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**SOCIAL AND PSYCHOLOGICAL BARRIERS TO SELF-  
DETERMINATION AND ACCESS TO JUSTICE<sup>†</sup>**

KATHRYNE M. YOUNG<sup>\*</sup>

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<sup>†</sup> An invited response to Lauren Sudeall, *Self-Determination and Self-Represented Litigants*, 106 B.U. L. REV. 1 (2026).

<sup>\*</sup> Professor of Law, The George Washington University Law School; Senior Scholar at the Center on Civil Justice at NYU Law School; Affiliated Faculty at the American Bar Foundation.

## INTRODUCTION: SELF-DETERMINATION AS A UNIFYING PRINCIPLE

On one hand, access to justice scholars increasingly take it for granted that a civil right to counsel would not go far enough in solving the access to justice crisis.<sup>1</sup> On the other, representation by counsel is still often held up as an ideal against which other models fall short. Professor Sudeall's article is useful for a number of reasons, foremost among them her articulation of a principle that can shake up staid supply-side conversations by providing a new sort of beacon for considering whether the civil justice system is achieving access to justice: Do people who enter the system get to figure out what *they* want to have happen, or is "justice" happening *to* them?

To an astonishing degree, the answer is the latter. One of Professor Sudeall's most powerful points is that, in contrast to the criminal realm, where self-determination is at least an articulated value, albeit imperfectly realized,<sup>2</sup> in the civil realm it is often ignored—or at least, remains implicit.<sup>3</sup> Courts talk instead about system-level values such as fairness and efficiency, which may be at odds with an individual litigant's goals and desires.<sup>4</sup> As Professor Sudeall poses, consider the famous case of *Turner v. Rogers*.<sup>5</sup> No one knows, really, what Michael Turner himself wanted to have happen. No one seems to have ever asked him, nor did the Court treat this as particularly important to the outcome. Instead, due process doctrine like the *Turner* safeguards help the defendant avoid a contempt ruling, but "they do not

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<sup>1</sup> See Nourit Zimmerman & Tom R. Tyler, *Between Access to Counsel and Access to Justice: A Psychological Perspective*, 37 FORDHAM URB. L.J. 473, 480 (2010). Additionally, formal legal expertise is more crucial in some roles than others. See Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise Through Lawyers' Impact*, 80 AM. SOC. REV. 909, 910 (2015) (arguing lawyers are most effective not because of their substantive legal knowledge but due to their knowledge of procedure).

<sup>2</sup> See MATTHEW CLAIR, PRIVILEGE AND PUNISHMENT: HOW RACE AND CLASS MATTER IN CRIMINAL COURT 6-7 (2020) (examining "how race and class inequalities in society are embedded in and reproduced through the attorney-client relationship, a defendant's most important relationship in court").

<sup>3</sup> See Lauren Sudeall, *Self-Determination and Self-Represented Litigants*, 106 B.U. L. REV. 1, 26 (2026).

<sup>4</sup> *Id.* at 17.

<sup>5</sup> 564 U.S. 431, 436-38 (2011) (recounting state court sentencing unrepresented litigant to six months incarceration for failing to pay child support and his appeal based on failure to provide counsel but omitting how litigant desired underlying dispute to be resolved).

necessarily advance self-determination,”<sup>6</sup> democratic values,<sup>7</sup> or equal justice.<sup>8</sup>

And, of course, for all the civil justice problems that make it into court, even more are not resolved in court at all. Bursting dockets push people into extrajudicial settlements, where the asymmetries are intense<sup>9</sup> and the consequences are steep. Excluded, too, are the below-the-iceberg<sup>10</sup> masses of would-be civil litigants who never take their problems to formal legal help.<sup>11</sup> Here, too, self-determination is frequently sidelined—often before the question could even be asked. And without knowing that their problem might be due a remedy at all, people are unlikely to pursue help to begin with.<sup>12</sup>

Self-determination is conceptually useful because it is a grounding principle that speaks to civil justice problems at these different levels of formal engagement. It is fundamental to the experience of self-represented litigants, and it is fundamental to how we think about providing access to justice for people who do not know that their problems are legal in nature. In this Response, I take up Professor Sudeall’s invitation to consider different means of permitting or ensuring self-determination,<sup>13</sup> and specifically to think about how the voices of ordinary litigants might be amplified in the access to justice conversation.

Despite significant advances in sociology and psychology about how people think about problem-solving, court reform proposals and legal scholarship often rely on generalized assumptions about the relationship

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<sup>6</sup> Sudeall, *supra* note 3, at 22.

<sup>7</sup> See Jennifer Ann Leitch, *Having a Say: Democracy, Access to Justice, and Self-Represented Litigants* (Apr. 5, 2016) (Ph.D. dissertation, York University) (on file with author).

