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## The Field of State Civil Courts

Anna E. Carpenter

Alyx Mark

Colleen F. Shanahan

Jessica Steinberg

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## FOREWORD

### THE FIELD OF STATE CIVIL COURTS

*Anna E. Carpenter*,\* *Alyx Mark*,\*\* *Colleen F. Shanahan*\*\*\* &  
*Jessica K. Steinberg*\*\*\*\*

#### INTRODUCTION

This symposium Issue of the *Columbia Law Review* marks a moment of convergence and opportunity for an emerging field of legal scholarship focused on America's state civil trial courts. Historically, legal scholarship has treated state civil courts as, at best, a mere footnote in conversations about civil law and procedure, federalism, and judicial behavior. But the status quo is shifting. As this Issue demonstrates, legal scholars are examining our most common civil courts as sites for understanding law, legal institutions, and how people experience civil justice. This engagement is essential for inquiries into how courts shape and respond to social needs and structural inequality and what all of this means for the present and future of American democracy.

Two key motivations drive scholarly interest in state civil courts. One motivation is generating knowledge. Historically, legal scholarship has largely ignored the most common and ordinary aspects of American civil justice in favor of studying the uncommon and the extraordinary. Thus, many of our core premises and assumptions—in civil procedure, administrative law, contracts, torts, and even constitutional law—are based on an understanding of only a sliver of formal civil justice activity. By case count, that slice is roughly two percent, the percentage of civil cases handled by federal courts each year, creating a glaring existential problem for legal scholarship. We need to know about the institutions that handle the other ninety-eight percent of civil matters to answer the most basic questions about civil law and the civil justice system, to say nothing of exploring broader social, economic, and political questions that intersect with civil courts' work.

Reform is another motivation. We live in a moment of collective concern and outrage about institutions, systems, and practices that perpetuate

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\* Professor of Law, University of Utah S.J. Quinney College of Law.

\*\* Assistant Professor of Government, Wesleyan University.

\*\*\* Clinical Professor of Law, Columbia Law School.

\*\*\*\* Professor of Law, George Washington University Law School.

structural inequality and injustice. State civil courts are one of those institutions; civil justice is one of those systems. Many of those who choose to study state civil courts are committed to generating insights that help make our civil justice system more accessible, fair, and supportive of shared prosperity and human flourishing.

We acknowledge a tension between knowledge generation and reform goals. We have much to learn and the need for reform is pressing—human lives and our democracy are on the line. In navigating this tension, empirical research on state civil courts ought to be theoretically driven, but it need not always include prescriptions or reform proposals to be valuable and vital. Given all we need to learn about state civil courts and the gravity and scope of their work, it may be too early for quality, data-driven prescriptions to flow from some research projects. Likewise, we need fresh frameworks and perspectives from critical and theoretical scholarship. The field of state civil courts should celebrate and elevate scholarship that describes what state civil courts *do* (through empirical methods) and *why* (through theory and critique). This does not mean state civil courts scholarship should be devoid of normative commitments. Indeed, like much of legal scholarship, scholars' work will be driven by explicit and implicit views of what *should be*.<sup>1</sup>

While this Issue focuses on academic legal scholarship about state civil courts, we owe a tremendous debt to the foundational work of law and society scholars,<sup>2</sup> to the National Center for State Courts for years of

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1. For legal scholarship about legal scholarship, including the relationship between and role of normative, empirical, critical, and theoretical work, see generally Danielle K. Citron & Robin West, *On Legal Scholarship* (2014), <https://www.aals.org/wp-content/uploads/2014/08/OnLegalScholarship-West-Citron.pdf> [<https://perma.cc/S8QZ-CZ2L>] (assessing the value and role of legal scholarship and categorizing it); Joshua B. Fischman, *Reuniting 'Is' and 'Ought' in Empirical Legal Scholarship*, 162 U. Pa. L. Rev. 117 (2013) (discussing how legal empiricists can bridge the gap between "is" and "ought"); Martha Minow, *Archetypal Legal Scholarship: A Field Guide*, 63 J. Legal Educ. 65 (2013) (categorizing approaches to legal scholarship); see also Katerina Linos & Melissa Carlson, *Qualitative Methods for Law Review Writing*, 84 U. Chi. L. Rev. 213, 214–17 (2017) (calling for a systematic, rigorous approach to qualitative analyses in doctrinal scholarship).

2. Sociolegal scholars have produced much of what we know about state-level civil trial courts and the public's experiences with civil justice more broadly. For an authoritative summary, see generally Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 Wis. L. Rev. 101 ("[W]e outline a framework for a research agenda that interrogates the premises of the policy model . . . [I]t is our hope that scholars *and* policy makers will come to understand access to justice in a different and more comprehensive way and . . . forge major new solutions to address poverty and inequality." (emphasis added)). For examples of key topics, such as how grievances become disputes, see generally Catherine R. Albiston, Lauren B. Edelman & Joy Milligan, *The Dispute Tree and the Legal Forest*, 10 Ann. Rev. L. & Soc. Sci. 105 (2014) (proposing the "dispute tree" framework); Ellen Berrey & Laura Beth Nielsen, *Rights of Inclusion: Integrating Identity at the Bottom of the Dispute Pyramid*, 32 Law & Soc. Inquiry 233 (2007) (reviewing David M. Engel & Frank W. Munger, *Rights of Inclusion: Law and Identity in the Life Stories of Americans With Disabilities* (2003)); William L.F. Felstiner, Richard L. Abel

dogged data collection,<sup>3</sup> and to the scholars, research organizations, and court leaders who have been steadily raising the volume on calls to improve state civil courts' data collection and analysis.<sup>4</sup> To celebrate the

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& Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 *Law & Soc'y Rev.* 631 (1980) (offering a framework for understanding how experiences become disputes and follow particular paths to resolution); Carrie Menkel-Meadow, *The Transformation of Disputes by Lawyers: What the Dispute Paradigm Does and Does Not Tell Us*, 1985 *Mo. J. Disp. Resol.* 25 (examining the dispute paradigm from the perspective of lawyers). For further discussion of legal consciousness, see Patricia Ewick & Susan S. Silbey, *The Common Place of Law 15–23* (1998) (“Our analysis of commonplace legality builds on a tradition of research on the social construction of law . . . [T]hese accounts describe how legal actors respond to particular situations.”); Lynette J. Chua & David M. Engel, *Legal Consciousness Reconsidered*, 15 *Ann. Rev. L. & Soc. Sci.* 335, 336 (2019) (tracing the development of legal consciousness research); Kathleen E. Hull, *Legal Consciousness in Marginalized Groups: The Case of LGBT People*, 41 *Law & Soc. Inquiry* 551 (2016) (focusing on sexual and gender identity minorities in legal consciousness research). For a discussion of procedural justice, see generally John Thibaut & Laurens Walker, *Procedural Justice: A Psychological Analysis* (1975); Robert J. MacCoun, *Voice, Control, and Belonging: The Double-Edged Sword of Procedural Fairness*, 1 *Ann. Rev. L. & Soc. Sci.* 171 (2005) (surveying major empirical findings on procedural justice).

