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# Access to Advice as a Linchpin of Family Justice

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Most Americans simply cannot afford legal representation in the traditional model, and family law is repeatedly invoked as an illustrative context in which this lack of access is stark: By some estimates, 80 to 90 percent of family cases involve at least one unrepresented party.[1] Family court systems around the country have responded to this reality by establishing robust self-help centers and working to simplify court forms and procedures to better meet the needs of self-represented litigants in divorce and child custody matters. As just one example in a rising tide of innovation, self-represented litigants in Colorado can obtain information and assistance – but not representation or legal advice – from Self-Represented Litigant Coordinators, who are judicial employees located in the self-help center of each judicial district.[2] The website for the state court system offers court-approved forms and plain language instructions, including flowcharts and short explanatory videos on electronic filing for non-attorneys.[3] The judges who handle domestic relations matters are assisted by Family Court Facilitators, who work with the parties to move the case to resolution,

[1] Natalie Anne Knowlton et al., *Cases without Counsel: Research on Experiences of Self-representation in U.S. Family Court* 1, Inst. for the Advancement of the Am. L. Sys. (2016), https://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf (last accessed Feb. 3, 2025); Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 Fordham L. Rev. 2587, 2607 (2014); *see also* Nat'l Ctr. for State Cts. Family Just. Inst., *The Landscape of Domestic Relations Cases in State Court* ii (2018), https://iaals.du.edu/sites/default/files/documents/publications/fji-landscape-report.pdf (last accessed Feb. 3, 2025) (examining eleven jurisdictions and finding that 72 percent of cases involved at least one self-represented litigant).

[2] S. Ct. of Colo., Off. of the Chief Just., *Chief Justice Directive* 13-01 (2023), https://www.coloradojudicial.gov/sites/default/files/2023-08/13-01.pdf (last accessed Feb. 3, 2025) (specifying what can and cannot be provided to self-represented litigants by self-help staff).

[3] *See, for example*, *Flowchart – Divorce of Legal Separation NO Minor Children*, Colo. Jud. Branch (undated), https://www.courts.state.co.us/userfiles/file/Court_Probation/04th_Judicial_District/El_Paso/Domestic%20Forms/FCF%20500%20Flowchart%20Dissolution%20or%20Legal%20Separation%20No%20Minor%20Children.pdf (last accessed Feb. 3, 2025); *Efiling for Non-Attorneys*, Colo. Jud. Branch (undated), https://www.coloradojudicial.gov/taxonomy/term/959 (last accessed Feb. 3, 2025).

and family court matters are governed by a special rule of civil procedure that requires courts to actively manage cases in a way that is tailored to the particular needs of each family.[4]

As important as these initiatives are, it is hard to avoid the impression that they are crisis measures – more band-aid than cure. They address the inability of litigants to obtain counsel rather than reflecting an affirmative sense of what civil justice should look like.[5] Litigants moving through family court systems that have been adjusted to be navigable without an attorney will find it much easier to successfully file for and complete a divorce as compared to systems that continue to operate on the fiction of attorney involvement.[6] But even in the jurisdictions that have done the most retrofitting, self-represented litigants must pursue their cases without the benefit of legal strategy, analysis, or advice.[7] A couple that intends to resolve their divorce swiftly and amicably with minimum transaction costs might need to complete the entire process without ever understanding whether the house they have been living in is separate or marital property. As Russell Engler explained so incisively more than twenty years ago, "most assistance needed by unrepresented litigants is likely to involve what would fall within an intellectually honest definition of legal advice."[8]

Against this backdrop, advocates for family law reform have wisely noted that traditional full-fledged representation in the adversarial model, even where available, is not well-suited to many domestic relations litigants in any event.[9] Litigants who come to court because they are divorcing, need an allocation of parental responsibilities, or are otherwise undergoing some kind of family transition have a highly distinctive set of needs and interests that don't appear in other contexts.[10] Family law's particular qualities – the need to protect children and the uniquely intertwined financial relationship between the parties – have led reformers to invest in systems that offer multiple pathways to resolution, depending on the degree of

[4] Colo. State Ct. Admin. Off., *Domestic Relations Triage Project Final Report* (Aug. 2018), https://www.ncsc.org/__data/assets/pdf_file/0023/18833/co-scao-report-final-w-app.pdf (last accessed Feb. 3, 2025).

[5] Jessica K. Steinberg, *Demand-Side Reform in the Poor People's Court*, 7 Conn. L. Rev. 741, 762 (2015).

[6] *See, for example*, D. James Greiner et al., *Using Random Assignment to Measure Court Accessibility for Low-Income Divorce Seekers*, 118 Proc. Nat'l Acad. Scis. e2009086118 (Apr. 6, 2021) (reporting numerous procedural barriers making divorce systems inaccessible to unrepresented litigants).

[7] *See supra* note 2 (specifying that court staff cannot provide strategy, analysis, or advice).

[8] Russell Engler, *And Justice for All-Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 Fordham L. Rev. 1987, 2026 (1999).

[9] Rebecca Aviel, *Why Civil Gideon Won't Fix Family Law*, 122 Yale L.J. 2106, 2109 (2013) (explaining that most family law litigants "want proceedings that are shorter, simpler, cheaper, more personal, more collaborative, and less adversarial").

[10] We are focused here on custody disputes between parents whose relationship is dissolving rather than state-initiated proceedings in which the state is seeking to obtain custody of an abused or neglected child or to terminate parental rights altogether; nor do we address cases where a third party asserts custodial rights to the child in question.

conflict and complexity presented by each family's circumstances.[11] Some divorcing couples who meet eligibility criteria regarding minor children and marital assets may be able to convert the terms of their agreement into a decree without even appearing in court.[12] Others will be able to arrive at an agreement after mediation or assistance from a court-assigned parenting coordinator. Adversarial procedures resulting in a judicial determination of rights and responsibilities are limited to those cases that truly cannot be resolved with a more streamlined, problem-solving approach. These structural reform efforts de-emphasize the role of counsel in resolving family law cases – reflecting both a pragmatic acknowledgement that the army of lawyers that would be needed to serve domestic relations litigants is not about to materialize, and a genuine sense that many families are better served by a system that does not run on the kind of individualized partisan advocacy that is taken to be the lawyer's stock-in-trade.

