

**JUSTICE WORK AS DEMOCRACY WORK: REIMAGINING ACCESS TO JUSTICE AS DEMOCRATIZATION**

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*Abstract*

*In democracy, justice is supposed to be everyone’s: everyday people are meant to participate meaningfully in shaping law’s content, using its protections, and fulfilling the obligations it creates. Research demonstrates very clearly, however, that justice is not available to everyone. Global estimates suggest that over 5 billion people, nearly two-thirds of the world’s population, live outside the protection of the law. Critical to justice being everyone’s is everyone having access to it. Yet all too often access to justice is constrained by regulatory capture, administrative burden, and institutional failures that estrange people from their own law. The estrangement of people from their own law is not just a problem of social welfare policy or justice service delivery, it is a failure of democracy.*

*In this paper, we explore the role of access to justice in building and enlivening democracy through a critical mechanism to demonopolize and democratize the law: justice workers. Justice workers are community members who enable their neighbors to access justice by helping them to understand, use, and shape the laws that order their lives. They may do this as part of their formal roles such as religious leaders, teachers, social workers, librarians, or healthcare providers, or simply as fellow members of a community. We argue that justice work makes democracy work.*

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I. INTRODUCTION: REIMAGINING JUSTICE WORK AS DEMOCRACY WORK	

We live in a “law thick” world.<sup>1</sup> Law touches on nearly every aspect of our daily lives, including fundamental needs like housing, livelihood, healthcare, domestic relations, dependent care, and more. However, growing social-scientific evidence on access to justice suggests that our “law thick” world is incredibly thin on addressing the justice needs of everyday people.<sup>2</sup> Indeed, this very experience of “law thickness” is ironically often confused with the rule of law, and shrouds the everyday injustices faced by many Americans. These include the corporate capture of courts for people in debt,<sup>3</sup> a pattern of legal threats from powerful actors being addressed extrajudicially

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1. Gillian K. Hadfield & Jamie Heine, *Life in the Law-Thick World: Legal Resources for Ordinary Americans*, in *BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN AMERICA* 21, 21 (Samuel Estreicher & Joy Radice eds., 2016).

2. See Rebecca L. Sandefur, *Access to What?*, *DÆDELUS*, Winter 2019, at 49, 49 [hereinafter *Access to What?*]; THE HAGUE INST. FOR INNOVATION OF L. & INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *JUSTICE NEEDS AND SATISFACTION OF THE UNITED STATES OF AMERICA* 7 (2021).

3. See Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 *HARV. L. REV.* 1704, 1708 (2022).

inside courthouses,<sup>4</sup> and the fact that access to critical, life-supporting public benefits is inexplicably uneven.<sup>5</sup>

Compounding this is Americans' estrangement from their own law. In democracy, justice is meant to be everyone's: everyday people should be able to participate meaningfully in shaping law's content, using its protections, and fulfilling the obligations it creates. Research shows very clearly, however, that justice is not available to everyone.<sup>6</sup> Indeed, it is withheld from most. Global estimates suggest that over 5 billion people, nearly two-thirds of the world's population, live outside the protection of the law.<sup>7</sup> In the United States, as many as 120 million justice problems go unresolved every year, affecting people's ability to make a living, have a place to live, and care for those who depend on them.<sup>8</sup>

Critical to justice being everyone's is everyone having access to it. Yet all too often access to justice is constrained by regulatory capture, administrative burden, and institutional failures that estrange people from their own law. This estrangement is not just a problem of social welfare policy or justice service delivery; it is a failure of democracy.

In this paper, we explore the role of access to justice in building and enlivening democracy through a critical mechanism to demonopolize and democratize the law: justice workers. These are community members who enable their neighbors to access justice by helping them to understand, use, and shape the laws that order their lives. They may do this as part of their formal roles, such as religious leaders, teachers, social workers, librarians, or healthcare providers, or simply as fellow members of a community.<sup>9</sup> This justice work makes democracy work.

In Part II we review research evidence about three ways that people are estranged from their own law: (1) regulatory capture that prevents (and often criminalizes) people who are not lawyers from providing legal advice and representation to others in their communities; (2) administrative burdens that delay and prevent people from accessing benefits and entitlements that they

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4. Nicole Summers, *Civil Probation*, 75 STAN. L. REV. 847, 859 (2023).

5. See PAMELA HERD & DONALD P. MOYNIHAN, ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS 6–7 (2018); Carolyn Barnes, "I Can't Get Ahold of Them": Perceptions of Administrative Burden and Administrative Exclusion Across SNAP, WIC, and Medicaid During the COVID-19 Pandemic, 706 ANNALS AM. ACAD. POL. & SOC. SCI. 118, 119 (2023).

6. See WORLD JUST. PROJECT, MEASURING THE JUSTICE GAP: A PEOPLE-CENTERED ASSESSMENT OF UNMET JUSTICE NEEDS AROUND THE WORLD 27 (2019).

7. See *id.*

8. See THE HAGUE INST. FOR INNOVATION OF L. & INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *supra* note 2, at 6, 41.

9. See Rebecca L. Sandefur, *The Legal System Is Shutting Out Millions of Americans.*, FRONTLINE JUST. (2022), <https://www.frontlinejustice.org/the-crisis#solution> [perma.cc/M8VT-TRC6].

are eligible for; and (3) failures in courts and other justice institutions that erode the public's trust and confidence.

In Part III we address three components of reform. First, we describe erosion of both the rule of law and democratic participation in law in the United States and around the world, shining light on threats sometimes exacerbated by lawyers and the legal profession. Second, we consider global shifts in justice policy and practice over the last two decades that attempt to respond to these threats, including legal empowerment and people-centered justice. Finally, we focus on emerging justice worker models in the United States that have the potential to demonopolize and democratize the law and animate meaningful access to justice.

## II. THE FAILURE OF ACCESS TO JUSTICE AS A FAILURE OF DEMOCRACY

People access justice when the justiciable events of their lives—those that the civil law institutionalizes as actionable by one or more parties involved—are resolved in accordance with substantive legal norms.<sup>10</sup> They may do this with or without the involvement of formal legal institutions, processes, or professionals. Access to justice is a substantive outcome, not an experience of going through the motions of a formal process.<sup>11</sup>

Accessing justice enables democratization in three ways: it is itself a form of democratic participation; it can change people's relationship to the law; and it supports trust in formal, law-constituted institutions, such as courts.

In democracies, using the law is a democratic act.<sup>12</sup> Democracies empower legislators to make laws that bring a collective stake to the ordering of important activities, like having a place to live, making a living, and caring for those who depend on us. When people use those laws, they are literally working democracy.

Positive experiences of working the law can change people's relationship to it. For example, a study of poor women of color facing justice problems finds them developing and expressing a sense of entitlement to help from the law and legal professionals.<sup>13</sup> This insight—that using law can lead to a new relationship with it—underlies legal empowerment work throughout the world. As we will describe in greater detail below:

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10. See *Access to What?*, *supra* note 2, at 50–51.

11. See *id.* at 51.

12. See *Access to Justice*, ORG. FOR ECON. COOP. & DEV., <https://www.oecd.org/en/topics/access-to-justice.html> [<https://perma.cc/3THZ-4QED>].