3. The National Center for State Courts offers the best available national estimates of key civil court data points like case volume, type, outcome, and representation status. The Court Statistics Project, Nat'l Ctr. for State Cts., <https://www.courtstatistics.org/> [<https://perma.cc/6EGZ-XFZD>] (last visited Feb. 7, 2022); see also Nat'l Ctr. for State Cts., *Civil Justice Initiative: The Landscape of Civil Litigation in State Courts*, at iii–vi (2015), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0020/13376/civiljusticereport-2015.pdf](https://www.ncsc.org/_data/assets/pdf_file/0020/13376/civiljusticereport-2015.pdf) [<https://perma.cc/7AJB-SHUD>] (reviewing data on state civil courts). Despite the National Center's longstanding efforts, state civil court data remain difficult to access and analyze. For a summary of the challenges, see Anna E. Carpenter, Jessica K. Steinberg, Colleen F. Shanahan & Alyx Mark, *Studying the “New” Civil Judges*, 2018 *Wis. L. Rev.* 249, 265–71. For a summary of the data, see *id.* at 257–65. For a new perspective on state civil court data, see Colleen F. Shanahan, Jessica K. Steinberg, Alyx Mark & Anna E. Carpenter, *The Institutional Mismatch of State Civil Courts*, 122 *Colum. L. Rev.* 1471 (2022).

4. See Deno G. Himonas & Tyler J. Hubbard, *Democratizing the Rule of Law*, 16 *Stan. J. C.R. & C.L.* 261, 267–68 (2020) (describing the Utah Supreme Court's efforts to address access to justice challenges); Bridget Mary McCormack, *Staying Off the Sidelines: Judges as Agents for Justice System Reform*, 131 *Yale L.J. Forum* 175, 178 (2021) (arguing that judges have an ethical obligation to advocate for justice system improvements); Erika Rickard, *The Agile Court: Improving State Courts in the Service of Access to Justice and the Court User Experience*, 39 *W. New Eng. L. Rev.* 227, 246 (2017) (describing the relationship between judicial administration and access to justice and offering recommendations for change); Rebecca L. Sandefur, *Paying Down the Civil Justice Data Deficit: Leveraging Existing National Data Collection*, 68 *S.C. L. Rev.* 295, 295 (2016) (describing civil justice data gaps and identifying possible solutions); Tanina Rostain & Erika Rickard, *Understanding State Courts: A Preliminary List of Data Needs 1* (Mar. 28, 2019) (unpublished manuscript) (on file with the *Columbia Law Review*) (identifying essential data to be collected about civil justice activity and entities best placed to collect that data); Civil Justice Data Commons, *Geo. L., Inst. for Tech. L. & Pol'y*, <https://www.law.georgetown.edu/tech-institute/programs/civil-justice-data-commons> [<https://perma.cc/5C5X-XR2R>] (last visited Feb. 7, 2022) (describing the Civil Justice Data Commons, a repository for civil legal data); *How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations*, *Pew* (Dec. 1, 2021), <https://www.pewtrusts.org/en/research-and-analysis/reports/2021/12/how-courts-embraced-technology-met-the-pandemic-challenge-and-revolutionized-their-operations> [<https://perma.cc/G9FU-T4YE>] (recommending that courts use data to guide

blossoming field of state civil courts in legal scholarship and encourage future scholars, we review the field using three intentionally broad and overlapping analytical lenses that drive research questions and methodological approaches: law, institutions, and people.

First, scholars using law as a lens focus on courts' adjudicatory and law development functions and ask questions about the nature and consequences of the substantive and procedural law that courts create, develop, and enforce. Second, scholars using an institutional lens examine courts from two perspectives. One is internal and studies courts as organizations with their own structures, norms, cultures, and roles. Another is external and examines courts in the context of their role in our broader government system, including how courts relate to other branches of state and federal governments and how courts' institutional design connects to systemic economic and social outcomes. Third, scholars using people as a lens explore how individuals and social groups experience courts and the resulting consequences.

The law, institutions, and people categories are not mutually exclusive; they overlap and contain cross-cutting issues. One example is a key theme running through many works in this Issue: inequality. Legal scholars writing about state civil courts interrogate racial, gender, and economic inequality and injustice through different frames within and across the categories of law, institutions, and people. Another example is the judicial role, which connects to law via civil procedure and judicial ethics rules, informs institutional questions via design choices that shape the judicial function, and affects people whose experiences of justice can be shaped by judicial behavior. For each category below, we highlight representative work and preview the contributions of papers in this Issue. We begin with a focus on law.

## LAW

Understanding the content and implications of substantive and procedural law as enforced, developed, and created by state civil courts is

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technology decisions); How Debt Collectors Are Transforming the Business of State Courts, Pew (May 6, 2020), <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts> [<https://perma.cc/RU7Z-AVKG>] (calling on states to improve the handling of debt collection cases with data); Law Technology Now, Model for Change: Utah's Data-Driven Approach to Closing the Justice Gap, Legal Talk Network (Sep. 16, 2020), <https://legaltalknetwork.com/podcasts/law-technology-now/2020/09/model-for-change-utahs-data-driven-approach-to-closing-the-justice-gap/> [<https://perma.cc/HNA6-DWN8>] (discussing Utah's approach to access to justice reform); Bridget McCormack, Opinion, Justice McCormack: Michigan Needs Better Court Data System, Detroit News (Jan. 6, 2021), <https://www.detroitnews.com/story/opinion/2021/01/07/opinion-justice-mccormack-michigan-needs-better-court-data-system/4139395001/> [<https://perma.cc/KKN9-USDB>] (calling for improved civil justice data collection).

a significant challenge and opportunity for legal scholars. Legal scholarship on civil law has long focused on federal courts' work, particularly in the contexts of constitutional issues, business litigation, and administrative law. As a result, legal scholarship has had relatively little to say about the substantive and procedural legal issues ordinary people face in courts, such as divorce, custody, guardianships, protective orders, debt, eviction, foreclosure, and small claims. By studying law in state civil courts, legal scholars can help us interpret civil law and understand how it affects people, institutions, and systems across our society. Scholars can also advance novel legal theories to improve substantive and procedural civil law and the social, political, and economic systems it supports and shapes—contributions that legal scholars are uniquely positioned to make.