As much as we should celebrate these efforts, we must also be candid about the role that legal expertise continues to play in achieving justice in family law. As long as we remain committed to the substantive principles that family law regimes seek to advance, and aspire to bring family law matters to resolutions that are aligned with these substantive principles, litigants should have some access to core legal competencies – especially the provision of advice. In this sense family law, for all its exceptionalist qualities, is not so different from other areas of law: Legal advice still matters. To make it accessible in the face of persistent resource constraints, the legal profession must be willing to expand the range of postures in which it is possible for litigants to get legal advice and the categories of professionals who are allowed to provide it.

The challenge, present in other legal areas where access concerns are acute but hitting family law with particular force, is how to leverage family law's mix of exceptionalist and universalist attributes to create an array of avenues for obtaining meaningful and affordable legal advice. The options we might offer in family law

[11] Because claims of exceptionalism are vulnerable to the identification of relevant similarities, it is worth clarifying at the outset that the point is not to make an argument of exceptionalism for its own sake. The argument is simply that several of family law's distinctive qualities are relevant to improving access to justice for divorcing couples. Some of family law's unique attributes offer cost-reduction opportunities that aren't available in other contexts – the fact that some divorcing couples have interests that are more aligned than they are adverse allows for the possibility of joint representation where it would be inappropriate in a landlord–tenant dispute. Conversely, some of family law's distinctive qualities produce constraints – the need to monitor and protect the interests of children limits the extent to which we should feel comfortable converting family law entirely to a private settlement regime. The essential point is that family law litigants should be offered a menu of resolution pathways and services that are uniquely tailored to the specific circumstances of family law, even if we wouldn't accept those arrangements in other contexts. And to be sure, a comprehensive access-to-justice strategy for family law will borrow liberally from other areas where promising.

[12] *See, for example*, *JDF 1018: Affidavit for Decree without Appearance*, Colo. Jud. Branch (Mar. 1, 2024), https://www.courts.state.co.us/Forms/PDF/JDF1018.pdf (last accessed Apr. 18, 2024).

will not translate seamlessly to all other contexts, as we will see. Indeed, what will work for some family law litigants would be inappropriate for others. But the exercise reveals a broader point: The most comprehensive access-to-justice strategies will include both Transubstantive interventions as well as subject-specific ones. The question is how to benefit from this pluralism while managing the added complexity that it brings. Section 16.1 shows how family law differs in key respects from the adversarial paradigm assumed by the American civil justice system. Section 16.2 explains that family law litigants are nonetheless navigating a system of legal rules, meant to effectuate profoundly consequential judgments about family obligations and various forms of dependency, and that in at least some subset of cases legal advice is critical to arriving at outcomes that are tolerably aligned with these substantive principles. Building from these observations, Section 16.3 considers various strategies for making legal advice more affordable and accessible to a wider range of family law litigants.

## 16.1 FAMILY LAW EXCEPTIONALISM

We might begin by observing that married couples who seek a divorce are required to use the judicial system to dissolve their marriage, no matter how deeply they agree that the marriage should end, and no matter how aligned they are regarding child custody, the distribution of debts and assets, and support obligations. Unlike parties to a contract dispute, or neighbors quarreling over a property line, or indeed any other type of civil matter, a divorcing couple may not negotiate and resolve their affairs without resort to the courts in any American jurisdiction.[13] Family law has undergone a profound transformation away from the fault-based, adversarial systems of yesteryear, in which spouses had to prove specific types of marital fault in order to obtain a divorce.[14] But for all that has changed, this feature of family law remains the same – though notably, in many jurisdictions divorcing spouses may now proceed as joint petitioners rather than opposing parties.[15] We will discuss in more detail the substantive legal principles that are said to justify this mandatory resort to the judicial system, but for now we sidestep such normative questions to instead make a simple but important observation: The presence of divorcing spouses in the judicial system says nothing about their adversity or alignment on the core issues of their dissolution. In other contexts, we might be able to assume that litigants are in court

[13] *See* Margaret Ryznar & Angélique Devaux, *Voilà! Taking the Judge Out of Divorce*, 42 SEATTLE U. L. REV. 161, 162 (2018) ("[A] fundamental premise in American law is that divorce constitutes a civil judicial process."); *see also* Hon. Lynda B. Munro (ret.) et al., *Administrative Divorce Trends and Implications*, 50 FAM. L.Q. 427, 428 (2016).

[14] *See, for example*, Rebecca Aviel, *Family Law and the New Access to Justice*, 86 FORDHAM L. REV. 2279, 2280 (2018) (explaining that until the 1960s and 1970s, divorce was only available to an "innocent" spouse who could prove that his or her partner had committed a specific type of misconduct – such as adultery, cruelty, or abandonment).

[15] Rebecca Aviel, *Counsel for the Divorce*, 55 B.C. L. REV. 1099, 1126 (2014).

because they are adversarial. But that's not necessarily true for divorcing spouses – in fact, a recent study conducted by the Family Justice Initiative found that 64 percent of domestic relations cases were filed as uncontested.[16] Divorcing spouses are in court, no matter how collegial or aligned their interests may be, simply because that is the only way they may dissolve the marriage.[17] This has important implications for designing access-to-justice solutions because it reminds us not to treat divorcing spouses as necessarily adverse to one another in a way that is analogous to other civil litigants. They might be able to benefit from legal service delivery models that would be categorically unethical and inappropriate for other litigants.

Another way in which family law is distinctive is the impact on children whose parents are undergoing dissolution. Family law rests on something of a paradox: The substantive principles that govern family law have as one of their chief objectives the protection of children's interests, but the process by which these principles are adjudicated and applied in individual cases can undermine this core objective.[18] The statutes that govern child custody instruct courts to weigh numerous factors designed to identify the best interests of the child,[19] and child support regimes have been repeatedly reformed to ensure adequate support for children after family dissolution.[20] The principles that govern the distribution of marital property and the award of spousal support also take into account children's interests. In allocating marital property between divorcing spouses, courts are instructed to consider whether to award "the family home or the right to live therein for a reasonable period to the spouse with whom any children reside the majority of the time."[21] Alimony statutes, which typically require a demonstration that the spouse seeking support is economically dependent, allow for the court to arrive at this conclusion either because the spouse is unable to support herself "through appropriate employment or is the custodian of a child whose condition or circumstances make it inappropriate for the spouse to be required to seek employment outside the home."[22] A court applying this provision could conclude that someone is eligible for spousal support – even if she is capable of obtaining adequate employment – because she cares for a child who would be best served by having her continue to stay home.

