Journal du Droit Transnational

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Legal Tech and the Future of Civil Justice David Freeman Engstrom, Cambridge University Press, Cambridge, 2023 ISBN: 9781009255301

Keywords: Computer Science, Computing and Society, Law, Law and technology, science, communication

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I.   INTRODUCTION

Digital technologies are transforming the legal system and the debate surrounding "legal tech" often drifts into the realm of "robo-judges" and "robo-lawyers," which leaves many questions unanswered. David Engstrom is the LSVF Professor in Law and Co-Director of the Deborah L. Rhode Center on the Legal Profession at Stanford University. With his book, *Legal Tech and the Future of Civil Justice*, he has stepped in to narrow the focus to here and now.

Engstrom's "Legal Tech and the Future of Civil Justice" is a breath of fresh air in a discourse clouded with speculative musings about the future. As an accomplished scholar, a seasoned litigator, and a renowned expert in law and technology, Engstrom's insights are grounded in a wealth of experience. This book ventures beyond the abstract and provides an in-depth exploration of the immediate and intermediate effects of digital technologies on litigation and access to justice. Engstrom dives into the most pressing questions: What are the limits and possibilities of legal tech within the constraints of regulation, organisation, and technology? How will these innovations impact lawyers, litigants, and procedural rules? Importantly, how will technology either expand or limit access to justice, and what changes in judicial administration are needed to ensure a balanced technological evolution that opens courthouse doors for all?

Engstrom's empirically minded approach not only demystifies the digital transformation of the legal system but also offers concrete, practical advice for navigating this ever-changing landscape.

II.   REVIEW

Engstrom's book is split into five parts. The first part is the introduction. In the introduction, Engstrom highlights the disruption that was brought on by the COVID-19 pandemic to the American legal system. While high-tech AI tools often dominate discussions, the author redirects the readers' attention to the potential of straightforward court-hosted websites that empower litigants to achieve better outcomes. Similar observations have been made by authors such as Lederer, who equally noted that the US legal system has failed to keep up with

technology over twenty years ago.[1] Engstrom's comprehensive study of the relevant websites reveals a critical shift that occurred during the pandemic. These websites now serve as a lifeline for self-represented litigants dealing with housing, financial, family, employment, and other legal issues. Engstrom sheds light on the rise of client-facing legal tech tools, i.e., online guides, document assembly systems, and case management platforms. These tools offer hope to those in need of civil justice by enhancing accessibility. This view has been corroborated by other academics who have highlighted the numerous benefits that technology and artificial intelligence in particular can help improve the legal system.[2] This chapter raises vital questions about how new legal technologies and regulations will either expand or restrict access to justice. Engstrom candidly critiques the current state of legal tech, highlighting the gap between promises and realities, challenging us to rethink our approach to civil justice. This chapter is essential reading for those interested in the future of the legal system, providing insights into technology's pivotal role in redefining civil justice.

Part I of the book concerns legal tech and the innovation ecosystem. In this chapter, the author examines the evolving impact of legal tech on the American legal sector. He explores the challenges and potential applications of technology while emphasising its transformative role within the legal framework. This part begins by highlighting the flourishing legal tech industry and its impact on the traditional legal profession. It points out the challenges posed by diminishing control over the legal monopoly and the competitive dynamics of PeopleLaw. In his work, Engstrom is concerned with accessibility to legal services as a recurring theme. He stresses the gap between middle-class Americans and legal assistance, mainly due to the traditional legal business model, which is often unaffordable for the average citizen. The part categorises American civil law lawyers into BigLaw and PeopleLaw sectors, underlining differences in earnings and the enforcement of unauthorised practice of law. Engstorm highlights the selective application of UPL regulations.

In this part, Engstrom also discussed the emergence of "justice tech" startups, aiming to scale legal services to underserved populations. The discussion on the future of legal tech in America is intriguing. In Engstrom's view, the continued American leadership in the legal tech sphere; he speculates that there is potential for more efficient legal services for the poor through the use of legal tech. Indeed, other authors also agree that the rise of digital justice is likely to improve accessibility for the common citizens.[3] On the other hand, he also explores the concept of "re-regulation" as an alternative to deregulation, suggesting that these reforms could bring