<sup>8</sup> See Tonya L. Brito & Daniela Campos Ugaz, *Asymmetry of Representation in Poor People’s Courts*, 92 *FORDHAM L. REV.* 1263, 1275-83 (2024) (discussing ways in which, despite due process protections, inequality shapes how child support enforcement cases unfold in court).

<sup>9</sup> Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 *GEO. J. ON POVERTY L. & POL’Y* 453, 487 (2011) (exemplifying inequality in bargaining strength with cases studies where unrepresented tenants in disputes with landlords often pay more than maximum liability in damages pursuant to negotiated settlements).

<sup>10</sup> See Rebecca L. Sandefur, *Access to What?*, 148 *DÆDALUS* 49, 50 (2019).

<sup>11</sup> REBECCA L. SANDEFUR, *CIVIL JUSTICE PROBLEMS ARE COMMON, WIDESPREAD, AND RARELY TAKEN TO A LAWYER*, AM. BAR FOUND. 1 (Oct. 19, 2016), [https://web.archive.org/web/20190829045451/http://www.americanbarfoundation.org/uploads/cms/documents/abf\\_research\\_brief\\_access\\_to\\_justice\\_v3.pdf](https://web.archive.org/web/20190829045451/http://www.americanbarfoundation.org/uploads/cms/documents/abf_research_brief_access_to_justice_v3.pdf) [<https://perma.cc/73TR-GFDK>].

<sup>12</sup> Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, in *TRANSFORMING LIVES: LAW AND SOCIAL PROCESS* 112, 124 (Pascoe Pleasence, Alexy Buck & Nigel J. Balmer eds., 2007).

<sup>13</sup> Sudeall, *supra* note 3, at 43.

between everyday people and the law.<sup>14</sup> Where sociolegal perspectives are incorporated into doctrinal debates, it is often in truncated form, with attention to their conceptual insights but less engagement with the empirical methods that produced them. A framework that centralizes self-determination offers a new invitation to engage with the psychological and sociological realities of civil justice problems at every stage of the justice process, from problem recognition to resolution. It also offers a framework for thinking about the cognitive barriers to self-determination, with which most courts have yet to meaningfully grapple for self-represented litigants.

Below, I draw on the sociological and psychological literatures, as well as empirical work on access to justice, to offer a few examples of how we can overcome barriers to self-determination to more fully realize this principle's potential.

### I. FUTILITY AND ESTRANGEMENT

Futility pervades the legal experiences of ordinary people who encounter the legal system. Sociolegal research is rife with empirical detail about people who doubt the justice system's ability to provide meaningful redress at the outset,<sup>15</sup> as well as people who go through various parts of the justice system without feeling like they have a meaningful influence on the outcome.<sup>16</sup> Here, procedural justice provides a partial set of solutions. As Professor Sudeall discusses,<sup>17</sup> procedural justice is concerned with making people feel as if they have been given a voice and treated with respect,<sup>18</sup> regardless of the substantive outcome.<sup>19</sup> But when it comes to achieving self-determination, some awareness of typical distributive outcomes is important as well. People need to be able to assess not only how they subjectively felt during the proceedings, but how the outcomes they received compared to the outcomes

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<sup>14</sup> See Zimmerman & Tyler, *supra* note 1, at 474 (offering psychological perspective lacking in ABA proposal for institutionalizing counsel in certain civil proceedings).

<sup>15</sup> See, e.g., Amy E. Nivette, Manuel Eisner, Tina Malti & Denis Ribeaud, *The Social and Developmental Antecedents of Legal Cynicism*, 52 J. RSCH. CRIME & DELINQ. 270, 276 (2014) (discussing factors contributing to development of legal cynicism in youth); *The Justice Gap: Section 4: Seeking and Receiving Legal Help*, LEGAL SERVS. CORP., <https://justicegap.lsc.gov/resource/section-4-seeking-and-receiving-legal-help> [<https://perma.cc/7DHX-ZNHD>] (last visited Feb. 2, 2026) (reporting survey respondents "did not think a lawyer could help with 44% of their problems and were not sure for another 30%").

<sup>16</sup> DAVID M. ENGEL & FRANK W. MUNGER, *RIGHTS OF INCLUSION: LAW AND IDENTITY IN THE LIFE STORIES OF AMERICANS WITH DISABILITIES* 15 (2003).

<sup>17</sup> See Sudeall, *supra* note 3, Section I.C.

<sup>18</sup> See Tom R. Tyler, *What Is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, 22 L. & SOC'Y REV. 103, 104-05 (1988).

