case). It's similarly implausible to suppose that having access to current advanced legal technology or a nonlawyer legal practitioner would have fundamentally altered Quiana's circumstances. And even if one of these supply-side

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interventions would have proved effective in Quiana's case, they would do little to change the (similar) conditions faced by many of her neighbors.

On the other hand, when tenants like Quiana organize collectively to exercise power in the face of the inequities that structure their lives, possibilities for more fundamental change emerge.[49] When lawyers and legal institutions go beyond providing access to legal services and toward facilitating collective organizing, people like Quiana are enabled to build power that can alter the conditions that profoundly constrain their life chances.

7.5 HOW POWER CAN MITIGATE LEGAL NEED

To make the case for critically assessing supply-side legal interventions through the lens of power, we must clarify precisely why power is so vital for mitigating legal need. This chapter describes three ways that political organizing to build power can change the conditions that lead to legal problems:

(1) Organizing can help to avoid problems that could have generated legal needs.
(2) Organizing can address problems (through nonlegal means) that generate legal needs.
(3) Organizing can affect policy change to alter conditions underlying legal problems.

Below, I give examples from in-depth qualitative interviews with sixty-seven tenants who organized collectively, each of which illustrates how these mechanisms work to mitigate legal needs.

7.5.1 *Preemptive Organizing to Avoid Problems that Generate Legal Needs*

Some tenant organizations pursued preemptive strategies to help avoid practices that might lead to heightened legal needs. Take, for instance, collective bargaining with landlords: Using the threat of rent strikes or other direct action as leverage, tenant organizations engaged in collective bargaining bring property owners to the table to establish terms that ensure enduringly livable, healthy housing conditions. Tom, an organizer from a large tenant organization in Massachusetts, described the model as follows:

> [W]e were really emphasizing this idea of collective bargaining. . . . You organize a tenant association, and you ask for negotiations with the landlord to secure a long-term contract that ha[s] limited rent increases and addresse[s] conditions. Just like a labor contract, you would try to sign a three-year contract that addresse[s] wages and

[49] Michener, *supra* note 46; Jamila Michener & Mallory SoRelle, *Politics, Power, and Precarity: How Tenant Organizations Transform Local Political Life*, 11 Int. Grp. & Advoc. 209 (2022).

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> working conditions. And we were successful in doing that. We were getting a lot of buildings under contract. … [A] number of landlords decided that it was in their interest financially to work with us, or negotiate with us, rather than trying to evict us, because we could mobilize some pretty serious resources to block evictions. So, we've got a lot of buildings under contract and that really was a qualitative step forward in terms of collective bargaining.

While Tom's union was especially successful, it was not peculiar. Collective bargaining of this sort happens around the country and can act as a mechanism to proactively tackle the conditions that otherwise generate legal needs.

7.5.2 *Responsive Organizing to Address Problems that Generate Legal Needs*

When tenants operate as individuals, they do not have much leverage to hold landlords accountable. Alternatively, when they work collectively, they can use direct pressure tactics like protests and rent strikes to push landlords to meet the very material needs that transform into legal needs when unaddressed. Carlos, a member of a tenant union in Texas, detailed his organizations' "tactics to pressure landlords or management companies to do the right thing":

> We helped organize tenants. … [T]hey'd already had one negotiation with this management company that didn't go so well. … They had no water in the building. … They've been going without water for quite a while, and they finally got it turned back on after the protest and the rent strike. They finally got the water turned back on. [Now] there are still all kinds of other issues – mold in the apartments, other apartments have leaks … [The property management company] don't seem concerned about it. So, that's why rent strikes can continue at least for the foreseeable future … a good number [of tenants] are determined to [keep going].

Carlos and fellow members of his tenant union target specific actors to address harmful housing conditions that might otherwise lead to legal action. If only one or two tenants acted individually by withholding rent (as Quiana did when her landlord would not abate the lead), they could easily end up in housing court facing eviction, and they would likely need a lawyer to prevent displacement. But in the context of collective action, tenants create opportunities to negotiate. And the outcome of those negotiations can circumvent the processes that would have generated legal need.

7.5.3 *Organizing to Affect Policy Change*

A third way that organizing can mitigate legal need is via policy change. From good cause eviction to rent control to affordable housing – tenants around the country build power to address the structural conditions at the root of many legal problems.

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Successful policy campaigns can have far-reaching reverberations in the lives of tenants. Consider Joe and Jocelyn, who started a tenant union in a Midwestern city. Soon after launching the union, Joe and Jocelyn discovered the main policy priority of the tenants in their organization: expelling a notorious property management company with a large footprint in the city. As Joe elaborated:

> They wanted them gone, and for good reason, there was a lot of illegal really, really brutal [stuff] going on. So that's the campaign we launched, to get that contract canceled. . . . Nobody gave us any chance in hell of winning that campaign . . . we had [city] council people saying this will never happen . . . we were getting our asses kicked in this campaign. We were not winning. They hired maintenance staff to intimidate us. . . . I got regular death threats against my daughter. Throughout this campaign every leader that spoke out was retaliated against from breaking windshields to evictions. But we just kept base building. We just kept knocking on doors. We just kept building relationships and we had meetings with the housing authority director.

