
ORIGINAL ARTICLE

What makes a legal problem? Dispute characteristics and the construction of legality

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Abstract

Individuals rarely turn to law when faced with civil legal problems and often do not perceive the problems that they experience as legal matters. Though not all justiciable problems require recourse to lawyers or legal institutions, the dynamics of legal characterization and responsive behaviour are important for understanding dispute processing and developing targeted policy interventions. Extant survey research documents the importance of problem type in shaping perceptions of legality and responsive action but has been limited in its ability to interrogate problem-level predictors. Using an experimental approach, this study extends existing research by investigating the effect of the amount at stake, the position within the dispute, and the allocation of fault on the likelihood that respondents identify problems as legal matters and would seek legal assistance. The findings confirm that characterization is not a wholly subjective phenomenon and that certain contextual features amplify the likelihood of a problem being viewed as legal.

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1 | INTRODUCTION

1.1 | Background

We live in a ‘law-thick’ world¹ in which everyday problems with civil legal implications are increasingly prevalent.² These problems often involve basic needs, including food, shelter, and financial stability.³ People’s ability to access civil justice, ‘to defend and enforce their rights and obtain just resolution of legal problems in compliance with human rights standards, if necessary, through impartial formal or informal institutions of justice and with appropriate legal support’, is therefore a matter of considerable importance.⁴ A failure to successfully resolve these problems can have a profound impact on an individual’s ability to function in society.⁵

As a cornerstone of democracy and the rule of law, access to justice is also recognized as a global concern. Efforts to safeguard access to justice, via procedural due process and access to free legal assistance, are enshrined in both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).⁶ Recognition of the importance of access to justice is also central to United Nations Sustainable Development Goal 16, with Target 16.3 establishing a commitment for member states to work to ‘[p]romote the rule of law at the national and international levels and ensure equal access to justice for all’.⁷

While efforts to evaluate the scale of the access to justice problem and unmet legal need have been a consistent focus of empirical legal research since at least the 1930s,⁸ recent developments have catalysed a renewed focus. These include the adoption of Indicator 16.3.3 as agreed by the Organisation for Economic Co-Operation and Development (OECD), the United Nations Development Programme (UNDP), and the United Nations Office on Drugs and Crime (UNODC) in 2019. This sets out that progress against Target 16.3 will be measured in part by reference to the ‘[p]roportion of the population who have experienced a dispute in the past two years and who accessed a formal or informal dispute resolution mechanism, by type of mechanism’, as evaluated via national surveys.⁹

Many such national legal needs surveys have been conducted, generating valuable insights regarding the extent of civil justice problem experience and the resolution strategies adopted by individuals.¹⁰ However, only a subset of surveys has sought to examine the determinants of

¹ G. K. Hadfield, ‘Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans’ (2010) 37 *Fordham Urban Law J.* 129, at 133.

² Hiil and IAALS, *Justice Needs and Satisfaction in the United States of America 2021: Legal Problems in Daily Life* (2021), at <<https://iaals.du.edu/sites/default/files/documents/publications/justice-needs-and-satisfaction-us.pdf>>.

³ R. L. Sandefur, ‘Access to What?’ (2019) 148 *Daedalus* 49.

⁴ Praia Group, *Handbook on Governance Statistics* (2020) 100, at <https://www.ohchr.org/sites/default/files/Documents/Issues/HRIndicators/handbook_governance_statistics.pdf>. See also *id.*

⁵ P. Pleasence and N. J. Balmer, ‘Justice and the Capability to Function in Society’ (2019) 148 *Daedalus* 140.

⁶ Praia Group, *op. cit.*, n. 4.

⁷ United Nations, ‘Goal 16: Peace, Justice and Strong Institutions’ *United Nations*, 2022, at <<https://www.un.org/sustainabledevelopment/peace-justice>>.

⁸ See for example C. E. Clark and E. Corstvet, ‘The Lawyer and the Public: An A.A.L.S. Survey’ (1938) 48 *Yale Law J.* 1272.

⁹ UNDP Oslo Governance Centre, *SDG16 Survey Initiative: Implementation Manual* (2022) 41, at <https://www.unodc.org/documents/data-and-analysis/sdgs/SDG16_Survey_Initiative_-_Implementation_Manual.pdf>.

¹⁰ OECD and Open Society Foundations, *Legal Needs Surveys and Access to Justice* (2019), at <https://www.oecd.org/en/publications/legal-needs-surveys-and-access-to-justice_g2g9a36c-en/full-report.html>.

responsive action – that is, to explain *why* people make the choices that they do when faced with a justiciable problem. More specifically, the question of why people do – or more frequently do not – seek legal assistance for problems with legal implications is of particular import for both theories of dispute processing and policy design and implementation.

Extant research has shown differences in the extent to which problems are characterized as legal, as well as a relationship between legal characterization and whether and from whom advice is sought.¹¹ While these studies have offered valuable preliminary insights, a detailed exploration of the determinants of legal characterization and its relationship to responsive behaviour has yet to be conducted. This is largely a function of the limitations of cross-sectional surveys on which most studies of legal characterization have relied. Using a novel methodological approach, this study addresses this gap, extending the existing literature on access to justice and legal need by examining both the determinants of legal characterization and the role of legal characterization in patterning responsive behaviour.

Employing an experimental design, this study tests how variations in problem features such as the amount at stake, the allocation of fault, and the structural position within a dispute influence problem characterization and law-seeking behaviour both *within* and *across* different types of disputes. The findings enrich current theoretical accounts of dispute processing by confirming that problem characterization is not driven only by individualized perspectives but also by norms that circulate about law and its relationship to different types of problems. These findings have significant policy implications, given the need to design interventions that equalize access to civil justice despite variation in how individuals perceive the problems that they experience.

1.2 | Dispute characteristics, legal characterization, and responsive behaviour

A significant body of research in the field of access to justice has documented the importance of timely access to support for those with a civil legal need, in instances where the failure to obtain support would exacerbate the adverse effects of problem experience.¹² Yet, studies also make clear that many of those who face a civil justice problem do not take action, and that where they do act – such as to obtain advice – they draw on a much broader range of advisers than only lawyers.¹³

Efforts to understand the choices that individuals make when faced with issues that directly engage legal rights have given rise to various strands of enquiry. Some scholars have focused

¹¹ P. Pleasence et al., ‘Horses for Courses? People’s Characterisation of Justiciable Problems and the Use of Lawyers’ in *The Future of Legal Services: Emerging Thinking*, ed. Legal Services Board (2010) 37; P. Pleasence et al., ‘What Really Drives Advice Seeking Behaviour? Looking beyond the Subject of Legal Disputes’ (2011) 1 *Oñati Socio-Legal Series* 1; N. J. Balmer et al., *Law ... What Is It Good For? How People See the Law, Lawyers and Courts in Australia* (2019), at <<https://discovery.ucl.ac.uk/id/eprint/10084550/1/Law-What-is-it-Good-For-Report.pdf>>.

¹² P. Pleasence et al., *Causes of Action: Civil Law and Social Justice* (2004); P. Pleasence et al., ‘Multiple Justiciable Problems: Common Clusters, Problem Order and Social and Demographic Indicators’ (2004) 1 *J. of Empirical Legal Studies* 301; Pleasence and Balmer, op. cit., n. 5; Pleasence et al., id. (2010); P. Pleasence and N. J. Balmer, *How People Resolve ‘Legal’ Problems* (2014), at <<https://legalservicesboard.org.uk/wp-content/media/How-People-Resolve-Legal-Problems.pdf>>; P. Pleasence, *Reshaping Legal Assistance Services: Building on the Evidence Base* (2014), at <<https://discovery.ucl.ac.uk/id/eprint/1453382/1/Pleasence%20et%20al%20%282014%29%20Reshaping%20Legal%20Assistance%20Services%20PUBLISHED.pdf>>.

¹³ OECD and Open Society Foundations, op. cit., n. 10; Hiil and IAALS, op. cit., n. 2; N. J. Balmer et al., *The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need* (2023) 102.

on person-level determinants such as education, income, or experience to explain individuals' propensity to use law to resolve disputes.¹⁴ Others have considered the effect of problem type, asserting the influence of 'problem-specific factors' over and above claimants' capacities or demographic characteristics.¹⁵ Where this latter body of work has drawn on data collected via legal needs surveys, it has revealed remarkable consistency, across several jurisdictions, as to which problem types are most likely to involve lawyers – namely, relationship breakdown and personal injury.¹⁶

These findings have provided insights into who seeks legal assistance and when, though have not always been well placed to provide an answer to the question of *why*. However, literature from within the field of legal consciousness, which has sought to consider the place of law in everyday life, has prompted new avenues of enquiry. Specifically, this work has highlighted the way in which culture and socialization may account for variation in the extent to which a problem is conceptualized as one of law. For example, an action may be identified as injurious because it breaches or is believed to breach a norm enshrined in law. However, it may also be recognized as injurious because it transgresses other forms of social regulation, such as norms that have their basis in religious or moral beliefs, or accepted practices circulating within communities.¹⁷ To the extent that these norms coincide with or are seen to coincide with legal obligations, they may also be recognized as such – though that is not to say that where the characterization of a problem could take multiple forms, the legal form will automatically triumph.

