

# LAWYERING IN TIMES OF PERIL: LEGAL EMPOWERMENT AND THE RELEVANCE OF THE LEGAL PROFESSION

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*As the world violently shifts and adjusts to peril, the legal profession has not been exempted from the challenge to transform itself. Within a legal empowerment practice, the question of relevance invites legal advocates and professionals to adapt and respond to the unmet legal needs arising from deepened states of inequality. This Article summarizes the experience and contributions of legal empowerment work in Puerto Rico during and after significant catastrophes. Analyzing how states of emergency and failed recovery processes affect the exercise of human dignity in Puerto Rico provides the legal profession perspective on the urgency to defend legal empowerment mainly when crises occur. Despite its importance during and after emergencies, access to justice is rarely considered an essential component of disaster preparedness or response. Unlike food, medicine, and debris removal, the capacity of individuals and communities to understand and traverse legal processes is not contemplated amidst the chaos. Survivors of emergencies who subsequently become victims of resulting economic fallout, law enforcement, and other social issues are left behind and fall through the abyss of underserved justice. A people-centered, legal empowerment approach to lawyering has proven valuable and feasible to address and respond to the acute disparities amplified during emergencies. It is also a call to a broadly defined justice community—the judiciary, agencies, lawyers, law students, and law schools—that is also at risk of peril if transformations fall short.*

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## INTRODUCTION

As the world violently shifts and adjusts to peril, the legal profession has not been exempted from the challenge to transform itself. The quest for the relevance of legal work is a question of values, tactics, and strategy. This is a question posed to governments, justice administration systems, law schools, and present and future lawyers. For some, relevance depends on our capacity to adapt, innovate, and safeguard our position of power among our peers, prospective clients and employers, and society. Within a legal empowerment practice, the question of pertinence shares some of those concerns and invites us to adapt, pivot, and respond to the unmet legal needs arising from deepened states of inequality. On September 21, 2017, hours after Hurricane María devastated Puerto Rico, anger, fear, and hope fueled us as we faced the question of the relevance of the legal profession. This Article summarizes some of the answers we have compiled in the continued work towards the just future people deserve.

This Article is grounded in my several years of working as a human rights lawyer, an advocacy strategist, and the founder and director of a legal empowerment nonprofit in Puerto Rico, Ayuda Legal Puerto Rico. Hurricanes, earthquakes, and the COVID-19 pandemic highlight the toll that centuries of political, social, and economic disasters have had on the Island. Colonialism and speculation over land and democracy pervade Puerto Rico, framing catastrophes within the contours of disaster capitalism and state-sanctioned policies of displacement.

Puerto Rico has been under colonial regimes since 1508.<sup>1</sup> In 1898, the Island was ceded by Spain to the United States pursuant to agreements under the Treaty of Paris, which marked the end of the Spanish-American War.<sup>2</sup> In 1917, a second-class citizenship was extended to those who were born in Puerto Rico, one which did not extend the right to vote in the presidential election.<sup>3</sup> Not until 1947 did Congress authorize Puerto Rico to elect its own governor for the first time.<sup>4</sup> The establishment of the Commonwealth of Puerto Rico in 1952 was a unique juridical and political construct that attempted to “regularize” the colonial relation between Puerto Rico and the United States.<sup>5</sup> Due to the collusion of the Puerto Rican and U.S. governments, in

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<sup>1</sup> See EFRÉN RIVERA RAMOS, *AMERICAN COLONIALISM IN PUERTO RICO: THE JUDICIAL AND SOCIAL LEGACY* 45 (2007).

<sup>2</sup> See *id.* at 4–5, 35.

<sup>3</sup> See *id.* at 56.

<sup>4</sup> See *id.*

<sup>5</sup> See *id.* at 56–57; see also CÉSAR J. AYALA & RAFAEL BERNABE, *PUERTO RICO IN THE AMERICAN CENTURY: A HISTORY SINCE 1898*, at 173 (2007).

1953 the United States vouched before the United Nations and Puerto Rico was removed from the list of territories that had not reached self-determination.<sup>6</sup> Thus, the United States freed itself from the obligation to report to the international community on Puerto Rico. This included reporting about the persecution, incarceration, and murder of believers in independence, the degree of U.S. control over the economy and politics of the country, and now, the close relationship between colonialism and the current crisis of human rights. The Puerto Rican people do not participate in U.S. presidential elections and have a congressional representative without voting rights.

Austerity is also part of the context. For more than a decade, the government of Puerto Rico has attempted to cover deficits and fulfill payments to predatory creditors by restricting access and enjoyment of fundamental rights like education, health, employment, housing, and access to justice.<sup>7</sup> While the local government tailored policies to attract investors to a tax haven, the U.S. Congress responded to the crisis by approving the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), a law that imposed a Fiscal Control Board.<sup>8</sup> Since June 2016, this body of seven unelected officials has taken over Puerto Rico's budget, policies, and instrumentalities. The Junta has eliminated workers' rights, shut down and privatized schools and health services, weakened the pension systems, eroded environmental regulations, increased tax incentives for foreign investors, and suppressed the right to protest.<sup>9</sup> The insurmountable public debt and the ability of private sectors to capitalize on it with the assistance of state-sanctioned policies created a nurturing environment for disaster capitalism.

Analyzing how states of emergency and failed recovery processes impact the exercise of human dignity in Puerto Rico provides the legal profession perspective on the urgency to defend legal empowerment, particularly when crises occur. Despite its importance during and after emergencies, access to justice is rarely considered an essential compo-

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<sup>6</sup> See *Developments in the Law — The U.S. Territories*, 130 HARV. L. REV. 1616, 1657 (2017); Humberto García Muñiz, *Puerto Rico and the United States: The United Nations Role 1953-1975*, 53 REVISTA JURÍDICA DE LA UNIVERSIDAD DE PUERTO RICO [REV. JUR. U.P.R.] [ix], 19–48 (1984).

<sup>7</sup> Ariadna Michelle Godreau-Aubert, *We Women Who Don't Owe Anyone: Las Propias in Times of Public Debt and Austerity*, 4 CRITICAL TIMES 132 (2021) (analyzing the impact of austerity on economic and social rights from a gender perspective).

<sup>8</sup> See Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Pub. L. No. 114-187, 130 Stat. 549 (2016) (codified in scattered sections of 15, 29, and 48 U.S.C.).

<sup>9</sup> For an analysis of the austerity measures imposed by the Fiscal Control Board, see Godreau-Aubert, *supra* note 7, at 132–33.

ment of disaster preparedness or response. Unlike food, medicine, and debris removal, the capacity of individuals and communities to understand and traverse legal processes is not contemplated amidst the chaos. Survivors of emergencies who subsequently become victims of resulting economic fallout, law enforcement, and other social issues are left behind and fall through the abyss of underserved justice. We can also attest that access to justice becomes more critical when full systems collapse.<sup>10</sup> A people-centered legal empowerment approach to lawyering has proven valuable and feasible to address and respond to the acute disparities amplified during emergencies. It is also a call to a broadly defined justice community—the judiciary, agencies, lawyers, law students, and law schools—that is also at risk of peril if transformations fall short.

This Article aims to muster theory and practice, using Ayuda Legal Puerto Rico’s experience as an incubator of a legal empowerment project that promotes housing, land, and climate justice while ensuring a just recovery for the people in Puerto Rico. The data, testimonies, and knowledge summarized in these pages are the by-product of dedicated reflection during the worst and most vulnerable times. Part I provides an introductory background to “access to justice” and “legal empowerment” from human rights and social justice perspectives. Part II explores the relationship between the pillars of legal empowerment work—know, use, and transform the law—and the justice system during disasters.<sup>11</sup> Part III discusses the problem of lawyering in times of peril, centering on the role of non-lawyers and community lawyers and the possibility of accompaniment. The conclusion shares our theory of change as a point of reference for initiatives of effective lawyering towards legal empowerment, mainly when emergencies occur.

## I

### ACCESS TO JUSTICE IS NOT ENOUGH: QUICK ANNOTATIONS ON LEGAL EMPOWERMENT WORK

Before diving into semi-formal approximations of the workings of the legal profession amidst disasters, it is crucial to distinguish access to justice from legal empowerment. Access to justice is a “process and

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<sup>10</sup> See, e.g., Diego García-Sayán (Special Rapporteur on the Independence of Judges and Lawyers), *The Coronavirus Disease (COVID-19) Pandemic: Impact and Challenges for Independent Justice*, U.N. Doc. A/HRC/47/35, at 3 (Apr. 9, 2021) (discussing the impact of COVID-19 on the rights of historically marginalized groups).

<sup>11</sup> See U.N. Secretary-General, *Legal Empowerment of the Poor*, U.N. Doc. A/64/133 (2009) (reporting on the various different methods in which the legal system can be utilized by the poor, while providing case studies of past examples).

a goal,”<sup>12</sup> and it is a necessary component of legal empowerment practice. In 2002, in the context of the First Access to Justice Congress in Puerto Rico, esteemed constitutionalist Efrén Rivera Ramos defined the right to access to justice as the set of conditions that facilitate or impede certain groups, sectors, or individuals from making equitable use of mechanisms that prevent the violation of rights, resolve controversies, and obtain legal remedies.<sup>13</sup> Above all, access to justice is a fundamental human right necessary to exercise and enjoy many other civic, social, and economic guarantees.<sup>14</sup> As a transversal guarantee of human dignity, access to justice enables the exercise and fulfillment of other rights such as freedom, food and shelter, dignified housing and labor, education, and non-discrimination. As stated by the United Nations Development Programme, “access to justice services can be lifesaving and critical for the preservation of physical integrity, such as in cases of grave sexual violence, domestic violence, or torture cases.”<sup>15</sup>

Not only is access to justice central to equitable development, but it has also been identified as a fundamental step in the eradication of poverty.<sup>16</sup> Democratic structures are theoretically bound by a rule of law where equal access, participation, and fairness are cherished. Access to justice injects transparency into the equitable management of controversies and the protection of social coexistence. As a transversal guarantee, access to justice extends beyond tribunals to include all the areas of civic development and participation, education, and policy change. It is also a measure of accountability against unfair and abusive state actions that fail to protect or fulfill human rights by its

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<sup>12</sup> Valesca Lima & Miriam Gomez, *Access to Justice: Promoting the Legal System as a Human Right 1*, in ENCYCLOPEDIA OF THE U.N. DEVELOPMENT GOALS: PEACE, JUSTICE, AND STRONG INSTITUTIONS (2021).