Having identified an important cause of the problems facing tenants in their city, Joe and Jocelyn's union focused on weakening the "power structure" represented by people like the city housing director to achieve their policy goal of driving out a major property management company. To this end, they engaged in strategic institutional negotiation.[50] Though they identified the housing director as a primary roadblock, she was highly respected and behaved differently in closed-door conversations with tenant union members than she did publicly. So, their strategy was to push her "to treat our residents in public the way she treats them in private meetings." Joe believed that "what grows in the dark dies in the light of exposure" and anticipated that making a public spectacle of the housing director would create productive political pressure. This is precisely what happened. Joe describes it this way:

> We were able to get a committee hearing with [city] council and a resolution saying that the council supported cancelling this contract. We showed up really powerful that day. We filled up half the room. Our members told really powerful stories about the most egregious shit happening, and then [the housing director] literally got up there and did everything short of calling them liars. And [the city contract with the management company] was canceled four days later.

Jocelyn and Joe worked with hundreds of tenants in their city, most of whom were black women, to achieve a policy change that directly addressed the very housing conditions that often landed tenants in court. Indeed, they initially wanted a RTC campaign to be their first policy effort. But most members of the union preferred that they begin the union's work with ousting the management company that had long plagued the city. Following the lead of the tenants by letting their needs

[50] Jamila Michener, *Health Justice through the Lens of Power*, 50 J.L. Med. & Ethics 656 (2022).

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determine the policy agenda of the union, Joe and Jocelyn developed a winning strategy and overcame the odds that seemed stacked against them at first. By building political power instead of legal capacity, they met the very needs that might have morphed into legal problems if left unaddressed. By doing so, they built their power further, creating a positive feedback cycle:

> [T]hat was our first campaign, and we built a really solid base out of that … If you're in [this city] and you lived in public housing in the last ten years, chances are you've experienced this management group. Chances are your family experienced abuse by them. So, we built a lot of credibility on that. It's like, okay, this isn't just another nonprofit. … These folks can actually deliver material demands, can actually make promises to working class people and deliver on them.

Joe, Jocelyn, and the tenants they organized took direct political action to drive policy change in their city. Their efforts centered on changes that would be meaningful in the lives of race-class marginalized tenants, altering the processes that create legal needs in the first place.

7.6 DEMAND-SIDE LEGAL INTERVENTIONS

Given the limits of the supply-side provision of legal services and the promise of building power through political organizing, it is tempting to underestimate the continued importance of civil legal infrastructure and resources. However, eschewing legal interventions in the current political economy risks doing great harm because many people would suffer more acute deprivation in the absence of legal protections. Further still, spurning legal tactics misses a potentially imperative opportunity to use the law as a means of forging countervailing power.[51] In this view, a strategic and complementary mix of supply and demand approaches is optimal.

What do demand-side legal interventions look like? All the attention given to supply has obscured the prospects for moving beyond accessing justice and toward wielding power.[52] Though an exhaustive accounting of those prospects is beyond the scope of this chapter, the remaining sections surface two examples that point in the direction of this fundamentally important shift: (1) using supply-side policies like RTC and use of nonlawyers as a path to power and (2) leveraging legal protections to support political organizing.

7.6.1 *From Supply to Demand: RTC as a Springboard*

Supply-side policies can complement and enhance efforts to build power in the marginalized communities that face the most debilitating legal problems. In some

[51] Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 Yale L.J. 546 (2021).

[52] Sameer M. Ashar & Annie Lai, *Access to Power*, 148 Daedalus 82 (2019).

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ways, this can happen inadvertently through policy feedback processes. For example, my coauthor Mallory SoRelle and I have found that people with civil legal problems who have legal representation have higher levels of political efficacy and are more likely to participate in politics.[53] In this way, policies that expand access to civil legal representation can "feedback" into the political system and boost the participation of people within racially and economically marginalized communities.[54]

There are also strategic and intentional ways of translating supply-side policies into demand-side gains. One example is Intro 1529 – a recently enacted law in NYC known as "The Power to Organize" bill. Intro 1529 amends the administrative code of the city of New York to require the Office of the Civil Justice (OCJ) coordinator to collaborate with community groups in engaging tenants around their civil legal rights and creating community infrastructure to enable tenants to protect those rights.[55] Such infrastructure can include holding tenant workshops and trainings, supporting the formation of tenant associations, and referring tenants to community organizations.