Building on this, in recent years, legal needs surveys have offered additional evidence for the fact that problems routinely understood by legal experts as legal are not always conceived as such by the public. An analysis of data from the 2010 and 2012 Civil and Social Justice Panel Surveys (CSJPSs) conducted in England and Wales revealed that those facing civil justice problems were more inclined to characterize them as 'bad luck' (47 per cent of problems), 'bureaucratic' (18 per cent), 'moral' (14 per cent), or 'social' (12 per cent), as compared to 'legal' (11 per cent) – only slightly higher than the proportion who classified their problem as 'criminal' or 'private' (7 per cent) or 'family/community' matters (6 per cent).¹⁸

In turn, legal needs research has yielded insights that, while seemingly obvious, have important implications for service design, placement, and branding.¹⁹ This includes the finding that problem

¹⁴ J. E. Carlin et al., *Civil Justice and the Poor: Issues for Sociological Research* (1967); L. Mayhew and A. J. Reiss, 'The Social Organization of Legal Contacts' (1969) 34 *Am. Sociological Rev.* 309; M. Silberman, *The Civil Justice Process: A Sequential Model of the Mobilization of Law* (1985); L. H. Goodman and S. Sanborne, *The Legal Needs of the Poor in New Jersey: A Preliminary Report* (1986); S. S. Silbey, 'After Legal Consciousness' (2005) 1 *Annual Rev. of Law and Social Science* 323.

¹⁵ R. E. Miller and A. Sarat, 'Grievances, Claims, and Disputes: Assessing the Adversary Culture' (1980) 15 *Law and Society Rev.* 525; H. G. Genn, *Paths to Justice: What People Do and Think about Going to Law* (1999).

¹⁶ Pleasence et al., op. cit. (2010), n. 11; H. M. Kritzer, 'To Lawyer or Not to Lawyer: Is That the Question?' (2008) 5 *J. of Empirical Legal Studies* 875; P. Pleasence and N. J. Balmer, 'Mental Health and the Experience of Social Problems Involving Rights: Findings from the United Kingdom and New Zealand' (2009) 16 *Psychiatry, Psychology and Law* 123; P. Pleasence et al., *How People Understand and Interact with the Law* (2015).

¹⁷ See for example P. Ewick and S. S. Silbey, *The Common Place of Law: Stories from Everyday Life* (1998); R. C. Ellickson, 'Of Coase and Cattle: Dispute Resolution among Neighbors in Shasta County' (1986) 38 *Stanford Law Rev.* 623; R. C. Ellickson, *Order without Law: How Neighbors Settle Disputes* (1991).

¹⁸ Pleasence et al., op. cit., n. 16; P. Pleasence et al., *Civil Justice in England and Wales: Report of Wave 1 of the English and Welsh Civil and Social Justice Panel Survey* (2010), at <https://doc.ukdataservice.ac.uk/doc/7643/mrdoc/pdf/7643_csjps_wave_one_report.pdf>.

¹⁹ M. Murayama, 'Experiences of Problems and Disputing Behaviour in Japan' (2007) 14 *Meiji Law J.* 1; Pleasence et al., op. cit. (2010), n. 11; Pleasence et al., op. cit. (2011), n. 11; Pleasence et al., op. cit., n. 16.

characterization is strongly associated with lawyer use. As shown by Pascoe Pleasence and Nigel Balmer in 2014 using CSJPS data, problems characterized as legal were far more likely to have led to advice being obtained from a lawyer, rather than being handled alone or with only informal advice.²⁰ Put in context, statistical modelling indicated that legal characterization increased lawyer use from 7 per cent to 19 per cent, and decreased handling alone from 59 per cent to 44 per cent. Yet legal characterization was found to have no overall bearing on people's tendency to use the advice sector (5 per cent versus 5 per cent) or other advice (17 per cent versus 18 per cent).²¹ More recently, Balmer et al.'s 2019 research in Australia has confirmed a correlation between the perception that law was important in respect of a problem and the extent to which a lawyer was also seen as important.²²

At the same time, this latest research also makes clear that the overlap between characterization and responsive behaviour is not perfect, as some problems identified as legal in nature are not those for which a lawyer is deemed important, and vice versa.²³ These findings underscore the need for research that develops a more expansive understanding of the 'prefigurative' dimensions of legality.²⁴

1.3 | The determinants of legal characterization

Though it has been shown that people do not always see problems through the lens of law, there remains less clarity as to what activates a legal as opposed to a non-legal framing. However, legal needs studies, combined with scholarship in the fields of dispute resolution, legal consciousness, and law and economics, suggest several problem characteristics that may contribute to problem characterization.

1.3.1 | Problem type

The documented association between problem type and problem characterization suggests that legal knowledge, cultural norms and practices, and the supply and demand of legal services may combine to make certain problems more likely to be understood as having legal solutions.²⁵ Efforts to explain why problem type may exhibit an outsized influence on legal characterization necessarily draw attention to the effect of knowledge of law, given that its absence denies an individual an understanding of what issues are within and outside the reach of law. To this point, the literature makes clear the generally poor levels of legal knowledge exhibited by the public, even where the laws in question are salient. For example, employees lack knowledge of their rights under employment law, and cohabitants have been shown to

²⁰ Pleasence and Balmer, op. cit., n. 12.

²¹ Pleasence et al., op. cit., n. 16.

²² Balmer et al., op. cit., n. 11.

²³ Id.

²⁴ M. W. McCann, 'Legal Rights Consciousness: A Challenging Analytical Tradition' in *The New Civil Rights Research*, eds B. Fleury Steiner and L. B. Nielsen (2006) ix.

²⁵ Pleasence et al., op. cit., n. 16.

lack knowledge regarding cohabitation law.²⁶ Likewise, teachers, school administrators, and health professionals lack knowledge of education and health law.²⁷ Despite this, there has been little evidence of differences in levels of professed knowledge of rights on the basis of problem characterization in prior studies.²⁸ While this may reflect the difficulty of relying on self-reported accounts of knowledge, it may also point to the impact of broader social and cultural phenomena.

This includes the effects of popular culture that reaffirms mental associations between specific problems and recourse to law, while minimizing others. For example, much of the coverage of law within the news media is focused on aspects of criminal law or certain types of cases, such as those regarding product liability or medical malpractice, placing less emphasis on more common case types, shaping public opinion and legislative behaviour in ways that mirror this distortion.²⁹

The relationship between problem type and legal characterization also brings into focus the possibility that the availability of legal services and legal processes across different problem types shapes perceptions of law. For example, issues relating to divorce, which are well served by the legal profession, are widely perceived as legal matters, whereas debt problems are not.³⁰ The association between problem type and legal characterization may also be driven by the presence of other service providers and resolution processes in a particular problem domain, which have the effect of decentring law, such as accountants and human resources specialists. The same may also be true of community-based or integrated services where reference to help for 'legal' problems is deliberately avoided lest it drive those who do not immediately conceive of their problem as legal away from the agency door.³¹

Culture or norms may also give rise to a disinclination to turn to law or commonly held assumptions as to the natural or normal way of responding to problems. This includes, for example, a fear of being labelled as someone who 'makes trouble' or is greedy,³² or a perception that turning to law

²⁶ P. T. Kim, 'Norms, Learning, and Law: Exploring the Influences on Workers' Legal Knowledge' (1999) 1999 *University of Illinois Law Rev.* 447; A. Barlow (ed.), *Cohabitation, Marriage and the Law: Social Change and Legal Reform in the 21st Century* (2005); J. Lewis et al., 'Financial Arrangements on the Breakdown of Cohabitation: Influences and Disadvantage' in *Sharing Lives, Dividing Assets: An Inter-Disciplinary Study*, eds J. Miles and R. Probert (2009) 161.

²⁷ M. Littleton, 'Teachers' Knowledge of Education Law' (2008) 30 *Action in Teacher Education* 71; D. Schimmel and M. Militello, 'Legal Literacy for Teachers: A Neglected Responsibility' (2007) 77 *Harvard Educational Rev.* 257; M. Militello et al., 'If They Knew, They Would Change: How Legal Knowledge Impacts Principals' Practice' (2009) 93 *NASSP Bulletin* 27; M. F. Weiner and D. W. Shuman, 'The Privilege Study' (1983) 40 *Archives of General Psychiatry* 1027; S. P. Saltstone et al., 'Knowledge of Medical-Legal Issues: Survey of Ontario Family Medicine Residents' (1997) 43 *Cdn Family Physician* 669; R. A. C. Chate, 'An Audit of the Level of Knowledge and Understanding of Informed Consent amongst Consultant Orthodontists in England, Wales and Northern Ireland' (2008) 205 *British Dental J.* 665; B. White et al., 'Doctors' Knowledge of the Law on Withholding and Withdrawing Life-Sustaining Medical Treatment' (2014) 201 *Medical J. of Australia* 229.

²⁸ Pleasence et al., op. cit., n. 16.

²⁹ D. S. Bailis and R. J. MacCoun, 'Estimating Liability Risks with the Media as Your Guide: A Content Analysis of Media Coverage of Tort Litigation' (1996) 20 *Law and Human Behavior* 419; S. Daniels and J. Martin, 'Where Have All the Cases Gone? The Strange Success of Tort Reform Revisited' (2015) 65 *Emory Law J.* 1445.

³⁰ Pleasence et al., op. cit. (2011), n. 11.

³¹ Id.; Pleasence et al., op. cit., n. 16.