Emerging work exploring the operation and development of law in state civil courts includes transsubstantive syntheses, analyses, and theories that help us understand broader forces that shape state civil law and explore their ramifications.<sup>5</sup> For example, Kathryn Sabbeth has offered an expansive argument that the civil justice system is intertwined with a market-based system of law development. In her account, the energy and attention of lawyers and courts focus disproportionately on developing law that aligns with the interests of wealthy people and corporations while mainly ignoring the evolution of law that affects low-income people.<sup>6</sup>

Scholars are describing, interpreting, and criticizing written law and law in action across the spectrum of state civil court jurisdiction, including child support,<sup>7</sup> domestic violence,<sup>8</sup> child welfare and parental rights,<sup>9</sup>

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5. See, e.g., Annie Decker, *A Theory of Local Common Law*, 35 *Cardozo L. Rev.* 1939, 1991–92 (2014) (theorizing how common law develops in trial courts); Colleen F. Shanahan, Anna E. Carpenter & Alyx Mark, *Can a Little Representation Be a Dangerous Thing?*, 67 *Hastings L.J.* 1367, 1372–83 (2016) (discussing the results and implications of an empirical study showing that nonlawyer advocates do not engage in law reform and law development activities and proposing how they might be trained to do so).

6. Kathryn A. Sabbeth, *Market-Based Law Development*, *The L. & Pol. Econ. Project* (July 21, 2021), <https://lpeproject.org/blog/market-based-law-development/> [<https://perma.cc/5UQ8-BRZT>].

7. See, e.g., Tonya L. Brito, *The Child Support Debt Bubble*, 9 *U.C. Irvine L. Rev.* 953, 955 (2019) (describing the nature and consequences of child support debt and calling for reform).

8. See, e.g., Jane K. Stoeber, *Transforming Domestic Violence Representation*, 101 *Ky. L.J.* 483, 492 (2012) (applying the “Stages of Change Model” to legal representation for domestic violence survivors).

9. See, e.g., Susan L. Brooks & Dorothy E. Roberts, *Social Justice and Family Court Reform*, 40 *Fam. Ct. Rev.* 453, 455 (2002) (presenting a vision of family court reform that centers social justice).

guardianship,<sup>10</sup> eviction,<sup>11</sup> and debt.<sup>12</sup> For example, Nicole Summers has leveraged a rigorous empirical study of housing law to develop grounded theory on the effectiveness of the warranty of habitability<sup>13</sup> and revealed a shadow system of “civil probation” enacted via eviction settlement agreements that operates parallel to formal law.<sup>14</sup> In the wage theft context, Llezlie Green’s study of wage and hour litigation shows that courts often apply incorrect substantive legal standards and argues that informal procedure undercuts the goals of substantive wage and hour laws.<sup>15</sup> And in child welfare, Dorothy Roberts’s extensive work has uncovered the punitive and carceral aspects of this ostensibly civil law.<sup>16</sup>

Civil procedure scholars are also turning toward state courts. Emerging work reveals new insights about written procedural law and its development, such as Zachary Clopton’s study of how states make civil procedure rules.<sup>17</sup> Other work examines how civil procedure operates on the ground, including the insight that traditional adversary procedure has largely disappeared in state civil courts given the absence of lawyers.<sup>18</sup> Scholars are discussing the wisdom of altering civil procedure and judicial ethics to create a more active or managerial role for courts and judges,<sup>19</sup>

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10. See, e.g., Joseph A. Rosenberg, *Poverty, Guardianship, and the Vulnerable Elderly: Human Narrative and Statistical Patterns in a Snapshot of Adult Guardianship Cases in New York City*, 16 *Geo. J. on Poverty L. & Pol’y* 315, 321–22 (2009) (exposing the reality of the guardianship process through a study of twenty adult guardianship cases in New York City).

11. See, e.g., Lauren Sudeall & Ruth Richardson, *Unfamiliar Justice: Indigent Criminal Defendants’ Experiences With Civil Legal Needs*, 52 *U.C. Davis L. Rev.* 2105, 2129–34 (2019) (“Many tenants are also unaware that landlords cannot engage in ‘self-help’ evictions outside of the normal court process.”); Kathryn A. Sabbeth, *Eviction Courts*, 18 *U. St. Thomas L.J.* 359, 389–95 (2022) (on file with the *Columbia Law Review*) [hereinafter Sabbeth, *Eviction Courts*] (describing how the formal and informal law of eviction courts distorted the interpretation of federal eviction moratoria).

12. See, e.g., Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 *Stan. L. Rev.* 1093, 1098–99 (2019) (critiquing credit as a tool of social provision for low-income Americans); Mary Spector, *Debts, Defaults and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 *Va. L. & Bus. Rev.* 257, 262 (2011).

13. Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 *U. Chi. L. Rev.* 145, 178–81 (2020); see also Kathryn Sabbeth, *(Under) Enforcement of Poor Tenants’ Rights*, 27 *Geo. J. Poverty L. & Pol’y* 97, 119 (2019) (“The right to safe housing is an established right for poor tenants. Yet neither the private legal market nor the public sector enforces it. The reason is that the affected tenants are poor.”).

14. Nicole Summers, *Civil Probation*, 75 *Stan. L. Rev.* (forthcoming 2023) (manuscript at 3–4), <https://ssrn.com/abstract=3897493> [<https://perma.cc/7NAA-Z6QH>].

15. Llezlie L. Green, *Wage Theft in Lawless Courts*, 107 *Calif. L. Rev.* 1303, 1307 (2019).

16. Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 *UCLA L. Rev.* 1474, 1476 (2012) (describing how the U.S. prison and foster care systems together have a punitive effect on Black mothers while preserving inequality).

17. Zachary D. Clopton, *Making State Civil Procedure*, 104 *Cornell L. Rev.* 1, 5 (2018).

18. See, e.g., Jessica K. Steinberg, *Adversary Breakdown and Judicial Role Confusion in “Small Case” Civil Justice*, 2016 *BYU L. Rev.* 899, 901–03.