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[1] Fredric Lederer, 'The road to the virtual courtroom? A consideration of today's and tomorrow's high-technology courtrooms' (1998-1999) 50(799) South Carolina Law Review 800, 818.
[2] Haoxi Zhong, Chaojun Xiao, Cunchai Tu, Tianyang Zhang, Zhiyuan Liu and Maosong Sun, 'How does NLP Benefit Legal System: A summary of legal artificial intelligence' (*Cornell University*, 25 April 2020). <https://arxiv.org/abs/2004.12158> accessed 18 October 2023.
[3] Jane Donoghue, 'The rise of digital justice: courtroom technology, public participation and access to justice' (2017) 80(6) Modern Law Review 995.

much-needed regulation to underserved areas of the legal market. A notable aspect of this part is its extensive coverage of NLP's role in legal tech, particularly in document review and outcome prediction. Zhong et al also agree with this view.[4] The challenges and limitations of NLP in the legal context are well articulated, highlighting the complexity of automating legal reasoning. However, the part's organisation could be more structured, and the excessive use of footnotes might benefit from integration into the main text for improved readability. For example, other papers have specifically focused on NLP in relation to US Supreme Court cases, which provides a detailed analysis in this specific sphere.[5] In summary, this part offers an insightful analysis of the American legal tech landscape, highlighting its transformative potential. It is certainly a valuable read.

Part II of the book concerns legal tech, litigation and the adversarial system. Engstrom delves into the intricate landscape of the legal system's digital transformation. He starts by revisiting the debate on moving the court system online, a discussion that predated the COVID-19 pandemic. In this context, scepticism lingers, especially concerning the migration of jury trials to a digital platform. Engstrom highlights that despite these concerns, research suggests that remote hearings have not significantly impacted the fact-finder's ability to discern the truth or the perception of the involved parties. This analysis has been reflected in foreign jurisdictions, such as Russia.[6] It is, therefore, recommended to proceed with online trials and evaluate their efficacy through randomized control trials (**RCTs**). One of the key highlights of this part is the role of videoconferencing in the legal process. It is noted that videoconferencing has either an insignificant or a positive effect on decision-making. Furthermore, it has the potential to reduce power imbalances and increase the perception of humanity within the legal system. However, Engstrom also discuss findings from non-randomised studies, which indicate potential adverse effects of videoconferencing on asylum decisions and bail amounts. These observations underscore the need for a robust research and evaluation program to comprehensively understand the impact of online fact-finding on the legal process. Engstrom moves on to examine the complex world of Technology Assisted Review (**TAR**) in the discovery process. He underscores a crucial issue – weak validation methods in TAR that may inadvertently hide relevant documents. Courts and attorneys have often deferred to the producing party's choice of search methodology, raising concerns about potential gamesmanship within this aspect of the legal system. The discussion expands to the realm of legal tech tools, where various tools are explored. These tools include algorithmic e-discovery tools, Colossus, and the Walmart

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[4] Haoxi Zhong, Chaojun Xiao, Cunchai Tu, Tianyang Zhang, Zhiyuan Liu and Maosong Sun, 'How does NLP Benefit Legal System: A summary of legal artificial intelligence' (*Cornell University*, 25 April 2020). <https://arxiv.org/abs/2004.12158> accessed 18 October 2023.

[5] Katherine Lockard, Robert Slater and Brandon Sucrese, 'Using NLP to Model U.S. Supreme Court Cases' (2023) 7(1) SMU Data Science Review 1, 3.

[6] Oleg Metsker, Egor Trofimov, Max Petrov and Nikolay Butakov, 'Russian court decisions data analysis using distributed computing and machine learning to improve lawmaking and law enforcement' (2019) 156 Procedia Computer Science 264, 265.

Suite, each with its unique influence on legal outcomes. While these tools can manipulate outcomes, it is recognized that TAR, in particular, may level the playing field and bring greater transparency to disputes. However, the chapter cautions that the effects of these tools are still uncertain and can have both positive and negative impacts on the civil justice system.

The part also touches on the issue of litigation by "losers" and its potential impact on the development of substantive law. This is a phenomenon where privileged defendants may share information with plaintiffs to avoid litigation and achieve efficient settlements. The authors suggest potential responses to this issue, including judicial discretion and democratising data. In the realm of computationally driven outcome prediction, the Engstrom discusses the use of statistical or machine learning methods to forecast litigation outcomes. These methods can reduce uncertainty and the cost of legal services. Other jurisdictions have seen similar impact.[7] Several commercial products in this space, such as LexMachina, Westlaw, and Bloomberg Law, are highlighted as offering predictive analytics for specific case types or litigation events. However, this part acknowledges the scarcity of examples of computationally driven litigation outcome prediction tools for specific cases. This part concludes by addressing the important issue of litigant autonomy within multidistrict litigation (**MDL**). It emphasises that individual autonomy is crucial for the legality and legitimacy of MDLs, and that MDL websites may have usability deficits, necessitating better communication tools for legal processes. Overall, this part provides a comprehensive analysis of the multifaceted impact of technology on legal processes and outcomes, shedding light on both the potential benefits and challenges that arise as technology continues to shape the legal field in the digital age.