<sup>13</sup> Efrén Rivera Ramos, *Las Múltiples Caras del Acceso a la Justicia*, in PRIMER CONGRESO ACCESO A LA JUSTICIA (XXII CONFERENCIA JUDICIAL) 8 (2002).

<sup>14</sup> See G.A. Res. 2200A (XXI), at arts. 2, 14, and 26 (Dec. 16, 1966) (discussing how dimensions of the right to justice have been acknowledged in multiple international human rights law instruments).

<sup>15</sup> U.N. Dev. Programme, *Ensuring Access to Justice in the Context of COVID-19*, at 8 (2020), [hereinafter *Ensuring Access*], [https://www.unodc.org/documents/Advocacy-Section/Ensuring\\_Access\\_to\\_Justice\\_in\\_the\\_Context\\_of\\_COVID-191.pdf](https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf) [https://perma.cc/74ZS-286L].

<sup>16</sup> U.N. Dev. Programme, *Programming for Justice: Access for All 3* (2005). Access to justice was included in the 2030 Agenda for Sustainable Development. Goal 16 of the Sustainable Development Goals envisions the capacity to “[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels.” See G.A. Res. 70/1, (Oct. 21, 2015). Target 16.3 specifically calls for the promotion of the rule of law at national and international levels and to ensure equal access to justice for all. *Id.*

actions, omissions, or tolerance of violations committed by third parties.

Still, access to justice has been tamed and fragmented. Elements such as the right to counsel, the creation of specialized courts for matters involving domestic violence or mental health, and fee waivers are often perceived as full compliance with the obligation to fulfill this human right.<sup>17</sup> But these are the bare minimum. Access to justice has been shaped into a commodity administered by courts, judges, law schools, and lawyers. In this context, impoverished individuals are perceived as beneficiaries, whose wellness must be safeguarded by professionals who comprehend the complexities of justice administration systems. By acting as gatekeepers, traditional legal workers ensure the exclusivity of their language, knowledge, careers, and resources. Consequently, they perpetuate the patterns of oppression ingrained in the rule of law itself. It is not accidental that approaches to improving access to justice are traditionally court-centered, disregarding many of the levels on which greater access, safeguards, and enjoyment of rights are needed.<sup>18</sup>

While access to justice is a necessary component of legal empowerment, legal empowerment advocates believe that access to justice is

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<sup>17</sup> See, e.g., EL TRIBUNAL SUPREMO DE PUERTO RICO OFICINA DE LA JUEZA PRESIDENTA, CREACIÓN DEL PROGRAMA PARA LA PREVENCIÓN DE DESALOJOS EN LOS CASOS DE DESAHUCIOS POR FALTA DE PAGO PRESENTADOS EN LOS TRIBUNALES DE PUERTO RICO, OAJP-2021-083 (2021) (explaining that access to justice initiatives implemented during the 2020 pandemic favored remedial procedural changes such as online filing and small court proceedings, or mitigating measures such as more agile attorney appointments or rental assistance evaluations for families facing eviction cases). Measures that suspend eviction orders during emergency declarations are reasonable and often are lifelines for individuals who otherwise would be left behind with limited chances to appeal or obtain redress for rights violations—so are fee waivers or pro bono counsel appointments for low-income parties involved in controversies regarding fundamental needs. Yet, they do not tackle systemic change. In contrast, substantive amendments to the rule of law guaranteeing fundamental rights during the COVID-19 crisis failed to gather support. See *Pierluisi Vetoes an Emergency Project and Evictions for Unpaid Rents Are Reactivated*, ARCHYDE (Aug. 29, 2021), <https://www.archyde.com/pierluisi-vetoes-an-emergency-project-and-evictions-for-unpaid-rents-are-reactivated-legislature> [<https://perma.cc/VB3J-PFTK>] (explaining Puerto Rico Governor Pedro Pierluisi's veto of a bill that would ban evictions and foreclosures during the crisis).

<sup>18</sup> See Samuel P. Baumgartner, *Does Access to Justice Improve Compliance with Human Rights Norms—An Empirical Study*, 44 CORNELL INT'L L.J. 441, 458 (2011) (defining access to justice as encompassing a number of different rights including “the formal right to sue the government for alleged human rights violations,” “the right of the accused to a trial before a court of law within reasonable time,” “the right to some form of state scheme to support those who cannot otherwise afford the costs of litigation and legal representation,” and so on).

not enough. Strategies to better the “supply-side”<sup>19</sup> of legal services and proceedings related to the administration of justice—techniques like counsel-for-a-day, self-help guides, legal information portals, and fee waivers—are important. Yet, these may “tend to obscure the problem of state intervention and reinforce court practices associated with subordination.”<sup>20</sup> We want real access to justice and more. Within legal empowerment work, “more” means initiatives to shift the justice system’s narratives, values, and practices by addressing the harms perpetrated by an intentional design of inequity.

Legal empowerment belongs to an internationalist current of thought, ethics, and values that identify tools and opportunities to ignite systemic change in legal work.<sup>21</sup> From Sierra Leone to India, the United States, and Latin America, legal empowerment initiatives<sup>22</sup> thrive on efforts that address open legal education, equitable practices for distributing justice, adequate and real remedies, and accountability of both state and private actors. Such efforts show that “[l]egal empowerment is both an approach and an outcome. As an approach, it seeks to increase knowledge of the law and design better pathways to justice. As an outcome, individuals and communities are better able to use the law themselves to advance their interests and rights.”<sup>23</sup>

Legal empowerment aims to finally transform a system designed to perpetuate politics of domination and oppression. It demotes lawyers and the traditionally defined legal community as exclusive managers of the rule of law to center the needs, wants, and human rights of those most affected by the law. The language, skills, and tools lawyers acquire throughout formal education are translated, conveyed, and shared with community members through relationships of accompaniment.<sup>24</sup> An integral component is a systemic understanding on the

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<sup>19</sup> Alissa Rubin Gomez, *Demand Side Justice*, 28 GEO. J. ON POVERTY L. & POL’Y 411, 412–13 (2021) (discussing the various resources that have been increasingly offered within the legal system to correct systematic legal issues for the disadvantaged).

<sup>20</sup> Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People’s Courts*, 22 GEO. J. ON POVERTY L. & POL’Y 473, 503 (2015).

<sup>21</sup> See, e.g., U.N. Secretary-General, *Legal Empowerment of the Poor and Eradication of Poverty*, U.N. Doc. A/64 (2009).

<sup>22</sup> See COMMUNITY PARALEGALS AND THE PURSUIT OF JUSTICE (Vivek Maru & Varun Gauri eds., 2018).

<sup>23</sup> MATTHEW BURNETT & PASCAL SOBOLL, OPEN SOC’Y FOUND., MAKING THE LAW WORK FOR PEOPLE: A HANDBOOK ON LEGAL EMPOWERMENT AND INCLUSIVE INNOVATION 5 (2021), <https://www.opensocietyfoundations.org/publications/making-the-law-work-for-people> [<https://perma.cc/A88Z-MUT7>]; COMMUNITY PARALEGALS AND THE PURSUIT OF JUSTICE, *supra* note 22.

<sup>24</sup> Legal accompaniment refers to practices and principles that redefine the traditional client-attorney relationship, in which law and case-by-case legal representation are central. At its core, legal accompaniment promotes the development of horizontal relationships

prejudices, underlying assumptions, and interests protected by the rule of law. Legal empowerment advocates for reforms to improve availability of legal services and the accessibility of courts. It also seeks to transform the rule of law and the whole system that feeds on systemic inequality and oppression. As stated in a recently published handbook, the goal is to “advance equality, fairness, rights, and justice by helping people understand, use, and shape<sup>25</sup> the laws that affect them and their communities.”<sup>26</sup>

A simple example can help illustrate the importance of decentralizing legal knowledge and practices by centering communities at the core of legal initiatives. In the aftermath of Hurricane María, people in Puerto Rico faced multiple barriers to requesting disaster assistance. Despite major power outages that lasted for weeks or months, and in some remote areas for a whole year, the Federal Emergency Management Agency demanded that applications be filed solely via the internet or phone. With tens of thousands of families living under blue tarps donated by nonprofits or government agencies, legal needs were on the rise.<sup>27</sup> While the first few weeks were a turmoil of training 400 lawyers and students, Ayuda Legal Puerto Rico’s following months were spent in brigades visiting communities that were too remote for the army to reach. While Ayuda Legal Puerto Rico supported thousands of people by educating them about disaster aid and filing their applications for disaster aid using a laptop and a hotspot, we soon realized the task was impossible. At the beginning, the rigidity of the legal profession moved the team to attempt to control community brigade calendars, community outreach activities, and the distribution of know-your-rights materials for survivors. We were soon burnt out. Community leaders, aware of the situation, called us to a meeting and demanded to be trained. They demanded copies of the materials, a translation of the main technical requirements, a draft of a confidentiality agreement, and reams of paper. Within a few days, non-lawyers started to lead, coordinate, and carry out events such as

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guided by storytelling, the promotion of self-defense, education, and strategic litigation that catalyzes systemic change.

<sup>25</sup> See text accompanying *supra* note 11 for a discussion of the three pillars of legal empowerment work.

<sup>26</sup> BURNETT & SOBOLL, *supra* note 23, at 5. See also Comm’n on Legal Empowerment of the Poor & U.N. Dev. Programme, *Making the Law Work for Everyone: Report of the Commission on Legal Empowerment* 21–22 (2008).