And yet amidst all of these substantive principles that express concern for the interests of children, a nearly universal consensus has emerged among scholars and advocates that divorce litigation itself is so harmful for children that avoiding it

[16] *See also* Nat'l Ctr. for State Cts., *supra* note 1, at i.
[17] See *supra* note 13 and accompanying text.
[18] *See, for example*, Jon Elster, *Solomonic Judgments: Against the Best Interest of the Child*, 54 U. Chi. L. Rev. 1, 11–12 (1987) (asserting that the best-interests standard is "self-defeating, in that finely tuned consideration of the best interests of each particular child is likely to impose 'process costs' that on balance tend to make children worse off").
[19] *See, for example*, Colo. Rev. Stat. Ann. § 14-10-124 (West).
[20] *See* Laura W. Morgan, *Child Support Fifty Years Later*, 42 Fam. L.Q. 365, 366 (2008).
[21] Colo. Rev. Stat. Ann. § 14-10-113.
[22] Colo. Rev. Stat. Ann. § 14-10-114.

should be one of the central features of family court reform.[23] This consensus has been so well-established that only a brief refresher is necessary here: The essential point is that because litigation puts parents in the position of adversaries, it actively generates hostility rather than simply reflecting some preexisting, static level of conflict that the parents bring with them simply by virtue of the end of the relationship. As the process drags on parties become more entrenched in their positions, and the resulting delay and uncertainty create anxiety and confusion for the children involved.

In addition to this uniquely powerful concern for the interests of third parties, family law matters present a financial relationship between the litigants that is without a convincing analogue in other areas of civil justice. There are surely cases where a spouse might have access to separate funds, gifted by a wealthy parent perhaps, to pay for their own representation. But for the most part, the spouses are both drawing on a single, joint pool of assets to fund litigation costs, and this is precisely the pool of assets whose favorable distribution they would be seeking to achieve. Consider a divorce where one spouse feels that they should receive more than 50 percent of the value of the marital house, perhaps because they contributed substantially more to the property's acquisition and improvement. This could well be a colorable legal claim: Most of the statutes that govern marital property don't require strictly equal division, and instead allow judges to make a distribution that is equitable based on individual circumstances, guided by statutory factors such as contribution.[24] But in a divorce where each spouse is represented by their own attorney in the conventional way, the spouse seeking the larger share will have to consider whether it is worth spending money on two lawyers to achieve this preferential result. This expense can quickly overtake the value of the increased share that the spouse was pursuing.

The need to engage in this calculus is particularly acute, given that dissolution produces various social and financial concerns that might reasonably appear more important to divorcing couples than obtaining the assistance of counsel. If a divorcing couple has limited resources to expend on professional assistance, it isn't obvious that they are better off spending those funds on a lawyer rather than a financial advisor, a tax accountant, or a child psychologist. In a recent study of divorcing spouses who chose to proceed without counsel, researchers repeatedly heard that a key part of the decision was to free up the funds that would have gone to attorney fees for family needs such as education and housing.[25] One study

[23] Michael Saini, *Triage as an Innovative Framework for Domestic Relations Cases*, Presentation at Modern Families, Innovative Courts: The 2015 Domestic Relations Best Practice Court Institute for Judges, Magistrates, Family Court Facilitators and Sherlocks (June 1–3, 2015) (PowerPoint on file with author) ("Everyone who works in family law . . . agrees on two things: family court is not good for families, and litigation is not good for children.").

[24] *See, for example*, Colo. Rev. Stat. Ann. § 14-10-113.

[25] Knowlton et al., *supra* note 1, at 12–15.

participant, "facing a rent and a mortgage, payments on two vehicles, and two insurance policies, concluded the money that would have been spent on an attorney would be better spent split between themselves."[26] Others emphasized the desire to redirect funds toward the children of the marriage:

- "As I was having conversations with the attorneys, it became clear to me that representation was not an efficient use of resources that were very, very limited that I could actually be using toward my children."
- "I'd much rather put that money toward supporting children than trying to fight to get them."
- "We have kids in college, and there just wasn't any reason to spend money on something – we just didn't need it."[27]

Decisions about whether to obtain legal assistance for a marital dissolution are seen as family budgeting assessments:

> My ex-partner and I looked at the expenses involved in each of us having a lawyer. We looked at the expenses of one of us having a lawyer and one not having a lawyer. We looked at the expenses of being represented for paperwork, by a paralegal, just to make the process clear so that we didn't have to return. And that's the method that we chose.[28]

For all these reasons, scholars and advocates have emphasized that models designed for other contexts are inapt for family law. Family law systems must prioritize problem-solving and private agreement over litigation and adjudication, and treat the parties as the best source of insight as to "what processes and services are best suited to a healthy reorganization for that family."[29] And yet, as much as we want to design systems that reduce antagonism and move away from the adversary nature of family dispute resolution, we must keep in mind that family law litigants are navigating a system that is fundamentally a legal one, in several important ways. Our growing appreciation for the value of self-determination in family court, and our need to grapple with the painful resource constraints that characterize the American civil justice system, more generally, ought not to obscure our recognition that even family court is a system in which legal expertise still has a meaningful role to play.