³² S. E. Merry and S. S. Silbey, 'What Do Plaintiffs Want? Re-Examining the Concept of Dispute' (1984) 9 *Justice System J.* 151; D. M. Engel, 'The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community' (1984) 18 *Law and Society Rev.* 551; Silbey, op. cit., n. 14.

equates to a loss of agency.³³ Similarly, broader narratives regarding law, such as Patricia Ewick and Susan Silbey's different forms of legal consciousness, are relevant here.³⁴ In the 'before the law' orientation, law is viewed with reverence and not to be sullied with everyday problems. In the 'against the law' orientation, by contrast, law is seen as powerful but arbitrary, encouraging acts of subterfuge or other forms of creative self-help to resist what are perceived as unjust outcomes. Finally, in the 'with the law' orientation, law is seen as a game that pits two sides against each other, but that necessarily invokes ideas of cost/benefit, about which more is said below.

Religious beliefs are also relevant in the context of norms, given that individuals who identify as part of a community with existing conflict resolution practices, such as those rooted in religious beliefs, have been shown to demonstrate less reliance on law.³⁵ David Engel's work has also identified religion as a justification for an individual's decision not to pursue legal remedies, despite awareness of the availability of such remedies.³⁶ That these effects are not only a function of legal knowledge is also made clear in Pleasence et al.'s finding that self-reported knowledge of rights did not vary by the extent to which a respondent felt that problems should be resolved within the family or community.³⁷

Legal needs studies have also documented that, within a given dispute type, perceptions of legality and responsive behaviour vary depending on the identity of the opposing party.³⁸ This is a fact thought to reflect the need to preserve ongoing associations and aspects of the parties' history or relationship.³⁹ High bargaining costs of a financial, relational, or psychological nature may therefore catalyse a turn away from law – in both perception and action – entrenching existing community-based interpretations of the problem, sidelining law, and encouraging informal methods of resolution.⁴⁰ This has also been seen in the commercial context, with Robert Bonn and Stewart Macaulay each observing how the risk of losing a customer encouraged attempts to resolve a business dispute informally.⁴¹

1.3.2 | Amount at stake

Survey research has documented that the likelihood of perceiving justiciable situations as legal matters increases with the severity of the problem, even within problem type.⁴² Issues involving greater financial stakes are positively associated with perceptions of legality and higher levels of

³³ K. Bumiller, *The Civil Rights Society: The Social Construction of Victims* (1988).

³⁴ Ewick and Silbey, op. cit., n. 17.

³⁵ C. J. Greenhouse, *Praying for Justice: Faith, Order, and Community in an American Town* (1986).

³⁶ D. M. Engel, 'Globalization and the Decline of Legal Consciousness: Torts, Ghosts, and Karma in Thailand' (2005) 30 *Law and Social Inquiry* 469.

³⁷ Pleasence et al., op. cit., n. 16, p. 71.

³⁸ Id.; Murayama, op. cit., n. 19; Pleasence and Balmer, op. cit., n. 12.

³⁹ D. Shestowsky and J. Brett, 'Disputants' Perceptions of Dispute Resolution Procedures: An Ex Ante and Ex Post Longitudinal Empirical Study' (2008) 41 *Connecticut Law Rev.* 63; J. A. Arnold and P. J. Carnevale, 'Preferences for Dispute Resolution Procedures as a Function of Intentionality, Consequences, Expected Future Interaction, and Power' (1997) 27 *J. of Applied Social Psychology* 371.

⁴⁰ See for example Ellickson, op. cit. (1986), n. 17; Ellickson, op. cit. (1991), n. 17.

⁴¹ R. L. Bonn, 'The Predictability of Non-Legalistic Adjudication' (1972) 6 *Law and Society Rev.* 563; S. Macaulay, 'Non-Contractual Relations in Business: A Preliminary Study' (1963) 28 *Am. Sociological Rev.* 55.

⁴² Balmer et al., op. cit., n. 11.

legal advice seeking.⁴³ While the association between severity and legal advice seeking appears intuitive, the same is not necessarily true of the link between severity and characterization. However, drawing on the work of Ewick and Silbey and the idea held by some of law as a majestic and rarefied realm in which only the most important issues possess standing, the link becomes more obvious.⁴⁴

The association between problem severity – as indicated by the financial amount at stake – and legal characterization and law-seeking behaviour may also reflect an assessment of the economic feasibility of accessing legal assistance. While the relationship of cost of lawyers to lawyer use is somewhat contested,⁴⁵ several legal needs surveys indicate that cost remains a live issue and that the failure to obtain advice from a lawyer may arise from concerns regarding the affordability of such services.⁴⁶ Thus, perceptions that legal services are inaccessible may pattern not only responsive behaviour but also problem framing; understandably, people may be less likely to frame a problem as legal if access to mechanisms for resolving legal disputes are seen as out of reach. Likewise, even if legal services are within reach, negative assessments of the potential benefit of legal assistance relative to its cost and to the amount at stake may discourage people from characterizing or responding to problems as legal matters. For example, it has previously been observed that ‘in less serious cases people may often see lawyers as not being cost beneficial even where law is seen as relevant’.⁴⁷

Similarly, if – as Ewick and Silbey have shown – law itself is conceived of as a majestic entity that is above the reconciliation of petty disputes, a game that cannot be won, or a force of oppression,⁴⁸ these last two constructions necessarily raise implications for the assessment of ‘benefit’, since they are, in part, qualitative expressions of quantitative findings regarding attitudes. In particular, findings drawn from a number of different jurisdictions suggest that individuals are often cynical about the possibility of achieving justice, and the capacity of legal institutions such as courts to deliver fair outcomes.⁴⁹ If law and legal processes such as courts are seen as antonymous rather than synonymous with fairness, this may be reflected in how individuals conceive of problems where fairness is seen to be at stake, and the perceived benefit of adopting law as a paradigm for resolution.

⁴³ Pleasence et al., op. cit. (2011), n. 11; Pleasence and Balmer, op. cit., n. 12.

⁴⁴ Ewick and Silbey, op. cit., n. 17; P. Ewick and S. Silbey, ‘Narrating Social Structure: Stories of Resistance to Legal Authority’ (2003) 108 *Am. J. of Sociology* 1328.

⁴⁵ Kritzer, op. cit., n. 16.

⁴⁶ C. Coumarelos et al., *Legal Australia-Wide Survey: Legal Need in Australia* (2012), at <https://lawfoundation.net.au/wp-content/uploads/2023/11/31PJR_Legal-Australia-Wide-Survey-Legal-need-in-Australia_2012.pdf>; Pleasence and Balmer, op. cit., n. 12, p. 37.

⁴⁷ Balmer et al., op. cit., n. 11, p. 19.

⁴⁸ Ewick and Silbey, op. cit., n. 17; Ewick and Silbey, op. cit., n. 44.

⁴⁹ See for example K. E. Fernandez and J. A. Husser, ‘Public Attitudes toward State Courts’ in *Open Judicial Politics*, eds R. S. Solberg and E. Waltenburg (2021); Australian Law Reform Commission, ‘Judicial Bias and Public Confidence: The Importance of Good Data’ *Australian Law Reform Commission*, 3 December 2020, at <<https://www.alrc.gov.au/news/importance-of-good-data/>>; Australian Law Reform Commission, *Review of Judicial Impartiality: Australian Survey of Social Attitudes 2020 (AuSSA 2020) – Preliminary Analysis* (2021), at <<https://www.alrc.gov.au/wp-content/uploads/2022/02/ALRC-JI-AuSSA-Survey-Preliminary-Analysis.pdf>>; L. Cornett and N. A. Knowlton, *Public Perspectives on Trust and Confidence in the Courts* (2020), at <https://iaals.du.edu/sites/default/files/documents/publications/public_perspectives_on_trust_and_confidence_in_the_courts.pdf>.

1.3.3 | Dispute positionality

Building on foundational socio-legal theories on the structure of litigation,⁵⁰ the literature gives rise to the possibility that positionality – meaning whether one is a respondent or a claimant – may also influence legal characterization and subsequent action. This derives from the fact that while those who possess a claim may choose the way in which it is framed and the action that follows, respondents do not have a parallel degree of freedom. Claims arrive at the respondent ‘pre-characterized’.⁵¹ Where a claim arrives in legal form, it is handled on those terms, even if that characterization is at odds with the framing that the respondent would have reached independently. By extension, the claimant’s characterization of a claim also serves to delimit the possible responses available to the respondent. Investigating this dynamic is particularly important given that respondents have largely been ignored in extant scholarship but comprise a substantial share of those who experience civil legal problems.⁵² This includes those whose issues are resolved informally and civil litigants, such as defendants in debt collection cases, which now comprise a quarter of the civil docket in US state courts;⁵³ high default rates in those cases underscore the need to better understand how individual respondents perceive justiciable situations and choose to respond.

1.3.4 | Fault

Finally, the natural or normal way of responding to problems is also influenced by dimensions such as fault. Here, scholarship on dispute processing finds that being at fault increases the social-psychological burden imposed by engaging in a dispute, with situations that evoke feelings of self-blame or stigma less likely to result in individuals making legal claims or raising affirmative defences.⁵⁴ While research to date has considered this issue in relation to responsive behaviour, we might also expect it to colour characterization.

1.4 | Empirical study and hypotheses

The literature suggests that several problem-level characteristics are likely to influence legal categorization and responsive behaviour. However, isolating the independent and interactive effects (that is, how factors work together beyond their individual effects) of these characteristics has not been possible using observational data. This study employs experimental methods to investigate how problem features influence legal characterization, both independently and in combination.

⁵⁰ M. Galanter, ‘Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change’ (1974) 9 *Law and Society Rev.* 95.