19. See Anna E. Carpenter, *Active Judging and Access to Justice*, 93 *Notre Dame L. Rev.* 647, 653–54 (2017); Russell Engler, *And Justice for All—Including the Unrepresented*

offering empirical evidence of how judges themselves are confused about the procedural, substantive, and ethical law guiding their work,<sup>20</sup> and debating whether state civil courts should embrace procedural simplification and informality to accommodate pro se litigants, including whether such “delegalization” of court procedure ultimately harms low-income litigants.<sup>21</sup> Other critical issues include procedural due process,<sup>22</sup> service of process,<sup>23</sup> ad hoc procedure,<sup>24</sup> assembly-line justice in debt collection<sup>25</sup> and eviction,<sup>26</sup> and how lessons from family court reform might translate to other areas of law.<sup>27</sup>

In this Issue, Pamela Bookman and Colleen Shanahan’s *A Tale of Two Civil Procedures* builds a bridge between civil procedure scholarship that has traditionally focused on federal courts and this emerging civil procedure scholarship focused on state courts.<sup>28</sup> Bookman and Shanahan argue

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Poor: Revisiting the Roles of the Judges, Mediators, and Clerks, 67 *Fordham L. Rev.* 1987, 1989–90 (1999); Russell G. Pearce, Redressing Inequality in the Market for Justice: Why Access to Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help, 73 *Fordham L. Rev.* 969, 970 (2004); Jessica K. Steinberg, Informal, Inquisitorial, and Accurate: An Empirical Look at a Problem-Solving Housing Court, 42 *Law & Soc. Inquiry* 1058, 1060–61 (2017) [hereinafter Steinberg, Informal, Inquisitorial, and Accurate].

20. See, e.g., Anna E. Carpenter, Colleen F. Shanahan, Jessica Steinberg & Alyx Mark, Judges in Lawyerless Courts, 110 *Geo. L.J.* 509, 557–61 (2022), [hereinafter Carpenter et al., Lawyerless Courts].

21. See Elizabeth L. MacDowell, Reimagining Access to Justice in the Poor People’s Courts, 22 *Geo. J. on Poverty L. & Pol’y* 473, 485 (2015); Kathryn A. Sabbeth, Simplicity as Justice, 2018 *Wis. L. Rev.* 287, 288; Jessica Steinberg, Demand Side Reform in the Poor People’s Court, 47 *Conn. L. Rev.* 741, 793 (2015) [hereinafter Steinberg, Demand Side Reform]; Steinberg, Informal, Inquisitorial, and Accurate, supra note 19, at 1062.

22. See, e.g., Jason Parkin, Dialogic Due Process, 167 *U. Pa. L. Rev.* 1115, 1117–18 (2019) (analyzing the divergence between due process doctrine and practice).

23. See, e.g., Andrew C. Budzinski, Reforming Service of Process: An Access-to-Justice Framework, 90 *U. Colo. L. Rev.* 167, 170 (2019) (surveying service of process challenges for plaintiffs without lawyers); Jane K. Stoever, Access to Safety and Justice: Service of Process in Domestic Violence Cases, 94 *Wash. L. Rev.* 333, 340 (2019) (showing how service of domestic violence protection orders is an access to justice and safety issue and proposing reforms including alternative service).

24. Pamela Bookman & David Noll, Ad Hoc Procedure, 92 *N.Y.U. L. Rev.* 767, 776 (2017) (describing ad hoc procedure-making and discussing the legitimacy of ad hoc procedural statutes).

25. See, e.g., Daniel Wilf-Townsend, Assembly-Line Plaintiffs, 135 *Harv. L. Rev.* 1704, 1708–09 [hereinafter Wilf-Townsend, Assembly-Line Plaintiffs] (offering empirical evidence of corporate repeat filers in debt claims and proposing reforms).

26. See, e.g., Lauren Sudeall & Daniel Pasciuti, Praxis and Paradox: Inside the Black Box of Eviction Court, 74 *Vand. L. Rev.* 1365, 1368 (2021) (drawing on a mixed-method study of Georgia’s dispossessory courts to reveal the processes and practices that govern eviction court proceedings and assessing implications).

27. See, e.g., Rebecca Aviel, Family Law and the New Access to Justice, 86 *Fordham L. Rev.* 2279, 2279 (2018) (discussing how family courts’ pioneering reforms may have some transferability to other courts).

28. Pamela K. Bookman & Colleen F. Shanahan, *A Tale of Two Civil Procedures*, 122 *Colum. L. Rev.* 1183, 1188 (2022).

that focusing on the division between federal and state courts as a conceptual framework for civil procedure, scholarship, and teaching can obscure the importance of lawyerless adjudication. They instead argue in favor of framing the field in terms of the distinction between lawyered courts (where most cases involve represented parties, such as federal courts or state business trial courts) and lawyerless ones (where at least one side routinely proceeds without a lawyer, such as family or housing courts).<sup>29</sup> Using this framing, they explore three major themes in current federal civil procedure scholarship and state civil courts scholarship: written and unwritten procedure-making, mass claims, and technology. Bookman and Shanahan make two vital theoretical and pragmatic points to help shape the future of civil procedure scholarship, teaching, and reform across lawyered and lawyerless courts. First, they argue that scholars should consciously distinguish between lawyered and lawyerless courts to determine whether and how the distinction is meaningful, especially when procedural rules or reforms build off a presumptively adversarial posture between parties. Second, they urge scholars and reformers to design procedures that “take advantage of lawyers’ presence while also functioning in their absence.”<sup>30</sup>

Diego Zambrano’s contribution to this Issue explores a core aspect of America’s civil procedure regime: discovery.<sup>31</sup> In *Missing Discovery in Lawyerless Courts*, Zambrano finds discovery is “nearly nonexistent and opaque” in state civil courts.<sup>32</sup> Zambrano examines the law on the books, comparing written state discovery procedures with the federal context. He shows, for example, that many states have rejected the transsubstantive model of federal law and developed specialized (and often limited) discovery rules for lawyerless cases such as housing, family law, or small claims. His theoretical inquiry identifies discovery’s positive and negative potential and suggests how lawyerless courts might leverage the upsides. Ultimately, he offers a potential prescription: imposing heightened disclosure requirements on represented, wealthy, and corporate parties, a burden that could mirror prosecutors’ obligations in the criminal context.

State civil courts scholarship focused on substantive and procedural law recognizes and reflects that much of American law is made, enforced, and experienced outside the federal context. This body of work illuminates areas of law most relevant to the lives of ordinary people, surfaces obscured truths about vast swaths of American civil law, and consistently shows that we must reexamine fundamental assumptions about civil procedure and litigation in the state court context.

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29. Carpenter et al., *Lawyerless Courts*, supra note 20, at 509.