## 16.2 FAMILY LAW AS A SYSTEM OF LEGAL RULES

The process that governs family dissolution is obviously a legal system in the sense that parties file motions, appear in court, and litigate toward a judgment. But more

[26] *Id.* at 15.
[27] *Id.*
[28] *Id.*
[29] Fam. Just. Initiative, *Principles for Family Justice Reform* 4 (2019), https://iaals.du.edu/sites/default/files/documents/publications/family_justice_initiative_principles.pdf (last accessed Feb. 3, 2025).

importantly, these judgments are meant to bear some relationship to substantive legal principles that express and operationalize critically important norms about family decision-making and the rights and duties that family members owe each other. The space for private ordering has grown substantially over the past decades,[30] but family law is a long way from being a system that seeks only to facilitate private agreements and resolve disputes according to the terms of any such agreements, although those are certainly important functions.[31]

Family law seeks to protect vulnerable individuals and manage the inescapable social phenomenon of intersecting forms of dependency. Children are obviously dependent on the adults who care for them; family law also recognizes that adults may arrive at the end of a marriage with significant economic dependency caused by their caregiving role in the family. The paradigm case is a couple who decides jointly during the marriage, as many still do, that the overall welfare of the family would be maximized if one spouse were to put her own educational and professional pursuits on hold to manage the household and care for the couple's children. Such an arrangement allows the other spouse to devote time and energy to professional advancement, resulting in an enhanced income stream that benefits the entire family during the marriage. But if the marriage dissolves, the economic dependency fostered by this arrangement is solely born by the caregiving spouse, while the other spouse walks away from the marriage with professional and financial prospects that reflect the family's investment in his career.[32] The pattern is so familiar that it is captured with a shorthand reference to the "displaced homemaker."[33]

The substantive legal principles that govern family law reflect a judgment about how the economic risks of such an arrangement should be allocated. As Anne Alstott observes, "family law rules that establish financial relationships and liability between individuals constitute a form of social insurance."[34] To protect against unfairness and to encourage adults to make decisions that are in the best interest of the whole family unit while the marriage is intact, the law treats marriage as an economic partnership. The couple earns and spends as a unit, and both parties have claims to the acquired assets of the marital estate. The fruit of marital labor belongs to the couple, not the individual laboring spouse.[35] Upon dissolution, each spouse is entitled to a share of that fruit because each contributed to its creation.

[30] Brian H. Bix, *Private Ordering and Family Law*, 23 J. Am. Acad. Matrim. Law. 249, 285 (2010).

[31] Carl E. Schneider, *The Channeling Function in Family Law*, 20 Hofstra L. Rev. 495, 497 (1992).

[32] *See, for example*, Lorenz v. Lorenz, Supreme Court of New York, Appellate Division, 63 A.D.3d 1361 (2009). At the time of divorce, the husband's annual income was roughly $100,000, while the wife's was around $20,000, which the court attributed in part to the effects of marital decision-making.

[33] *See, for example*, *In re* Marriage of Wilson, 201 Cal. App. 3d 913, 918 (Ct. App. 1988).

[34] Anne L. Alstott, *Private Tragedies? Family Law as Social Insurance*, 4 Harv. L. & Pol'y Rev. 3, 4 (2010).

[35] *Principles of the Law of Family Dissolution* § 4.03 (Am. L. Inst. 2002).

The enforcement of these principles is a big part of why the state still plays quite a robust role at the end of a marriage – not by adjudicating fault as it used to do, but by monitoring and supervising the terms of dissolution, a role that is effectuated through the requirement that those seeking divorce obtain a judicial decree.[36] States require divorces to happen in the courthouse, rather than in an administrative office resembling the county clerk's office where real estate titles are recorded, to effectuate the economic partnership and child welfare norms to which family law is committed.

These norms are considered so important that divorcing spouses are given less autonomy than any other civil litigants to deviate from these principles.[37] Courts no longer categorically reject prenuptial agreements as per se unenforceable or presumptively invalid, but such agreements are subject to heightened scrutiny, including robust disclosure requirements.[38] Divorce settlement agreements likewise are subject to both procedural and substantive fairness review.[39] Family law's economic partnership norms are more than simply default rules around which parties may contract to their own satisfaction.[40]

None of this, of course, is set in stone. Lawmakers must consider whether there are groups of couples whose circumstances are so unlikely to implicate these concerns that they should be allowed to opt out entirely of meaningful dissolution review. That's precisely the idea underlying simplified dissolution procedures, an important innovation offered in a growing number of jurisdictions.[41] Although the details vary, the unifying theme is that couples who meet certain eligibility requirements and agree on the terms of their dissolution can convert their agreement into a formal divorce decree with minimal time and process, sometimes without even appearing in court.[42] In Illinois, for example, couples without children are eligible

[36] There are other reasons as well, including the detection of and appropriate response to domestic violence. Colo. Rev. Stat. Ann. § 14-10-107.8 (requiring parties filing divorce petitions "to disclose to the court the existence of any prior temporary or permanent restraining orders and civil protection orders to prevent domestic abuse").

[37] *In re* Marriage of Manzo, 659 P.2d 669, 674 (Colo. 1983) (noting that "because of the fiduciary relationship between husband and wife, separation agreements generally are closely scrutinized by the courts, and such agreements are more readily set aside in equity under circumstances that would be insufficient to nullify an ordinary contract").

[38] *See, for example*, Edwardson v. Edwardson, 798 S.W.2d 941, 945 (Ky. 1990).

[39] Colo. Rev. Stat. Ann. § 14-10-112 (instructing courts to review separation agreements for unconscionability). Such review is undertaken in light of the statutory criteria governing property distribution. *See In re* Marriage of Lowery, 568 P.2d 103 (Colo. 1977).

[40] Part of the reason for that is the state's own interest in privatizing dependency. The Uniform Premarital Agreement Act specifies that if the modification or elimination of spousal support in a premarital agreement would cause a spouse to be eligible for public assistance at the time of separation, "a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility." Uniform Premarital Agreement Act § 6(b).

[41] *See* Munro (ret.) et al., *supra* note 13, at 428 (discussing the benefits of summary dissolution).

[42] Aviel, *supra* note 14, at 2283.

for simplified dissolution if the marriage lasted less than eight years; neither spouse owns real estate; the entire marital estate is valued at $50,000 or less; neither spouse is dependent on the other for support; neither makes more than $30,000 per year nor does their combined annual income exceed $60,000; there are no jointly held retirement benefits; and the combined value of any benefits either spouse holds is less than $10,000.[43]

There is ample room for productive debate about whether a larger range of couples should be eligible for this kind of streamlined process, or even administrative rather than judicial divorce. And the debate should take into account a realistic assessment of how many couples will have access to the kind of legal advice that would conceivably allow them to benefit from family law's substantive principles and attendant judicial review. But as it currently stands, family law reflects an ambition, however imperfectly realized, that goes beyond simply effectuating private agreements, and few advocate for a systematic overhaul that would move substantive family law principles in that direction. Simplification is a crucial part of family law reform, but at a certain point it collides with our commitment to the substantive principles that form the foundation of family law.