⁵¹ E. S. Taylor Poppe, ‘Why Consumer Defendants Lump It’ (2019) 14 *Northwestern J. of Law and Social Policy* 149.

⁵² OECD and Open Society Foundations, op. cit., n. 10.

⁵³ Pew Charitable Trusts, *How Debt Collectors Are Transforming the Business of State Courts* (2020), at <<https://www.pew.org/-/media/assets/2020/06/debt-collectors-to-consumers.pdf>>.

⁵⁴ K. Calavita and V. Jenness, *Appealing to Justice: Prisoner Grievances, Rights, and Carceral Logic* (2014); B. T. White, ‘Underwater and Not Walking Away: Shame, Fear, and the Social Management of the Housing Crisis’ (2010) 45 *Wake Forest Law Rev.* 971; D. Coates and S. Penrod, ‘Social Psychology and the Emergence of Disputes’ (1980) 15 *Law and Society Rev.* 665.

More specifically, the investigation focuses on three core features that have been raised within the literature but have remained understudied to date – amount at stake, positionality, and fault – and nests them within distinct problem types. It also explores the relationship between these features and responsive action and considers the link between characterization and responsive action.

The study interrogates hypotheses grounded in existing theoretical and empirical scholarship.

First, drawing on studies highlighting the relationship between the substance of a dispute and its characterization, including the availability of lawyers and legal processes in triggering perceptions of legality,⁵⁵ we expect that where a dispute requires recourse to courts for resolution, legal characterizations will be higher (H1a). However, because of the tendency for non-legal responsive behaviour to occur more often where there is a need to preserve a relationship between parties,⁵⁶ we expect that legal responsive behaviour will be reduced in situations where the parties have an ongoing relationship (H1b).

Second, given the association between characterization and severity,⁵⁷ we expect a positive association between amount at stake and legal characterization (H2).

Third, extending H2, and drawing on findings that suggest that situations that evoke feelings of self-blame or stigma are less likely to result in individuals making legal claims or raising affirmative defences,⁵⁸ we expect that perceptions of legality will be greater when individuals are at fault (H3a), but that they will be less likely to take aggressive responsive action (H3b).

Finally, in light of research highlighting the possible influence of positionality,⁵⁹ we expect that respondents – meaning those against whom action would be taken to remedy the issue underlying the dispute – will be more likely than claimants to perceive situations as legal matters (H4a) and to take responsive action (H4b).

2 | METHODS

2.1 | Data

Data in the present study comes from 1,803 participants in the AmeriSpeak Panel, a large probability-based household panel funded and operated by the National Opinion Research Center (NORC) at the University of Chicago.⁶⁰ The panel is constructed to be representative of the United States (US) household population encompassing all 50 states and the District of Columbia.⁶¹ Probability-based online panels such as AmeriSpeak are a popular means of collecting generalizable probability-based data in a cost-effective way.⁶² Despite typically low cumulative response rates, probability-based panels have significant advantages over non-probability

⁵⁵ Pleasence et al., op. cit., n. 16; Pleasence and Balmer, op. cit., n. 12.

⁵⁶ Pleasence et al., id.; Pleasence and Balmer, id.; Pleasence et al., op. cit. (2011), n. 11; Murayama, op. cit., n. 19.

⁵⁷ Balmer et al., op. cit., n. 11.

⁵⁸ Calavita and Jenness, op. cit., n. 54; White, op. cit., n. 54; Coates and Penrod, op. cit., n. 54.

⁵⁹ Galanter, op. cit., n. 50; Taylor Poppe, op. cit., n. 51.

⁶⁰ NORC, *Technical Overview of the AmeriSpeak Panel: NORC's Probability-Based Household Panel* (2024), at <<https://amerispeak.norc.org/content/dam/amerispeak/about-amerispeak/pdf/amerispeak-technical-overview.pdf>>.

⁶¹ Id.

⁶² Ipsos, 'KnowledgePanel' Ipsos, at <<https://www.ipsos.com/en-us/solutions/public-affairs/knowledgepanel>>.

TABLE 1 Number of cases for each combination of problem type, positionality, and fault

		Your error		Their error	
		You owe	You are owed	You owe	You are owed
		N	N	N	N
Problem type	Tax	474	425	424	480
	Employment	428	472	474	429
	Estates	532	373	378	520

panels,⁶³ with recent estimates indicating that they are approximately twice as accurate across various benchmark variables.⁶⁴ A technical overview of the AmeriSpeak Panel is provided by NORC.⁶⁵

For this experimental survey study, respondents were randomly assigned to vignettes describing problematic scenarios with civil legal dimensions. Problem type was manipulated via reference to the identity of the opposing party: the tax authorities, an employer, or a relative handling the estate of someone who has died. These are common types of justiciable problems that are familiar to most respondents and have real-world implications.⁶⁶ At the same time, they are dispute categories in which perceptions of legality and responsive behaviour have been shown to vary.⁶⁷

Respondents randomly received one hypothetical scenario for each problem type. The scenarios within each problem type varied on three dimensions: the party who was at fault (the respondent or the opposing party), dispute positionality (whether the respondent was owed money or owed money to the opposing party), and the amount at stake (16 discrete amounts between \$500 and \$50,000). Each of these dimensions was randomized for each scenario. The design yielded four iterations of the vignette for each problem type through the manipulation of fault and position (see Appendix 1), with additional variation of the amount at stake within each iteration.

After exposure to a vignette, respondents were asked about their reaction to the situation: (1) whether they would characterize the situation as a legal matter, and (2) what they would do in response.⁶⁸ These questions were based on existing questions that have been used extensively in legal needs surveys.⁶⁹ Altogether, 1,803 respondents were presented with 5,409 scenarios. Table 1 reports the number of cases for each combination, ignoring the amount at stake.

⁶³ R. Baker et al., 'AAPOR Report on Online Panels' (2010) 74 *Public Opinion Q.* 711; M. Callegaro et al., *Online Panel Research: A Data Quality Perspective* (2014); D. S. Yeager et al., 'Comparing the Accuracy of RDD Telephone Surveys and Internet Surveys Conducted with Probability and Non-Probability Samples' (2011) 75 *Public Opinion Q.* 709.

⁶⁴ A. Mercer and A. Lau, *Comparing Two Types of Online Survey Samples* (2023), at <https://www.pewresearch.org/methods/wp-content/uploads/sites/10/2023/09/pm_09.07.23_benchmarking-report.pdf>.

⁶⁵ NORC, op. cit., n. 60. AmeriSpeak has a household sample coverage rate of 97 per cent, an American Association for Public Opinion Research (AAPOR) panel recruitment response rate of 32.9 per cent, an inclusive response rate of 5–10 per cent, and a panel tenure of around three years on average. For more on response rate calculation, see R. Montgomery et al., *Response Rate Calculation Methodology for Recruitment of a Two-Phase Probability-Based Panel: The Case of AmeriSpeak* (2016), at <https://www.norc.org/content/dam/norc-org/pdfs/WhitePaper_ResponseRateCalculation_AmeriSpeak_2016.pdf>.

⁶⁶ Pleasence et al., op. cit. (*Causes of Action*), n. 12.

⁶⁷ Pleasence et al., op. cit. (2011), n. 11.

⁶⁸ A third outcome question about the respondent's confidence in being able to achieve a fair resolution is not included in this analysis.

⁶⁹ OECD and Open Society Foundations, op. cit., n. 10.

2.2 | Analytical strategy

Problem type, who was in error, who was owed, and amount at stake form the independent variables used in statistical analysis. The two dependent variables used in statistical analysis were legal characterization (whether or not respondents considered the scenario legal) and the problem-solving strategy that they would adopt if faced with the scenario ('do nothing', 'resolve problem on my own', 'get help from family or friends', 'get help from a lawyer', 'get help from another kind of adviser', or 'get help from somewhere else').

To test the hypotheses set out above, first, a binary logistic regression model was fitted to model whether or not respondents characterized scenarios as legal. Second, a multinomial logistic regression model was fitted to model proposed problem-solving strategy (with proposed use of a lawyer as the reference response category). For both models, problem type, who was in error, who was owed, and the natural logarithm of amount at stake⁷⁰ were included as predictors, as well as the interactions between problem type and amount at stake, problem type and who was in error, problem type and who was owed, and who was in error and who was owed (that is, testing whether the effects of these variable pairs depended on each other). As each respondent was presented with more than one scenario, clustered standard errors were used to account for any within-cluster (respondent) correlation in responses.⁷¹

To aid model interpretation, throughout the results, margins (also referred to as 'predictive margins', 'adjusted predictions', and 'recycled predictions') were calculated to allow the examination of the relationship between specific outcomes and sets of predictors while controlling for others. This is generally referred to in the results as 'controlling for other variables'. Margins statistics were calculated from predictions of a previously fitted model at fixed values of some covariates and averaging or otherwise integrating over the remaining covariates, with average marginal effects used throughout (rather than marginal effects at the mean or at representative values).⁷² All models were fitted using Stata statistical software.

2.3 | Design strengths and limitations

This design offers several benefits. Most importantly, it makes it possible to isolate the individual and interactive effects of dispute characteristics *within* and *across* problem types, which is not possible using existing forms of observational data. To do so requires the use of vignettes that can be clearly manipulated. Vignettes are a well-accepted method for generating estimates of causal effects that are otherwise difficult to observe, as is the case here, where the legal and social patterning of disputes hinders the utility of observational approaches.⁷³ Moreover, short vignettes

⁷⁰ This was preferred over polynomials for ease of interpretation, for a more parsimonious model, as there was no reason to expect anything other than monotonic relationships with amount at stake, and since it fitted the data well.