13. See Diana Hernández, “I’m Gonna Call My Lawyer”: *Shifting Legal Consciousness at the Intersection of Inequality*, in 51 SPECIAL ISSUE INTERDISCIPLINARY LEGAL STUDIES: THE NEXT GENERATION 95, 97–98 (Austin Sarat ed., 2010).

[B]oth an approach and an outcome . . . legal empowerment seeks to increase knowledge of the law and design better pathways to justice. [When this work is successful], individuals and communities are better able to use the law themselves to advance their own interests and rights.<sup>14</sup>

Legal empowerment builds the capacity of people and communities to engage with the law by using it and by attempting to change it in ways that are more supportive of their own or their community's interests.<sup>15</sup>

Positive experiences using law can also support trust in legal institutions. The literature on procedural justice reveals that people are more likely both to accept decisions as legitimate and to comply with their dictates when their experience of the process of getting to that decision feels fair. Fairness in this research has four key elements: people should be allowed to express their views, be treated respectfully in interactions with institutional actors, and believe that the decision-making authority is impartial and is acting in good faith.<sup>16</sup> Because access to justice is a substantive outcome, not merely a procedural charade, this feeling of fairness must reflect ordinary people empowered to communicate their views and needs, as well as decision makers actually applying the law, and doing so fairly.<sup>17</sup>

The ability to participate is definitive of democracy, and when exercised, has material impacts. Theories of participatory justice rest on the idea that justice is “parity of participation.”<sup>18</sup> That parity requires “arrangements that permit all to participate as peers in social life. Overcoming injustice means dismantling institutionalized obstacles that prevent some people from participating on par with others. . . .”<sup>19</sup> That participation, when enabled, has an “instrumental role . . . enhancing the hearing that people get in expressing and supporting their claims.”<sup>20</sup> It also has a “constructive role,” shaping our very understanding of what our important needs are.<sup>21</sup> But once enabled, these

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14. MATTHEW BURNETT & PASCAL SOBOLL, OPEN SOC'Y FOUNDS., MAKING THE LAW WORK FOR PEOPLE: A HANDBOOK ON LEGAL EMPOWERMENT AND INCLUSIVE INNOVATION 5 (2021).

15. See Laura Goodwin & Vivek Maru, *What Do We Know About Legal Empowerment? Mapping the Evidence*, 9 HAGUE J. RULE L. 157, 159 (2017).

16. See Kevin Burke & Steve Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction*, 44 CT. REV. 4, 6 (2007).

17. See Robert J. MacCoun, *Voice, Control, and Belonging: The Double-Edged Sword of Procedural Fairness*, ANN. REV. L. SOC. SCI. no. 1, 2005, 171–201 for a discussion of ways in which experiences of procedural fairness can mask substantive bias and unfairness.

18. NANCY FRASER, *SCALES OF JUSTICE: REIMAGINING POLITICAL SPACE IN A GLOBALIZING WORLD*, COLUM. UNIV. PRESS 16 (2009).

19. *Id.*

20. AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 148 (1999).

21. *Id.*

capacities have to be used: “[d]emocracy does not serve as an automatic remedy of ailments as quinine works to remedy malaria. The opportunity it opens up has to be positively grabbed. . . .”<sup>22</sup> Working democracies have positive consequences: a fact cited in evidence is that “no substantial famine has ever occurred in an independent country with a democratic form of government and a relatively free press.”<sup>23</sup>

The well-documented precipitous decline in the American public’s trust in government and courts has many causes.<sup>24</sup> The procedural justice literature, which is focused on subjective experiences of justice, and the participatory justice literature, which is focused authentic participation, suggest that an important antidote could be access to justice and fair treatment.<sup>25</sup> But Americans face critical barriers to experiencing justice and fairness when they engage with law. Prominent examples include regulatory capture, administrative burden, and institutional failure. These barriers estrange people from their own law, and, because they often exacerbate existing inequalities, from each other.

#### A. *Regulatory Capture*

In the United States, lawyers have captured the practice of law.<sup>26</sup> Sometimes accessing justice requires help. A significant barrier to getting help is the capture of authorization to share helpful expertise. Lawyers, a largely self-regulating profession, have a substantial monopoly on accessing justice.<sup>27</sup> Though justice is everybody’s, lawyers—whether bar associations or state supreme courts—in many jurisdictions effectively control access to it because they set the rules about who can provide assistance in using the law. “The practice of law has been defined essentially as the work that lawyers do, and

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22. *Id.* at 155.

23. *Id.* at 152.

24. See Claudia Deane, *Americans’ Deepening Mistrust of Institutions*, PEW TRS. (Oct. 17, 2024), <https://www.pewtrusts.org/en/trend/archive/fall-2024/americans-deepening-mistrust-of-institutions> [perma.cc/RSY3-XGPQ].

25. See *Explainer: Why Is Public Trust in the Judicial System Important*, COLO. JUD. INST., <https://coloradojudicialinstitute.org/what-we-do/public-education/explainer-why-is-public-trust-in-the-judicial-system-important.html> [https://perma.cc/Y38A-TAPX].

26. See generally Matthew Burnett & Rebecca L. Sandefur, *A People-Centered Approach to Designing and Evaluating Community Justice Worker Programs in the United States*, 51 *FORDHAM URB. L.J.* 1509, 1512–15 (2024) [hereinafter *A People-Centered Approach*] (discussing the trend away from allowing non-lawyers to practice law in the 19th and 20th centuries, leading to the current monopolistic nature of the profession).

27. See Rebecca L. Sandefur & Matthew Burnett, *Justice Futures: Access to Justice and the Future of Justice Work*, in *RETHINKING THE LAWYER’S MONOPOLY: ACCESS TO JUSTICE AND THE FUTURE OF LEGAL SERVICES* (David Freeman Engstrom & Nora Freeman Engstrom eds.) (forthcoming July 2025) (manuscript at 6), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4836747](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4836747) [https://perma.cc/T5YV-2RJD] [hereinafter *Justice Futures*].

it is this current definition that guides the authorization of legal practice in most of the [country].”<sup>28</sup> While many countries restrict certain aspects of legal practice to specific kinds of workers, the United States affords lawyers a “more robust and punitive monopoly on the law than is granted . . . in many other contexts, restricting not only rights of appearance, but even the ability to offer legal advice.”<sup>29</sup> And, states in many instances criminalize the unauthorized practice of law.<sup>30</sup>

Because lawyers have captured law, delivery models are limited to those that are lawyer-centric. These consistently fail to meet critical needs because they do not enable services that are effective and responsive to people’s actual needs and capabilities.<sup>31</sup> They are, rather, the hammer in search of the proverbial nail. Lawyers’ capture is not only a market monopoly but also a political capture that chills attempts to help people use their own law. “Available evidence suggests that most complaints about the unauthorized practice of law come not from aggrieved members of the public, but rather from lawyers themselves.”<sup>32</sup> “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.”<sup>33</sup>

People’s ability to engage with law and courts is critical to vibrant access to justice and democracy, and lawyers’ gatekeeping is a key barrier that must be overcome. But these formal legal institutions are not the only ways in which people need to access justice. In contemporary nation states, a wide range of administrative agencies mediate people’s access to critical benefits and entitlements that are meant to protect them from poverty and its consequences, to secure a safe and healthy old age or safeguard young children from hunger, or to acknowledge their contributions to common life through various kinds of service, such as employment and military service.<sup>34</sup> When people cannot engage these agencies around their critical social work, both access to justice and democracy fail.