Like Intro 2014-B, Intro 1529 was developed and advanced by community organizers in collaboration with city council members and lawyers.[56] Media reports referred to the bill as promoting "tenants' right to organize."[57] In local meetings, tenant organizers explicitly talked about the limits of RTC/Intro 214-B and the necessity to both reinforce RTC through organizing efforts and use RTC as a springboard for funding organizing to build more power.[58] In this way, Intro 214-B together with Intro 1529 offer a model for addressing both the supply and the demand side of civil justice by pushing for both access to legal resources and increased organizing power. The complementary logic of these bills exemplifies how providing people with civil legal representation can be an entry point into cultivating political power.

7.6.2 *Abating Demand: Using Law to Sustain Organizing*

Leveraging civil law as a tool to buttress community organizing against the actors that provoke demand for legal services is also an important and direct means of

[53] Jamila Michener & Mallory SoRelle, Uncivil Democracy: Power, Politics, and Civil Justice (forthcoming).

[54] Jamila Michener, *Policy Feedback in a Racialized Polity*, 47 Pol'y Stud. J. 423 (2019).

[55] Int. 1529-2019, N.Y.C. Council, Comm. Gen. Welfare (codified at N.Y.C. Admin. Code, §§ 26-1304(c); 26-1306), https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3923900&GUID=93564381-0704-43F3-9599-244BA2545155 (last accessed Feb. 14, 2025).

[56] Michener, *supra* note 12.

[57] Jonathan Sperling, *Coalition Urges City to Promote Tenants' Right to Organize*, Queens Daily Eagle (Dec. 13, 2019), https://queenseagle.com/all/2019/12/13/coalition-urges-city-to-promote-tenants-right-to-organize (last accessed Feb. 14, 2025).

[58] Author's ethnographic observation of tenant organizations (2020 and 2021).

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abating such demand.[59] For example, landlords that rent unsafe properties or perpetrate unethical practices are one driver of legal need.[60] As discussed in the previous section, providing legal support for organized groups of tenants that fight against such landlords – as opposed to only providing legal representation to each individual tenant – is an example of a demand-side, power-centered approach. This is not a new idea. Community lawyering and movement lawyering are longstanding and continued forms of resistance to structural inequalities.[61] Nevertheless, there is a disconnect between legal practitioners who prioritize increasing access to justice and those who seek to build power within the communities that are most bereft of such justice. John Whitlow, director of CUNY School of Law Community and Economic Development Clinic, incisively articulates the contours of this disconnect:

> [R]ight to counsel should be viewed as a limited intervention that operates when eviction is imminent, i.e. after the structural sources of displacement have done their work. Failure to recognize the limits of the RTC – and of access to justice paradigms more generally – naturalizes those structural sources and legitimates as normal the widening inequalities produced by our current political-economic and social order. Challenging inequality and displacement in a deep and lasting way requires moving beyond access to justice.[62]

One means of "challenging inequality and displacement in a deep and lasting way" is by offering legal support to tenant organizations as they marshal such challenges. For instance, consider the circumstances of tenants in Crest Hill Apartments, a privately owned recently renovated eighty-unit building.[63] Because Crest Hill has rent-stabilized apartments, it is one of the only affordable options for low-income tenants in the Northeastern community where the building is located. For this reason, many Crest Hill tenants welcomed the opportunity to rent in an affordably priced recently renovated building.

However, when a small child in the complex fell ill and a local pediatrician identified lead poisoning as the underlying problem, Crest Hill tenants discovered

[59] John Whitlow, *Community Law Clinics in the Neoliberal City: Assessing CUNY's Tenant Law and Organizing Project*, 20 CUNY L. Rev. 351 (2017).

[60] Philip M. E. Garboden & Eva Rosen, *Serial Filing: How Landlords Use the Threat of Eviction*, 18 City & Cmty. 638 (2019).

[61] Karen Gargamelli & Jay Kim, *Common Law's Lawyering Model: Transforming Individual Crises into Opportunities for Community Organizing*, 16 CUNY L. Rev. 201 (2012); Nicholas Hartigan, *No One Leaves: Community Mobilization as a Response to the Foreclosure Crisis in Massachusetts*, 45 Harv. C.R.-C.L. L. Rev. 181 (2010).

[62] John Whitlow, *Beyond Access to Justice: Challenging the Neoliberal Roots of Hypergentrification*, L. & Pol. Eco. Blog (Apr. 9, 2018), https://lpeproject.org/blog/beyond-access-to-justice-challenging-the-neoliberal-roots-of-hyper-gentrification/ (last accessed Feb. 14, 2025). Whitlow is not alone in advancing a vision that looks beyond access to justice to more fundamental structural transformation that contributes to "social reconstruction rather than social reproduction." *See, for example*, Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 Clinical L. Rev. 359 (2008).

[63] Based on author's interview with tenant organizer in state in the Northeast (October 2022).