To see these dynamics in action, consider a couple in their early thirties, without children, who are divorcing after six years of marriage. Each spouse has a college degree and has been working for the duration of the marriage. The wife works at a nonprofit organization that focuses on the resettlement of refugees, earning about $50,000 a year, while the husband works as an investment banker for a national firm, earning anywhere from $250,000 to $350,000 a year, depending on bonuses. Upon marriage the couple decided that they would not merge their finances, a practice that has grown more common in recent decades.[44] Each has their own account into which they deposit their respective paychecks, and they have a joint checking account from which to pay shared expenses. Each moves funds from their own account to the shared account as needed to pay for their half of the couple's bills. Upon deciding to end the marriage, the couple might begin from the premise that they will each walk away with the funds in their own account and half of whatever might be residually remaining in the joint account. After all, the very practice of keeping separate accounts suggests some underlying notion of what belongs to whom – the couple might feel that by keeping their finances separate they have already resolved the question of how the assets will be distributed at the end of the relationship.

A lawyer, on the other hand, would readily identify and apply the fruit-of-marital-labor principle to this couple's situation, and would see that the husband's account

[43] 750 Ill. Comp. Stat. Ann. 5/452.

[44] Joe Pinkser, *Should Couples Merge Their Finances?*, Atlantic (Apr. 20, 2022), https://www.theatlantic.com/family/archive/2022/04/how-couples-should-manage-finances-hybrid-model/629607/ (last accessed Feb. 3, 2025).

was in fact marital property.[45] In some jurisdictions it would be subject to an equal distribution, while in others it would be subject to equitable distribution, based on factors such as the parties' respective contributions to the marital estate and the economic circumstances they will face after the marriage ends. To appreciate the importance of having access to this legal advice, we do not need to take a position on what the parties will or should do with this knowledge. The parties might choose to proceed as they would have previously, arriving at an agreement that leaves the husband with more of the proceeds from his salary than a court might award in a judicial determination, subject to the kind of review discussed above.[46] But it is fair to assume that the parties will bargain differently with one another with this knowledge, and that if we believe in the substantive principles that underlie marital property distribution, that this is a good thing. Without it, left only to their intuitions about what is "theirs," their agreement will be at odds with the core principle that the fruit of marital labor belongs to the couple – not because the parties knowingly contracted around it but because the insight wasn't available. And this is a fact pattern that intentionally sidesteps some of the more pressing issues that arise in family law matters: custody of minor children, a displaced homemaker, domestic violence, or a jointly owned business that would require professional expertise to partition fairly.[47]

What reformers must continue to grapple with is the extent to which family courts should be willing to sign off on agreements that smoothly and quickly proceed to a resolution that no court would order when applying the substantive legal principles in an adjudicative posture. On the surface, the agreement does tolerably well on some of the metrics that are commonly used to evaluate civil justice reforms – speed, reduction of transaction costs, and self-determination, at least in some superficial sense. But it does poorly when judged against the substantive principles that family law seeks to advance – marriage as an economic partnership – and without the wife's understanding of this core legal principle, it is hard to say that there has been a knowing and voluntary waiver.[48] Even as we move steadily and laudably toward more autonomy in the dissolution of marriage, offering litigants a bypass around slow and costly judicial procedures that they would prefer to avoid, we should be

[45] These principles are sufficiently determinate that a competent lawyer should be able to identify and predictively apply them from a posture of neutral assessment rather than partisan advocacy.

[46] While judicial review offers something of a failsafe, a system that makes the advice available early on in the process, so that parties can incorporate it into their agreement, is better than one that operationalizes the substantive principles only by having a judge refuse to accept an excessively lop-sided agreement.

[47] In a well-functioning triage system, cases with these features would not be eligible for simplified procedures but would be flagged for additional services and interventions.

[48] It could be argued that the wife's participation in keeping separate accounts during the marriage should be treated as a functional waiver of any claims to the husband's earnings and manifests an intention to be governed by the practice of financial separation instead of whatever the default legal principles would offer. Marital property principles could be revised to reflect this view, but that's not how they are currently understood.

candid about what it means for systems to ratify agreements in the absence of legal advice. Agreements may not only deviate significantly from substantive legal principles, which is one thing, but will rest on a lack of knowledge about substantive legal entitlements.

This is the conundrum: We want to facilitate private agreement, both out of an authentic commitment to promoting self-determination and reducing adversarialism in family matters, and as a realistic response to the overwhelming caseloads and resource constraints that characterize family court. And yet, for all that has changed in the law of marriage and divorce over the past sixty years, we continue to think that there is a social benefit to having a law of families that is more than just a set of mechanisms for effectuating private agreements. As long as we think it a worthy social endeavor to regulate families in this way, rather than just facilitating purely private decision-making about the distribution of assets upon dissolution, we'll have difficult decisions to make about when we allow litigants to opt out of the judicial procedures that operationalize family law's social insurance and risk-allocation objectives. Simplified dissolution pathways in their current form are largely designed to allow opt-out only for those couples whose circumstances are less likely to implicate economic partnership and child welfare concerns – shorter marriages with few assets and no children. (The couple depicted above would not even be eligible for simplified dissolution in Illinois, for example, because their incomes are too high.)

If we could imagine more affordable access to legal advice, so that more litigants were choosing dissolution pathways with some basic knowledge about how the law applies to their circumstances, we might feel more comfortable allowing a much wider range of couples to forego judicial review. Enhancing access to advice can thus soften – although surely not eliminate – the tension between speed, simplification, and self-determination, on the one hand, and family law's substantive commitments on the other. Legal expertise was once necessary to navigate the compulsory adversarial nature of adjudicative divorce proceedings; now it might be the key to allowing more and more couples to opt out while maintaining some residual commitment to family law's substantive principles.