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28. *Id.*

29. *Id.* at 4.

30. *Id.* at 3.

31. *See id.* at 6.

32. *Id.*

33. *Id.*

34. *See* Herd et al., *Introduction: Administrative Burden as a Mechanism of Inequality in Policy Implementation*, 9 RSF: RUSSELL SAGE FOUND. J. SOC. SCIS., Sept. 2023, at 1, 3.

B. *Administrative Burden*

Administrative agencies in the United States exist to ensure a range of life supports: food, shelter, medical care, and income security.<sup>35</sup> These institutions incorporate specific processes that people must use to access those benefits and services. While they can feel inevitable to those on the receiving end of them, these processes are *designed*: people make decisions and take actions that make them look and work as they do. Currently, poorly designed procedures block many people's exercise of their rights and access to their entitlements. For example, many procedures to connect to these supports place the burden to show eligibility for benefits like health care and income on the applicant rather than the agency. A growing literature on administrative burdens, "frictions that people face in their encounters with public services," reveals the impact of these elements of institutional design on people's ability to connect supports as diverse as supplemental disability income, health care, and food security.<sup>36</sup>

While the specifics of bad design differ from program to program and agency to agency, the research identifies common elements of bad design. Across programs that implicate critical needs such as food, housing, income maintenance, and childrearing, people must discover and learn about programs and services for which they are eligible, and then how to use them. They must comply with application and participation requirements, such as complex or cumbersome documentation mandates.<sup>37</sup> They must pay the financial and in-kind costs of application, such as time, travel, and application fees.<sup>38</sup> They may also have to endure psychological burdens, such as the stigma of participating in unpopular programs or programs that signal stigmatized statuses such as poverty or a criminal history.<sup>39</sup> They may have to endure strictures of surveillance that encumber their access to basic needs, but do not burden other parents, or workers, or community members who face similar needs met through different means.<sup>40</sup> The distribution of these burdens tracks lines of major social cleavage, such as race, class, gender, and disability.<sup>41</sup> These burdens thus contribute to inequalities that pull Americans apart from each other, making it harder for some groups to participate than others, and sharpening the material inequalities between them.

Both agencies of government and formal legal institutions are critical means of enacting democracy. If people do not trust them, they may avoid

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35. *See id.* at 1–2.

36. *See id.* at 1.

37. *See* HERD & MOYNIHAN, *supra* note 5, at 23.

38. *See id.*

39. *See id.*

40. *See* Herd et al., *supra* note 34, at 11.

41. *See id.*

engaging with them or simply not comply with them—both acts that render institutions inutile. Trust in formal legal institutions is at an all-time low.<sup>42</sup> This decline in trust in law and justice is happening in a context in which many people have little contact with either or even each other.

### C. *Institutional Failures*

Perhaps the most consistent finding of contemporary access to justice research is that courts and formal legal actors are peripheral to most people's civil justice experiences.<sup>43</sup> A critical development of recent years in law and social science is a new body of empirical studies of how people experience, think about, and handle justice issues.<sup>44</sup> Rather than starting with elements of formal legal institutions—statutes and codes, judges and lawyers—these studies center the justice experiences of ordinary people.<sup>45</sup> This research reveals that existing institutions do a poor job of providing justice that is *people-centered*, or “accessible, proportionate, and focused on the outcomes people experience when they face civil justice problems.”<sup>46</sup> For many, these institutions are remote in the sense of being inaccessible.<sup>47</sup> But most people are often not even thinking about them at all in reference to their justice issues.

People typically do not think of civil justice issues in terms of law, lawyers, courts, or rights. When people who report having justice issues such as unpaid overtime, struggles with child custody agreements, difficulty getting insurance to pay, being behind on their rent, are asked what kind of problem they think their justice issue is—personal, legal, moral, private, etc.—law is almost literally the last way they report thinking about these justice issues.<sup>48</sup>

But institutions are not only distant failures; they are also intrusive failures. The literature on administrative burdens, discussed above, demonstrates one mechanism through which institutions undermine themselves. They create experiences that discourage and frustrate engagement, that can be as simple as long waiting times and rude staff, or as

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42. See Deane, *supra* note 24.

43. See REBECCA L. SANDEFUR ET AL., JUST. DATA OBSERVATORY, PEOPLE-CENTERED ACCESS TO JUSTICE RESEARCH: A GLOBAL PERSPECTIVE 12 (2023).

44. See, e.g., *id.*

45. See *id.*

46. See *A People-Centered Approach*, *supra* note 26, at 1550.

47. See NIGEL J. BALMER ET AL., VICTORIA L. FOUND., THE PUB. UNDERSTANDING OF L. SURV. (PULS) VOLUME 1: EVERYDAY PROBLEMS AND LEGAL NEED 41 (2023), [https://cdn.prod.website-files.com/64cb3eaa05058fe9b199601b/66d6a986f46cb803fc4fc2e2\\_The Public Understanding of Law Survey Volume 1.pdf](https://cdn.prod.website-files.com/64cb3eaa05058fe9b199601b/66d6a986f46cb803fc4fc2e2_The%20Public%20Understanding%20of%20Law%20Survey%20Volume%201.pdf) [<https://perma.cc/LYT6-A778>].

48. See Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443, 449 (2016); REBECCA L. SANDEFUR, *Money Isn't Everything: Understanding Moderate Income Households' Use of Lawyers' Services*, in MIDDLE INCOME ACCESS TO JUSTICE 222, 244 (Anthony Duggan et al. eds., 2012).

complex as application procedures actively designed and administered to prevent success.<sup>49</sup>

Research demonstrates that engagement with justiciable events and the law and rights that order them can be discouraging and frustrating. A study of why people do nothing about significant civil justice problems found that a critical reason was “frustrated resignation.” Experience is a powerful teacher. When people have many or significant experiences attempting to handle justice issues, they can learn that they are unlikely to make any headway, and so they stop trying.<sup>50</sup>

The social scientific literature documents widespread feelings of estrangement from the law. Unequally distributed across social groups, estrangement is a “product of . . . procedural *injustice*, vicarious marginalization, and structural exclusion.”<sup>51</sup> Procedural injustice is the experience of being treated unfairly and disrespectfully by the staff of legal institutions; it is the opposite of procedural justice and parity of participation. Vicarious marginalization occurs when people observe and identify with others who are marginalized by legal actors: they learn that the law is not for them because it is not for people like them.<sup>52</sup> This kind of marginalization is related to legal cynicism, the mistrust of legal institutions and their staff, such as police, which grows out of community experience.<sup>53</sup> For example, in communities where people observe biased or arbitrary policing and enforcement, they may develop mistrust of police or of the broader legal system, or both.<sup>54</sup> Structural exclusion occurs when policies that seem facially neutral with respect to key social divisions like race, social class, gender, sexuality, or disability in fact distribute resources in biased ways.<sup>55</sup> This bias occurs through “legal closure.”<sup>56</sup> For example, in policing, “legal closure leaves some areas essentially lawless—harshly policed yet underprotected—while others may be rigorously defended over and above the degree to which they are at risk.”<sup>57</sup> These factors are not equally distributed, as seen clearly,

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49. See Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, in TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 112, 125–26 (Nigel Balmer et al. eds., 2007).