<sup>27</sup> Adrian Florido, *Two Years After Hurricane Maria, Blue Tarps Are Symbol of Island’s Slow Recovery*, NPR (Sept. 20, 2019, 7:23 AM), <https://www.npr.org/2019/09/20/762662675/blue-tarps-are-an-indicator-of-hurricane-marias-long-lasting-damage> [<https://perma.cc/RP5V-DWJB>] (explaining how the “blue tarp crisis” is still an issue for thousands of survivors five years after Hurricane María).

calling people to apply for federal assistance and visiting bedridden elders who could not get to the official disaster relief centers at their homes. Because we realized that food and shelter insecurity was an inevitable consequence of this catastrophe, the goal was to complete as many applications as possible. Community leaders went beyond the existing protocols and decided to challenge the norms by creating a paper version of the application that they would later submit electronically. We would be the data entry people. They would lead the brigades, weeks before the government could create a comprehensive plan to open Disaster Relief Centers. Nearly 1.1 million applications were filed after Hurricane María.<sup>28</sup> This large number was the result of a legal empowerment effort involving legal and advocacy actions in Puerto Rico and other jurisdictions that demanded accessibility for disaster survivors who required aid.<sup>29</sup>

## II

### LEGAL EMPOWERMENT LAWYERING IN CRISIS MODE

The cooperation that follows chaos is instrumental to attaining essential supplies, preventing and mitigating harms, planning, deploying humanitarian assistance, and amplifying demands. Still, the suddenness of disasters and violence experienced throughout the last few years may lead to expressions of solidarity that homogenize and flatten experiences of despair. Ideas about shared “survivorhood” after the disasters attempt to summarize collective grief of individuals, groups, and communities. Crises do not impact people equally. Concealing how a catastrophic event is experienced by historically marginalized groups frustrates chances of recovery and the adequate defense of their rights. Legal empowerment approaches provide an effective tool for disaster recovery.

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<sup>28</sup> AYUDA LEGAL P.R., TOWARDS A JUST RECOVERY: THE RESPONSE IN THE FACE OF DISASTERS AND THE PUERTO RICO THAT IS POSSIBLE 12 (Sept. 2020); CTR. FOR PUERTO RICAN STUD., PUERTO RICO POST-MARIA 12 (2018).

<sup>29</sup> See INSTITUTO CARIBEÑO DE DERECHOS HUMANOS & CLÍNICA INTERNACIONAL DE DERECHOS HUMANOS DE LA FACULTAD DE DERECHO DE LA UNIVERSIDAD INTERAMERICANA DE PUERTO RICO, JUSTICIA AMBIENTAL, DESIGUALDAD Y POBREZA EN PUERTO RICO [ENVIRONMENTAL JUSTICE, INEQUALITY AND POVERTY IN PUERTO RICO] 24–32 (2017) (discussing the conditions and pitfalls of the immediate response to Hurricane María as carried out by the government of Puerto Rico and the United States); see also Ariadna M. Godreau-Aubert, *Relevancia del Trabajo Legal Comunitario Ante el Desastre: La Experiencia de Ayuda Legal Puerto Rico* [Relevance of Legal Community Work in Response to the Disaster: The Experience of Ayuda Legal Puerto Rico], REVISTA JURÍDICA DE LA UNIVERSIDAD DE PUERTO RICO [REV. JUR. U.P.R.] (2021) (noting the important role of Ayuda Legal Puerto Rico in ensuring that disaster survivors received aid after Hurricane María).

A. *Whom Are We Accompanying? Intersectionality, Violence, and Banishing the Heroic Lawyer*

An intersectional perspective is fundamental to legal empowerment. Gender, race, ability, nationality, ethnicity, economic status, and a wide array of other dimensions of identity nuance and impact how justice is perceived and served. In times of peril, identity differences exist and are amplified. Low-income communities are more likely to become and remain homeless long after catastrophes;<sup>30</sup> Black people are threatened and killed by public officers;<sup>31</sup> Black and brown homeowners who lacked legal documentation to support their title are denied disaster assistance based on unattainable eligibility criteria;<sup>32</sup> women lose their jobs because they lack childcare when schools are shut down;<sup>33</sup> incarcerated individuals are denied primary healthcare amidst a pandemic;<sup>34</sup> and so on. In the legal field, failure to acknowledge differences has concrete manifestations, among which is the equalization of courses of action, plaintiffs and defendants, and parties affected by state or private acts and omissions. As a legal community often called to serve survivors of natural or manufactured disasters, legal advocates must remain aware of inequality. Crises do not affect all people equally.

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<sup>30</sup> See Christopher Flavelle, *Why Does Disaster Aid Often Favor White People?*, N.Y. TIMES (June 7, 2021), <https://www.nytimes.com/2021/06/07/climate/FEMA-race-climate.html> [<https://perma.cc/6VUM-ZN6Z>] (explaining why the federal government often gives less help to disaster survivors of color in comparison to white people based on numerous systemic biases).

<sup>31</sup> See Jeffrey A. Fagan & Alexis D. Campbell, *Race and Reasonableness in Police Killings*, 100 B.U. L. REV. 951, 958 (2020) (discussing the disproportionate use of violence by police officers against Black people).

<sup>32</sup> See Hannah Dreier & Andrew Ba Tran, *The Real Damage*, WASH. POST, (July 11, 2021, 6:00 AM), <https://www.washingtonpost.com/nation/2021/07/11/fema-black-owned-property> [<https://perma.cc/7J4H-U68A>] (analyzing how homeowners of color have historically been more likely to be denied FEMA aid). Ayuda Legal Puerto Rico's work to change policies that deny assistance on the basis of lack of legal documentation to prove ownership was able to change national guidelines. To learn more about the impact of this policy in Puerto Rico, where 70,000 families were denied FEMA assistance due to unverified ownership, and advocacy efforts led by the organization, see AYUDA LEGAL P.R., TOWARDS A JUST RECOVERY 13 (Aug. 2021).

<sup>33</sup> See Nicole Bateman & Martha Ross, *Why Has COVID-19 Been Especially Harmful for Working Women?*, BROOKINGS INST. (Oct. 2020), <https://www.brookings.edu/essay/why-has-covid-19-been-especially-harmful-for-working-women> [<https://perma.cc/E2C2-GYDU>] (explaining the discrepancies of economic effects caused by COVID-19 between men and women).

<sup>34</sup> See Meg Anderson & Huo Jingnan, *As COVID Spread in Federal Prisons, Many At-Risk Inmates Tried and Failed to Get Out*, NPR (Mar. 7, 2022, 5:00 AM), <https://www.npr.org/2022/03/07/1083983516/as-covid-spread-in-federal-prisons-many-at-risk-inmates-tried-and-failed-to-get> [<https://perma.cc/WW4E-WVR5>] (illustrating the difficult and dangerous conditions for inmates in federal prisons as a result of COVID-19).

The rule of law benefits and thrives on the idea of commonness. The equality of individuals reiterated in the constitutional framework and its progeny is grounded in the invisibility of difference as a precondition for fairness. In their critique of the concept of “equality” enshrined in the Fourteenth Amendment, feminist legal scholars Catharine MacKinnon and Kimberlé Crenshaw state:

The Equal Protection Clause must mean the same thing for everybody, the Court majestically intones. But packaged in its misleading rhetoric, equating colorblindness and gender neutrality—so-called same treatment—with constitutional equality are precisely the discordant protections that the Court repudiates. The Court shields the rights and entitlements of those whom the Constitution has historically privileged and disarms the aspirations of those it has historically excluded.<sup>35</sup>

Legal empowerment practices acknowledge the violence of the equality myth that occludes the violence inherent to law and legal work. At the core of legal empowerment work is a realization that our current legal justice system is “designed to protect those in power, and that any meaningful, equitable, and accessible system of justice must put the power of law in the hands of everyday people.”<sup>36</sup> Although the current demographics of the legal profession are slightly more diverse than they were historically,<sup>37</sup> the archetypical lawyer is a white, English-speaking—or in the context of Puerto Rico, Spanish-speaking—able-bodied, lighter skinned, heterosexual, and high-income man.

As Patricia Hill Collins warned, “within U.S. culture, racist and sexist ideologies permeate the social structure to such a degree that they become hegemonic, namely, seen as natural, normal, and inevitable.”<sup>38</sup> The justice system is the guarantor of the permanence of society as we know it. It represents how a “supposedly seamless web of economy, polity, and ideology function as a highly effective system of social control designed to keep African-American women in an

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<sup>35</sup> Catharine A. MacKinnon & Kimberlé W. Crenshaw, *Reconstituting the Future: The Equality Amendment*, 129 *YALE L.J.F.* 343, 350 (2019) (advocating for a constitutional amendment that would provide substantive intersectional equality and discussing historical social inequalities dating back to the founding of the United States against people of color and women).

<sup>36</sup> BURNETT & SOBOLL, *supra* note 23, at 5.

<sup>37</sup> See AM. BAR ASS'N, *PROFILE OF THE LEGAL PROFESSION 12–15* (2021) (concluding that the proportion of lawyers who are people of color increased three percentage points over the last decade to 14.6% of the profession, while the proportion of women increased four percentage points to 36% of the 1.3 million lawyers in the United States).

<sup>38</sup> PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 5 (2d ed. 2000) (explaining the history of Black feminist intellectuals rooted in racial and gender discrimination).

assigned, subordinate place.”<sup>39</sup> Low-income women of color carry the burden of state-sanctioned “controlling images.”<sup>40</sup> Throughout different variations of disasters, we have seen an increasing insistence by authorities—including the justice system—to condition women’s chances of recovery on compliance with maternal and submissive norms. For weeks after the 2020 earthquakes, the government failed to provide aid to hundreds of families who were left to sleep in informal camps, such as abandoned baseball parks, roundabouts, and empty lots.<sup>41</sup> Mothers struggled to keep their children safe and clean under improvised tents, while the few formal shelters were drowned in mud, flooded with sanitary waste, and lacking essential supplies. Meanwhile, we saw public officials in crisp white shirts visit these mothers, not to offer help, but to threaten to take their children away because they were being exposed to harmful conditions. Fast-forward two years, to an economic shutdown provoked by COVID-19: The government has created campaigns to admonish workers who “refuse” to return to work with lay-offs and with fraud charges if they request pandemic unemployment assistance despite being able to return. Mothers who were serving at the frontline and deemed “essential” workers but who lacked childcare because of school closures were punished, threatened, and excluded from the workforce.<sup>42</sup>

We need to face systemic racism as a feature and not an accident of the justice system. Racism has certainly not been solved by promises of equality or by the vastness of destruction after a disaster strikes. A global pandemic is not a crisis for all. Attending to the disjuncture between racial justice work and progressive lawyering requires an intentional shift of narrative and practices.<sup>43</sup> It is important to note that “race is often conflated with class, and concerns about economic inequality often animate public interest organizations

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 69–70.