Part III of the book concerns legal tech and access to justice. This part's exploration of the internet's role in access to justice and the transformation of court proceedings into virtual spaces offers a thought-provoking and comprehensive analysis. The central theme of this part revolves around the internet's role in providing access to justice. It raises critical questions about the effectiveness and impact of online resources on individuals seeking legal assistance. This part acknowledges the potential of the internet to direct individuals to incorrect or unhelpful resources, or to overwhelm them to the point of disengagement. It also highlights the importance of empowering individuals to take action to resolve their legal problems. Other academics agree that digital justice is useful even in complex cases with class actions.[8] One of the crucial areas the book touches upon is the quality of online legal help. It urges further research into whether people can access high-quality assistance online or whether intermediaries direct them towards lower-quality or inaccurate resources. This perspective

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[7] Ran Wang, "Legal technology in contemporary USA and China' (2020) 39 Computer Law & Security Review < https://www.sciencedirect.com/science/article/abs/pii/S0267364920300649> accessed 18 October 2023.
[8] Peter Cashman and Eliza Ginnivan, 'Digital justice: online resolution of minor civil disputes and the use of digital technology in complex litigation and class actions' (2019) 19(39) Macquarie Law Journal 1, 23.

emphasises the importance of evaluating content quality, human-centred design, technical performance, and discoverability of online legal help sites.

This part also proposes an intriguing concept of "digital epidemiology" to track legal needs through search engines and social media data sources. This approach could provide valuable insights into the types of justice problems people are experiencing, seasonal patterns, and emerging trends in legal needs. This kind of research could be essential for understanding and addressing access to justice issues more effectively.

Furthermore, the part raises the critical issue of potential harms that individuals might face when seeking assistance online. Drawing parallels to the spread of misinformation in other domains, it asks whether there are situations in law where individuals are led astray by online resources, such as outdated or jurisdictionally incorrect information. The part's emphasis on addressing these issues is essential in maintaining the integrity of online legal resources. This part highlights the difficulties faced by unrepresented individuals who engage with court proceedings through virtual platforms, often on their cell phones. The disparities between unrepresented individuals and repeat-player lawyers, who fully utilise virtual interaction capabilities, are striking. This part contributes to understanding the challenges and inequalities inherent in the shift to virtual court proceedings. Nevertheless, it recognises the assistance which can be provided by technology in litigation, as similar authors agree.[9]

In summary, this part offers a comprehensive analysis of the internet's role in access to justice and the transformation of legal processes into digital spaces. This is reflective of the Hecht's work in this area.[10] It addresses critical questions, proposes innovative research methodologies, and highlights the need for quality assessment and the mitigation of potential harms in online legal assistance. Additionally, the examination of virtual court proceedings adds a valuable perspective on the impact of technology on access to justice. This part is a significant contribution to the evolving landscape of law and technology, and it provides a roadmap for future research and policy initiatives aimed at enhancing access to justice in the digital age.

Part IV of the book concerns courts, data and civil justice. One of the key takeaways is the shift in perception and attitudes towards court technology. Prior to the pandemic, the barriers to technology adoption were primarily rooted in funding constraints and reluctance among judges and court administrators. However, the urgent need to adapt to the pandemic forced a re-evaluation of these barriers. Engstrom notes that the perceived barriers which exist in relation to technology in the legal system became less significant when they were compelled to embrace

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[9] Richard Marcus, 'Technology and litigation: the 21st century American experience' (2021) 25 Zeitschrift für Zivilprozess International 99, 100.
[10] N Hecht, 'Coping with COVID: Continuity and change in the courts' (2020) 104(2) Judicature 16.

technology as a means of ensuring continued access to justice. This transformation highlights the adaptability of the legal system and the capacity for innovation when necessity dictates.

The part also examines the adoption of specific technological solutions, shedding light on the increased use of self-help resources, online dispute resolution (**ODR**), and automated text-message systems for court date reminders. These innovations have proven effective in enhancing access to justice and streamlining court proceedings, particularly in improving appearance rates among self-represented litigants.