50. See *id.* at 127.

51. See Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2100 (2017) (emphasis added).

52. See Bell, *supra* note 51, at 2105.

53. See Robert J. Sampson & Dawn Jeglum Bartusch, *Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences*, 32 L. & SOC’Y. REV. 777, 800 (1998).

54. See Bell, *supra* note 51, at 2087.

55. See *id.* at 2114.

56. See *id.* at 2114–15.

57. See *id.* at 2115.

for example, in research on such once-seemingly mundane events as traffic stops.<sup>58</sup>

Institutions' failures undermine people's trust in and engagement with them. It becomes a vicious cycle: as people withdraw from formal institutions, those institutions become less effective. Failure's impacts are not equally distributed, and the unfair share of burden borne by some people is another factor pulling Americans apart from one another.<sup>59</sup>

While the situation is dire, it is not actually intractable. Institutions are designed and staffed by people.<sup>60</sup> The rules that control who can assist in using law and working institutions are also made by people. What people create, they can change.

### III. JUSTICE WORK AS DEMOCRACY WORK

Because access to justice is a tool of democratization, work that enables access is also democracy work. In this section, we explore three dimensions of access to justice as democratization: (1) how lawyer-centric models contribute to democratic backsliding and monopolization of law; (2) justice policy approaches that support rather than discourage people's participation in law and democracy; and (3) evidence about how nonlawyer justice workers can be agents of democratization. Recognizing the urgency of the moment, the value of evidence-based frameworks for program and policy design, and the potential for justice work as democracy work, we make the case for reimagining access to justice as democratization.

#### *A. New Urgency: Democratic Backsliding and the Monopolization of Law*

Long holding itself up as a beacon of democracy, justice, and the rule of law, the United States is demonstrably receding from those core values. According to the most recent (2024) data from the *World Justice Project's Rule of Law Index*, the United States ranks 26th out of 142 countries on rule of law across all measures (below the majority of other high-income

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58. See CHARLES R. EPP ET AL., *PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP* 9 (2014).

59. See generally Lawrence D. Bobo, *Racial Attitudes and Relations at the Close of the Twentieth Century*, in 1 *AMERICA BECOMING: RACIAL TRENDS AND THEIR CONSEQUENCES* 264 (Neil J. Smelser et al. eds., 2001).

60. Arthur L. Stinchcombe, *On the Virtues of the Old Institutionalism*, 23 *ANN. REV. SOCIO.* 1, 1–2 (1997).

countries),<sup>61</sup> and 107th on “accessibility and affordability of civil justice” (in the bottom quarter of all countries measured).<sup>62</sup> Over only the last decade, the United States’ ranking on access to and affordability of civil justice dropped thirty-five spots, from 72 to 107.<sup>63</sup> Americans’ trust in the rule of law is also declining. The proportion of Americans who believe “a high-ranking official would be held accountable for breaking the law” decreased from 65% in 2013 to 35% in 2024.<sup>64</sup> More than one-tenth (13%) of Americans agree with the view that people do not need to “obey the laws of a government they did not vote for.”<sup>65</sup>

The United States is not alone in its democratic failures. V-Dem, the largest global dataset on democracy, estimates that countries today are almost evenly divided between democracies (91) and autocracies (88).<sup>66</sup> Even more troubling, 71% of the world’s population lives in autocracies, an increase from 48% a decade ago.<sup>67</sup>

An enormous literature (both empirical and normative) examines the role of lawyers and courts in protecting the rule of law and democracy,<sup>68</sup> yet much less attention is given to another critical factor: the ways in which lawyers and the legal profession undermine or erode the rule of law. Existing research reveals two dimensions of this troubling role of lawyers, who in all but four states take formal oaths upon admission to their profession to uphold the U.S. Constitution.<sup>69</sup> The first is direct: lawyers have attacked the rule of law itself, drawing specifically on their status and authorizations as lawyers. The second is indirect: lawyers have captured the regulation of law, holding a monopoly

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61. WORLD JUST. PROJECT, WORLD JUSTICE PROJECT RULE OF LAW INDEX 2024 11 (2024).

62. *WJP Rule of Law Index, Civil Justice, United States*, WORLD JUST. PROJECT (2024) [hereinafter *WJP Index 2024*], <https://worldjusticeproject.org/rule-of-law-index/factors/2024/United%20States/Civil%20Justice/> [https://perma.cc/4C4N-962C].

63. *See id.*; *WJP Rule of Law Index, Civil Justice, United States*, WORLD JUST. PROJECT (2015) [hereinafter *WJP Index 2015*], <https://worldjusticeproject.org/rule-of-law-index/factors/2015/United%20States/Civil%20Justice/> [https://perma.cc/Q2GN-3ETX].

64. WORLD JUST. PROJECT, U.S. RULE OF LAW TRENDS & THE 2024 ELECTION 10 (2024).

65. *Id.* at 11.

66. V-DEM INST., DEMOCRACY REPORT 2024: DEMOCRACY WINNING AND LOSING AT THE BALLOT 6 (2024).

67. *Id.*

68. *Id.* *See generally*, e.g., Adama Dieng, *Role of Judges and Lawyers in Defending the Rule of Law*, 21 FORDHAM INT’L L.J. 550 (1997); Gillian K. Hadfield, *Don’t Forget the Lawyers: The Role of Lawyers in Promoting the Rule of Law in Emerging Market Democracies*, 56 DEPAUL L. REV. 401 (2007); Jeremy Waldron, *The Rule of Law and the Role of Courts*, 10 GLOB. CONSTITUTIONALISM 91 (2021).

69. Lauren E. Bartlett, *Human Rights and Lawyer’s Oaths*, 36 GEO. J. LEGAL ETHICS 411, 413 n.7 (2023).

on it that prevents citizen participation in assisting others with the lawful resolution of everyday justice problems.<sup>70</sup>

### 1. *Lawyers and Democratic Backsliding*

The primary focus of this article is the promise of justice work to support democracy, not the legal profession's failure to do so. It is nonetheless important to recognize that lawyers can not only promote rule of law, they can also contribute to its decline. Lawyers' role in undermining law is not a new phenomenon,<sup>71</sup> but there are reasons to feel new urgency. Scholars observe a rise in "legalistic autocrats," leaders who work to achieve authoritarian aims through law rather than violence, offering fertile ground for lawyers' participation in autocratization even as their participation masks that rise.<sup>72</sup>

Law is a largely self-regulating profession. Ironically, part of the profession's own justification for that self-regulation is to "maintain the legal profession's independence from government domination."<sup>73</sup> Yet, precisely because of the role lawyers have traditionally played as gatekeepers of the very democratic institutions—for example, courts and adjudicative agencies—that autocrats seek to attack and undermine, lawyers can powerfully aid in supporting autocracy.<sup>74</sup> Part of a pro-democracy push requires democratizing and demonopolizing the law.