<sup>41</sup> See Melissa Correa Velázquez, *Urgen Soluciones Para Familias Desplazadas Tras Terremotos: La Organización Ayuda Legal Puerto Rico Reclama que se Provean los Servicios a los Más de 200 Mil Desplazados*, EL VOCERO (Jan. 24, 2020), [https://www.elvocero.com/actualidad/urgem-soluciones-para-familias-desplazadas-tras-terremotos/article\\_05603aaa-3edb-11ea-ac0e-173c00b8f217.html](https://www.elvocero.com/actualidad/urgem-soluciones-para-familias-desplazadas-tras-terremotos/article_05603aaa-3edb-11ea-ac0e-173c00b8f217.html) [<https://perma.cc/8BY4-9JAB>] (describing the poor conditions and lack of aid Puerto Rican families have faced in the aftermath of Hurricane María).

<sup>42</sup> See Bateman & Ross, *supra* note 33.

<sup>43</sup> See Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 830–44 (1997) (analyzing and proposing a framework on racial awareness in legal practice).

...”<sup>44</sup> Hence, public interest and legal advocacy organizations often assume that “by addressing the problem of poverty, the legal services program would also address the problem of racial inequity.”<sup>45</sup> But serving the impoverished does not translate automatically into racial justice work.

The reason targeting poverty alone is insufficient to resolving racial inequity is that race operates independently from socioeconomic status. Racism is not only present in the reality of the communities served but also conditions the relationship between people of color and the justice system.<sup>46</sup> Seminal articles on critical race theory explore how white court appointments raise concern for Black parties because of “racism, attorney effectiveness, and the practical difficulties in educating the white lawyer on the impact race has on the defendant’s case.”<sup>47</sup> Racism also problematizes the relationship between Black lawyers and Black parties, the latter being concerned about the weight of racial discrimination on the defense of their rights and harboring doubts about the capacity of their legal counsel.<sup>48</sup> Addressing the internal bias of the legal community and diversifying the legal profession have more urgency when inequality worsens. Racial justice frameworks, integral to legal empowerment, need to be implemented within organizations and law schools, along with antiracist recruiting, hiring, staffing, capacity development, curricula, and organizational policies. Incorporation of racial justice frameworks should apply to intake processes, educational efforts directed toward communities of color, the framing of demands for remedies, and the delivery and assessment of legal services.<sup>49</sup>

The first encounters of many people in low-income communities with the legal system translate into experiences of violence and pain:

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<sup>44</sup> Atinuke O. Adediran & Shaun Ossei-Owusu, *The Racial Reckoning of Public Interest Law*, 12 CALIF. L. REV. ONLINE 1, 2 (2021) (scrutinizing racial biases that exist within public interest legal practices).

<sup>45</sup> Alan W. Houseman, *Racial Justice: The Role of Civil Legal Assistance*, 36 CLEARINGHOUSE REV. 5, 8 (2002) (arguing that the civil legal aid and state justice communities need to give greater priority and commitment to race-based advocacy).

<sup>46</sup> See W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 50 (Univ. of Mass. Press, 2018) (1903) (addressing how the legal system perpetuates relationships of subordination for Black communities subject to slavery and violence).

<sup>47</sup> Kenneth P. Troccoli, *I Want a Black Lawyer to Represent Me: Addressing a Black Defendant’s Concerns with Being Assigned a White Court-Appointed Lawyer*, 20(1) L. & INEQ. 1, 5 (2002) (exploring the different benefits and costs that Black defendants may perceive regarding obtaining a Black or white attorney).

<sup>48</sup> See *id.* at 37.

<sup>49</sup> See Shani M. King, *Race, Identity, and Professional Responsibility: Why Legal Services Organizations Need African American Staff Attorneys*, 18 CORNELL J.L. & PUB. POL’Y 1 (2008) (analyzing the importance of racial validation and correspondence in client-attorney relationships in Black communities).

brutal law enforcement, evictions, debt collection processes, custody or alimony processes, and the denial of public assistance.<sup>50</sup> We must remember that “[p]oor people do not lead settled lives into which the law seldom intrudes; they are constantly involved with the law in its most intrusive forms.”<sup>51</sup> An intersectional paradigm “remind[s] us that oppression cannot be reduced to one fundamental type and that oppressions work together in producing injustice.”<sup>52</sup> Poverty is a lack of power—it “can be seen as both the cause and consequence of the exclusion from the rule of law.”<sup>53</sup> Awareness of the violence also requires recognizing the person or institution provoking it. The matrix of domination organizes and operationalizes these intersecting oppressions “regardless of the particular intersections involved[;] structural, disciplinary, hegemonic, and interpersonal domains of power reappear across quite different forms of oppression.”<sup>54</sup> After all, “[t]he access-to-justice crisis is a crisis of exclusion and inequality . . . .”<sup>55</sup>

When catastrophic events exacerbate precarity, the legal profession may fall prey to heroic ideas of justice that legitimize systems of oppression.<sup>56</sup> Better-intentioned colleagues are not immune to this trap. My colleague Vivek Maru brilliantly approaches this dichotomy in this passage:

Many Sierra Leoneans, especially rural Sierra Leoneans, perceive the legal system and the government in a way not unlike the way they perceive the workings of black magic: as things to be feared rather than understood. We hope to demystify these things; by educating people about them, by guiding people through them, and, most importantly, by proving that law and government can be made to serve ordinary citizens.

We may risk inconsistency, however, for we also make strategic use of the awe with which the law is perceived. Though we do not possess as yet any statutory authority, we have found that just the color of law—“human rights” identification cards around our staff

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<sup>50</sup> See, e.g., LEGAL SERVS. CORP., *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 1, 6 (2017) (finding that seventy-one percent of low-income people in the United States experienced at least one civil legal problem in the last year, including issues related to housing, health, public assistance, disability and pension benefits, as well as domestic violence).

<sup>51</sup> Stephen Wexler, *Practicing Law for Poor People*, 79 *YALE L.J.* 1049, 1050 (1970).

<sup>52</sup> COLLINS, *supra* note 38, at 18.

<sup>53</sup> Lima & Gómez, *supra* note 12, at 6 (citation omitted).

<sup>54</sup> COLLINS, *supra* note 38, at 18.

<sup>55</sup> Rebecca L. Sandefur, *Access to What*, 148 *DAEDALUS* 49, 53 (2019) (positing that the lack of access to just outcomes is caused by social inequality).

<sup>56</sup> See Wexler, *supra* note 51, at 1060–63 (describing a tendency of allowing legalistic concerns and ego to override the best interests of their clients to which some lawyers may be prone).

members' necks, typed letters on letterhead in a society that is mostly illiterate, knowledge of the law, and, importantly, the power to litigate if push comes to shove—causes many Sierra Leoneans to treat our office with respect.<sup>57</sup>

Exploiting the differences to retain a position of authority has many manifestations. Lawyers may gatekeep knowledge of statutes, defenses, and legal processes, approach legal counseling of the poor like charity, perform legal representation hierarchically, adopt “voice of the voiceless” personas, seize control of activism, and capitalize on community woes and wins. Eradicating these tendencies is an ongoing challenge.

### *B. A Three-Pronged Approach: Know, Use, and Shape the Law*

The socialization of legal knowledge and tools through training and framing actions around parties' needs, wants, and human rights rupture cycles of oppression. To accomplish this, we develop strategies for people to know, use, and shape the law.

As legal empowerment advocates, we believe that there is power in knowing your rights.<sup>58</sup> This is the first pillar of legal empowerment. Legal language is inaccessible and unnecessarily complex. Hence, “[p]rejudices, complexities in interpretation of the law, inaccessibility to laws, unnecessary formalities and language obstacles are . . . common barriers” for the defense of rights and the solution of controversies.<sup>59</sup> Non-lawyers must overcome “numerous legislations and case law that create a labyrinth, which can be navigated only by highly specialized lawyers . . . .”<sup>60</sup> They must also confront the inequitable balance of power in courtrooms with the undue stress and sense of intimidation that derive from not knowing how to dress, where to sit or stand, or how to address the bench.<sup>61</sup> The inaccessibility of the legal system is in part due to the privatization and inaccessibility of legal education, and this promotes disempowerment: “The lack of statistics available to the public and the lack of information offered to citizens

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<sup>57</sup> Vivek Maru, *Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide*, 31 YALE J. INT'L L. 427, 451 (2006) [hereinafter Maru, *Between Law and Society*].

<sup>58</sup> AYUDA LEGAL P.R., <https://ayudalegalpuertorico.org> [<https://perma.cc/3PDL-T27B>] (adopting the phrase “Knowing your rights is power” or “Conocer tus derechos es poder” as its slogan).

<sup>59</sup> Fatos Selita, *Improving Access to Justice: Community-Based Solutions*, 6 ASIAN J. LEGAL EDUC. 83, 84 (2019) (footnote omitted) (describing obstacles that can hinder non-experts in navigating the legal system).

<sup>60</sup> *Id.*

<sup>61</sup> See MAGDALENA SEPÚLVEDA CARMONA & KATE DONALD, MINISTRY FOR FOREIGN AFFS. OF FIN., ACCESS TO JUSTICE FOR PERSONS LIVING IN POVERTY: A HUMAN RIGHTS APPROACH 27 (2014).

about their own rights are an acute impediment for the realization of the access to justice.”<sup>62</sup>

Complexity and formality, financial barriers, and the limited reach of free legal service providers make legal information unattainable, scarce, and costly. As a report published by the American Bar Association states, “The complexity of the justice system, coupled with a lack of knowledge about how to navigate it, undermines the public’s trust and confidence.”<sup>63</sup> It is no surprise that in recent years, lawyers have been displaced as the primary source of trustworthy legal information for many marginalized people by radio and television programs.<sup>64</sup> Often, spokespeople who use these outlets have no expertise in law and may be subject to several interests beyond promoting legal awareness. Fake news, particularly at times of crisis and regarding the exercise of fundamental rights, is dangerous: “The unchecked spread of misinformation can exacerbate conflict” and interfere with the exercise of rights.<sup>65</sup> Consider, for example, the hundreds of families who faced the threat of eviction from private landlords and public housing officials during the COVID-19 pandemic.<sup>66</sup> The federal eviction moratorium<sup>67</sup> notwithstanding, a lack of an adequate know-your-rights campaign placed low-income households at risk of losing their homes during COVID lockdowns.

