

INTEGRATING THE ACCESS TO JUSTICE MOVEMENT

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Last fall, advocates of social change came together at the A2J Summit at Fordham University School of Law and discussed how to galvanize a national access to justice movement—who would it include, and what would or should it attempt to achieve? One important preliminary question we tackled was how such a movement would define “justice,” and whether it would apply only to the civil justice system. Although the phrase “access to justice” is not exclusively civil in nature, more often than not it is taken to have that connotation.¹ Lost in that interpretation is an opportunity to engage in a broader, more holistic conversation about what justice entails and what is required to gain access to it.

The justice system has traditionally been organized into two silos: civil and criminal. While there are clear legal distinctions between the two contexts—including the procedural protections, like counsel, that are provided—individuals’ lived experiences often do not cleanly fall along such stark lines. For example, many domestic issues have both civil and criminal aspects,² and certain events—like violating a municipal ordinance targeted at homelessness after being evicted from one’s home—can redirect a person’s trajectory from one sphere to another. Perhaps because of these blurred lines, many individuals who experience justice problems do not distinguish between the two contexts: “Court is court. The law is the law. Lawyers are lawyers. Judges are judges.”³

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1. See, e.g., *Access to Justice*, DÆDALUS (2019), <https://www.amacad.org/daedalus/access-to-justice> [<https://perma.cc/VJ4U-PLFH>]. The *Access to Justice* issue focuses on the “national crisis in civil legal services facing poor and low-income Americans.” *Id.* State Access to Justice Commissions typically focus on barriers to civil justice for low-income or otherwise disadvantaged individuals. See *Access to Justice Commissions*, AM. BAR ASS’N., https://www.americanbar.org/groups/legal_aid_indigent_defendants/resource_center_for_access_to_justice/atj-commissions/ [<https://perma.cc/R8AZ-6MZ9>] (last visited Apr. 1, 2019).

2. Incarceration for civil contempt—for the failure to pay child support, for example—may further blur the lines for those unfamiliar with the civil/criminal distinction.

3. Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1290 (2016) (“[F]rom a legal standpoint, for most poor respondents there is little difference between the two systems.”).

Rather than remaining constrained by the typology of “criminal justice reform” or “access to (civil) justice” as two distinct bases for advocacy, we should focus on how individuals navigate a system (with both legal and non-legal components) that controls fundamental aspects of their lives—safety, shelter, family, and their liberty—whether at will or by force. In doing so, we can think more broadly about how individuals relate to the courts, how and when they receive information about the process, and how the way in which the government and the courts manage disputes impacts their lives. Shifting our mindset in this way would have several benefits.

First, it would advance the no-wrong-door approach to justice reform. Recent reform efforts have focused on the need to ensure that, regardless of where and how they first seek assistance, people will be directed to the resources they need. By expanding the universe of relevant doors beyond those typically contemplated in addressing civil issues—including, for example, doors that open from within the criminal justice system—and creating a more seamless provider network, we can reach an audience of people who could benefit from civil legal assistance but may not be familiar with such resources (or who do not recognize the applicability of such resources to their present issues). Here, I am referring not just to civil collateral consequences of conviction, but instead the range of civil legal issues—housing, employment, domestic and family issues, access to benefits and public assistance—that confront almost everyone and can be particularly difficult to address for those with fewer resources. In 2017, Dr. Ruth Richardson and I conducted a study about the civil legal needs of indigent defendants that revealed that public defender clients were largely unfamiliar with civil legal aid organizations and the assistance they provide.⁴ Although clients had, over the course of their lives, experienced a range of issues with civil legal aspects—for example, school disciplinary hearings or eviction and other housing issues—many did not view their issues as problems that could be addressed by legal assistance.⁵ In some cases, they did not see themselves or their problems as warranting the attention of the people who provide such help.⁶

There are surely additional outreach measures that could be taken to expand awareness of civil legal aid, including placement of services in the communities where practical and cultural barriers make it difficult for individuals to affirmatively seek out such assistance.⁷ But there is some irony in the finding that public defender clients have such extensive contact with one aspect of the legal system and remain wholly unfamiliar with its other dimensions. To the extent that a large part of the access to justice

4. See Lauren Sudeall & Ruth Richardson, *Unfamiliar Justice: Indigent Criminal Defendants’ Experiences with Civil Legal Needs*, 52 U.C. DAVIS L. REV. (forthcoming 2019) (manuscript at 5) (noting that 20 percent of the public-defender clients interviewed had never sought civil legal assistance and many were completely unaware of local civil legal providers and the type of assistance they provide).

5. *Id.* (manuscript at 5–6).

6. *Id.*

7. *Id.* (manuscript at 50–51).

problem is the identification of when and where civil legal assistance is needed,⁸ this group of individuals presents a prime opportunity for diagnosis as well as education and intervention. Many in these communities are familiar with the legal system but may not fully understand how other aspects of that system operate or why and how it can be used to affirmatively address their life circumstances.

Relatedly, the line between criminal and civil is blurrier than we typically acknowledge and the experience of many—low-income people, in particular—exists at the overlap. People living in poverty are often just steps away from being dragged into either system—for example, either through arrest or eviction—or may bounce back and forth between the two systems as negative outcomes in one sphere lead to an increased risk of involvement with the other. For example, interactions with the criminal justice system may lead to eviction or ineligibility for public housing, and a loss of housing and other resources may lead to additional criminal issues given the various laws and policies that criminalize poverty.⁹

While our systems may be organized into silos, people's lived experiences are not nearly so well-defined. A more unified view of reform could address these interactions between and among systems and ensure providers in both systems—lawyers, non-lawyers, and social workers—are more aware of how to assist their clients in diagnosing and addressing legal issues (for example, an outstanding warrant that might be cleared, or an improper denial of benefits) and avoiding future undesired interactions with either the civil or criminal systems.

Last, an integrated reform movement could position civil and criminal reformers as allies rather than adversaries battling over priorities and limited resources. Advocates of criminal reform emphasize that constitutional mandates remain unfulfilled while civil justice advocates lament the fact that protections in their own realm have inadequate or no constitutional support. On the criminal side, liberty is presented as the ultimate deprivation, while civil justice consequences—relating to family ties, basic human needs, and deportation—can have fundamentally devastating effects. Regardless of the differences between the two areas of law, many of the barriers that prevent individuals from using the law to address their justice problems are the same.

8. This problem has received less attention than has been given to addressing problems that have already been identified. For example, a recent American Bar Foundation report by Rebecca Sandefur and others demonstrated that most access to justice technology efforts beyond information and lawyer referral have focused on document creation; although civil legal needs studies have shown great need in the area of diagnosis, few technological solutions have been offered in that space. REBECCA L. SANDEFUR, AM. BAR FOUND., *LEGAL TECH FOR NON-LAWYERS: REPORT OF THE SURVEY OF US LEGAL TECHNOLOGIES 10* (2019), http://www.americanbarfoundation.org/uploads/cms/documents/report_us_digital_legal_tech_for_nonlawyers.pdf [<https://perma.cc/75S6-XC9S>].

9. *See generally* PETER EDELMAN, *NOT A CRIME TO BE POOR: THE CRIMINALIZATION OF POVERTY IN AMERICA* (2017) (describing criminal justice strategies that punish the poor for their poverty, including regulation of certain behaviors and the imposition of exorbitant fines and fees).

Zooming out to view the legal system as one massive entity will not only help to identify obstacles that may go undetected through a narrower lens, but can also help reformers think innovatively about how to use different aspects of the legal system to address the multidimensional nature of individuals' lived experiences.