

DON'T GO IT ALONE

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Civil legal challenges cut across an astonishing range of headline-making social issues. And so, while it is possible to make a compelling case for “access to justice” without tying it to issues of inequality, mobility, race, and equity, that is no way to build or ally with a movement. Access to justice should not just be about “justice” in a narrow legalistic sense, but in the way that the broader world understands it and people feel it, driven by imperatives such as: expanding opportunities for underserved populations; creating legal systems that protect the most vulnerable; and building institutions and structures that are fair and work for everyone regardless of race, class, or gender. Indeed, some of the field’s most promising innovations emerge from a “justice” framework that explicitly connects civil legal aid to other sectors and movements, and to other barriers faced by low-income Americans rather than trying to go it alone.¹

An astonishing number of people face civil legal issues. Roughly 70 percent of low-income households have experienced at least one civil legal problem in the past year which run the gamut from housing instability, to wage theft, to personal bankruptcy, to child support.² Legal aid cuts across those challenges and connects family, livelihood, and health challenges with the legal system.

Thinking about access to justice as a cross-cutting imperative clarifies more than it complicates because it is a better reflection of reality: people live their lives horizontally, rather than in employment, housing, or health

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1. A standout example is Rhode Island Legal Services’ Holistic Legal Network, which aims to help people move from poverty to economic security by connecting to, and establishing formal relationships with, a range of social sector services and partners. See Nora Salomon, *Building Holistic Networks in Legal Aid: Transitioning from Poverty to Self-Reliance*, SARGENT SHRIVER NAT’L CTR. ON POVERTY L. (June 2016), <https://www.povertylaw.org/clearinghouse/stories/salomon> [https://perma.cc/GR3R-FMJA]; Nora Salomon, *Holistic Networks: From Implementation to Output*, NAT’L LEGAL AID & DEFENDER ASS’N CORNERSTONE May–Aug. 2016, at 32, <http://files.ctctcdn.com/a18d9a13001/9533f2c1-82c7-4ae7-b366-af20ebc6e990.pdf> [https://perma.cc/W5GV-6ARY].

2. See LEGAL SERVS. CORP., *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 21 (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> [https://perma.cc/TVX3-CRRR].

verticals. Civil legal issues are rarely discrete and tidy: civil fines and fees can land a person in jail; and evictions, foreclosures, and housing instability can yield toxic stress for families.³ Moreover, racial disparities within our criminal justice system are mirrored in civil courts. These are not novel conclusions, but rather reflect two emerging themes from an array of powerful efforts to promote access to justice. First, partnerships with other sectors and movements have helped open new sources of revenue, draw public attention, inspire policy reforms, and, most critically, better-reflect the multi-dimensional lives of real people. Second, by connecting with other fields, civil legal researchers and practitioners increasingly reflect the innovations of those fields, including “moving upstream” in a way that parallels major innovations in the field of public health. This Essay will address each theme in turn.

I. PARTNERING AND INTEGRATING

The access to justice field has witnessed, in recent years, a push to integrate civil legal aid with other supports for low-income Americans. Those models advance a “person-centered” frame that reflects the interlaced issues people face when they end up in court—from health problems that stress personal finances, to housing dilemmas that complicate getting a degree. Examples include work by the National Legal Aid and Defenders Association to help embed civil legal services into the work (and budgets) of multiple federal departments,⁴ including Veterans Affairs, Labor, Justice, and Health and Human Services. In turn, the emergence of medical-legal partnerships has brought legal expertise into health care settings, reducing both return medical visits and costs by addressing the root causes of health issues (for instance, getting a landlord to remove mold that would have otherwise provoked multiple emergency room visits).⁵ In the process, these partnerships are helping to connect chronically underfunded legal aid programs to new resources at the local, state, and federal levels.

Integration is also building public awareness about access to justice by connecting it to issues and movements that make daily headlines. Attorneys can sometimes forget how invisible the civil legal system is to non-lawyers—something nonprofits like Voices for Civil Justice are actively trying to change—and also how evocative and urgent access to justice becomes when illustrated by specific social issues. As a practical demonstration: ask a friend outside of legal practice when they think people have a right to an

3. See HARVARD UNIV. CTR. ON THE DEVELOPING CHILD, THREE PRINCIPLES TO IMPROVE OUTCOMES FOR CHILDREN AND FAMILIES 4 (2017), https://46y5eh11fhgw3ve3ytpwxt9r-wpengine.netdna-ssl.com/wp-content/uploads/2017/10/HCDC_3PrinciplesPolicyPractice.pdf [<https://perma.cc/E6H4-QUUL>].

4. *Civil Legal Aid Initiative: Non-LSC Federal Resources*, NAT’L LEGAL AID & DEFENDER ASS’N, <http://www.nlada.org/tools-technical-assistance/civil-resources/civil-legal-aid-funding/civil-legal-aid-initiative-non> [<https://perma.cc/FAW3-6445>] (last visited Apr. 1, 2019).

5. See *Impact*, NAT’L CTR. FOR MED. LEGAL PARTNERSHIPS, <https://medical-legalpartnership.org/impact/> [<https://perma.cc/A946-N6B9>] (last visited Apr. 1, 2019).

attorney. Eviction? Child custody? Domestic violence? Bankruptcy? Deportation? The across-the-board answer can leave laypeople stunned. In our experience, the line between things that do and do not affect liberty—*Gideon*'s line of demarcation⁶—does not translate well when talking about losing one's home, job, security, or family. For non-lawyers, it can be mind-boggling that, in the face of those life-altering circumstances, the least well-off among us might have to (and often do) fend for themselves.