We now can see clearly that, for all its exceptional qualities, family law shares something in common with other areas plagued by pervasive unmet legal needs. For at least some subset of participants, meaningful access to justice requires some access to legal advice: the identification of governing legal principles and the application of those principles to an individual's particular circumstances. This is not to diminish the work that has been done to provide various other forms of valuable assistance to self-represented litigants; some of the notable efforts in this vein, in addition to the simplification initiatives mentioned above, include converting court documents and forms into plain language, document preparation software and other technological assistance, and "concierge" or "navigator" models of assistance in which court staff provide "personalized assistance, but not legal advice, for

self-represented parties."[49] But it is clear that none of this is intended to function as legal advice. Indeed, discussions of the optimal role for court staff to play in domestic relations matters routinely emphasize the need to steer clear of providing legal advice.[50]

An honest appraisal of access to justice for family law litigants would acknowledge the importance of legal advice, at least for some subset of unrepresented litigants, and would note what a large range of couples there are whose assets are substantial enough to benefit from legal assistance, but whose resources are sufficiently limited that the couple will reasonably hesitate before diverting those funds to lawyer's fees – the family law version of the "missing middle." No matter how well-trained, hard-working, and sensitive to the specialized needs of domestic relations litigants, a bevy of court staff sidling up to the line between legal information and legal advice, or automated, AI-based advice keyed to modal rather than edge situations, falls short of what our aspirations should be. Reforms that work around the margins of the provision of legal advice are important, and we should continue to explore ways to shrink the set of litigants for whom access to advice will make a meaningful difference in the substantive justice of their resolutions – but a comprehensive strategy will attend to the fundamental importance of advice.

## 16.3 ACCESS TO ADVICE AS A LINCHPIN OF FAMILY JUSTICE

We've seen that in order to develop an appropriate access-to-justice strategy for family law, we must both carefully attend to family law's exceptionalist attributes, and yet also recognize that, for all the transformation family law has already undergone, it continues to be a legal system governed by substantive principles, such that just resolutions will in some instances require legal advice of the sort that is still very hard to come by for most Americans. We have the foundation to understand that among the many innovative solutions being proposed and implemented, family court reform must also offer expanded access to legal advice – meaning, of course, opportunities to obtain advice, and potentially related legal services such as negotiation and document drafting, at a lower price point than what traditional representation at market rates would entail. We can now squarely consider various

[49] Fam. Just. Initiative, *A Model Process for Family Justice Initiative Pathways* 2 (2019), https://nationalcenterforstatecourts.app.box.com/s/620evvuopo8bzvfigt7505cmhx6se2kq (last accessed Feb. 3, 2025).

States using this kind of model include Alaska, California, Maryland, and Oregon. *Family Law Self-Help Center*, Alaska Ct. Sys., https://courts.alaska.gov/shc/index.htm (last accessed Mar. 21, 2024); *Self-Help Guide: Families and Children*, Cal. Cts., https://selfhelp.courts.ca.gov/families-and-children (last accessed Mar. 21, 2024); *Family Court Help Centers*, Md. Cts., https://www.mdcourts.gov/family/familyselfhelp (last accessed Mar. 21, 2024); *Family Law Self-Help*, Or. Jud. Branch, https://www.courts.oregon.gov/programs/family/selfhelp/Pages/default.aspx (last accessed Mar. 21, 2024).

[50] *See* Fam. Just. Initiative, *supra* note 49, at 17.

ways this might be achieved. Some of these possibilities, like the acceptance of joint representation as a legitimate form of unbundled legal services, will draw on family law's distinctive attributes to propose a model that would not transfer well to other areas of unmet legal needs. Others, like early neutral evaluation, involve family law borrowing a mechanism from other areas of law and refashioning it to meet access-to-justice objectives for family law litigants. The goal is to convert family law's particular mix of distinctive and generalizable attributes into a wider range of opportunities for obtaining meaningful and affordable legal advice.

### 16.3.1 *Unbundling Legal Advice from Partisan Advocacy*

The revision of the rules of professional conduct to explicitly allow limited scope representation, whereby "the client is in charge of selecting one or several discrete lawyering tasks contained within the full-service package," was a significant milestone in expanding access to advice.[51] A robust literature now examines the connection between "unbundling" and access to justice, for the straightforward reason that it allows clients with limited financial resources to obtain some legal services even if they cannot afford full representation.[52] Online divorce platforms like Hello Divorce reflect the newest approach to unbundling, offering clients a range of tech-enabled plans and services that can include consultation with an attorney.[53] But for all the innovation that's out there, unbundling has yet to achieve its full potential in enhancing access to advice for family law. One of the reasons for that is the legal profession's continued insistence that advice and related services can only be provided in a posture of individualized partisan advocacy, thus foreclosing the joint representation of amicably divorcing spouses by a single lawyer. This possibility seems shocking if we continue to assume that divorcing spouses are analogous to other civil litigants. But it follows naturally from one of the distinctive qualities of family law considered above: Divorcing spouses are not necessarily adverse to each other in the ways that would foreclose a joint representation.

Lest one be tempted to scoff at the idea that anyone going through a divorce would agree to such a thing, it turns out that many divorcing couples seek precisely that, and reasonably so – they don't want to hire two different attorneys to assist each spouse on an individualized basis, but they believe that they would benefit from some legal expertise in the course of their dissolution. They seek a particular type of

[51] Forrest S. Mosten, Unbundling Legal Services: A Guide to Delivering Legal Services a la Carte 1–2 (2000).

[52] *See, for example*, Molly M. Jennings & D. James Greiner, *The Evolution of Unbundling in Litigation Matters: Three Case Studies and a Literature Review*, 89 Denv. U. L. Rev. 825 (2012). Researchers have raised questions about the effectiveness of limited scope assistance as compared to full representation. *See, for example*, D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 Harv. L. Rev. 901, 906 (2013).

[53] See hello divorce, https://hellodivorce.com/ (last accessed Mar. 21, 2024).

limited scope representation, "in which a single lawyer provides them with guidance as to the set of interests they share; assists them in arriving at a negotiated resolution of all divorce-related issues; and provides them with the drafting expertise necessary to make their agreement clear, concrete, and comprehensive."[54] Such couples are repeatedly told with the utmost conviction that this would be a categorical violation of the ethical rules, specifically the prohibition on conflicts of interest.[55] As I have previously explained, this conclusion rests on a paternalistic and insufficiently nuanced assessment of adversity in divorce, a misunderstanding of how much can be "usefully explained to a divorcing couple from an impartial stance about the law that governs the dissolution of marriage," and a failure to appreciate the extent to which a couple can benefit from a lawyer's expert advocacy for their potentially substantial shared interests in "minimizing transaction costs, maximizing the total value of the marital estate at the time of the dissolution, and reducing the negative impact of the divorce on any children."[56]

To be sure, joint representation isn't for everyone – on the contrary, it is an arrangement that would work only for a very particular subset of divorcing couples. But it illustrates a broader point that access-to-justice strategies need not be uniform across or even within subject areas, and that attending to the unique needs and interests of sub-groups within sub-groups can reveal opportunities to provide access to advice in new and cheaper formulations. Joint representation should be available as part of a broader menu of options to obtain legal advice without engaging in full-fledged adversarial representation.