Legal education permits people to identify legal issues, develop an awareness of their rights and responsibilities, decide on the process, strategies, and tools they want to use to solve disputes, seek the accompaniment they need and want, redress grievances, and obtain adequate remedies.<sup>68</sup> People should always have “access to appropriate information on public authorities and the conditions in which the laws are drafted” as well as to “information [about] how judicial

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<sup>62</sup> Lima & Gómez, *supra* note 12, at 8 (positing that inaccessibility of information is an important factor contributing to the absence of just legal outcomes).

<sup>63</sup> AM. BAR ASS’N COMM’N ON THE FUTURE OF LEGAL SERVS., REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 34 (2016) (footnote omitted).

<sup>64</sup> See AYUDA LEGAL P.R., STUDY ON LEGAL EMPOWERMENT IN PUERTO RICO 16 (2021), <https://www.ayudalegalpuertorico.org/wp-content/uploads/2022/01/Study-on-Legal-Empowerment-english-version.pdf> [<https://perma.cc/2HTS-67FJ>] (finding that among dark-skinned and less-educated Puerto Ricans, television and radio programs were more common sources of trusted legal information than lawyers).

<sup>65</sup> *Ensuring Access*, *supra* note 15, at 8.

<sup>66</sup> See Chris Arnold, *Evictions Rise Sharply in Places with No Pandemic Protections for Renters*, NPR (Nov. 2, 2021, 5:04 AM), <https://www.npr.org/2021/11/02/1051363382/evictions-rise-sharply-in-places-with-no-pandemic-protections-for-renters> [<https://perma.cc/76XN-KJCY>] (describing the crisis of evictions following the Supreme Court decision striking down the federal eviction moratorium).

<sup>67</sup> Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55292 (Sept. 4, 2020).

<sup>68</sup> See *supra* note 24.

institutions work, so as to become more understandable to stakeholders, especially to ordinary citizens and vulnerable groups.”<sup>69</sup> Legal education strategies should account for children, immigrants, elders, people with disabilities, and those with limited English language proficiency. Eliminating language barriers, ensuring accessible formats for educational materials and forms, guaranteeing service to immigrants and working families with diverse legal needs, as well as the availability of legal advice in remote areas is crucial.

The legal community must develop plain language skills to translate, communicate, and accompany low-income communities. Present and future lawyers must get out into the community. Know-your-rights workshops, where legal information is combined with popular education tools, are spaces to build power and community around issues that are often understood at the individual level but carry collective impact. Housing justice community events, legal brigades, and community-led glossary encounters transform an eviction summons or disaster application into a group analysis of the law—its purpose, pitfalls, and potential for change. Know-your-rights radio programming, like Ayuda Legal Puerto Rico’s “Tus Derechos al Día,” helps us connect with people who continue to rely on traditional media outlets to remain informed. At the same time, television and social media presence promotes awareness of rights through widespread platforms. Similarly, web-based tools like [ayudalegalpr.org](http://ayudalegalpr.org) present a cost-effective way to expand legal knowledge beyond the previously imagined reach.

Most importantly, the socialization of legal knowledge creates a narrative shift that impacts the foundations of the justice system itself. Law is “a source of economic, social, and political power.”<sup>70</sup> Because the legal profession controls a system designed for lawyers themselves,<sup>71</sup> changing the coordinates of legal literacy dislocates such power. After several years of implementing initiatives to open legal services, nothing has created more resistance from the community of lawyers than proposals to “socialize legal knowledge.” Since [ayudalegalpr.org](http://ayudalegalpr.org)—a platform that provides free and accessible legal education to two million users per year—was launched in 2015, dozens of attorneys have either written directly to us or commented in long, angry social media threads about the harms created by a tool

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<sup>69</sup> Lima & Gomez, *supra* note 12, at 8 (citation omitted).

<sup>70</sup> Anuradha Joshi, *Legal Empowerment and Social Accountability: Complementary Strategies Toward Rights-Based Development in Health?*, 99 *WORLD DEV.* 160, 162 (2017) (quoting Robin Nielsen, *Sustaining the Process of Legal Empowerment*, *JUST. INITIATIVES*, Autumn 2013, at 112).

<sup>71</sup> Sandefur, *supra* note 55, at 54.

that “gives out for free” what cost them years of preparation. They appeal to mockery and dismiss the idea of a well-informed non-lawyer able to adequately name their legal issues, criticize clients who question their advice based on know-your-rights flyers, and evangelize about the terrible consequences of self-representation. Even legal aid employees argue that legal education is not lawyerly work, diminishing the work of attorneys and organizations dedicated to this enterprise. While some of these reactions are grounded in legitimate concerns—such as the proliferation of unverified sources of legal information that lead impoverished families to error—many demonstrate a resistance to breaking the closed nature and exclusiveness of legal knowledge.

The second pillar of legal empowerment is the capacity to use the law. How, where, and when to access the justice system matters. Shut-downs, lockdowns, and restrictions to public transportation or mobility limit access to courts and administrative fora. Thus, mismanagement of disasters may compromise the continuity of operations of the justice system. Court and administrative functions are crucial: “Given its criticality, states should categorize justice services as an ‘essential service’ and take necessary measures to mitigate the suspension or postponement of these services.”<sup>72</sup> Having these services ensures oversight of emergency measures implemented by law enforcement, protects individuals from discrimination, addresses issues that arise from the socioeconomic impact of crises, and prevents unlawful detentions. Access to justice cannot be suspended during public emergencies.<sup>73</sup>

Ensuring equitable and ample access to the use of law relates to the use of technology, a strategy embraced during the last few years. Innovation is critical for a legal community eager to respond throughout crises. Acting quickly often precludes consideration of how emergency measures impact the human rights of individuals and families, particularly those from historically marginalized backgrounds. Technology can be a strategy to secure “[e]qual access to fair, timely, and effective justice services.”<sup>74</sup> Remote hearings and possibilities of e-filing may prove beneficial for domestic violence survivors and people with limited mobility who struggle for equal access to

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<sup>72</sup> *Ensuring Access*, *supra* note 15, at 8 (arguing states should ensure the continued functioning and availability of the justice system during the COVID-19 pandemic).

<sup>73</sup> U.N. Hum. Rights Comm., CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, ¶ 7, CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001).

<sup>74</sup> *Ensuring Access*, *supra* note 15, at 12 (noting both the importance and challenges of technology use during the pandemic, as well as the state of access to justice throughout this emergency).

restraining orders and emergency court proceedings. Technology may lower the cost of in-person litigation, including diminished attorney fees, fewer work-related interruptions, and increased access for single female households without childcare. Undoubtedly, the technological win the justice system achieved during the pandemic is here to stay.<sup>75</sup> The local and international acknowledgement of the benefits resulting from technological advances, together with the extension of measures more than two years after the pandemic started, signal this.

Yet limiting court access to virtual alternatives may prove challenging for people who lack broadband access, smartphones, computers, or digital literacy. The digital divide proves to be more challenging for elders, very low-income individuals, and people with disabilities.<sup>76</sup> Similarly, criminal justice advocates have voiced several concerns regarding fair trial guarantees during remote hearings.<sup>77</sup> Digitalization creates a greater distance between individuals who demand the protection of their rights and the justice system, for example by obstructing access to conflict resolution processes, free legal services, and assistance from court officials.<sup>78</sup> During the peaks of COVID-19, this distance was monumental. We experienced hearings where the defendant lacked access to technology and needed to move to the court to obtain access to the virtual proceeding. When she joined the Zoom conference call and appeared before a judge sitting in front of a virtual background, she was a small square in a dimly illuminated room. The court marshal attempted to fix lighting and sound in an empty courtroom. When the court engaged with her, she asked the judge to repeat her question on three occasions. She could not understand how to use breakout rooms to consult privately with her attorneys. Her vulnerability echoed through the speakers of our computers.

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<sup>75</sup> See *id.* at 13.

<sup>76</sup> See García-Sayán, *supra* note 10, ¶ 47 (“Vulnerable groups, such as persons without legal identification documents or good-quality Internet access, have been particularly affected . . . a lack of access to information technology and the Internet means that many people . . . have been left particularly exposed to legal difficulties in defending or upholding rights.”).

<sup>77</sup> See DOUGLAS KEITH & ALICIA BANNON, BRENNAN CTR. FOR JUST., PRINCIPLES FOR CONTINUED USE OF REMOTE COURT PROCEEDINGS 4 (2020), [https://www.brennancenter.org/sites/default/files/2020-09/Principles%20for%20Continued%20Use%20of%20Remote%20Court%20Proceedings%20final\\_0.pdf](https://www.brennancenter.org/sites/default/files/2020-09/Principles%20for%20Continued%20Use%20of%20Remote%20Court%20Proceedings%20final_0.pdf) [<https://perma.cc/EX7V-EHJE>] (detailing concerns that courts must address to ensure remote proceedings protect due process rights).

<sup>78</sup> See García-Sayán, *supra* note 10, ¶¶ 44–66 (detailing how remote proceedings and other limitations and restrictions on access to legal systems have created obstacles for people seeking legal remedies and recourse).

A similar phenomenon is faced by people in rural areas. This was true before the pandemic and even in the absence of catastrophic events. Rural areas tend to be neglected by disaster assistance and the justice system design.<sup>79</sup> A “metrocentric approach” results in increased unmet legal needs.<sup>80</sup> According to the Legal Services Corporation Justice Gap study of 2017, only fourteen percent of low-income people in rural areas of the United States receive assistance for civil legal issues.<sup>81</sup> This is half of the national average.<sup>82</sup> Some solutions to this problem include open courtrooms in remote locations, public transportation, temporary relocation services, and permanent establishment of legal aid services and legal empowerment opportunities in rural areas.