Furthermore, this part raises the critical issue of measuring litigants' personal satisfaction with court access and the perceived fairness of proceedings. The pandemic necessitated the development and expansion of virtual platforms, providing an opportunity to collect feedback and identify areas for improvement. This emphasis on "customer satisfaction" aligns with the evolving principles of user-centric design and improved user experience in the legal system.

This part underscores the importance of open access to court data, especially in the federal courts. It points out the significant challenges researchers face in accessing court data due to limitations in the PACER system. The author argues for greater transparency and accessibility of court data, a critical issue for researchers, policymakers, and the public. However, the author also recognises that data breaches should be taken into account to ensure that similar issues do not arise, as for example, specified by Ishii and Komukai.[11]

Finally, this part advocates for the use of legal technology and data to address access-to-justice challenges systematically. It echoes the idea that data can play a pivotal role in understanding the law and improving the justice system. This part references Oliver Wendell Holmes' historic statement about the importance of data in the study of law, emphasising that the legal system's embrace of technology aligns with this vision.

In conclusion, this part of the book provides a comprehensive overview of the impact of the pandemic on the legal system's adoption of technology, the changing perceptions of court technology, and the potential for data-driven improvements in the legal system. It calls for a collaborative effort among various stakeholders to increase knowledge about biases in the civil justice system, promote evidence-based approaches to reform, and ultimately enhance access to justice for all. The book is cautious in its optimism in the face of these transformative changes encourages the legal community not to let the lessons learned during the pandemic go to waste.

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[11] Kaori Ishii and Taro Komukai, 'A comparative legal study on data breaches in Japan, the US and the UK' (*Springer Link*, 2016) < https://link.springer.com/chapter/10.1007/978-3-319-44805-3_8> accessed 18 October 2023.

III.   APPLICATION OF THE REVIEW TO THE MIDDLE EAST

Engstrom's analysis, and in particular, its focus on the impact of the most recent pandemic on legal technology, court proceedings, and access to justice provide invaluable insight when considered with the context of the Middle East. While the book is focused on the American legal system, the themes contained within it resonate with the challenges and opportunities which are faced by the legal systems in the Middle East.

The pandemic brought forward with much speed the adoption of technology in the legal sector globally; to that, the Middle East was not an exception. The courts across the region were required to transition to virtual proceedings and embrace legal tools to ensure that justice could continue. Engstrom emphasises the importance of websites and online resources which are provided by the courts for those who are representing themselves. This would appear to align with similar efforts which are likely in place in the Middle East.[12]

Similar to the observations made by Engstrom, the Middle East legal system will also have faced the challenge of keeping up with technological advancements. It is likely that there will be a similar gap in the region, i.e., barriers such as funding constraints, regulatory hurdles and resistance to change are likely to hinder the progress and advancement in the region.

The Middle East region has, however, attempted to encourage technology. For example, through the city of NEOM,[13] which is designed to lead to innovations and use technology to bridge the gap in all sectors in the region. It is likely that such improvements in the technological framework will gain traction to improve the legal framework within the region.

Engstrom explores in his book the impact of technology on the litigation processes, including online trials and technology-assisted reviews, which raises an important consideration for the Middle Eastern legal systems. It will be important for the courts in the region to also consider the implications of tools such as algorithmic tools in the decision-making process.

The book emphasises on the principle of access to justice as well as the potential use of data-driven approaches which can be used to improve the legal system. This aligns with the ongoing efforts in the Middle East region to promote judicial reform and enhance the rule of law.[14] Engstrom calls for collaboration among stakeholders, which echoes the sentiment which is

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[12] Zachary Calo and Barry Solaiman, "Alternative dispute resolutions: Technology and ADR in the Middle East following the COVID-19 pandemic" (2020-2021) 14 J. Marshall Law Journal 57.

[13] "NEOM". Available at https://www.neom.com/en-us. Last accessed 7 February 2024.

[14] Ingo Keilitz, et al., "Racial inequality and systemic injustice, the Coronavirus Pandemic, and the Courts" (2020) Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695661. Last accessed 7 February 2024.

shared by legal professionals, policymakers and other actors in the civil society in the region who recognise the importance of addressing such matters.

In conclusion, it is clear that Engstrom's analysis provides invaluable insights to understand the intersection of technology and the legal system in the Middle East. By addressing these challenges and opportunities, civil society organisation, policymakers and legal professionals can work together to build a more accessible and efficient legal systems which leads to equitable legal decisions in the digital age.