The problem, of course, is that any system with multiple pathways relies on the efficacy of the sorting mechanism used to match cases with appropriate services. Joint representation rests on the premise that individual lawyers, working with prospective clients to discern their interests and objectives, can deploy their trademark professional skills – an understanding of both substantive family law principles and conflicts of interest – to determine when the arrangement would be suitable. Other pathways will turn on decision-making by court staff, guided by some combination of statutory criteria, internal court protocols, and intuition. None of these are going to be perfect, and all of them will face difficult questions about path dependencies and self-fulfilling prophecies. Cases might initially appear to be nonadversarial, but only because some key issue hasn't yet surfaced; the procedural features of the pathway into which the case is routed could then suppress an opportunity to identify and fully resolve the issue in accordance with family law's substantive commitments. These are thorny questions requiring more extensive

[54] Aviel, *supra* note 15, at 1121.

[55] *Id.* at 1121–24. *See also* Dist. of Colo. Bar, *Ethics Op.* 243 (1993). Supposedly in service to this ideal of loyalty, lawyers are channeling clients into arrangements that are considerably worse: where the lawyer represents one of the spouses, and in that posture drafts documents that both spouses will sign.

[56] Aviel, *supra* note 15, at 1143.

treatment than can be provided here. One partial and preliminary answer is to note that the only way to avoid these challenges is to return to a one-size-fits-all approach. Given the demonstrated shortcomings of that model, it is reasonable to press forward in the pursuit of an expanding menu of options, knowing full well how much pressure it places on the development of effective triage mechanisms.

### 16.3.2 *Offering Advice in a Nonrepresentative Posture*

Just as advice can be unbundled from partisan advocacy, it can be provided in a capacity that is entirely nonrepresentative. Early neutral evaluation, or early neutral assessment as it is sometimes called, does exactly this, offering a model that family law can borrow from other contexts. Descriptions of early neutral evaluation tend to focus on its function as an alternative resolution mechanism – typically for counseled parties – rather than a source of advice for self-represented litigants. The American Bar Association, for example, explains that soon after a case has been filed in court, it may be "referred to an expert, usually an attorney, who is asked to provide a balanced and unbiased evaluation of the dispute."[57] After meeting with parties or reviewing their written comments, the "expert identifies each side's strengths and weaknesses and provides an evaluation of the likely outcome of a trial." This evaluation can assist the parties in assessing their case and may propel them toward a settlement.[58] As this description suggests, early neutral evaluation can be successful as an alternative dispute resolution mechanism precisely because of the expert opinion that evaluators offer to the parties, after applying the governing legal principles to the specific facts of the case.

The insight that parties might obtain from this process, potentially propelling them to settlement, may be particularly valuable for self-represented litigants in family court who have no other access to an expert who can consider their individualized facts and predict how a court is likely to rule. While mediation has been a mainstay of modern divorce for decades now, and has played a substantial role in resolving family disputes with reduced reliance on litigation, early neutral evaluation improves upon some of mediation's recognized shortcomings, including the one we are focused on here: Mediators typically offer divorcing couples just passive facilitation, brokering an agreement without providing the kind of substantive advice that would help the couple contextualize the important choices and trade-offs they may be making.[59]

Family court reformers in Colorado and Minnesota have understood the value of providing more substantive guidance to family court litigants, and both states offer

[57] *Dispute Resolution Processes*, Am. Bar Ass'n, https://www.americanbar.org/groups/dispute_resolution/resources/dispute-resolution-overview/processes (last accessed Feb. 3, 2025) (describing early neutral evaluation).

[58] *Id.*

[59] Aviel, *supra* note 14, at 2285.

voluntary, court-sponsored early neutral evaluation programs that are currently limited to the evaluation of parenting-time disputes.[60] Typical teams are comprised of one lawyer and one mental health professional, with substantive experience in the field of child custody matters. The team draws upon this background to guide the couple in their custody negotiation: After hearing from the parties, the lawyer provides the couple with information about the governing legal framework, while the mental health professional offers insight on child development, attachment theory, and other concepts important for separating parents to understand. The ensuing negotiation is primed to be more successful because the parents have been assisted in developing realistic expectations and have had some expert guidance in developing terms appropriately tailored to the needs of the children in question. This expert guidance is offered early in the process, before parties have dug in on their respective positions, and judges are on hand to convert an ensuing agreement into a decree. This combination has proven to be very effective, allowing parties to resolve their entire parenting-time dispute in a period of three to four hours. As one judge describes the process: "parties can walk into the courthouse for their [early neutral evaluation] session, negotiate a fully comprehensive parenting-time agreement – complete with holidays, transportation issues, and the like – and walk out of the courthouse with a permanent order."[61]

Unsurprisingly, cost is a significant problem in scaling up the program to include more families in its purview. The court-sponsored early neutral evaluation program costs $400 per party,[62] an expenditure that many families either simply can't afford or are unwilling to choose at a juncture that is already financially precarious. At the same time, the cost is minimal compared to traditional representation by an attorney, suggesting that the expansion of such programs should be part of a comprehensive strategy that, as argued here, takes seriously the importance of lawyer assistance in providing meaningful access to justice.

### 16.3.3 *Allowing Nonlawyers to Offer Advice*

We must think critically and creatively about the various postures in which lawyers can offer legal advice. But as scholars such as Deborah Rhode recognized many decades ago, a comprehensive strategy for enhancing access to advice must also include an expansion of the categories of people who are allowed to provide it.[63] In large part due to her insights and advocacy, the lawyer's monopoly on the

[60] *Id.*

[61] *Id.* at 2286.

[62] Colo. State Cts., *Early Neutral Assessment*, https://www.courts.state.co.us/userfiles/file/Court_Probation/08th_Judicial_District/Larimer/ENA%20Info%20Sheet.pdf (last accessed Feb. 3, 2025).