Innovations in the justice system tend to be “top-down and process-centered. They largely focus on transforming formal justice institutions, like courts and administrative tribunals, and automating existing legal documents and procedures.”<sup>83</sup> Therefore, these innovations may result in “replicating existing inequalities and power imbalances.”<sup>84</sup> Providing technical assistance and overseeing technological strategies through an equity lens are crucial for improving access to justice. Inclusive innovation and participatory design could be integrated into the planning of these mechanisms now that multiple years of continuous disasters help us foresee how catastrophes affect justice delivery.

Advocates who aspire to promote legal empowerment should demand that justice systems publish data that show demographics, legal issues, emergency petitions granted, the average timeline for the resolution of controversies, and the legal representation status of parties. For disaster readiness plans to consider how vulnerabilities increase during and after disasters, data are crucial to ensuring that resources be deployed where needed.

With respect to disparate impact, it is time to understand that not all plaintiffs are equal. Problematizing the equalization of landlords and tenants, or petitioners of restraining orders and respondents, is challenging but fundamental. On the one hand, due process guarantees must be protected to name, mitigate, and abolish systemic racism

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<sup>79</sup> See Michele Statz, Hon. Robert Friday & Jon Bredeson, “*They Had Access, but They Didn’t Get Justice*”: *Why Prevailing Access to Justice Initiatives Fail Rural Americans*, 28 GEO. J. ON POVERTY L. & POL’Y 321, 321, 324–26 (2021) (exploring how the legal needs of rural communities are neglected by available legal aid services and the court systems).

<sup>80</sup> *Id.*

<sup>81</sup> LEGAL SERVS. CORP., *supra* note 50, at 48.

<sup>82</sup> *Id.* at 42.

<sup>83</sup> BURNETT & SOBOLL, *supra* note 23, at 8.

<sup>84</sup> *Id.*

and abuses of power. As a procedural and substantive guarantee of the fair administration of justice, access to justice includes the right to a fair trial, impartial judges, access to legal counsel, public hearings, a chance to appeal, and reduced risks of arbitrary detention.<sup>85</sup> On the other hand, and as mentioned before, the disproportionate impact of crises and disasters on certain groups is undeniable.

Distrust in justice fora often finds root in experiences of institutional abandonment. After all, as in Sierra Leone, we live in a “barren institutional landscape” in which institutions—including the justice system—are corrupt.<sup>86</sup> Access to justice holds both state and non-state actors accountable.<sup>87</sup> The relationship between legal empowerment and social accountability approaches is clear: “a strategy of awareness-raising and mobilization, an orientation toward state-granted rights, and a concern with improving services, creating active citizens, and establishing sustainable changes in governance structures.”<sup>88</sup> Assessing and shifting the effectiveness of the legal system, and guaranteeing real and adequate remedies, requires accountability.

Still, the experiences of historically marginalized populations throughout legal processes cast doubt on the capacity of the legal system to be accountable. The perception of results in court and administrative proceedings is negative. According to a Legal Empowerment Study commissioned by Ayuda Legal Puerto Rico in 2021, “[a]dministrative forums have a lower satisfaction rate than courts, even though such forums should constitute more practical and expedite [sic] settings.”<sup>89</sup> Appearing before courts or administrative fora is perceived by the general public as an unnecessary investment of resources, with low expectations over the results and the potential to cause more problems in the future.<sup>90</sup> Those who are denied access to adequate grievance mechanisms or actual redress for harms suf-

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<sup>85</sup> See *Ensuring Access*, *supra* note 15, at 22–23 (arguing states must proactively work to guarantee fundamental legal due process rights for citizens during times of crisis).

<sup>86</sup> Maru, *Between Law and Society*, *supra* note 57, at 447 (describing Sierra Leone’s lack of functioning, non-corrupt institutions).

<sup>87</sup> See U.N. Dev. Programme, *supra* note 16, at 4 (describing how justice remedy mechanisms can increase accountability on the part of both state and non-state actors).

<sup>88</sup> Joshi, *supra* note 70, at 160; see also Vivek Maru, *Allies Unknown: Social Accountability and Legal Empowerment*, 12 HARV. J. HEALTH & HUM. RTS. 83, 84 (2010) [hereinafter Maru, *Allies Unknown*] (arguing that an approach that combines social accountability for public services and legal empowerment education could best achieve more just and equitable outcomes).

<sup>89</sup> AYUDA LEGAL P.R., *supra* note 64, at 67–69 (finding that fifty-three percent of participants said they were satisfied with the result of an administrative proceeding, while sixty percent were satisfied with the remedies obtained before the courts).

<sup>90</sup> *Id.* at 65–66 (finding that large percentages of those surveyed viewed participation in legal dispute resolution as not worth the time, effort, or difficulty).

ferred are barred from relief. International human rights law enshrines the right to an effective remedy in multiple documents.<sup>91</sup> Under this international approach, “remedies must be effective and legal and judicial outcomes must be just and equitable. The right to an effective remedy also includes reparation, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”<sup>92</sup>

The third and final pillar of legal empowerment is to transform the law. “[S]queezing justice out of dysfunctional systems”<sup>93</sup> is a daily task for justice advocates, one that is often complicated by the distinctive rigidity of legal practices. While the rule of law and its acolytes—law schools included—are not amicable to change, advocacy and strategic litigation are areas where we can witness and ignite the transformation of law.

Social impact advocacy work is legal work, but it also involves social accountability.<sup>94</sup> When disasters happen, lawyers have a shared responsibility to ensure “[e]mergency powers must be in line with constitutional . . . and national legal frameworks as well as international human rights obligations.”<sup>95</sup> Because explicit protections in public policy matter, we need to shorten the distance between people and the creation of rules and laws. Lawyers, legal advocates, law students, and other justice community members have the skills and knowledge necessary to navigate policy spaces. And the legal ecosystem should use their skills and knowledge to promote community-informed proposals of legislation, amendments to administrative policies, or new mechanisms to advance dispute resolution.

Promoting impact litigation strategies is an opportunity to engage community stakeholders in awareness processes regarding their relationship with the rule of law. Community lawyers, for example, complement their lived experiences of inequitable relationships to economic development and climate degradation with newly acquired knowledge about the legal intricacies of environmental law. Impact litigation co-designed with community leaders is an opportunity to

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<sup>91</sup> For example, the right to remedies is acknowledged in the Universal Declaration of Human Rights, G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 8 (Dec. 10, 1948), the ICCPR, International Covenant on Civil and Political Rights, art. 2.3, Dec. 16, 1966, T.I.A.S. No. 95-20, and the ICERD, International Covenant for the Elimination of All Forms of Racial Discrimination, art. 6, Sept. 28, 1966, T.I.A.S. No. 94-1120.

<sup>92</sup> CARMONA & DONALD, *supra* note 61, at 32.

<sup>93</sup> Maru, *Allies Unknown*, *supra* note 88, at 88 (arguing that legal professionals can serve the goal of social accountability because of their experience navigating dysfunctional legal systems).

<sup>94</sup> See Joshi, *supra* note 70, at 161 (discussing the relationship between social accountability and legal empowerment).

<sup>95</sup> *Ensuring Access*, *supra* note 15, at 6.

understand statutes and jurisprudence through new lenses, advance arguments grounded in self-determination and participation, and address de facto discriminatory consequences of legal frameworks. The power-building potential of brave strategic litigation can be mobilized towards social justice.<sup>96</sup>

Following the steps of organizations like Namati and Nazdeek, in March 2021, Ayuda Legal Puerto Rico launched the first formal community paralegal initiative in Puerto Rico. Participants are community leaders from Loíza, a predominantly Black municipality besieged by systemic racism and the neglected impacts of natural and artificial disasters.<sup>97</sup> The program is centered on climate justice and the right to stay.<sup>98</sup> Within this strategy, community participants and legal empowerment advocates co-design a curriculum that combines substantive law, navigation skills, and storytelling practices. Integral to each session is the role of “community historians,” members of the group who are selected to retell the story of a specific statute or case as experienced by their families and collectives. The process of retelling has been instrumental to identifying the commonality of legal issues that have persisted for decades, to shift narratives from oppression or “war stories” to entitlement over human rights and ancestry, and to address a fundamental urgency to hold law and its institutions accountable. It is no coincidence that the first legal strategy pursued by the group revolved around access to information on the use of recovery funds and mitigation and displacement plans. They are preparing to take justice back.

### III

#### WE CANNOT LAWYER OUR WAY OUT OF THE CRISIS: WE NEED PRO SE LITIGANTS AND COMMUNITY PARALEGALS TO THRIVE

Possibly no other document on the state of access to justice is more quoted in articles, legislative reports, grant proposals, and lobbying efforts than the Justice Gap reports, published by the Legal Services Corporation (LSC).<sup>99</sup> In 2017, before the pandemic, it was

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<sup>96</sup> See Joshi, *supra* note 70, at 163 (discussing litigation as part of a broader legal empowerment framework).

<sup>97</sup> To learn more about Loíza and racism in Puerto Rico, see generally Samiri Hernández Hiraldo & Mariana Ortega-Brena, “If God Were Black and from Loíza”: *Managing Identities in a Puerto Rican Seaside Town*, 33 *LATIN AM. PERSPS.* 66 (2006).

<sup>98</sup> At Ayuda Legal Puerto Rico, we define the right to stay as the right of people and communities to be guaranteed security of tenure, access to justice, and participation against displacements.

<sup>99</sup> *LEGAL SERVS. CORP.*, *supra* note 50.

estimated that eighty-six percent of civil legal problems reported by low-income families received either inadequate or no legal help.<sup>100</sup> The 2022 report presents an alarming new number: Ninety-two percent of substantial civil legal problems faced by low-income Americans are not adequately addressed.<sup>101</sup> In the United States and globally, legal services remain underfunded, politically restricted, and unreachable for millions. The United Nations Human Rights Council has stated that “[l]egal aid is an essential component of a fair and efficient justice system founded on the rule of law.”<sup>102</sup> International human rights bodies have acknowledged how the civil justice gap, particularly the lack of right to counsel, has a disproportionate impact on racial, ethnic, and so-called national minorities.<sup>103</sup> Hence, the urgency to develop new mechanisms of judiciary and access to justice accountability. The international community calls on the United States to secure funding to ensure the legal representation of these groups, particularly when fundamental human rights are at stake.<sup>104</sup> Meaningful access to legal representation is a guarantee against abuses of power, promotes accountability of the justice system, and helps create a more equitable setting for dispute resolution. The resistance to acknowledge a right to counsel in civil rights cases<sup>105</sup>—referred to as the demand for a civil *Gideon*<sup>106</sup>—is indicative of the impact that defending social and economic rights may have on the foundations of a fundamentally conservative justice system.