⁷¹ This was done using the `vce(cluster respondent)` command in Stata. This is a generalization of `vce(robust)` that relaxes the assumption of independence of the errors and replaces it with the assumption of independence between clusters (respondents), meaning that the errors are allowed to be correlated within clusters. See StataCorp, *Stata User's Guide: Release 18* (2023), at <<https://www.stata.com/manuals18/u.pdf>>.

⁷² R. Williams, 'Using the Margins Command to Estimate and Interpret Adjusted Predictions and Marginal Effects' (2012) 12 *The Stata J.* 308.

⁷³ N. Jenkins and S. Noone, 'Vignettes' in *SAGE Research Methods Foundations*, eds P. Atkinson et al. (2019).

describing justiciable problems have been used successfully in large-scale national surveys to solicit respondents' reactions, including for measuring propensity towards legality.⁷⁴

Of course, there are also limitations to this design. Though they provide analytical clarity, vignettes do not incorporate the nuance of lived experiences and thus may not perfectly predict actual behaviour. In addition, the data is limited to the US population and therefore cannot be assumed to generalize to other contexts. That said, there is reason to expect that similar patterns are likely to emerge in at least some other contexts. Legal needs surveys from the United Kingdom (UK) and Australia, for example, find relatively similar rates of legal problem recognition.⁷⁵

3 | RESULTS

3.1 | Legal characterization

Overall, 4,233 of 5,396 scenarios (78.4 per cent) were characterized as legal by respondents.⁷⁶ Table 2 shows binary logistic regression output, modelling whether respondents characterized scenarios as legal on the basis of problem type, who was in error, who was owed, and amount at stake, as well as the interaction between problem type and amount at stake, problem type and who was in error, problem type and who was owed, and who was in error and who was owed (to test whether variable combinations have different effects than their individual contributions).

There was a highly statistically significant relationship between amount at stake (entered in the model as the natural logarithm of amount at stake in thousands of dollars) and likelihood of characterizing problems as legal across all dispute types. As shown in Table 2, the main effect for amount at stake was statistically significant ($z = 6.77$, $p < 0.001$), while the positive coefficients for estates by amount at stake and employment by amount at stake both fell short of statistical significance ($z = 0.94$, $p = 0.348$ and $z = 1.75$, $p = 0.08$, respectively).

The relationship is illustrated in Figure 1, overall and by problem type (in both cases calculating margins that control for other variables). Overall, and for each problem type, likelihood of legal characterization increased with amount at stake, with the increase steeper at lower stake values. Legal characterization increased with amount at stake in a pattern that was broadly comparable across problem types, though there was a steeper increase for employment problems, which reflected the relatively close-to-statistically-significant employment by amount at stake term. Figure 1 also illustrates more general differences in the extent to which different problem types were seen as legal, with significant differences between tax problems (the reference category) and estates problems (estates main effect: $z = 2.39$, $p = 0.017$ ⁷⁷). Holding amount at stake at the median condition of \$7,500, controlling for other variables, and again calculating margins, 75.9 percent of tax problems were characterized as legal, compared to 78.9 percent of employment problems and 84.4 percent of estates problems.

The findings offer less evidence of the hypothesized effects of other dispute characteristics. The 'who was in error' ('their error') main effect was clearly non-significant ($z = 0.02$, $p = 0.987$),

⁷⁴ N. J. Balmer et al., *The Public Understanding of Law Survey (PULS) Annotated Questionnaire* (2022), at <https://cdn.prod.website-files.com/64e6d2582dd4319151be6a26/653b3bae758435ceda1aa446_64ec1214a6c63ccef372136_the-public-understanding-of-law-survey-puls-annotated-questionnaire.pdf>.

⁷⁵ Balmer et al., op. cit., n. 13; A. Ames et al., *Legal Problem and Resolution Survey 2023: Summary Report* (2024).

⁷⁶ Thirteen respondents who did not characterize their problem were excluded from all characterization analysis.

⁷⁷ As well as non-significant estates interaction terms: see Table 3.

TABLE 2 Binary logistic regression model predicting legal characterization on the basis of problem type, fault, positionality, and amount at stake, and the interaction between problem type and amount at stake, problem type and fault, problem type and positionality, and fault and positionality

Variable	Level	Coef.	Robust SE	z	p
Log(stake^a>)		0.303	0.045	6.770	<0.001
Problem type	Tax (<i>ref</i>)	–	–	–	–
	Employment	–0.113	0.174	–0.650	0.516
	Estates	0.428	0.179	2.390	0.017
Whose error?	Your error (<i>ref</i>)	–	–	–	–
	Their error	0.002	0.126	0.020	0.987
Who is owed?	You owe (<i>ref</i>)	–	–	–	–
	You are owed	0.013	0.129	0.100	0.921
Problem type × stake	Employment × log(stake)	0.111	0.064	1.750	0.080
	Estates × log(stake)	0.065	0.069	0.940	0.348
Problem type × fault	Employment × their error	0.038	0.157	0.240	0.809
	Estates × their error	–0.024	0.170	–0.140	0.885
Problem type × positionality	Employment × you are owed	0.094	0.164	0.570	0.567
	Estates × you are owed	–0.006	0.165	–0.040	0.972
Fault × positionality	Their error × you are owed	0.291	0.139	2.100	0.036
Constant		0.455	0.123	3.700	<0.001

Note: ^a in \$1,000s.

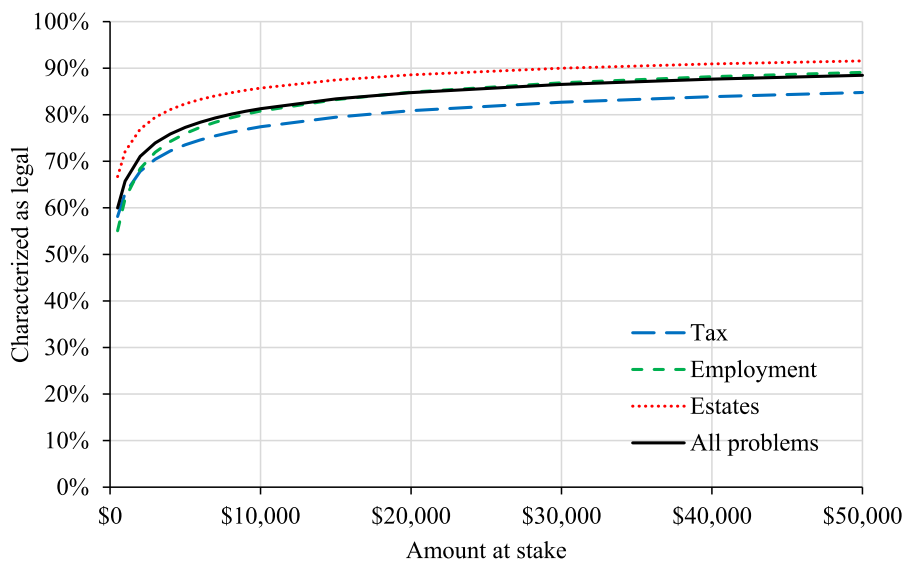


FIGURE 1 The relationship between legal characterization and amount at stake for each problem type and for all problems

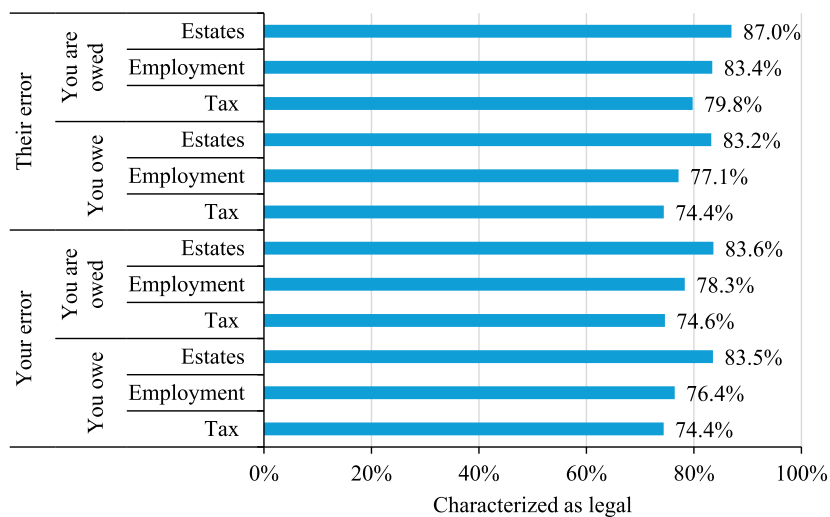


FIGURE 2 The percentages of responses characterizing scenarios as legal by problem type, fault, and positionality

and there was no evidence of variation in the relationship between who was in error and legal characterization for different problem types, with both the employment by ‘their error’ and estates by ‘their error’ interaction terms also clearly non-significant ($z = 0.24$, $p = 0.809$ and $z = -0.14$, $p = 0.885$, respectively), meaning that fault effects did not vary by problem type. Similarly, the ‘who is owed’ (‘you are owed’) main effect was also non-significant ($z = 0.1$, $p = 0.921$), as were employment by ‘you are owed’ and estates by ‘you are owed’ interaction terms ($z = 0.57$, $p = 0.567$ and $z = -0.04$, $p = 0.972$, respectively), suggesting no evidence of variation in the relationship between who was owed and legal characterization by problem type.