### 2. *Lawyers' Monopolization of Law*

While the United States is not unique in prohibiting the unauthorized practice of law ("UPL"), it allows lawyers a more robust and punitive monopoly than is granted in many other jurisdictions. Indeed, most U.S. states actively criminalize UPL.<sup>75</sup> "This capture of law by lawyers is not only a market monopoly, but it is also a political capture that chills attempts to help people use their own law."<sup>76</sup>

In addition to the fact that most complaints about the unauthorized practice of law come from lawyers themselves, rather than aggrieved

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70. See Renee Newman Knake, *The Legal Monopoly*, 93 WASH. L. REV. 1293, 1294–95 (2018).

71. See, e.g., Cynthia Fountaine, *Complicity in the Perversion of Justice: The Role of Lawyers in Eroding the Rule of Law in the Third Reich*, 10 ST. MARY'S J. ON LEGAL MALPRAC. & ETHICS 198, 201 (2020).

72. See Kim L. Scheppele, *Autocratic Legalism*, 85 U. CHI. L. REV. 545, 547–48 (2018).

73. MODEL RULES OF PRO. CONDUCT PREAMBLE (AM. BAR ASS'N 1983).

74. Fountaine, *supra* note **Error! Bookmark not defined.**

75. *Justice Futures*, *supra* note 27, at 3.

76. *Id.* at 6.

members of the public,<sup>77</sup> attempts at reforming legal services regulation to increase access to justice have been largely lawyer-led and business-focused, often using the rhetoric of innovation and market freedom and crowding out meaningful reforms. This is the case, for example, in arguments for outside investment in law firms (i.e. Alternative Business Structures) as a way to permit the kinds of capitalization that might allow for investments in technology, growth, and economies of scale.<sup>78</sup> Evidence from jurisdictions where these kinds of “outside” investments are allowed is so far equivocal about their impacts on access to justice.<sup>79</sup> If the goal is to facilitate people’s ability to understand and engage with their own laws and justice institutions—access to justice—reform efforts should center on fundamentally reimagining who can provide help.

Lawyer-centric models of legal service delivery and rule of law orthodoxy centered on lawyers and courts have reliably failed to provide accessible and equal access to justice.<sup>80</sup> Fortunately, new approaches to justice services are emerging that center the people the law is meant to serve rather than the lawyers and courts that are meant to be people’s servants.

### B. *New Paradigms: Legal Empowerment and People-Centered Justice*

Over the last two decades, two complementary approaches have emerged for understanding access to justice as democratization: legal empowerment and people-centered justice.<sup>81</sup> Both challenge rule of law orthodoxy and offer viable alternatives.<sup>82</sup> Both focus on people and recognize their diverse needs and capabilities.<sup>83</sup> And both recognize that access to justice is about both rights and entitlements and responsibilities and duties.<sup>84</sup>

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77. Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587, 2591 (2014).

78. Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 FORDHAM URB. L.J. 129, 153 (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, 48 (2014).

79. Rebecca L. Sandefur & Emily Denne, *Access to Justice and Legal Services Regulatory Reform*, 18 ANN. REV. L. & SOC. SCI. 27, 32–33 (2022).

80. *Justice Futures*, *supra* note 27, at 6.

81. Julie Delahanty, *How Legal Empowerment Can Help Solve the Crisis of Democracy*, INT’L DEV. RSCH. CTR. (Dec. 10, 2024), <https://idrc-crds.ca/en/perspectives/how-legal-empowerment-can-help-solve-crisis-democracy> [https://perma.cc/FZ9H-EF3Z]; Alycia Ebbinghaus-Owens, *People-Centered Justice as Transformation in Rule of Law Practice*, CREATIVE ASSOCS. INT’L (Dec. 11, 2023), <https://www.creativeassociatesinternational.com/blog/people-centered-justice-as-transformation-in-rule-of-law-practice/> [https://perma.cc/T2SX-M7FK].

82. See Delahanty, *supra* note 81; Ebbinghaus-Owens, *supra* note 81.

83. See Delahanty, *supra* note 81; Ebbinghaus-Owens, *supra* note 81.

84. See Delahanty, *supra* note 81; Ebbinghaus-Owens, *supra* note 81.

### 1. *Legal Empowerment*

Legal empowerment has its roots in law and development, and grows out of the capability approach theorized by development economist Amartya Sen.<sup>85</sup> In the early 2000s, legal scholars, as well as scholars of global public health, education, and environment, and a range of global intergovernmental organizations (“IGO”s), including the United Nations Development Program (“UNDP”), the World Bank, and the Asian Development Bank, began to employ Sen’s capability approach in law and development research and use it to guide and focus development funding.<sup>86</sup>

Legal empowerment has been defined in a range of different but complementary ways, all departing from narrow top-down reform to formal justice institutions in favor of openness to incorporating bottom-up interventions focused on the common but consequential legal needs of ordinary people. Stephen Golub, an early legal empowerment scholar, characterized the approach as “both an alternative to the problematic, state-centric rule-of-law orthodoxy and a means for making rights-based development a reality using law to support broader socio-economic development initiatives.”<sup>87</sup> The 2008 report of the Commission on Legal Empowerment of the Poor, co-chaired by former U.S. Secretary of State Madeleine Albright and the Peruvian economist Hernando de Soto, understood legal empowerment “to be the process of systemic change through which the poor and excluded become able to use the law, the legal system and legal services to protect and advance their rights and interests as citizens and economic actors.”<sup>88</sup>

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85. See Amartya Sen, *Equality of What?*, Speech at Stanford University, in 1 TANNER LECTURES ON HUMAN VALUES, 195, 218 (Sterling McMurrin ed., Cambridge Univ. Press, 1980) (an early exploration of his capability approach); AMARTYA SEN, *COMMODITIES AND CAPABILITIES* 51, 59–71 (Amsterdam: North-Holland 1985) (a more formal articulation of his capability approach); AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 18–20 (Alfred A. Knopf, Inc. 1999) (Sen’s most widely read and influential synthesis of the capability approach).

86. See, e.g., Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative* 29 (Carnegie Endowment for Int’l Peace, Working Paper No. 41, 2003); UNITED NATIONS DEV. PROGRAM, *PROGRAMMING FOR JUSTICE: ACCESS FOR ALL*, 136–53 (2005), [https://globalprotectioncluster.org/sites/default/files/2022-09/2005.undp\\_justice\\_guides\\_programmingforjustice-accessforall.pdf](https://globalprotectioncluster.org/sites/default/files/2022-09/2005.undp_justice_guides_programmingforjustice-accessforall.pdf) [<https://perma.cc/T6P5-3H4E>]; Vivek Maru, *Access to Justice and Legal Empowerment: A Review of World Bank Practice* 9 (The World Bank Justice and Development Working Paper Series, Paper No. 9, 2009).

87. See Stephen Golub, *The Legal Empowerment Alternative*, in *PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE* 161, 161 (Thomas Carothers ed., 2006).