30. Bookman & Shanahan, supra note 28, at 1241.

31. Diego A. Zambrano, *Missing Discovery in Lawyerless Courts*, 122 *Colum. L. Rev.* 1423, 1428 (2022).

32. *Id.* at 1426.

## INSTITUTIONS

Using an institutional lens, state civil courts scholars are working to develop and update accounts of courts as institutions. In contrast, legal scholarship has traditionally centered on federal courts and the federal system as the starting point for such institutional analyses. Some state civil courts scholars take a broad, external view, including examining questions of state courts' place in a three-branch system of democratic governance at federal and state levels and as government entities with relationships to civil society groups. Other scholars take an internal perspective, understanding courts as organizations with internal structures, cultures, and norms staffed by people who inhabit particular roles, exercise discretion, and shape court operations. Scholars are also interrogating cross-cutting questions of how court design and courts' institutional procedures reinforce social, racial, and economic power structures and inequality.

Beginning with the external perspective, legal scholarship on the judiciary's role in our democracy has paid limited attention to states. Leading theories of courts and democracy, including those of judicial legitimacy, tend to study or assume a federal, idealized version of adjudication, and they tend to present courts as democracy-enhancing in ways that do not map onto the state court context. For example, take the comments of a leading legal theorist:

The quotidian activities of ordinary litigation oblige disputants to treat each other as equals and to provide one another with information . . . . Public courts demonstrate government commitments to forms of self-restraint and explanation, to the equality of all persons, and to transparent exercises of authority in the face of conflicting claims of right.<sup>33</sup>

American legal and political theory has long held that a core aspect of courts' social value rests on their accessibility and transparency as democratic sites for contesting political values, protecting legal rights, and examining government operations (including scrutinizing judges' work firsthand and in real time). Leading theories emphasize courts' publicness. Many theorists implicitly or explicitly assume that parties and the public can observe courts' adjudicative work, that judges routinely produce clear statements of who has won a case and why, and that court rulings are available to parties or any interested observer.

Scholarship focused on state civil courts underscores the need for revisiting and revising these theories. Instead of courts that uphold equal access and transparency, state civil courts scholarship reveals courts characterized by procedural mazes and informational opacity. Rather than promoting party engagement and information sharing, powerful plaintiffs

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33. Judith Resnik, *Reinventing Courts as Democratic Institutions*, 143 *Daedalus* 9, 10, 21 (2014).

in state civil courts routinely obtain near-automatic judgments against low-income litigants.

Updated theories of courts' role in democratic governance can inform critical public conversations. We live in a time of social and political upheaval and waning trust across democratic institutions, including courts, which depend on public trust and confidence to maintain the rule of law.<sup>34</sup> It matters that there is a chasm between American courts' promise of justice and the justice they ultimately deliver. Recent polling suggests falling levels of confidence in the judiciary and finds that a majority of the public may have concerns about courts as sites where racial and gender biases drive decisions or where people are treated differently based on their financial circumstances or personal qualities.<sup>35</sup> Yet we know very little of how state civil courts relate to public trust in the judiciary or civic engagement. The field of state civil courts is poised to develop a more accurate, bottom-up account that confronts weaknesses and disconnects in the existing system. We urge scholars to advance such accounts and imagine a future where civil courts are places that deliver on promises of democratic engagement and the fair resolution of disputes.

Intending to rethink civil courts' institutional role in America's democratic system, our contribution to this Issue, *The Institutional Mismatch of State Civil Courts*, offers a theory of civil courts' institutional role rooted in the mismatch between what courts are designed to do—dispute resolution—and what they actually do—confront people's pressing social needs.<sup>36</sup> Courts are not designed to deliver access to justice interventions, to say nothing of addressing the crushing effects of poverty and racial inequality. We show how state civil courts confront social needs in the face of executive and legislative branch failures to provide a social safety net and other systems of care. And we show how this mismatch underscores two roles for state civil courts: policymaking bodies and violent institutions. Our theory of state civil courts' policymaking underscores the hidden shift in the democratic balance of power that occurs as state courts are experimenting without the benefit of experimentalism. Our theory of the violence of state civil courts is in conversation with that of others who engage questions of violence as a tool of social control, including this Issue's *Racial Capitalism in the Civil Courts*, discussed further below, and work by Shirin Sinnar that draws on evidence from eviction courts to argue

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34. See, e.g., Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis, 129 Yale L.J. 1784, 1789–94 (2020) (offering a framework for a “law-and-political-economy” approach to legal scholarship).

35. Logan Cornett & Natalie Anne Knowlton, Inst. for the Advancement of the Am. Legal Sys., Public Perspectives on Trust & Confidence in the Courts 1, 5 (2020), [https://iaals.du.edu/sites/default/files/documents/publications/public\\_perspectives\\_on\\_trus\\_t\\_and\\_confidence\\_in\\_the\\_courts.pdf](https://iaals.du.edu/sites/default/files/documents/publications/public_perspectives_on_trus_t_and_confidence_in_the_courts.pdf) [<https://perma.cc/2YXE-ADU9>].

36. Shanahan et al., *supra* note 3, at 1475–76.

that civil courts use the threat of force to shape the “rights and relative advantage” of different groups.<sup>37</sup>

Conversations about federalism tend to leave state courts in the margins and focus on federal–state parity and federal supremacy questions. Recent exceptions include Ezra Rosser’s volume on poverty law in the federalist system<sup>38</sup> and Zambrano’s exploration of the relationship between the historical “rise” of federal courts and the “decay” of state courts.<sup>39</sup> Justin Weinstein-Tull has also explored updating theories of judicial federalism by drawing on a description of how state courts are structured, including how they are shaped by forces at varying levels of government from the federal to the local level and how institutional arrangements differ across states.<sup>40</sup> This emerging work underscores the importance of understanding, empirically, how courts and court systems are designed, organized, and funded, while also updating theories of state civil courts as institutions—positing state and local courts as the starting point for analysis rather than mere footnotes.

In addition to relationships with other state and federal government entities, courts also have connections with nongovernmental organizations. Jamila Michener explores such interactions in this Issue’s *Civil Justice, Local Organizations, and Democracy*.<sup>41</sup> Drawing on a study of local tenant organizations, Michener presents an account of how nonlegal organizations engage with the civil legal system and argues that these organizations should be understood as civil legal institutions with democracy-enhancing qualities. Michener shows how local organizations help people navigate civil legal systems, advocate for reform of those systems, and build political power within racially and economically marginalized communities.