There was, however, some evidence of a significant interaction between who was in error and who was owed, meaning that the effect of fault on legal characterization depended on who owed. Cases where the other side was in error and the respondent was owed were associated with a significant increase in likelihood of legal characterization ($z = 2.1$, $p = 0.036$). In that circumstance, controlling for other variables and holding amount at stake constant at \$7,500, 83.5 per cent of problems were characterized as legal. By contrast, where it was the respondent’s error and they owed the other side, only 78.4 per cent of cases were characterized as legal. This was a similar percentage to situations where it was the respondent’s error and they were owed (78.6 per cent) or where it was the other side’s error and the respondent owed them (78 per cent). Figure 2 combines findings for problem type, who was in error, and who was owed, estimating from the model in Table 2, controlling for other variables, and holding amount at stake constant at \$7,500.

3.2 | Proposed problem-solving strategy

In addition to characterizing a problem as legal or not, respondents were also asked what they would do in response to the problem scenarios presented. They offered responses for 5,132 problem

scenarios.⁷⁸ For 95 scenarios (1.9 per cent), respondents indicated that they would do nothing; for 867 (16.9 per cent), they would resolve the problem on their own; for 331 (6.4 per cent), they would turn to family and friends; for 2,857 (55.7 per cent), they would get help from a lawyer; for 873 (17 per cent), they would use some other form of adviser; and for 109 (2.1 per cent), they would get help from somewhere else. Table 3 shows multinomial logistic regression output modelling respondents' proposed problem-solving strategy on the basis of problem type, who was in error, who was owed, and amount at stake, as well as the interaction between problem type and amount at stake, problem type and who was in error, problem type and who was owed, and who was in error and who was owed (again testing whether variable combinations have different effects than their individual contributions). As in the analysis above, the natural logarithm of amount at stake in thousands of dollars was entered in the model. 'Get help from a lawyer' was the base outcome to which other proposed problem-solving strategies were compared.

Further affirming the expected relevance of problem type in predicting legal behaviour, there was a significant problem type main effect. Compared to tax problems, respondents were less likely to indicate that they would resolve the problem on their own or seek advice from somewhere else for estates problems ($z = -2.62$, $p = 0.008$ and $z = -2.83$, $p = 0.005$, respectively), while those with employment problems were less likely to propose seeking help from family and friends ($z = -3.94$, $p < 0.001$).⁷⁹ Compared to tax problems, respondents were less likely to indicate that they would use another kind of adviser for both employment and particularly estates problems ($z = -2.22$, $p = 0.027$ and $z = -8.63$, $p < 0.001$, respectively).

Figure 3 shows the percentage of responses proposing to use a lawyer by amount at stake for each problem type and for all problems, controlling for other variables. As illustrated, estates problems were most associated with proposed lawyer use, particularly when compared to tax problems. Meanwhile, proposed use of a lawyer for employment problems was comparable to tax problems at low stakes, but increased relatively quickly with amount at stake, tending towards proposed lawyer use for tax problems at higher stakes.

As Figure 3 suggests, there was a highly significant relationship between amount at stake and proposed problem-solving strategy. Statistically significant negative model terms (for the reference category tax problems) associated with doing nothing ($z = -2.08$, $p = 0.037$), resolving the problem on their own ($z = -8.32$, $p < 0.001$), getting help from family or friends ($z = -3.94$, $p < 0.001$), and getting help from another kind of adviser ($z = -4.86$, $p < 0.001$) all indicated that as amount at stake increased, so did respondents' proposal to use a lawyer rather than adopt any other problem-solving strategy.

Most of the problem type by amount at stake interaction terms were non-significant, indicating that the relationship between proposal to use a lawyer and amount at stake was broadly consistent across problem type. However, there were two interesting exceptions: a significant positive term for amount at stake by employment problems (meaning that employment problems showed different stake effects) for proposing to turn to family and friends (compared to using lawyers: $z = 2.35$, $p = 0.019$), and a significant negative term for amount at stake by employment problems for proposing to use a different form of adviser (again, compared to using lawyers: $z = -2.86$, $p = 0.004$). This suggests that in the case of employment problems, proposed use of family and friends did not decay in the same way as for other problems as amount at stake increased, while proposed use of other types of advisers was quicker to decay with amount at stake. Figure 4

⁷⁸ There were 277 scenarios where respondents did not know how they would act.

⁷⁹ This finding helps to contextualize the significant employment by amount at stake interaction term referred to above.

TABLE 3 Multinomial logistic regression model of respondents' proposed problem-solving strategy on the basis of problem type, fault, positionality, and amount at stake, as well as interactions between problem type and amount at stake, problem type and fault, problem type and positionality, and fault and positionality

Variable	Level	Get help											
		Do nothing		Resolve problem on my own		Family or friends		Another kind of adviser		Somewhere else			
		Coef.	SE	Coef.	SE	Coef.	SE	Coef.	SE	Coef.	SE		
Log(stake^a)		-0.325	0.156	-0.515	0.062	-0.499	0.096	-0.234	0.048	-0.180	0.119		
Problem	Tax	0.000	-	0.000	-	0.000	-	0.000	-	0.000	-	0.000	-
	Employment	0.435	0.796	-0.091	0.219	-1.653	0.420	-0.485	0.219	0.471	0.483		
	Estates	0.398	0.509	-0.571	0.216	-0.093	0.322	-2.210	0.256	-1.953	0.691		
Fault	Your error	0.000	-	0.000	-	0.000	-	0.000	-	0.000	-	0.000	-
	Their error	0.220	0.482	-0.242	0.162	-0.374	0.269	-0.350	0.140	-0.214	0.374		
Positionality	You owe	0.000	-	0.000	-	0.000	-	0.000	-	0.000	-	0.000	-
	You are owed	0.079	0.471	-0.307	0.168	-0.314	0.263	-0.346	0.142	-0.315	0.369		
Problem × stake	Employment × log(stake)	-0.305	0.288	-0.117	0.085	0.313	0.133	-0.220	0.077	-0.271	0.160		
	Estates × log(stake)	-0.226	0.196	-0.035	0.087	0.131	0.116	-0.006	0.089	0.090	0.222		
Problem × fault	Employment × their error	-1.419	0.885	0.395	0.196	0.954	0.355	-0.013	0.183	0.150	0.415		
	Estates × their error	0.092	0.474	0.180	0.213	0.138	0.295	0.735	0.232	-0.529	0.668		
Problem × positionality	Employment × you are owed	-0.702	0.771	0.275	0.199	0.491	0.375	0.211	0.187	0.114	0.411		
	Estates × you are owed	0.482	0.470	-0.014	0.207	0.673	0.296	-0.046	0.228	1.033	0.683		
Fault × positionality	Their error × you are owed	-0.352	0.471	-0.281	0.165	-0.130	0.244	0.121	0.163	-0.006	0.408		
Constant		-2.794	0.472	0.255	0.165	-1.017	0.255	0.325	0.144	-2.317	0.389		

Note: ^a in \$1,000s; coefficients in bold are statistically significant at $p \leq 0.05$.

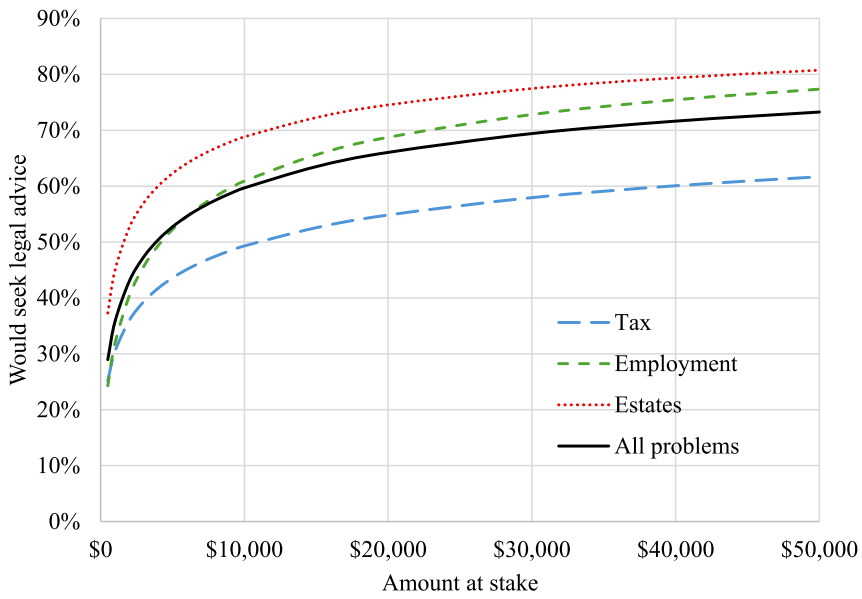


FIGURE 3 The relationship between proposed lawyer use and amount at stake for each problem type and for all problems

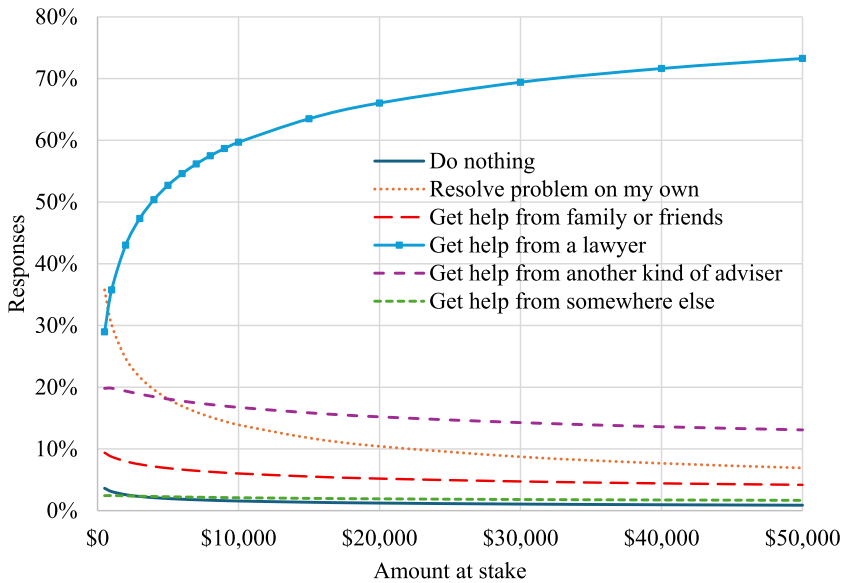


FIGURE 4 The relationship between proposed problem-solving strategy and amount at stake

illustrates margins for proposed problem-solving strategy by amount at stake, derived from the model in Table 3 and controlling for other variables. As shown, proposed use of a lawyer increased with amount at stake, while other problem-solving strategies – particularly the proposal to resolve the problem on their own – decreased.