88. MADELEINE K. ALBRIGHT & HERNANDO DE SOTO, *COMM’N ON LEGAL EMPOWERMENT OF THE POOR, MAKING THE LAW WORK FOR EVERYONE*, at vi (2008), [https://ycsg.yale.edu/sites/default/files/files/making\\_the\\_law\\_work.pdf](https://ycsg.yale.edu/sites/default/files/files/making_the_law_work.pdf) [<https://perma.cc/NL9A-4P3D>].

In sharp contrast to a one-size-fits all model of providing access to justice that prioritizes lawyers and courts, the core elements of the legal empowerment approach prioritize people and their diverse needs and capabilities, focusing on inclusion and participation.<sup>89</sup> These elements include:

1) *Empowerment*. “Legal empowerment is about power relations. It seeks to help those who, because of lack of power, are unable to seek justice.”<sup>90</sup> “Unlike traditional rule of law orthodoxies, legal empowerment views the poor and marginalized as partners. It seeks to cultivate the agency and power of affected communities.”<sup>91</sup>

2) *Just solutions designed with many entry points and routes to remedy*. “Legal empowerment seeks to help people find concrete solutions to their daily justice problems, to demonstrate, case by case, that even in an environment marked by arbitrariness and unfairness, justice is possible.”<sup>92</sup> It “encompasses a wide set of tools, flexibly applying grassroots methods such as education, information, organizing, and mediation . . . backed up by the possibility of high level advocacy and litigation when other methods fail.”<sup>93</sup> It “engages and respects both traditional and modern legal regimes, builds bridges between them, and advocates for the positive evolution of each.”<sup>94</sup>

3) *Centering community justice workers*. “The nature of legal empowerment means that, as a matter of both principle and cost-effectiveness . . . non-lawyers who acquire legal knowledge and skills that they employ to educate and assist the disadvantaged often play prominent roles.”<sup>95</sup>

4) *Balancing rights, responsibilities, and accountability*. “Legal empowerment efforts can strike a balance between right and responsibility by supporting community and self-help organizations

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89. See Open Soc’y Just. Initiative, Legal Empowerment: An Integrated Approach to Justice and Development (Mar. 21, 2012) (draft working paper), <https://www.justiceinitiative.org/uploads/149596ab-d845-4882-935d-04e99021642c/lep-working-paper-20120701.pdf> [<https://perma.cc/DF8X-22SX>].

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

and by advocating as often and as strenuously for fulfillment of citizen obligation as for insistence on citizen rights.”<sup>96</sup> They “seek to increase the voice of marginalized community members in local governance and public policy.”<sup>97</sup>

5) *Addressing the relationship between law and socioeconomic development.* “Others beyond the justice sector can benefit from using legal empowerment methodologies. For example, initiatives on natural resources management, public health, education, livelihoods, small business enterprise, and governance can all be improved by integrating an element of legal empowerment. . . .”<sup>98</sup>

Examples of effective and impactful legal empowerment programs flourish across diverse global contexts,<sup>99</sup> as well as in the United States.<sup>100</sup> Over the last decade, legal empowerment has developed into a robust field of practice. For example, the Grassroots Justice Network, a global community of legal empowerment practitioners and organizations convened by Namati, has 16,600 members representing over 4,200 organizations from 175 countries.<sup>101</sup> These programs have received notable research attention in the development context and beyond. For example, a recent global meta-research project on people-centered justice research found that many more studies in law and development explore legal empowerment and democratic participation than access to justice and poverty alleviation or distributed growth.<sup>102</sup>

Legal empowerment, like people-centered justice described below, is focused on redesigning justice services and justice institutions so that they are responsive and accountable to the people they are meant to serve. Both turn the traditional institution-centered rule of law approach on its head, prioritizing everyday people’s access to their own justice.

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96. *Id.*

97. *Id.*

98. *Id.*

99. See generally COMMUNITY PARALEGALS AND THE PURSUIT OF JUSTICE (Vivek Maru & Varun Gauri eds., 2018).

100. See, e.g., Sukti Dhital et al., *Symposium: Foreword: Critical Legal Empowerment*, 97 N.Y.U. L. REV. 1547, 1553 (2022); Jhody Polk & Tyler Walton, *Legal Empowerment Is Abolition*, 98 N.Y.U. L. REV. 282, 318 (2023); Ariadna M. Godreau-Aubert, *Lawyering in Times of Peril: Legal Empowerment and the Relevance of the Legal Profession*, 97 N.Y.U. L. REV. 1599, 1621 (2022).

101. GRASSROOTS JUST. NETWORK, <https://grassrootsjusticenetwork.org/> [<https://perma.cc/5Z6D-LVRW>].

102. SANDEFUR ET AL., *supra* note 43, at 14.

## 2. *People-Centered Justice*

The people-centered justice framework has developed over the past decade or so out of a growing base of empirical evidence and global and national opportunities for policy action around Sustainable Development Goal (SDG) 16.3: “to promote the rule of law at the national and international levels, and ensure equal access to justice for all.”<sup>103</sup>

Much of the empirical basis for people-centered justice is rooted in a growing body of research evidence on civil legal needs, including over 250 legal needs studies conducted in more than 110 countries and jurisdictions over the last three decades.<sup>104</sup> A consistent and transformative empirical finding of these studies is that formal justice systems are peripheral to the resolution of most civil justice problems.<sup>105</sup> Another consistent finding is that most people do not recognize the justiciable problems that they face in life as having legal dimensions.<sup>106</sup> A vast and growing number of unresolved justice issues that have consequential impacts on people’s lives and livelihoods exist alongside justice systems that are simply not responsive to them.

Accompanying this burgeoning body of research, the adoption of SDG 16.3 has catalyzed efforts to mobilize policymakers around a shared policy agenda.<sup>107</sup> Key to this transformation was the “Task Force on Justice,” an initiative led by the Pathfinders for Peaceful, Just and Inclusive Societies (“Pathfinders”) and diverse justice stakeholders including intergovernmental organizations, governments, researchers, and nonprofit organizations.<sup>108</sup> The Task Force produced its final report in 2019<sup>109</sup> and Pathfinders continues to promote research and evidence and policy solutions supporting people-centered justice.

A recent outgrowth of this work is the Justice Action Coalition (“JAC”), “a multi-stakeholder alliance of countries and organizations . . . working to

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103. *Indicators and a Monitoring Framework*, SUSTAINABLE DEV. SOLS. NETWORK, <https://indicators.report/targets/16-3> [<https://perma.cc/5EKR-HH8A>]; see OECD, *OECD FRAMEWORK AND GOOD PRACTICE PRINCIPLES FOR PEOPLE-CENTERED JUSTICE* 17–18 (2021) [hereinafter *OECD FRAMEWORK*].

104. See *Atlas of Legal Needs Surveys*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/our-work/research-and-data/atlas-legal-needs-surveys> [<https://perma.cc/Z8YG-NCFF>].

105. See, e.g., OECD & OPEN SOC’Y FOUNDS., *LEGAL NEEDS SURVEYS AND ACCESS TO JUSTICE* 33 (2019); PASCOE PLEASANCE ET AL., *RESHAPING LEGAL ASSISTANCE SERVICES: BUILDING ON THE EVIDENCE BASE* 102 (2014).