Scholars employing an internal perspective on state civil courts have produced a body of work concerned with understanding how courts are designed and how they operate, the consequences of growing numbers of unrepresented people, and the work of those charged with keeping the wheels of justice spinning, including judges, lawyers, and court staff. An important strain of this research comes from scholars focused on courts in

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37. Shirin Sinnar, *Civil Procedure in the Shadow of Violence*, in *A Guide to Civil Procedure: Integrating Critical Legal Perspectives* (Portia Pedro, Brooke Coleman, Liz Porter & Suzette Malveaux eds., forthcoming 2022) (on file with the *Columbia Law Review*).

38. See generally *Holes in the Safety Net: Federalism and Poverty* (Ezra Rosser ed., 2019) (offering “a grounded look at how states and the federal government provide assistance to poor people”).

39. See generally Diego A. Zambrano, *Federal Expansion and the Decay of State Courts*, 86 U. Chi. L. Rev. 2101 (2019) (arguing that “federal expansion may be contributing to the decay of state courts and has reinforced a plaintiff-defendant divergence between the two systems”).

40. Justin Weinstein-Tull, *The Structures of Local Courts*, 106 Va. L. Rev. 1031, 1058 (2020).

41. Jamila Michener, *Civil Justice, Local Organizations, and Democracy*, 122 Colum. L. Rev. 1389, 1392 (2022).

the access to justice tradition, exploring how courts enhance or impede access, the relationship between courts and legal services, and the implications for courts and the people they serve. Some scholars, such as Russell Engler, focus on understanding and critiquing how courts have dealt with the rise of unrepresented people on their dockets. Engler has been a leading voice in documenting courts' responses to self-represented litigants and in advocating for reform, with a particular focus on how the roles of various court actors are (or are not) evolving in response to the new reality of lawyerless civil dockets.<sup>42</sup>

More recently, Tonya Brito's ethnographic research in child support cases surfaces four models of institutional actors—navigators, bureaucrats, zealots, and reformers—and explores how each makes sense of their work and achieves justice in lawyerless child support cases.<sup>43</sup> Our work has revealed judges in the breach, relying on a shadow network of staff employed by nonprofit organizations to process claims and as substitutes for some of lawyers' traditional functions.<sup>44</sup> Other scholarship examines how courts' institutional design interacts with lawyer services and self-help to produce or hinder substantive and procedural justice.<sup>45</sup>

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42. See Engler, *supra* note 19, at 1988–90 (outlining and reexamining the roles that court actors—including judges, clerks, and lawyers—play in their interactions with unrepresented litigants).

43. Tonya L. Brito, *Producing Justice in Poor People's Courts: Four Models of State Legal Actors*, 24 *Lewis & Clark L. Rev.* 145, 148 (2020).

44. Jessica K. Steinberg, Anna E. Carpenter, Colleen F. Shanahan & Alyx Mark, *Judges and Deregulation of the Lawyer's Monopoly*, 89 *Fordham L. Rev.* 1315, 1316 (2021).

45. See Laura Abel, *Designing Access: Using Institutional Design to Improve Decision Making About the Distribution of Free Civil Legal Aid*, 7 *Harv. L. & Pol'y Rev.* 61, 62–63 (2013) (applying an institutional design lens to the decisionmaking process that affects access to civil legal aid); D. James Greiner, Cassandra Wolos Pattanayak & Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 *Harv. L. Rev.* 901, 904–05 (2013) (pointing to empirical data that suggests the U.S. legal system has become more complex and flooded with pro se litigants, a confluence of circumstances which has frustrated access to justice for many); Jeffrey Selbin, Jeanne Charn, Anthony Alfieri & Stephen Wizner, *Service Delivery, Resource Allocation, and Access to Justice: Greiner and Pattanayak and the Research Imperative*, 122 *Yale L.J. Forum* 45, 46 (2012) (arguing that, in light of the growing demand for legal services and their shrinking supply, empirical research on service delivery, resource allocation, and access to justice questions has become imperative); Colleen F. Shanahan, Anna E. Carpenter & Alyx Mark, *Lawyers, Power, and Strategic Expertise*, 93 *Denv. U. L. Rev.* 469, 469–71 (2016) (studying represented and unrepresented litigants with a focus on institutional considerations like the balance of power, the ability to navigate civil procedures, and the role that formal legal training can play in achieving substantive justice); Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 *Geo. J. on Poverty L. & Pol'y* 453, 454–57 (2011) (studying the impact of unbundled legal services on otherwise unrepresented litigants and highlighting the benefits and considerations of introducing such services into the legal system more broadly). For an important meta-study of lawyers' work, see Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise Through Lawyers' Impact*, 80 *Am. Socio. Rev.* 909 (2015).

In their contribution to this Issue, Sara Sternberg Greene and Kristen Renberg explore court design and the judicial role through a mixed-methods empirical study that challenges the common and often implicit assumption that judges are lawyers.<sup>46</sup> Greene and Renberg show that states permit nonlawyer judges in some cases, trace the history of nonlawyer judges in America, and explore arguments for and against the practice.<sup>47</sup> They show how the practice links to a historical pattern of undervaluing legal issues most commonly experienced by low-income people, argue that it perpetuates a lack of law development around these issues, and conclude that it serves to entrench economic inequality.<sup>48</sup> Finally, they advance a proposal increasingly common in civil justice scholarship: the need for more financial resources, including federal resources, to support higher-quality justice in state courts.<sup>49</sup>

Using an institutional lens, state civil courts scholars can place our state courts at the center of conversations about democratic governance, court legitimacy, and federalism. Institutional perspectives also help us understand courts' internal organization and the consequences of court design for users and courts. This growing body of knowledge holds the promise of insights that will improve court operations, courts' relationship with other government institutions, and courts' role in our democracy.

#### PEOPLE

Using people as a lens, a significant strain of state civil courts scholarship has documented and theorized how state civil courts affect people as individuals, another body of work examines system-level questions, and emerging reform-focused contributions apply human-centered design methods to civil legal services and courts. Such people-centered perspectives build on a legacy of sociolegal scholarship exploring ordinary people's legal needs and experiences. A review of sociolegal scholarship reveals the urgent need for insights from the emerging field of state civil courts: It turns out that we know a lot more about how people experience civil legal problems *outside* of the courthouse than we know about what happens *inside* the courthouse.

While there is still much to learn about the nature and consequences of ordinary people's interactions with formal civil justice, we do know some things. The view is grim. Existing research tells a consistent story of people

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46. Sara Sternberg Greene & Kristen M. Renberg, *Judging Without a J.D.*, 122 *Colum. L. Rev.* 1287, 1291 (2022).

47. *Id.* at 1295.