As with the analysis above regarding legal characterization, there was limited evidence of an association between proposed problem-solving strategy and dispute characteristics relating to

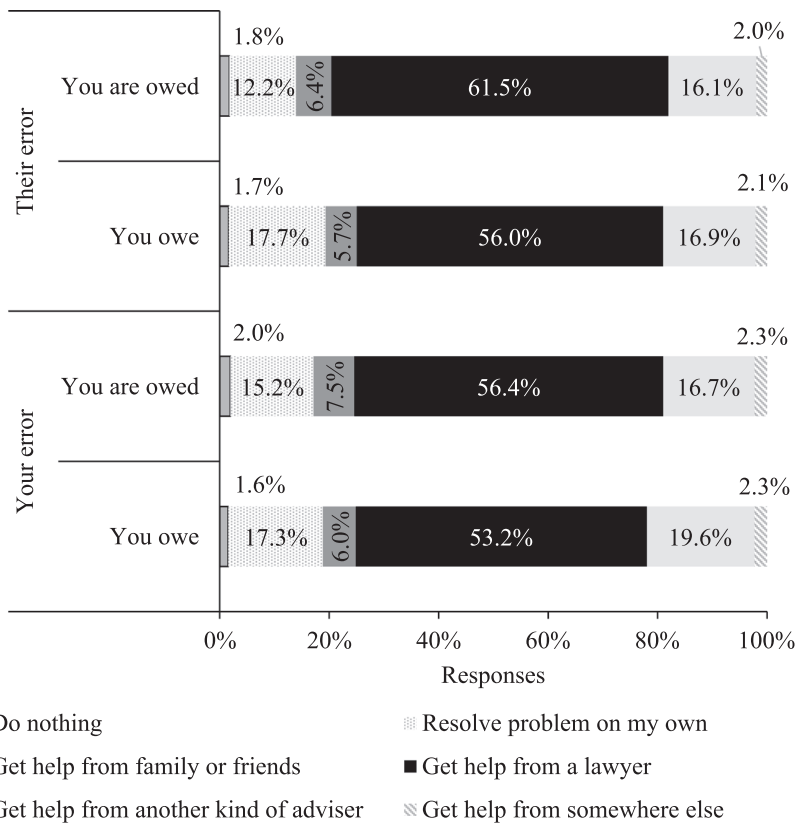


FIGURE 5 Proposed problem-solving strategy by fault and positionality

fault and positionality. Compared to proposal to use a lawyer (the reference category in Table 3), proposal to resolve the problem on their own was associated with negative though non-significant ‘their error’, ‘you are owed’, and ‘their error’ by ‘you are owed’ model terms ($z = -1.50$, $p = 0.13$, $z = -1.83$, $p = 0.067$, and $z = -1.71$, $p = 0.088$, respectively). In the case of proposed use of another kind of adviser, negative model terms for both ‘their error’ and ‘you are owed’ were statistically significant ($z = -2.50$, $p = 0.012$ and $z = -2.43$, $p = 0.015$, respectively). While falling well short of statistical significance, terms associated with proposed use of family or friends and going somewhere else were also predominantly negative (see Table 3). Regarding legal advice, the net effect was that being owed, the other side being in error, and particularly the combination of the two were associated with increased proposed use of legal advice. This is illustrated in Figure 5, controlling for other variables and holding amount at stake constant at \$7,500.

In predicting responsive behaviour, there was also evidence of some significant interactions between problem type, fault, and positionality, meaning that these factors’ effects varied depending on problem type. In particular, the significant positive term for the interaction of employment problem type by ‘their error’ for the problem-solving strategies of ‘resolve problem on my own’ and ‘get help from family and friends’ (rather than a lawyer: $z = 2.02$, $p = 0.044$ and $z = 2.69$, $p = 0.007$, respectively) indicated that both of these proposed courses of action were more common than for tax problems where the other side was in error. There was also a significant positive interaction term for estates by ‘you are owed’ for proposed use of family and friends (rather than a lawyer: $z = 2.28$, $p = 0.023$) and estates by ‘their error’ for ‘get help from another kind of adviser’ (rather

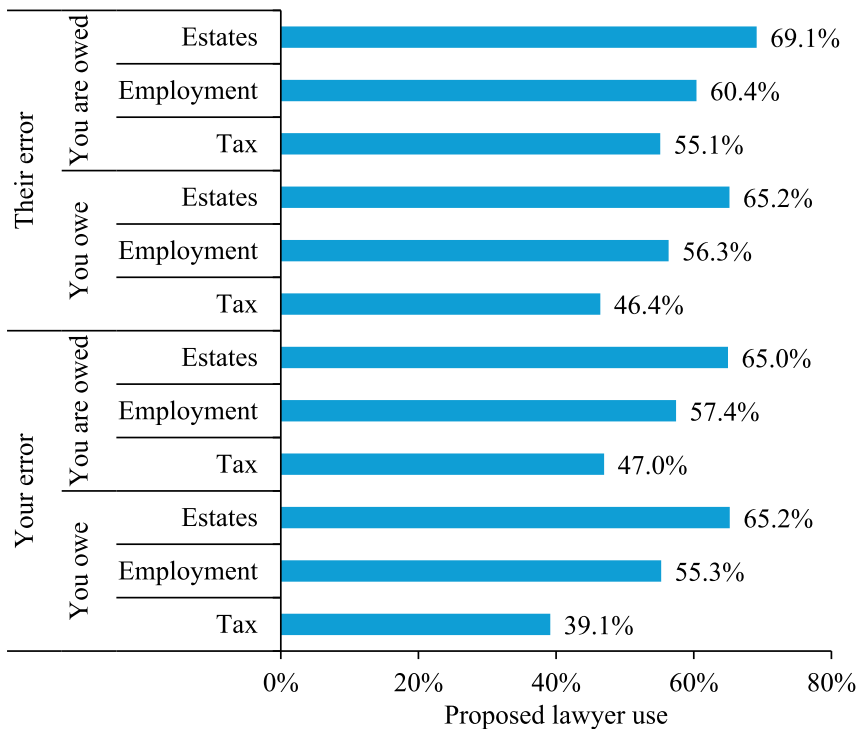


FIGURE 6 Proposed lawyer use by problem type, fault, and positionality

than a lawyer: $z = 3.18$, $p = 0.001$). These interactions indicate that being owed in estates disputes increased proposed use of family and friends more than in other problem types, while fault by the other party in estates disputes increased proposed use of other kinds of advisers (rather than lawyers) more than in tax or employment problems.

Figure 6 focuses specifically on proposed use of a lawyer based on problem type, who was in error, and who was owed, controlling for other variables and holding amount at stake constant at \$7,500. Proposed lawyer use was highest for estates issues, followed by employment and tax problems. For tax, compared to problems where it was 'your error' and 'you owe', 'you are owed' and 'their error' were individually associated with increased proposed use of a lawyer. For all three problem types, scenarios where it was 'their error' and 'you are owed' were associated with highest proposed use of a lawyer, though differences were most pronounced for tax problems.

3.3 | The relationship between legal characterization and problem-solving strategy

Not surprisingly, whether or not problems were characterized as legal and the proposed problem-solving strategy were strongly related, as shown in Figure 7. Legal characterization (78.4 per cent of scenarios overall) was associated with a large increase in the percentage of responses proposing that they would seek assistance from a lawyer, and a decrease in all other proposed problem-solving strategies, when contrasted with problems not characterized as legal (21.6 per cent of scenarios overall).