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that they were living in conditions that were perilous for their health. Per state law, the lead poisoning diagnosis triggered automatic reporting to the local Department of Health, which then involved the Environmental Protection Agency (EPA). The EPA was legally mandated to test every unit in the building where children younger than six years old lived. Testing revealed that some units had nearly 50,000 micrograms of lead dust per square foot, relative to the EPA limit of 10 micrograms.

Tenants were infuriated. Many of the children in the building had been experiencing respiratory and other health issues. Melissa, a young mother in the building with some experience in political organizing, learned about the threat of lead toxicity and jumped right into action:

> [I]t was such an egregious revelation that . . . I was like, we have to have a meeting – a tenants meeting. There's just no option. We have to deal with this. And if we do it individually, there's just too many units for it to get mishandled by management . . . it was obvious . . . I literally have to do this. So I put up fliers around the building.

Melissa spread the word and Crest Hill tenants quickly had an initial meeting. Soon, the tenants in the building formed a tenant union to collectively confront the lead hazard that was sickening their families:

> So that first meeting, we had thirty people or so. It was a really good first meeting. And we just talked about the lead issue and how we were going to address it. And it was mostly giving people information on how to schedule their inspections, things like that . . . [T]he second meeting I broached the subject of a tenant union . . . it's so egregious that . . . we just have to proceed as quickly as possible . . . to move swiftly in order to protect kids in this building, let alone everyone else. And so, we got a majority support verbally at that meeting. And then me and a handful of other people brought the union petition around the buildings.

Within a month, three-quarters of the units in the building signed the petition. But the building owner was completely indifferent to tenant demands. Crest Hill was one of many buildings they owned, and paltry state fines did not outweigh the significant cost of lead abatement.

Crest Hill tenants pursued multiple strategies for holding the owner accountable. One strategy involved seeking legal help:

> [I]t came to light that not only is there a chronic, a systematic lead issue. There's also severe water damage and leaking . . . [and] fuzzy mold growth . . . our spore counts in here are very high . . . [so] it escalated pretty quickly in terms of our actions . . . [we] had to hire a civil attorney. With children involved, obviously, affecting their health . . . [I]t's for our own protection . . . [So]there's a housing court case. The first family filed with the housing court in January. Five more families, including us, joined for February. So now, we're paying rent into an escrow account. Ten more people are joining the rent strike for March.

Though the housing court case was a means of redress in its own right, it was also a mechanism to support organizing. The most obvious leverage that Crest Hill

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tenants had against their delinquent owner was the money they paid for rent. But tenants feared that withholding rent would risk eviction. Even though the building was hazardous, it was the only option for many tenants, especially short of any settlement or support to facilitate their move. So, if Crest Hill tenants wanted to organize a rent strike against the building owner, they needed protection from eviction while doing so. The civil proceeding afforded such protection by allowing tenants to pay their rent into an escrow that could be withheld from the landlord while the case was pending. This cleared the way for tenants to pursue more risky strategies, including direct action (protests, rallies, press conferences) in combination with a coordinated rent strike. In the absence of assurances from a civil attorney, many tenants would not have participated in these activities.

Crest Hill tenants navigated the boundaries between legal strategies and building grassroots power with a keen understanding of the relationship between the two, which Melissa articulated this way:

> [I]t can be really important to separate out the legal from the power building because Americans especially will go straight to the legal system as their only avenue. So, initially, everyone was going straight to that: "We got to hire the lawyer and sue [the owner]. . ." But even at the first meeting, I was saying, "if we are only going through the legal system, we will quickly become extremely frustrated and stop any kind of actual struggle against ownership and management because there are so many gaps."
>
> And a good lesson for the tenants was the Department of Health finished their legal mandate to only inspect units with kids under six, and tenants were like, "how can that be possible? How can they not be in charge of inspecting the rest of the units?" People were saying, "that can't be what the law is because that's not sufficient." And it's like, I hear you that it's not how it should be, but that is the reality . . . the law is not made for tenants. It is not directed at tenants. It is to protect landlords and property ownership, to encourage property ownership. And what you're hearing is true, but we can't just get frustrated. We have to just take that information, find out what the gap is between where regulation stops and where we want it to be, and that gap is where we have to organize until we get the living conditions that we want to get.

At the core of these observations is an acknowledgment of the distinct but symbiotic relationship between legal and organizing approaches. The explicit use of lawyers in support of community organizing efforts goes beyond the case-based approach implicit in many access-to-justice efforts, and toward collective action that can help larger groups of people face more fundamental problems. In this view, policies seeking to advance access to justice through supply-side approaches like RTC, legal technology, and the use of nonlawyers are necessary, but not sufficient. It is pivotal to complement such policies with demand-side statutes that protect people from retaliation for organizing, strengthen collective bargaining rights, provide funding for lawyers to support community organizations, and more.

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