48. *Id.*

49. *Id.* at 1343–44. See, e.g., Daniel Wilf-Townsend, *The Great Democracy Initiative, National Civil Justice Reform: A Proposal for New Federal-State Partnerships 3* (2020), [https://rooseveltinstitute.org/wp-content/uploads/2021/08/GDI\\_National-Civil-Justice-Reform\\_202003.pdf](https://rooseveltinstitute.org/wp-content/uploads/2021/08/GDI_National-Civil-Justice-Reform_202003.pdf) [<https://perma.cc/W3TG-C9GE>] (proposing a “broad grant of federal money to support and improve the operations of civil justice systems around the country”).

without legal training struggling and failing to navigate the civil justice maze, often with life-altering effects. Over the past two decades, a small group of legal scholars focused on access to justice have labored to show how people without lawyers experience formal civil justice. This work includes first-hand accounts of the routine tragedies that result when people without legal training or representation are pulled into civil litigation. Much of this scholarship focuses on the experiences of low-income litigants, which comprise the majority of litigants in civil courts. It explores how social power dynamics shape courts' work and how courts, in turn, reinforce existing hierarchies both in how they treat litigants and process claims and through their ultimate substantive judgments.

A canonical example is Barbara Bezdek's thirty-year-old study of a high-volume Baltimore housing court. Bezdek's searing exploration describes how tenants, most of whom were Black women, were systematically silenced by judges who refused to hear their affirmative claims or defenses, their voicelessness covered in a "veneer of due process and the ordered resolution of disputes."<sup>50</sup> In the intervening years, other scholars have cataloged how powerful, represented litigants wield legal tools with ease. In contrast, unrepresented people routinely face insurmountable logistical, procedural, and substantive legal hurdles that lead to disproportionately negative outcomes.<sup>51</sup> Deborah Rhode, a leading figure in access

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50. Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 Hofstra L. Rev. 533, 534 (1992).

51. See Laura K. Abel, *Language Access in State Courts*, 44 Clearinghouse Rev. 43, 43–44 (2010) (highlighting that unrepresented litigants, especially those with limited proficiency in English, face particular struggles in navigating state court proceedings); Paris R. Baldacci, *Access to Justice Is More Than the Right to Counsel: The Role of the Judge in Assisting Unrepresented Litigants*, in 2 *Impact: Collected Essays on Expanding Access to Justice* 122, 123 (2016), [https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1004&context=impact\\_center](https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1004&context=impact_center) [<https://perma.cc/6TBL-YU6Z>] (“Without the assistance of the judge in helping her articulate her claims . . . the unrepresented litigant is generally incapable of mustering her evidence according to a cognizable legal theory that might demonstrate her right to the relief she seeks.”); Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 Fordham Urb. L.J. 37, 49–50 (2010) (describing how represented tenants fare better in housing court proceedings and how unrepresented tenants are “steamrolled” by the courts’ operation); Stephan Landsman, *The Growing Challenge of Pro Se Litigation*, 13 Lewis & Clark L. Rev. 439, 440–41, 449 (2009) (reviewing empirical data and concluding that the modern judicial system has seen an explosion of pro se litigation, which poses individualized challenges for unrepresented litigants and systemic challenges such as increasing docket pressure, slowing case resolution, and testing traditional perceptions of judges, rulemakers, and attorneys); William M. O’Barr & John M. Conley, *Litigant Satisfaction Versus Legal Adequacy in Small Claims Court Narratives*, 19 Law & Soc’y Rev. 661, 662 (1985) (describing the challenges that unrepresented litigants face in small claims court when they attempt to use everyday methods of conversation and storytelling to communicate with judges who are accustomed to legal formalism); Steinberg, *Demand Side Reform*, supra note 21, at 743–44 (noting that “[u]nrepresented parties face challenges at every step of the litigation, from properly filing and serving an action to gathering and presenting admissible evidence to a judge”); Richard Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the*

to justice, spent her career documenting how courts and lawyers fail people. In her definitive book, Rhode took lawyers to task for creating and perpetuating “procedures of excessive and bewildering complexity, and forms with archaic jargon left over from medieval England.”<sup>52</sup> Today, Bezdek’s findings and Rhode’s arguments still resonate in narratives appearing in journalism and public scholarship.<sup>53</sup>

Scholars have also explored the human, relational, and emotional dynamics that play out in courts, including patterns of intimidation, feelings of powerlessness, and a sense that unfairness is baked into the system. Sara Sternberg Greene collected people’s experiences with formal justice and found a pattern of painful, fear-inducing experiences that pushed people, particularly Black people, to avoid formal law. As one interviewee stated, “To me it’s all law and courts and bad. Stay away from the law, that is my MO. It’s good advice.”<sup>54</sup> Greene also explores how experiences with criminal justice can shape views about civil justice, intersections which Lauren Sudeall and Ruth Richardson have also examined.<sup>55</sup>

Turning to systemic perspectives on people’s experiences of civil justice, forty years ago, leading sociolegal scholar Marc Galanter showed that “haves” tend to come out ahead, while the “have-nots” are consistently on the losing end of civil litigation.<sup>56</sup> Today, scholars describe, theorize, and criticize how civil courts support unequal and unjust systems, market forces, and social arrangements. A growing evidence base shows little sign of courts offering redemption or redress for people without significant wealth. Emerging work shows how the collective consequences of state court action reinforce existing hierarchies and inequities with the most pernicious and punitive effects falling disproportionately on women and people of color.

For example, recent research documents civil courts’ role in supporting inequality through the lens of debt and eviction cases and shows how powerful corporate interests use courts for predictable, assembly-line

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Appearance of Neutrality When Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications, 17 *Geo. J. Legal Ethics* 423, 425 (2004) (suggesting a “theoretical approach for how a judge might obtain the benefits of engagement and true neutrality without running the risk of creating the appearance of non-neutrality,” particularly in the pro se context).

52. Deborah L. Rhode, *Access to Justice* 14 (2004).

53. See, e.g., Matthew Desmond, *Evicted: Poverty and Profit in the American City* 304 (2016); Editorial Board, *Opinion, You Can Lose Your Kids, Home and Freedom Without Ever Seeing a Lawyer. It’s a Profound Injustice.*, *Wash. Post* (Feb. 26, 2021), <https://www.washingtonpost.com/opinions/2021/02/26/noncriminal-cases-right-to-lawyer-representation/> (on file with the *Columbia Law Review*).

54. Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 *Iowa L. Rev.* 1263, 1289 (2016).

55. *Id.*; Sudeall & Richardson, *supra* note 11 (exploring how criminal defendants experience and respond to civil legal problems).

56. Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 *Law & Soc’y Rev.* 95, 97 (1974).

wealth extraction from low-income defendants, often via questionable or fraudulent practices.<sup>57</sup> Using gender as a lens for understanding civil courts, Kathryn Sabbeth and Jessica Steinberg show that women are likely the majority of litigants in civil matters and argue that America has a gendered justice system: In this system, men in criminal cases have access to representation, whereas women who go to civil court have none. Sabbeth and Steinberg point to a history of Supreme Court doctrine that favors men's interests while devaluing or outright ignoring women's interests as a leading cause of this disparity.<sup>58</sup>

Race is a vital lens for understanding state civil courts. Scholars have revealed a disproportionate lack of access and persistent negative outcomes for racialized people and communities and explored how court staff and parties negotiate race and racial inequality.<sup>59</sup> In this Issue's *Racial Capitalism in the Civil Courts*, Tonya Brito, Kathryn Sabbeth, Jessica Steinberg, and Lauren Sudeall draw on theories of racial capitalism to show that racial subordination is baked into civil courts' role in our society and economy. The authors argue that state civil courts should be understood as sites in which private capital holders leverage a system of race-based oppression central to American capitalism. Brito, Sabbeth, Steinberg, and Sudeall use the example of consumer debt collection to demonstrate the racialized nature of seemingly formalist court interventions in the civil legal landscape.<sup>60</sup>

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57. On debt, see, e.g., Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 *Harv. J. on Legis.* 41, 118 (2015) (examining the "broken" process of debt collection); Wilf-Townsend, *Assembly-Line Plaintiffs*, *supra* note 25, at 1716–24 (telling the story of "assembly-line litigation" and describing the litigation "explosion" in the debt-collection context). On eviction, see Emily A. Benfer, David Vlahov, Marissa Y. Long, Evan Walker-Wells, J.L. Pottenger Jr., Gregg Gonsalves & Danya E. Keene, *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98 *J. Urb. Health* 1, 6 (2021) (exploring the relationship between housing and health in the pandemic); Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity Among Low-Income and Minority Tenants*, 24 *Geo. J. on Poverty L. & Pol'y* 59, 64–65 (2016) (describing relationships between eviction, class, race, and health outcomes). See generally Sabbeth, *Eviction Courts*, *supra* note 11 (examining how eviction courts operated during the pandemic and raising the broader question of what social functions eviction courts serve).

58. Kathryn A. Sabbeth & Jessica K. Steinberg, *The Gender of Gideon*, 69 *UCLA L. Rev.* (forthcoming 2022) (manuscript at 28), <https://ssrn.com/abstract=3807349> [<https://perma.cc/6SGG-YN47>].

59. See, e.g., Tonya L. Brito, David J. Pate, Jr. & Jia-Hui Stefanie Wong, "I Do for My Kids": Negotiating Race and Racial Inequality in Family Court, 83 *Fordham L. Rev.* 3027, 3036–51 (2015) (using original data to explore how legal actors and litigants without counsel negotiate race in family court); Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 *Ann. Rev. Socio.* 339, 349–52 (2008) (reviewing data on the relationships between race, class, gender, and access to civil justice and arguing that existing research has focused too heavily on formal legal systems and the experiences of low-income people, making it difficult to compare civil justice experiences across populations and social groups).

60. See generally Tonya L. Brito, Kathryn A. Sabbeth, Jessica K. Steinberg & Lauren Sudeall, *Racial Capitalism in the Civil Courts*, 122 *Colum. L. Rev.* 1243 (2022) (exploring

Finally, a small but growing body of work comes from the legal design movement, which seeks to reform legal systems in response to the needs and preferences of court users—a movement deeply connected to experiential learning courses, including clinics, labs, and practicums located in law schools and universities.<sup>61</sup> Here, scholars advocate for (and often practice) human-centered design methodology to understand and redesign state civil courts. Margaret Hagan and Victor Quintanilla are leading scholarly voices and practitioners.<sup>62</sup> In the field, Stacy Butler is using human-centered design frameworks to build new legal services delivery models and redesign court processes.<sup>63</sup>

Today's legal scholars build on a rich history of sociolegal scholarship to describe and theorize how people experience civil law and courts. The works noted above consistently reveal the manifest unfairness facing people—most of whom are lawyerless—from the moment they receive a complaint or enter the doors of a courthouse. A growing body of work shows how state civil courts reflect economic, racial, and gender inequality and how these courts reinforce or magnify these structures. At the same time, scholars offer hope for reform that places people at the center of state civil courts' work.

#### CONCLUSION

This Issue is rooted in legal scholarship's growing field of state civil courts and is an essential step toward its future. It reflects the collective nature of this field, the value of collaboration across institutions and areas of expertise, and the urgency of the scholarly project.

In this moment of opportunity, researchers willing to tackle the challenge of studying state civil courts can make definitive contributions, shape new lines of empirical and theoretical inquiry, and produce original and actionable insights. The field of state civil courts is ripe for contributions from legal and sociolegal scholars—including empiricists, theorists, methodologists, and critical scholars—to begin filling the yawning gaps in

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how the civil legal system—and civil courts specifically—function as a tool of racial capitalism).

61. See Innovation for Justice, i4J, <https://www.innovation4justice.org/> [<https://perma.cc/FLJ3-X6DJ>] (last visited Feb. 7, 2022); We Envision a World Where Everyone Is Empowered to Use the Law, NuLawLab, <https://www.nulawlab.org/> [<https://perma.cc/8GMY-3TTC>] (last visited Feb. 7, 2022); Stanford Legal Design Lab, <https://www.legaltechdesign.com/> [<https://perma.cc/2EAR-FBWB>] (last visited Feb. 7, 2022).

62. Margaret Hagan, A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Interventions to Make Courts User-Friendly, 6 *Ind. J.L. & Soc. Equal.* 199 (2018); Victor D. Quintanilla, Human-Centered Civil Justice Design, 121 *Penn. St. L. Rev.* 745 (2017); see also Dan Jackson, Miso Kim & Jules Rochielle Sievert, The Rapid Embrace of Legal Design and the Use of Co-Design to Avoid Enshrining Systemic Bias, 36 *Design Issues* 16 (2020); Emily S. Taylor Poppe, Institutional Design for Access to Justice, 11 *U.C. Irvine L. Rev.* 781 (2021).

63. See Innovation for Justice, *supra* note 61.

knowledge left by common approaches to legal scholarship. A vital project is developing a baseline of solid empirical research to support critical inquiry, theoretical developments, and prescriptions for change. It is our hope that many more scholars will embark on this journey to understand our most common and vital civil courts.