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<sup>100</sup> *Id.* at 30.

<sup>101</sup> LEGAL SERVS. CORP., *THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 7–8 (2022), <https://justicegap.lsc.gov/the-report> [<https://perma.cc/XHM3-YYET>].

<sup>102</sup> Gabriela Knaul (Special Rapporteur on the Independence of Judges and Lawyers), *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, ¶ 20, U.N. Doc. A/HRC/23/43 (Mar. 15, 2013).

<sup>103</sup> *See, e.g.*, U.N. Dev. Programme, *supra* note 16, at 142–53 (discussing challenges to accessing legal aid and counsel, especially for poor and disadvantaged people, and proposing various capacity development strategies to enhance legal aid and counsel).

<sup>104</sup> Comm. on the Elimination of Racial Discrimination, Consideration of Reps. Submitted by States Parties Under Article 9 of the Convention: Concluding Observations of the Comm. on the Elimination of Racial Discrimination: United States of America, U.N. Doc. CERD/C/USA/CO/6, at 6 (May 8, 2008).

<sup>105</sup> *See, e.g.*, Ted Frank, *The Trouble with the Civil Gideon Movement*, AM. ENTER. INST. FOR PUB. POL’Y RSCH. (Aug. 2008), [https://www.aei.org/wp-content/uploads/2011/10/20080807\\_23374LOAugustg.pdf](https://www.aei.org/wp-content/uploads/2011/10/20080807_23374LOAugustg.pdf) [<https://perma.cc/RRB8-FUDC>] (arguing that civil *Gideon* will be counterproductive in its supposed goals of helping the poor and making the legal system more accessible).

<sup>106</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963). In this case, the Supreme Court of the United States acknowledged the right to have legal representation in criminal proceedings under the Sixth Amendment. The Court noted this principle was “established to achieve a fair system of justice.” *Id.* at 344.

The situation of the Legal Services Corporation is telling. Congress founded LSC in 1974 to provide legal aid to low-income individuals.<sup>107</sup> LSC occupies a valuable position as the largest funder of civil legal aid for low-income families in the United States.<sup>108</sup> Yet, these legal aid organizations are “under-funded and severely restricted.”<sup>109</sup> For years, organizations, law schools, and community stakeholders advocated against the politically motivated decrease of funding appropriated to the LSC.<sup>110</sup> According to federal regulations, with limited exceptions, LSC-funded legal service providers cannot engage in activities involving: abortion litigation,<sup>111</sup> influencing the census,<sup>112</sup> desegregation of schools,<sup>113</sup> habeas corpus,<sup>114</sup> drug-related evictions from public housing,<sup>115</sup> the representation of incarcerated individuals regarding civil rights and the conditions of detention,<sup>116</sup> and most legal needs of undocumented immigrants.<sup>117</sup> Restrictions imposed by several federal administrations have limited LSC’s capacity to demand redress for rights violations.

Restrictions on lobbying and strategic litigation under class-action suits<sup>118</sup> limit the possibilities of low-income individuals to shape the laws that promote exclusion and demand remedies for human rights harms. The income eligibility cutoff for potential clients remains at 125% of the federal poverty level,<sup>119</sup> a criterion that excludes people who cannot afford an attorney but still live in conditions of deprivation. Private funders have the ability to impose similar restrictions, which impedes the defense of fundamental legal guarantees for low-income individuals. Lifting restrictions designed to prevent

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<sup>107</sup> 42 U.S.C. § 2996.

<sup>108</sup> Legal Servs. Corp., *Assessing the Goals in the Strategic Plan 2017–2020*, Request for Comments, 85 Fed. Reg. 45702, 45702 (July 29, 2020).

<sup>109</sup> COLUMBIA LAW SCHOOL HUMAN RIGHTS CLINIC, *ACCESS TO JUSTICE: ENSURING MEANINGFUL ACCESS TO COUNSEL IN CIVIL CASES* 301 (2013), [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT\\_CCPR\\_NGO\\_USA\\_15241\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_NGO_USA_15241_E.pdf) [<https://perma.cc/W58B-E8P9>].

<sup>110</sup> See Liza Q. Wirtz, *The Ethical Bar and the LSC: Wrestling with Restrictions on Federally Funded Legal Services*, 59 VAND. L. REV. 971, 974–76.

<sup>111</sup> Pub. L. No. 104-134, tit. V, § 504(a)(14), 110 Stat. 1321, 1321–55 (1996).

<sup>112</sup> 45 C.F.R. § 1632(c) (2020).

<sup>113</sup> 42 U.S.C. § 2996f(b)(9) (2018).

<sup>114</sup> 45 C.F.R. § 1615.2 (2020).

<sup>115</sup> *Id.* § 1633.3 (2020).

<sup>116</sup> *Id.* § 1637.3 (2020).

<sup>117</sup> *Id.* § 1626.3 (2020).

<sup>118</sup> *Id.* § 1617.3 (2020) (“No class action may be undertaken by a staff attorney without the express approval of the director of the recipient, acting in accordance with policies established by the governing board.”).

<sup>119</sup> 45 C.F.R. § 1611.3 (2020).

actions that can catalyze systemic change is essential to ensuring legal empowerment.<sup>120</sup>

Besides budget cuts and politically motivated prohibitions, there are multiple reasons behind the absence of legal counsel. Individuals who cannot afford lawyers often do not know that free legal aid exists and therefore do not seek their assistance.<sup>121</sup> As a result, some individuals fail to identify legal issues promptly or decide not to appear before justice proceedings. Others are not aware of their right to counsel in specific cases or do not know how to request a court-appointed attorney. Some feel shame or distrust or are just too exhausted to show up. As an attorney interviewed by Michele Statz summarizes, “It’s really easy for our clients to ignore civil legal needs. It’s just a way of life for them.”<sup>122</sup> During crises, we have witnessed an increased reluctance of low-income individuals to pursue justice or remedies through traditional justice proceedings.

As strategists of justice initiatives and enthusiasts of the end of the old legal tradition, we have an announcement: The future of the legal system is self-representation. Data and experience on the ground support this claim. First, studies show that the general public deals with justice problems by themselves or with the help of relatives or friends.<sup>123</sup> The Community Needs Services Study commissioned by the American Bar Foundation in 2016 found that “the most common way in which people report handling civil justice situations is by taking some action on their own without any assistance from a third party.”<sup>124</sup> Similarly, the Justice Gap report of 2017 concluded that people only sought legal help for twenty percent of their civil legal issues.<sup>125</sup> The Legal Empowerment Study of 2021 derived similar results: People often decided to defend themselves or refused to go to the justice system when facing a legal issue.<sup>126</sup>

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<sup>120</sup> See Bobby Vanecko, *Access to Justice: The Law and Political Economy of the Legal Services Corporation*, 25 PUB. INT. L. REP. 64 (2019) (advocating for the continued political power of the Legal Services Corporation).

<sup>121</sup> According to the 2017 Justice Gap Report, people seek assistance from grantees of the Legal Services Corporation for only six percent of their civil legal problems. LEGAL SERVS. CORP., *supra* note 50, at 40.

<sup>122</sup> Statz, Friday & Bredeson, *supra* note 79, at 370.

<sup>123</sup> See Sandefur, *supra* note 55, at 51 (“Most civil justice problems are handled by people on their own, or with advice from family and friends.”).

<sup>124</sup> REBECCA L. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 11 (2014), [https://www.americanbarfoundation.org/uploads/cms/documents/sandefur\\_accessing\\_justice\\_in\\_the\\_contemporary\\_usa\\_aug\\_2014.pdf](https://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf) [<https://perma.cc/S9ZG-ZD3L>].

<sup>125</sup> LEGAL SERVS. CORP., *supra* note 50, at 7.

<sup>126</sup> AYUDA LEGAL P.R., *supra* note 64, at 43.

Second, legal representation is not a panacea. As has been discussed in this paper, the abysmal distance between the current justice system and those who seek justice is grounded in several design issues: systemic racism, discrimination, costs, language inaccessibility, formality, lack of adequate remedies, and distrust, among others. As Professor Rebecca Sandefur states:

The distinction between a justice problem and a legal need turns out to be crucial, for these two ideas reflect fundamentally different understandings of the problem to be solved. If the problem is people's unmet legal needs, the solution is more legal services. If the problem is unresolved justice problems, a wider range of options opens up.<sup>127</sup>

Alternative solutions that attempt to bridge the gap in access to justice can also be steppingstones towards legal empowerment. Efforts to strengthen legal capacities of communities, simplify court and administrative processes, integrate comprehensive conflict resolution strategies, and create self-help toolkits are important examples. These initiatives are scalable and cost-effective, and promote agility and accessibility to existing procedures. However, as addressed in Part II of this Article, these efforts only impact the supply-side of the system.<sup>128</sup> Acts to mitigate a crisis that jeopardizes basic human rights solely through these efforts may end up occluding the visibility of the need for more radical reforms.

Asking lawyers to contribute to a justice system in which lawyers are not a condition required to exercise rights is still perceived as a radical proposition. So-called unauthorized practice of law is perceived as a threat to the legal profession. Colleagues often characterize self-represented litigants as less intelligent, problematic, difficult, obstacles to agility, and nuisances in courts. They are placed at the center of jokes and arbitrary restrictions. They are sometimes sanctioned or criminalized.<sup>129</sup> Members of the bench have analyzed how represented litigants are less burdensome for the legal system, in comparison to pro se litigants.<sup>130</sup> Stereotypes grounded in race, gender, and class, as well as the narrative transformation of induced

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<sup>127</sup> Sandefur, *supra* note 55, at 50.