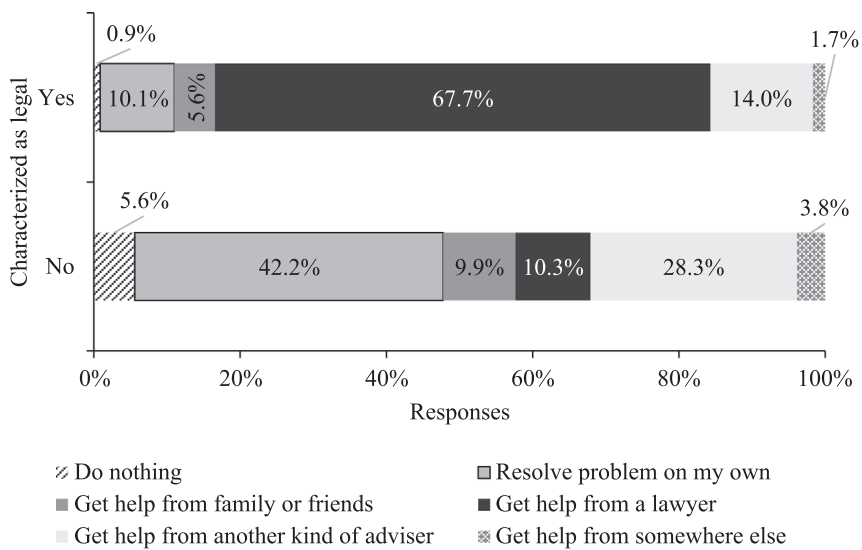


FIGURE 7 The relationship between legal characterization and proposed problem-solving strategy

4 | DISCUSSION AND CONCLUSION

Consistent with existing studies drawing on cross-sectional survey research finding that problem type influences legal characterization,⁸⁰ the findings reveal differences in the rate at which the three types of problems were identified as legal matters. Estates problems were most likely to be seen as legal, followed by employment problems, and then tax problems, with statistically significant differences in legal characterization between estates and tax problems. As set out under H1a, which predicted that perceptions of legality would be greater in disputes where lawyers and legal processes are more central, this could reflect an understanding that decedents' estates are handled through probate courts, often with the assistance of lawyers, while employment issues and tax issues may be addressed through internal processes that are perceived as being 'less legal'. Relatedly, this may point to a relationship between the commonality of a problem and the extent to which it bleeds into the issues and challenges of the 'everyday', and the characterization of that problem as 'non-legal'. This would dovetail with the narrative of law as majestic and remote, removed from ordinary concerns, most consistent with the 'before the law' orientation identified by Ewick and Silbey, as opposed to the 'with the law' or 'against the law' perspectives.⁸¹

Regardless of underlying mechanism, the results confirm the relevance of public perceptions of legality for the purposes of developing access to justice interventions. For example, knowing that members of the public are less likely to characterize certain problem types as legal matters could indicate the need for greater outreach and education on those kinds of issues to ensure that people are able to resolve these types of disputes effectively. It also highlights the importance of entry points that are not branded or defined as legal. In the UK, Citizens Advice provide the most prominent example, with legal characterization not related to use.⁸²

⁸⁰ Pleasence et al., op. cit. (2011), n. 11; Balmer et al., op. cit., n. 11.

⁸¹ Ewick and Silbey, op. cit., n. 17.

⁸² Pleasence et al., op. cit. (2011), n. 11.

The findings regarding the effect of the amount at stake were also consistent with predictions. Consistent with H2, there was a statistically significant relationship between amount at stake and likelihood of legal characterization. As amount at stake increased, so did the probability that the problem would be viewed as a legal matter, with this trend more pronounced at lower stakes. This may speak to the perceived need for a problem to reach a certain threshold of seriousness before recourse to law and assistance from a lawyer is seen as warranted, in line with the narrative of law as majestic and rarefied. Similarly, we might expect that among those for whom law is a 'game', it is only invoked where the stakes, and therefore the potential cost/benefit of 'playing' that game, are merited. By contrast, where an 'against the law' orientation is triggered, alternative non-legal solutions may be favoured; these results could suggest that this is more likely the case when the amount at stake is lower.

If the observed patterns are a function of a cost/benefit analysis or an assessment of the accessibility of legal actors or processes, then questions arise as to the accuracy of these assessments. Moreover, the importance of the amount at stake for legal characterization raises troubling questions about situations where we rely on private enforcement. While debates about the efficacy of private enforcement typically focus on issues relating to the accessibility of lawyers (such as through fee shifting), these findings suggest that the higher-order issues of problem recognition and characterization may also be connected to the value of potential financial remedies.

Prior studies have theorized that individuals are less likely to turn to law where they are seen to be at fault.⁸³ This was not borne out in the present study in such simple terms. Contrary to what we proposed in H3a and H4a, fault and positionality did not, in isolation, significantly influence the characterization of a problem as legal. Only in combination did we find evidence of an effect; when the other party was at fault and money was owed to the respondent, the likelihood of legal characterization increased. That is, differences emerged in the rate of legal characterization where the protagonist was both not to blame for the error and at a loss. The limits of existing observational data have made it impossible to investigate the effects of these dispute characteristics or to test the extent to which they are encompassed within existing controls for problem type. These results confirm the importance of problem type in driving legal characterization, even when fault and positionality are taken into account.

In terms of responsive behaviour, the findings reveal that problem type also influenced proposed problem-solving strategy. Respondents reported being less likely to attempt to resolve estates problems on their own or to seek advice elsewhere when compared to tax problems. Respondents also reported being less inclined to seek help from family and friends for employment problems, though this preference, where expressed, tended to be held for longer as amount at stake increased compared to other problem types. Both employment and estates problems were associated with a lower likelihood of using another kind of adviser compared to tax problems. This provided little support for H1b, which predicted that proposed lawyer use would be lower in situations involving a closer ongoing relationship, such as in the estates scenario (involving a relative) and the employer dispute.

In addition, the findings show that as amount at stake increased, so too did the proposal to use a lawyer over other problem-solving strategies, with this relationship broadly consistent across problem type. This is consistent with prior studies and our predictions.⁸⁴ However, the findings also reveal that for employment problems, the likelihood of turning to family and friends did not decrease with higher stakes as it did for other problem types. This was paired with a more rapid

⁸³ See for example Calavita and Jenness, *op. cit.*, n. 54; White, *op. cit.*, n. 54; Coates and Penrod, *op. cit.*, n. 54.

⁸⁴ Balmer et al., *op. cit.*, n. 11; Pleasence et al., *op. cit.* (2011), n. 11; Pleasence and Balmer, *op. cit.*, n. 12.

decrease in the likelihood of using other advisers as amount at stake increased. This suggests that while overall family and friends are not a common source of help for employment problems, those who do turn to family and friends may be less receptive to obtaining professional advice even as problem severity increases, and even though adverse consequences tend to increase alongside problem severity.

Fault and positionality, and particularly the combination of these two factors, also played a role in problem-solving strategy selection. Consistent with H3b, the other side being at fault was associated with an increase in the proposal to seek legal advice, but so too was being owed, in contrast to expectations set out in H4b. These findings suggest that feeling 'wronged' is a catalyst for a turn to law. Being in error was associated with a decreased tendency for legal characterization, perhaps because people are inclined to downplay the legal dimensions of their own actions and to present them as honest errors rather than deliberate transgressions of rights or responsibilities. That this was also the case in instances where individuals were not at fault but still owed suggests that people may internalize culpability, either because they made an error or because they owe.

While the same combinations of fault and positionality showed similar patterns for proposed lawyer use, rates of proposed lawyer use based on combinations of fault and positionality were less pronounced with respect to estates problems. Culpability shaped legal characterization for estates problems more than it affected the likelihood of seeking advice from a lawyer. It is also interesting to note that differences in the rates of proposed lawyer use based on fault and positionality were most pronounced for tax problems. There, the combination of 'their error' and 'you are owed' was associated with highest proposed use of a lawyer, but unlike other problem types, where the remaining combinations of fault and positionality led to similar rates of proposed lawyer use, there was a much lower rate of proposed lawyer use among those with tax problems where it was 'their error' and they owed. The comparatively lower level of proposed lawyer use among those faced with this set of conditions may speak to such circumstances being relatively widespread.

Finally, the results indicate that legal characterization and problem-solving strategy were strongly related. Compared to non-legal characterization, where a problem was characterized as legal, it corresponded to a large increase in the percentage of responses proposing to seek assistance from a lawyer, and a decrease in all other problem-solving strategies. This further emphasizes the importance of problem characterization in meeting legal needs.

A better understanding of characterization and its relationship to responsive action offers an evidence base to underpin targeted outreach initiatives intended to engage those who may otherwise fail to access justice. Future research building on this project could further develop this evidence base. For example, researchers might work to isolate the effects of other dispute characteristics that are often correlated with problem type, such as the availability of legal services or the need to address problems through the formal legal system, on problem characterization or behaviour. This work could reveal that problem type serves as a proxy for a constellation of other characteristics that trigger certain cultural schema or behaviours. Relatedly, though survey data suggests that comparable dynamics are likely to be observed in at least some other contexts, comparative scholarship could provide additional insights into the ways in which differences in cultural norms, the availability of legal assistance, or substantive legal protections across jurisdictions generate differences in characterization and behaviour. Finally, future research could investigate the interplay between individual-level characteristics and dispute characteristics in prompting legal characterization and behaviour. Such research might consider, for example, whether people with greater legal capability respond to certain dispute characteristics differently than people with lesser legal capability.

In sum, our experiment shows that there is a degree of subjectivity at play in the assessments that people make about the character of the problems that they face and the need for legal assistance. The intention in widening access to justice is not to encourage everyone to turn to law to resolve every dispute; rather, it is to ensure that where a dispute arises, it is resolved in line with legal norms.⁸⁵ Variation in the level of legal capability among the population means that some individuals will necessarily be better placed than others to achieve such an outcome without a turn to law. For those who are not, access to law is critical. Yet, as our results show, there is difficulty in producing 'one-size-fits-all' approaches.

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SUPPORTING INFORMATION

Additional supporting information can be found online in the Supporting Information section at the end of this article.

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⁸⁵ Sandefur, op. cit., n. 3.