[63] Nora Freeman Engstrom, *She Stood Up: The Life and Legacy of Deborah L. Rhode*, 74 Stan. L. Rev. Online 1 (2021).

provision of legal advice is finally starting to soften. A small but growing list of states have launched programs that allow trained and licensed professionals who are not lawyers to provide legal services – including the provision of advice – to clients in specified types of cases, including, most prominently, family law.[64] Some of these states offer such programs only in family law,[65] while others include areas such as debt collection and landlord/tenant matters; in the latter group, professionals seeking a license choose the area in which they will specialize.[66] The details of each program vary, but the education, training, and testing requirements to obtain the license are extensive, and the new legal service providers are subject to a disciplinary system that investigates and resolves grievances.[67] A full evaluation of the design considerations in developing and sustaining an alternative legal provider (ALP) program is beyond the scope of what can be covered here, but it is worth noting that data from the existing programs "show that ALPs are making a positive impact in people's lives. Well-trained ALPs are competent, their clients are satisfied with their work product, and they can reach a portion of the population that attorneys are not reaching. Alternative legal providers are providing high-quality legal services at around half the cost of attorneys."[68]

Alternative legal provider programs are an important element of improving access to justice across multiple areas of unmet legal needs, not just family law. But it isn't surprising that several states have made the program available only in family law, or that, even in the jurisdictions with a broader menu of service areas, there's been the most uptake in the family law area.[69] As noted at the outset, family law is often invoked as the paradigm case for the country's shameful justice gap – an area where the vast majority of Americans must navigate legal matters of profound personal

[64] Michael Houlberg & Natalie Anne Knowlton, *Allied Legal Professionals: A National Framework for Program Growth*, Inst. for the Advancement of the Am. L. Sys. (June 2023), https://iaals.du.edu/sites/default/files/documents/publications/alp_national_framework.pdf (last accessed Feb. 3, 2025).

[65] Colorado, the most recent state to authorize an ALP program, has limited the scope to particular matters within family law, including divorce and the allocation of parental responsibilities. *See* Colo. S. Ct. R. §§ 207-207.14, https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2023/Rule%20Change%202023(06).pdf (last accessed Feb. 3, 2025). Washington launched an ALP program in 2012 that was limited to family law; the program was sunset in 2020, purportedly due to cost, but the ninety-one practitioners who had obtained licensure are permitted to continue offering services. *See* Michael Houlberg & Janet Drobinske, *The Landscape of Allied Legal Professional Programs in the United States* 7–8, Inst. for the Advancement of the Am. L. Sys. (Nov. 2022), https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf (last accessed Feb. 3, 2025). For additional discussion of the Washington experience, see Jason Solomon & Noelle Smith, *The Surprising Success of Washington State's Limited License Legal Technician Program*, Stan. Ctr. on the L. Pro. (2021) https://law.stanford.edu/wp-content/uploads/2021/04/LLLT-White-Paper-Final-5-4-21.pdf (last accessed Feb. 3, 2025).

[66] Houlberg & Drobinske, *supra* note 65, at 8–9, 20–26, and 42–47.

[67] *Id.* at 41–49.

[68] *Id.* at 28.

[69] *Id.* at 21–22.

significance without legal assistance. And as developed throughout this chapter, family law is an area where we might particularly desire alternatives to full-fledged individualized partisan advocacy in the adversarial frame – where what is unaffordable might also be undesirable. The progress that has been made in enhancing self-help support and simplifying divorce procedures is laudable, and considerably more should be done on this front. Given the persistently high cost of legal services, many more couples should be eligible to choose summary dissolution instead of slow and costly judicial proceedings from which they may have little to gain. But ALP programs reflect a growing recognition that in family law and elsewhere, there is a wide gulf between self-help and full-fledged partisan advocacy – perhaps an entire ecosystem, with different levels of service and types of service providers.[70]

## 16.4 CONCLUSION

As we encourage and foster this proliferation of strategies designed to close the justice gap, we also need to study it: We lack reliable evidence about the effectiveness of these innovations, and experimentation must be accompanied by careful research.[71] Here too, the unique characteristics of family law will require special consideration. As Jim Greiner and Cassandra Wolos Pattanayak observe in their call for additional randomized studies in the provision of legal assistance, "perhaps the highest degree of difficulty in defining desirable outcomes is represented by the area of divorce and child custody."[72] They proceed to note that legal representation may advance important nonpecuniary (and yet measurable) values such as the smooth and efficient operation of the adjudicatory system, "may educate the client as to her best interests or as to what is possible given legal and factual constraints, thereby adjusting the client's goals," and may promote the client's perception of fairness and sense that she was afforded an opportunity to be heard.[73]

We will want to apply the best possible empirical testing to determine whether these essential goals can also be served by the variants on traditional representation considered here: joint representation, early neutral evaluation, representation by an allied legal professional, or an amalgamation of more than one type of innovation.

[70] *Id.* at 28 (explaining that "an ecosystem of legal professionals" is necessary to close the justice gap).

[71] D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118, 2181–82 (2012); *see also* Deborah L. Rhode et al., *Access to Justice through Limited Legal Assistance*, 16 NW. J. HUM RTS. 1, 9 (2018).

[72] Greiner & Pattanayak, *supra* note 71, at 2204 (contrasting divorce and custody matters to disputes over government benefits, where success is easy to define). *See also* Judith G. McMullen & Debra Oswald, *Why Do We Need a Lawyer?: An Empirical Study of Divorce Cases*, 12 J. L. & FAM. STUD. 57, 68 (2010) (noting "a multitude of idiosyncratic custody outcomes which cannot be compared in terms of success or failure").

[73] Greiner & Pattanayak, *supra* note 71, at 2206 (proposing that randomized studies can measure client perception through surveys).

(We could imagine a divorcing couple who, hungry for legal advice but needing to conserve household resources as much as possible, chooses to be jointly represented by an allied legal professional instead of a lawyer.) The first step, as urged herein, is to recognize the continued value of legal advice for family law litigants, and to endeavor to make that advice more affordable and accessible using all the levers at our disposal. We might even be able to anticipate that the entire realm of civil justice could benefit from this very practice: combing through individual areas of law, identifying the precise combination of attributes that might allow us to pry open some space for additional innovation without unmanageable complexity or undue sacrifice of the field's core commitments.