<sup>128</sup> See *supra* Section II.B.

<sup>129</sup> See generally Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 *FORDHAM L. REV.* 2587 (2014) (reviewing the criminal and administrative consequences of unauthorized practice of law regulations).

<sup>130</sup> See, e.g., *Judges' Views of Pro Se Litigants' Effect on Courts*, 40 *CLEARINGHOUSE REV. J. POVERTY L. & POL'Y* 228, 229–30 (2006) (discussing the systemic “burden” of pro se litigants on courts).

disadvantages—such as lack of legal literacy—into lack of capacity feed the crisis of justice.

Strengthening the capacity of pro se litigants serves the best interests of the justice system. It provides agility, promotes addressing effective navigation of court systems, and also embeds equity to legal processes. It is also an act of honesty. The legal profession monopolizes the administration of justice, fully conscious of its incapability to do so in an equitable and fair manner. The rise of eviction proceedings<sup>131</sup> and debt collection processes, as well as an increase in need to file for disaster assistance regarding housing or unemployment, highlights the limits and consequences of the hegemony of the legal profession. The avalanche of cases cannot be supported by legal aid, and people are in a worse position to afford private attorneys. Furthermore, the urgency of these multiplying legal needs narrows the window of opportunity for low-income individuals to learn and use the law in a timely manner.

Acknowledging the importance of court navigators and community paralegals within accompaniment frameworks is a step in the right direction. Decentralizing legal work is proving to be a difficult process and an opportunity to transform the core of the justice system. A recent case involving the legitimacy of legal advice provided by non-lawyers is a great example. Upsolve, a nonprofit organization dedicated to helping low-income families who cannot afford lawyers file for bankruptcy through an online web application, launched a training program for non-lawyers to accompany and advise families at risk of debt collection processes.<sup>132</sup> Because New York enforced rules prohibiting the unauthorized practice of law (UPL), which carries criminal and civil penalties, the nonprofit sued arguing the unconstitutionality of such norms.<sup>133</sup> Upsolve argued that the First Amendment protects the right to self-representation, which “close[s] a well-documented gap in access to justice.”<sup>134</sup> Plaintiff Reverend Udo-Onkon, a pastor who collaborates with the organization and is willing to provide free legal advice to increase access to justice, presented a petition signed by 114 South Bronx residents in need of legal aid—a

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<sup>131</sup> See Arnold, *supra* note 66 (discussing the rise of evictions during the COVID-19 pandemic).

<sup>132</sup> Rohan Pavuluri, *Why I Started Upsolve*, UPSOLVE, <https://upsolve.org/rohan-story> [<https://perma.cc/2MYJ-KS33>] (discussing Upsolve’s mission and web application); see *Upsolve, Inc. v. James*, No. 22-cv-627, 2022 WL 1639554, at \*2 (S.D.N.Y. May 24, 2022) (discussing Upsolve’s “American Justice Movement” training program).

<sup>133</sup> Complaint at 3, *Upsolve*, 2022 WL 1639554.

<sup>134</sup> *Id.* at 1.

demonstration of unmet needs present in the community.<sup>135</sup> Similarly, multiple access to justice stakeholders, including some dedicated to traditional legal services, wrote amicus briefs supporting Upsolve's claims regarding the arbitrary and illegitimate barriers to access to justice imposed by UPL prohibitions.<sup>136</sup> On May 24th, 2022, the district court finally resolved the case, ruling that legal advice is a form of speech protected under the First Amendment.<sup>137</sup> This piece of strategic litigation is politically important for legal empowerment advocates. The accompaniment and training of a nonprofit legal empowerment organization like Upsolve is a step towards a changing landscape.

Outside of courts, community paralegal efforts also strive to change how justice is delivered. Community lawyers, sometimes called barefoot lawyers, are grassroots advocates who develop the capacity and knowledge to use, shape, and transform the law to advance the defense of their collectives. While there are a variety of approaches to community paralegal work, these approaches seem to share a core element. Through workshops and capacity development opportunities on the ground, these community leaders obtain substantive knowledge of law and skills to navigate legal and advocacy efforts such as investigations of human rights violations, documentation, lobbying, and know-your-rights education.<sup>138</sup> And they "provid[e] access to information on rights, guidance on how to access benefits, and support to fill out forms, particularly for those who are illiterate, do not speak or read the official language of the country, or cannot access online services."<sup>139</sup> Along the process, they partner with lawyers to co-design legal strategies and litigation. Sometimes, this relationship translates into mobilization and organizing efforts. The effectiveness of this methodology relies on the fact that legal empowerment strategies must attempt to meet "people where they are and frame[] problems and success from the perspective of communities themselves."<sup>140</sup> At the core of these initiatives is personal experience: "[W]e want to make sure that individuals with lived experience and affected communities are at the center of the process, as well as have agency and con-

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<sup>135</sup> Memorandum of Law on Behalf of *Amicus Curiae* National Center for Access to Justice at Fordham University School of Law in Support of Plaintiffs' Motion for Preliminary Injunction at 2, *Upsolve*, 2022 WL 1639554.

<sup>136</sup> *See, e.g., id.*

<sup>137</sup> *Upsolve*, 2022 WL 1639554, at \*17.

<sup>138</sup> *See Maru, Between Law and Society, supra* note 57, at 469 (discussing various applications of community paralegal skills).

<sup>139</sup> *Ensuring Access, supra* note 15, at 28.

<sup>140</sup> BURNETT & SOBOLL, *supra* note 23, at 5.

trol over the process and its outcomes.”<sup>141</sup> Although different in theory and practice, such models of non-lawyering seem to coincide with the need to transform the relationship between people and the justice system by placing those affected by inequality and crisis in the center. Transformation is at the core of these initiatives: “If poverty is stopped, it will be stopped by poor people.”<sup>142</sup>

### CONCLUSION

In the wake of the 2020 earthquakes, we found ourselves re-reading “Rebuilding the Ethical Compass of Law,” an essay on movement lawyering values written by Purvi Shah. The essay includes an invitation for everyone within the legal community:

Moments of social unrest offer us an opportunity, if not an imperative, to examine business as usual—to excavate what is rotten and rebuild something better. Law is no exception. This current moment has exposed so much of the hypocrisy and failure of law. But if we are courageous inside this vulnerable moment, there is an opportunity for transformation. Difficult moments, like the one we are in, can serve as opportunities to innovate, experiment, and shift culture.<sup>143</sup>

Disasters—or more precisely, surviving disasters—shift our perspective on the role of legal work. In part, this is because our formal legal training falls short when vulnerabilities are highlighted. We strive to identify sources of legitimacy for a profession that, at worst, reveals itself as violent and, at best, outdated or insufficient. Legal work needs a new framework. Lessons from the several apocalyptic threats can assist us in its redesign.

Lawyering at times of crisis is difficult and messy. Challenges include low participation at workshops, particularly when communities are overworked, exhausted, or think legal awareness is a waste of time. Many of the people who need assistance for evictions or disaster legal aid are hesitant to represent themselves and are not willing to consider help from non-lawyers. The technicalities and power imbalance of foreclosure proceedings make it unmanageable for people without legal education to defend themselves. Amidst precarious situations that have been neglected for years and latent disasters, there is not enough time to face the multiple expressions of injustice that pervade the life of the impoverished.

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<sup>141</sup> *Id.* at 10.

<sup>142</sup> Wexler, *supra* note 51, at 1053 (arguing that lawyers must help “poor people organize themselves”).

<sup>143</sup> Purvi Shah, *Rebuilding the Ethical Compass of Law*, 47 HOFSTRA L. REV. 11, 15 (2018).

Changing the way traditional legal formation shapes us is a source of angst and uncertainty. Even for volunteers who donate their time to social justice, resources are needed. Mileage, costs that derive from holding community meetings, parking fees, lunch stipends, child-care, and other expenses are real and cumulative. Failure to address the fragility of community lawyering practice, particularly for first-generation lawyers, is devastating. We who practice at nonprofits or legal aid initiatives need to have a difficult conversation: Community lawyering work should not be a vow of poverty or a promise of burnout. We attest to witnessing directors and program officers who neglect sleep and food to work on grant-seeking or strategic litigations. We see colleagues sacrificing family and health to remain at the forefront of legal empowerment. We see mental health crises arising from feelings of blame and insufficiency. Broad recognition of the toll that nonprofit work and its urgent nature take on community lawyers is crucial to sustaining the work. To sustain is to address our wellness just as we do with the wellness of the people and groups we serve. The just world we want should also be available to us. As we demand the justice system to change, we also need those who fund systemic transformation efforts—foundations and grantors—to acknowledge the diversity of legal work when conflict arises. Those of us who are already in spaces where legal empowerment is fostered have an important role to play for the sake of future generations of legal workers.

A theory of change is a tool that helps us monitor the alignment of our values and practices as we assess how our goals are reached. It is also a mechanism to acknowledge that legal advocates who engage in this path are also accompanied. In Ayuda Legal Puerto Rico, we have developed a three-part theory that dialogues with the legal empowerment know-use-shape methodology. We strive to socialize, sustain, and transform.

First, we socialize legal education through technology, brigades, and popular legal education. Radio programs, web portals, document assembly tools, manuals, and checklists are all part of a broader effort to transform a narrative of exclusion and monopolization into shared capabilities grounded in access and rights.

Second, we sustain our work by developing capacity among other lawyers, fostering a strong pro bono culture, and accompanying legal workers who want to learn more about community lawyering. A strong pro bono culture is essential for the continued relevance of the legal profession. Pro or low bono opportunities are a chance to approach different law practices and practice how to pivot when unmet needs drastically change or when it is time to adopt new strate-

gies to reach people. The capacity to sustain this work also derives from the opportunity to hold spaces for communities and groups to build power by integrating legal tools to amplify their work. Nurturing different levels of engagement and participation in the design, implementation, and evaluation of legal strategies is beneficial for everyone.

Last, and with the assistance of strategic litigation and social impact advocacy, we aim to participate in and accompany others committed to transforming the justice system. Self-determination, human rights, and accompaniment received from community stakeholders hold our work accountable throughout every step of the process. Even at the end of times, and because it's the beginning of everything that is still possible, our relevance lies in the capacity to be present.