Thus, the success in securing a right to counsel during eviction proceedings is growing in a number of American cities, drawing on Matthew Desmond's reporting in *Evicted*⁷ and the efforts of groups like the National Coalition for a Civil Right to Counsel.⁸ There is, similarly, great promise in a "justice" frame that elevates the ways in which criminal justice reform intersects with, and is challenged by, problems in the civil system, including, but certainly not limited to, fines and fees, as well as research around disparities in both systems based on race, class, and gender.

II. MOVING UPSTREAM

A second major theme—also tied to other fields—has been the push by practitioners and researchers to explore a broader set of solutions to increase access to justice. Untenable gaps in legal representation for low-income Americans, and the reality that we are unlikely to achieve a "civil *Gideon*" any time soon, have forced the question: What else can be done to make a real difference in outcomes before, during, and after people end up in court? Some of the most promising answers have illuminating parallels to work in the field of health to "move upstream."

Over the past twenty years, the health field has increasingly shifted from a targeted focus on medical care to a broader agenda around the social determinants of health. Accelerated in part by the Affordable Care Act, medical payors and providers have begun addressing issues that have not traditionally been considered the responsibility of "health care"—such as housing quality, clean water, and transit access—yet which have clear health impacts. Noting that these determinants "are an underlying cause of today's major societal health dilemmas including obesity, heart disease, diabetes, and depression," the *New England Journal of Medicine* points to the complex interactions and feedback loops [that] exist among the social determinants of health. For example, poor health or lack of education can impact employment opportunities which in turn constrain income. Having a low income reduces access to health care and nutritious food and increases

6. *Gideon v. Wainwright*, 372 U.S. 335, 342–43 (1963).

7. MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016).

8. *A Civil Right to Counsel: What We're Fighting For*, NAT'L COALITION FOR CIV. RIGHT TO COUNS., <http://civilrighttocounsel.org/about> [https://perma.cc/4PNB-XEL9] (last visited Apr. 1, 2019).

hardship. Hardship causes stress which in turn promotes unhealthy coping mechanisms such as substance abuse and overeating of unhealthy foods.⁹

A striking dimension of all of those challenges is how deeply tied they are to legal ones—and how closely that analysis tracks emerging efforts by access to justice stakeholders. The health field’s movement upstream suggests a powerful path forward to achieve access to justice. Take, for example, a first principle posited by the American Academy of Medicine: “As a determinant of health, medical care is insufficient for ensuring better health outcomes.”¹⁰ This is a simple but profound acknowledgment, and a similar hypothesis is emerging in the access to justice field: as a determinant of justice, legal representation (alone) is insufficient for ensuring more just outcomes.

The suggestion is not that already-stressed legal aid providers should get into the business of affordable housing. But a parallel analysis applies and is taking shape. While the gap in legal representation is one of the great inequities of our time—it is, after all, the equivalent of not being able to see a doctor when you are sick—a trial, with or without an attorney, never occurs in isolation. It is part of a longer sequence of events that alternately support or undercut an individual’s path to justice. For that reason, justice stakeholders and researchers are moving upstream by acknowledging that attorney representation may not always be possible, or the only viable solution. That realization has provoked thorny questions like: When is a lawyer most critical? And when might innovations in technology and practice that do not involve lawyers still dramatically improve outcomes (much like community health worker models in health care)?

There are both supply and demand dimensions of moving upstream. The starting point for the former has traditionally been looking for more attorneys to fill gaps in representation by, for instance, expanding pro bono efforts, creating fellowship programs, or seeking out new funding sources. Researchers moving upstream, by contrast, are exploring solutions like technology-enabled self-help or “legal navigators” that might mitigate the need for attorneys or even avoid a court date in the first place.

Considering the demand side means thinking about the interdependencies of, for instance, sickness, employment, and housing stability that drive people to seek legal remedies. It also means asking questions like: How can we prevent issues from becoming legal matters in the first place? How can we expand the power and agency of clients to make the legal system less a source of toxic stress and more a problem-solving infrastructure for them? What might a system look like that is user-centered, rather than being designed for and by lawyers and courts? What policy and regulatory

9. *Social Determinants of Health (SDOH)*, NEJM CATALYST (Dec. 1, 2017), <https://catalyst.nejm.org/social-determinants-of-health/> [<https://perma.cc/2W54-CLYP>].

10. Sanne Magnan, *Social Determinants of Health 101 for Health Care: Five Plus Five*, NAT’L ACAD. MED. (OCT. 9, 2017), <https://nam.edu/social-determinants-of-health-101-for-health-care-five-plus-five/> [<https://perma.cc/M9AC-6Q3J>].

assumptions should we test, and what are the field's top policy and regulatory priorities—beyond “more resources”?

Those questions reflect a critical and emerging next generation of research and advocacy. In linking civil legal aid to the wealth and wisdom of other sectors, as well as to other “justice” movements, stakeholders are challenging an analysis that starts and ends with attorneys, or the notion that “more resources” and a “civil *Gideon*” should be the sole north stars of the movement. Far from diluting the focus and urgency around civil legal issues, partnerships with other fields and social movements are breaking vital new ground in increasing access to justice.