<sup>19</sup> See Robert J. MacCoun, *Voice, Control, and Belonging: The Double-Edged Sword of Procedural Fairness*, 1 ANN. REV. L. & SOC. SCI. 171, 171-72 (2005).

received by others.<sup>20</sup> Indeed, believing that their own outcomes, or the outcomes for their group in general, are lacking, is a key cause of legal estrangement.<sup>21</sup> As Professor Sudeall points out, is corrosive to the value of self-determination because it makes people feel structurally excluded from the legal mechanisms that are supposed to deliver substantive justice.<sup>22</sup>

People's sense of futility, lack of agency, or structural exclusion in the form of legal estrangement are all important components of legal consciousness—the social processes that comprise the attitudes, beliefs, and ideas that people have about law.<sup>23</sup> Understanding exactly how legal consciousness is shaped by various forms of participation and specific procedural innovations is key to building systems of self-representation that uphold values of dignity and self-determination. It is also key to understanding cultural, geographic, and other differences in order to calibrate self-determination contextually. What may feel trite or paternalistic in one setting may provide crucial guidance in another setting. But again: These are questions whose answers are knowable. Developing the requisite knowledge base will take real empirical work and meaningful community partnerships. But it *can* be done.

## II. STIGMA AND SELF-BLAME

When people believe that a problem is their own fault, they are less likely to do anything to change the situation.<sup>24</sup> Stigma, too, stymies legal claims.<sup>25</sup> Recent experimental results find that blaming oneself less for a worker misclassification problem is associated with a greater likelihood of pursuing varied solutions to a problem, and a reduced likelihood of taking no action.<sup>26</sup> Thus, to facilitate self-determination, it is incumbent upon legal institutions to consider new ways to reduce stigma and self-blame. Increased legal

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<sup>20</sup> See Óscar Aguilar-Rojas, Carmina Fandos-Herrera & Alfredo Pérez-Rueda, *The Importance of Social Comparison in Perceived Justice During the Service Recovery Process*, 33 EUR. J. MGMT. & BUS. ECON. 488, 494-96 (2024).

<sup>21</sup> Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2100 (2017).

<sup>22</sup> Sudeall, *supra* note 3, at 29-30.

<sup>23</sup> See Susan S. Silbey, *After Legal Consciousness*, 1 ANN. REV. L. & SOC. SCI. 323, 334 (2005).

<sup>24</sup> See Dan Coates & Steven Penrod, *Social Psychology and the Emergence of Disputes*, 15 L. & SOC'Y REV. 655, 671-72 (1980).

<sup>25</sup> See Leisy J. Abrego, *Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First- and 1.5-Generation Immigrants*, 45 L. & SOC'Y REV. 337, 357-60 (2011); Cheryl R. Kaiser & Victor D. Quintanilla, *Access to Counsel: Psychological Science Can Improve the Promise of Civil Rights Enforcement*, 1 POL'Y INSIGHTS BEHAV. & BRAIN SCIS. 95, 96 (2014).

<sup>26</sup> Kathryne M. Young & Heidi H. Liu, *What Can Legal Knowledge Do for Access to Justice?*, 75 DUKE L. J. 643, 682 (2026) (finding empirically workers were more likely to act outside of workplace to solve misclassification problem when given legal knowledge).

knowledge—for example, making interpretive legal advice more readily available, as opposed to legal information that people have to interpret on their own—is one promising route.<sup>27</sup> Knowing exactly *how* the law applies to their situation broadens a person’s sense of what they can do; put differently, it bolsters the value of self-determination.

Eliminating feelings of self-blame should be a goal in justice innovations generally,<sup>28</sup> but is particularly important in the context of self-help and self-representation because it transforms the sorts of actions people are likely to take on their own behalf. For example, Professors Kitty Calavita and Valerie Jenness find that prisoners who blame themselves for their imprisonment are less likely to file grievances about things that happen to them in prison.<sup>29</sup> People who feel that they “got themselves into” a particular situation—as many civil litigants also feel—may be ill-equipped to advocate fully on their own behalf, which is precisely what we demand of self-represented litigants. Compounding this hurdle is the simple fact that trying to navigate an unfamiliar and confusing set of rules and procedures can make people feel exceedingly vulnerable.<sup>30</sup> And although legal representation is no panacea for experiencing a lack of agency,<sup>31</sup> feeling like they have someone “in their corner” can make judicial procedures less alienating for people. To this end, court navigators and other nonlawyer advocates can be extremely helpful,<sup>32</sup> and their ability to increase people’s sense of agency and reduce the stigma they feel as they go through the system stands as a powerful argument for

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<sup>27</sup> *Id.* at 698-99.