106. OECD & OPEN SOC’Y FOUNDS., *supra* note 105, at 11.

107. See Governance Data and Analytics Team, UNDP Global Policy Centre for Governance, *From Data to Action: Strengthening Civil Justice with SDG 16.3.3*, IISD (Mar. 12, 2025), <https://sdg.iisd.org/commentary/guest-articles/from-data-to-action-strengthening-civil-justice-with-sdg-1633/> [<https://perma.cc/U9E8-WEQ4>].

108. THE TASK FORCE ON JUST., *JUSTICE FOR ALL – FINAL REPORT* 6 (2019).

109. TASK FORCE ON JUST., *JUSTICE FOR ALL – OVERVIEW* (2019).

achieve measurable progress in justice outcomes for people and communities by the third SDG summit in 2027 and beyond.”<sup>110</sup> Their core workstreams engage deeply with institutions working to support the rule of law and enhance access to justice for all, and include: *data and evidence*, led by the Organization for Economic Development and Cooperation (“OECD”); *strategy, development, and coordination* led by the United Nations Development Program (“UNDP”); *communication, narrative, and connection to the SDGs*, led by the Pathfinders for Peaceful, Just, and Inclusive Societies; and, *justice financing*, also led by Pathfinders.<sup>111</sup>

People-centered justice puts individuals and their legal needs at the center of the justice system. Its approach to justice rests on five pillars:

“Establish[ing] a people-centered purpose and culture in the justice system,” which includes a government commitment to “promote people-centered justice based on empirical data and evidence” and mentions the need for whole-of-state and whole-of-society approaches, setting shared goals at the sector-level, and emphasizes the eradication of bias and discrimination.<sup>112</sup>

“Design[ing] and deliver[ing] people-centered . . . services,” which concerns the design, development, and maintenance of justice service delivery.<sup>113</sup> It underscores the need to “identify citizens’ justice needs and what works for each group in society, as well as how to deliver accessible services, including for the most vulnerable groups.”<sup>114</sup>

“Establish[ing] a[n] [enabling] governance infrastructure,” which focuses on “the role of government and other key justice actors in establishing justice systems that are accessible and ensure that citizens’ justice needs are effectively addressed.”<sup>115</sup> This includes “approaches to establish whole-of-government engagement, foster access to technology and data, drive justice system simplification and seamless case referrals, and maintain people-centered innovation.”<sup>116</sup>

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110. PATHFINDERS, JUST. ACTION COAL., <https://www.sdg16.plus/justice-action-coalition/> [perma.cc/7ZPW-F7MC].

111. *Id.*

112. OECD, OECD RECOMMENDATION OF THE COUNCIL ON ACCESS TO JUSTICE AND PEOPLE-CENTERED JUSTICE SYSTEMS 6 (2025); *see also* OECD FRAMEWORK, *supra* note 103.

113. *Id.*

114. OECD FRAMEWORK, *supra* note 103, at 11.

115. *Id.*

116. *Id.*

Empowering people to be informed and to participate, which underscores “the importance of strengthening the capabilities of people,” including both “how to empower people by raising their legal literacy and awareness and the co-design of justice services” as well as “the need to develop capabilities of those working in the justice sector.”<sup>117</sup>

Evidence-based “[p]lanning, monitoring and accountability,” which focuses on “the role of justice data to establish and maintain evidence-based mechanisms to support decision making, delivery and monitoring of people-centered justice services.”<sup>118</sup>

In the United States, both the United States Agency for International Development (“USAID”) and the U.S. Department of Justice Office for Access to Justice have embraced people-centered justice approaches to foreign and domestic justice policy.<sup>119</sup> These approaches offer new opportunities for access to justice researchers, practitioners, judges, and justice policymakers to refocus and redouble efforts to better understand and deliver people-centered justice services. Doing so aligns both with evidence and current global policy trends.

The legal empowerment and people-centered justice approaches reflect the value of building policy and practice on a solid evidence base about people’s justice needs and experiences, informing the design of solutions that are accessible and responsive to the diverse needs and capabilities of people in contemporary diverse societies.

### C. *Democratizing Access to Justice: Empowering Community Justice Workers*

A core insight of recent empirical research on access to justice is the need to fundamentally rethink and redesign policies and programs so that they can actually meet the justice needs of ordinary people, sustainably and at scale. If law is meant to be an equalizing institution—or even merely one where people have the equal justice under the law promised on the frieze of the U.S. Supreme Court—we have been foolish to try to impose a one-size-fits-all, “lawyer-centric” model of access. Instead, empirical, scientific research

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117. *Id.*

118. *Id.*

119. See Elizabeth Andersen, *Opinion: USAID’s Pivot to People-Centered Justice is a Game Changer*, DEVEX (May 4, 2023), <https://www.devex.com/news/opinion-usaid-s-pivot-to-people-centered-justice-is-a-game-changer-105418> [<https://perma.cc/7YDH-7VSQ>]; LEGAL AID INTERAGENCY ROUNDTABLE, ACCESS TO JUSTICE IN FEDERAL ADMINISTRATIVE PROCEEDINGS: NONLAWYER ASSISTANCE AND OTHER STRATEGIES 1 (2023).

shows us that if we want everyone to be able to democratically engage with law, we need to provide diverse entry points and diverse supports—lots of different doors, and many signposts.<sup>120</sup> In terms of what we know about how to design those entry points so that people can access their own law, they need to be timely, showing up when people realize they have an issue; targeted, specific and proportionate to the needs they actually have; trustworthy, found and delivered from sources people trust; transparent, clearly explaining to people what situation they face, what their options are, and what may happen in the event of taking each option.<sup>121</sup> While lawyers and formal justice institutions have a role to play in protecting rule of law and access to justice, they cannot be the sole gatekeepers of justice. Fortunately, they do not have to.

In the United States, for many decades people without law licenses have represented petitioners and respondents in a wide range of federal administrative proceedings, including as accredited immigration and Veterans Service Organization (“VSO”) representatives.<sup>122</sup> Tribal lay advocates represent clients across the nation’s hundreds of Tribal courts,<sup>123</sup> and jailhouse lawyers who provide legal assistance in carceral institutions have found constitutional cover to authorize their work.<sup>124</sup>

Within only the last few years, several state supreme courts have made rule changes that enable justice workers to provide legal advice and representation in community contexts. In 2022, the Alaska Supreme Court approved a waiver that permits community justice workers trained and supervised by Alaska Legal Services Corporation (“ALSC”), the state’s primary provider of civil legal aid, to both provide legal advice and represent their clients in court.<sup>125</sup> Nearly 200 community justice workers have completed training in SNAP advocacy, debt collection defense, wills, domestic violence advocacy, and the Indian Child Welfare Act (“ICWA”), and hundreds more are in the training pipeline.<sup>126</sup> Approximately one third of these justice workers are Alaska Native, and nearly all are volunteers or work for community-based organizations, a form of democratic representation and participation not available in most places.<sup>127</sup>

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120. Matthew Burnett & Rebecca L. Sandefur, *Designing Just Solutions at Scale: Lawyerless Legal Services and Evidence-Based Regulation*, 19 DIREITO PÚBLICO 104, 106–110 (2022) (Braz.).