<sup>28</sup> *See id.*

<sup>29</sup> Kitty Calavita & Valerie Jenness, *Inside the Pyramid of Disputes: Naming Problems and Filing Grievances in California Prisons*, 60 SOC. PROBS. 50, 51 (2013).

<sup>30</sup> RICHARD MOORHEAD & MARK SEFTON, U.K. DEP’T FOR CONST. AFFS., LITIGANTS IN PERSON: UNREPRESENTED LITIGANTS IN FIRST INSTANCE PROCEEDINGS 198 (2005), <https://orca.cardiff.ac.uk/id/eprint/2956/1/1221.pdf> [<https://perma.cc/86LB-ELUM>]; JULIE MACFARLANE, NAT’L SELF-REPRESENTED LITIGANTS PROJECT, IDENTIFYING AND MEETING THE NEEDS OF SELF-REPRESENTED LITIGANTS: FINAL REPORT 97 (2013), <https://representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf> [<https://perma.cc/7D D6-YBEX>].

<sup>31</sup> *See* AUSTIN SARAT & WILLIAM L. F. FELSTINER, DIVORCE LAWYERS AND THEIR CLIENTS: POWER AND MEANING IN THE LEGAL PROCESS 106-07 (1995) (ethnographic study detailing even represented litigants often feel their sense of agency is subsumed by lawyers’ influence on decision-making).

<sup>32</sup> *See* MARY E. MCCLYMONT, JUST. LAB GEORGETOWN L. CTR., NONLAWYER NAVIGATORS IN STATE COURTS: AN EMERGING CONSENSUS 19-22 (2019), <https://www.law.georgetown.edu/tech-institute/wp-content/uploads/sites/42/2023/06/Nonlawyer-Navigators-in-State-Courts.pdf> [<https://perma.cc/AX9P-269V>] (discussing ability of nonlawyer navigators to assist litigants); Rebecca L. Sandefur & Matthew Burnett, *Building Successful Justice Worker Programs: Emerging Insights from Research and Practice*, 41 ALASKA L. REV. 23, 28-42 (2024) (expounding research on many benefits of community justice worker models).

reregulation.<sup>33</sup> Improving systems of self-representation means not only working to remedy known access inequalities,<sup>34</sup> but understanding how different design choices can work on the ground to help overcome barriers to self-determination.

#### CONCLUSION: WHAT'S NEXT FOR SELF-DETERMINATION?

Professor Sudeall's excellent article provides access to justice scholars with a framework for thinking about self-representation, community justice work, and other types of justice provision by asking what self-determination really means in practice. The next step in this scholarship is to pinpoint precisely when we have achieved or delivered self-determination in a particular setting. How can we know whether or not Michael Turner got what he really wanted? How can we know whether he got a meaningful chance to weigh his options, had apt guidance for doing so, and experienced a meaningful sense of agency during the process? How can we know that his subjective satisfaction with the outcome is based on a reasonable amount of knowledge about the range of outcomes received by others in his position? How can judges provide self-represented litigants meaningful guidance and awareness of the pros and cons of different options without overstepping their roles as neutral arbiters? Since we know that people want someone to help guide them through their civil justice problems,<sup>35</sup> what new models for guidance might we provide?

As Professor Sudeall writes, “[p]roviding people with meaningful self-determination will, in practice, require thoughtful consideration of what information is required up front as well as the underlying cultural context and what people will need for self-determination.”<sup>36</sup> In large part, whether court procedures, active judging, simplified forms, community justice workers, or self-help sites facilitate self-determination is an empirical question. Concepts like futility, estrangement, self-blame, and stigma, are significant barriers, but they are measurable and surmountable. We need work in more justice contexts not only to understand their causes and effects in greater detail, but to connect them to the realization of concrete access to justice goals.

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<sup>33</sup> See Elizabeth Chambliss, *Evidence-Based Lawyer Regulation*, 97 WASH. U. L. REV. 297, 341-43 (2019); Rebecca L. Sandefur & Emily Denne, *Access to Justice and Legal Services Regulatory Reform*, 18 ANN. REV. L. & SOC. SCI. 27, 29 (2022); Lauren Sudeall, *Delegalization*, 75 STAN. L. REV. ONLINE 116, 116-17 (2023).

<sup>34</sup> See Victor D. Quintanilla et al., *Digital Inequalities and Access to Justice: Dialing into Zoom Court Unrepresented*, in LEGAL TECH AND THE FUTURE OF CIVIL JUSTICE 225, 225-26 (David Freeman Engstrom ed., 2023).

<sup>35</sup> Kathryn M. Young, *Getting Help*, 2024 WIS. L. REV. 1149, 1183-84.

<sup>36</sup> Sudeall, *supra* note 3, at 41.