121. *See id.* at 112–13.

122. *See* LEGAL AID INTERAGENCY ROUNDTABLE, *supra* note 119, at 27.

123. Judith M. Stinson et al., *Trusting Tribal Courts: More Lawyers Is Not Always the Answer*, 14 L.J. SOC. JUST. 130, 154–55 (2021).

124. *See* Johnson v. Avery, 393 U.S. 483, 490 (1969).

125. ALASKA BAR RULE 43.5.

126. Joy Anderson et al., *Community Justice Workers: Part of the Solution to Alaska’s Legal Deserts*, 41 ALASKA L. REV. 9, 19 (2024).

127. *A People-Centered Approach*, *supra* note 26, at 1539.

New justice worker activity is spreading through diverse routes around the country. In 2020, the Supreme Court of Arizona authorized a program that<sup>128</sup> empowers nonlawyer community-based advocates to “provide trauma-informed, limited scope legal advice and assistance to [domestic violence] survivors in areas including child support, spousal maintenance, and fair and equitable property and debt divisions.”<sup>129</sup> In 2023, the Arizona State Supreme Court granted another waiver permitting trained Housing Stability Legal Advocates to assist low-income people facing eviction.<sup>130</sup> And in 2024, the Court approved Administrative Order No. 2024-50, authorizing community justice workers to be supervised by any of the state’s three Legal Services Corporation-funded legal services providers.<sup>131</sup> In 2025, the Arizona Supreme Court expanded this authorization to many more providers throughout the state.<sup>132</sup>

In 2022, the Delaware Supreme Court authorized Qualified Tenant Advocates to represent tenants in eviction cases.<sup>133</sup> Since 2019, the Utah Supreme Court has been operating the world’s first legal services regulatory sandbox, a regulatory space where traditional rules restricting legal advice and advocacy to lawyers can be relaxed in an environment where consumer protection is actively monitored.<sup>134</sup> The Utah Sandbox includes programs assisting people with legal issues surrounding medical debt, criminal records expungement, domestic violence, and end of life planning.<sup>135</sup> In 2024, the Washington State Supreme Court approved a similar regulatory model.<sup>136</sup>

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128. *Domestic Violence Legal Advocate Initiative*, INNOVATION FOR JUST., <https://www.innovation4justice.org/research/service/dvla> [<https://perma.cc/6NJG-UDRC>].

129. CAYLEY BALSER ET AL., INNOVATION FOR JUST., HOUSING STABILITY LEGAL ADVOCATE INITIATIVE: 2023 UPDATE 9 (2023), [https://docs.google.com/document/d/1G3QqXB8Y5nz4la\\_kRChxtBLJz3A\\_J3AodjiZ457PMvs/edit](https://docs.google.com/document/d/1G3QqXB8Y5nz4la_kRChxtBLJz3A_J3AodjiZ457PMvs/edit) [<https://perma.cc/PD26-P548>].

130. *Id.* at 51.

131. Authorizing a Legal Serv. Cmty. Just. Worker Program, Admin. Order No. 2024-250 (Ariz. 2024).

132. See *New ACJA 7-221: Community-Based Justice Work Service Delivery Models*, AZCOURTS.GOV, <https://www.azcourts.gov/ACJA-Forum/aft/1666> [<https://perma.cc/QDW5-JZK3>] (Dec. 22, 2024).

133. Press Release, Del. Sup. Ct., Del. Sup. Ct. Announces Adoption of New Sup. Ct. Rule 57.1 to Allow Non-Law. Representation of Residential Tenants in Eviction Actions (Jan. 28, 2022), <https://courts.delaware.gov/Forms/Download.aspx?id=133348> [<https://perma.cc/V86D-RDEX>].

134. Rebecca L. Sandefur & Lucy Ricca, *Outside the Box: How States Are Increasing Access to Justice Through Evidence-Based Regulation of the Practice of Law*, 108 JUDICATURE 59, 61 (2024).

135. *Authorized Entities*, UTAH OFF. OF LEGAL SERVS. INNOVATION, <https://utahinnovati.onoffice.org/authorized-entities> [<https://perma.cc/SR7J-6BUD>].

136. Compare *id.*, with Adoption of a Pilot Project to Test Entity Regul. Using the Prac. of L. Bd.’s Framework for Legal Regul. Reform, Order No. 25700-B-721 (Wash. 2024).

Even more states have proposed or are considering rule changes to permit expanded justice work. For example, the Supreme Court of Texas has recently proposed reforms authorizing Licensed Court-Access Assistants (“LCAA”s).<sup>137</sup> To practice under this model (as currently proposed), applicants must be sponsored by an approved nonprofit organization, successfully complete an approved training program, and pass a criminal background check.<sup>138</sup> These community justice workers would be authorized to practice under the supervision of an attorney at the sponsoring nonprofit organization.<sup>139</sup> The legal services they would be authorized to provide include not only legal advice but also “representation in civil justice court in areas that they have been trained.”<sup>140</sup>

By expanding who can engage in justice work, we expand who can access justice and engage in democracy. As we described above, justice workers are often from the communities they serve, through processes that are inclusive and low barrier; in this sense, they are of the people. The rich and diverse experiences they bring to their justice work are forms of expertise, including language and cultural competency, as well as insider knowledge that comes from living a particular life in a particular place. More access to justice happens when more people have accessible entry points to engaging with the law. An enriched democracy happens when more and more diverse and distinctive experiences are represented among those who work that democracy.

#### IV. CONCLUSION

American democracy faces significant threats not only from outside anti-democratic actors, but also from within. Failures of law and justice as well as lawyers’ failures contribute to the factors undermining people’s trust in government and democratic institutions. They also contribute to the widening inequalities that pull people apart from one another. We will have to chart that new path together. Other “awakenings” have come “from periods of deep darkness,” a recognition that is “no insignificant thing, as we try to imagine the future ahead, in which something rises from the ashes better than before.”<sup>141</sup>

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137. See Preliminary Approval of Rules Governing Licensed Legal Paraprofessionals and Licensed Court-Access Assistants, Misc. Docket No. 24-9050, 2024 Tex. LEXIS 633 (Tex. Aug. 6, 2024).

138. *Id.* at 18–19.

139. *Id.* at 19.

140. *Id.*

141. Gregg Gonsalves & Amy Kapczynski, *The Social Life of Care*, 154 DÆDALUS: J. AM. ACAD. ARTS & SCIS. 224, 236 (2025).

Democracy only works if we work it. People can work it when we open up space for them to enact their democratic rights and duties, and be able to engage with law, to use it when they need to and work to change it when law needs change. Democracy is also trying to figure out how to act collectively to live together in a way that enables lots of different kinds of people to thrive—to be healthy, to contribute, to participate, to live their understanding of a good life. We have to figure this out together. No one person or one idea or one approach or one method can get us to a good place where everyone can flourish. Justice work is a critical way to begin to repair social and institutional ruptures and rebuild trust and engagement in that shared project of trying to make a good, fair, and free life together.