

PART I

**JUSTICE VALUES
AND DIGITALIZATION**

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INTRODUCTION

Fundamental Values in a Technologized Age of Efficiency

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In the twentieth century it is usually taken for granted that the only reliable sources for improving the human condition stem from new machines, techniques, and chemicals.... [Yet] as we "make things work" what kind of world are we making?

Langdon Winner¹

The immense faith that Western societies have placed in technology's capacity to improve the human condition and the equation of technological change with progress are also, at least rhetorically, evident with respect to justice systems. The chapters in this section step back from rhetorical approaches that simplistically equate the introduction of technology with the improvement of justice systems. In particular, they demonstrate the complexities involved in the relationship between technological innovation and access to justice, and call for analyses of the world we are making that move beyond quantitative analyses of efficiency. They urge us to recognize that much more than efficiency is required of justice systems in democratic societies and support a more critical approach to technological innovation in the justice sector. As Vermeys aptly puts it in his chapter, the question should not be "what do we have to gain or lose" from any given technology, but rather "how best to use the technology in a way that corresponds to our fundamental legal principles."

In other words, technological innovation in the justice sector should not simply be technology for technology's sake. Instead, it is essential to understand how a technology may facilitate or affect the fundamental values underlying the justice system, values that are essential to access to justice as well. Without in any way dismissing the capacity of technology to improve justice systems and access to those systems, the authors in this section put us on a path where fundamental values such as privacy, equality, transparency, and others no longer take a backseat to efficiency or to an uncritical and automatic equation of technology with progress or access to justice.

Beauchard's chapter frames the critical discussion of technology that runs throughout this section by focusing on cyberjustice initiatives in the context of international development. While his analysis is specific to that development agenda, it highlights a number of universal lessons with respect to the implementation of technology in the justice sector. Beauchard demonstrates the ways in which technology in the form of computerized case management and justice showrooms can and have been used to create visibility and media attention designed to stimulate faith in courts in emerging economies, rather than addressing the issues of relevance to the people who live there. In addition to employing mega models that have been shown to fail in other jurisdictions, the cyberjustice initiatives he discusses prioritize efficiency and "Taylorized justice" without addressing other fundamental justice values, such as procedural compliance, decisions in accordance with law, and the inviolability of basic rights. Further, he notes that the technology-worshipping vision that has tended to predominate in the context of cyberjustice initiatives associated with international development has led to a celebration of technology in and of itself and a constant postponement of measuring whether the technology has actually been effective. Where cyberjustice initiatives have been evaluated, assessment has tended to focus on efficiency alone, effectively ignoring justice values such as the availability of law common to all parties and the inviolability of basic rights that are key to "creating the conditions of trust required for economic development."

Lupo's chapter directly addresses the importance of evaluating cyberjustice initiatives. He shows how existing evaluation models that draw on information-systems literature focus on efficiency measures that leave out fundamental values that are essential to ensuring that justice systems contribute meaningfully to a well-functioning

democracy. While Lupo accepts that efficiency and efficacy criteria such as system quality, information quality, user satisfaction, and organizational benefits are important aspects of evaluating cyberjustice systems, he proposes a model that also incorporates evaluation of such systems' impacts on six key justice values. By seeking to evaluate cyberjustice systems' impacts on independence, accountability, impartiality, equal access, transparency, privacy, and legal validity, Lupo's proposed model would address a key concern identified by Beauchard. This model of evaluation would augment evaluation of a system's efficiency with an analysis of its impacts on the kinds of fundamental values essential to creating conditions of trust in and access to justice systems.

The last two chapters in this section transition from more general concerns around cyberjustice initiatives and fundamental justice values to examine in depth the sometimes conflicting effects that online access to court records and information can have for the foundational justice values of transparency and privacy.

Reynolds' chapter grounds the right to access information about court proceedings in the Canadian *Charter's* guarantee of freedom of expression, which includes a right to access information. While noting that traditional forms of media have been recognized as essential to Canadians' access to information about court proceedings, Reynolds argues that digital connectivity now makes it possible for Canadians to access court information without the need for an intermediary. Working from this foundation, he asserts that courts ought to take all reasonable steps to make court information accessible online in order to enhance Canadians' right to freedom of expression. After documenting some of the ways in which Canadian courts have begun to make information available online, as well as examples of restrictions Canadian courts have placed on use of technology in courtrooms, Reynolds suggests that courts ought to continue with initiatives that facilitate digitized access to information. He recognizes, however, that countervailing concerns around privacy and security will have to be balanced against expressive rights in order to ensure that cyberjustice initiatives of this sort remain faithful to the full range of fundamental justice values at play.

Vermey's chapter explores in depth the implications of the countervailing privacy considerations arising from online access to court records. While recognizing that the transparency and expressive values emphasized in Reynolds' chapter have traditionally

prevailed over countervailing privacy concerns in the context of court records and information, Vermeys notes that even in the pre-internet context, the open-court principle gave way in some instances to other values of “superordinate importance.” Vermeys advances a compelling case for taking privacy even more seriously in an era of online access, pointing out that inconveniences that once ensured most people would not access physical court records have been eroded by the ease with which records can be accessed online. He suggests that this erosion of practical obscurity that worked informally to protect sensitive information in court documents from widespread disclosure necessitates recognition of privacy as a value of superordinate importance that merits some restrictions on electronic access to court records and information, especially in light of widespread corporate data-mining practices. Ultimately, Vermeys and Reynolds are *ad idem* with respect to harnessing the expressive and transparency advantages to be gained from online access to court records and information. The solution, Vermeys suggests, is not to avoid the technology that can facilitate the key justice value of transparency. Instead, he proposes potential technological and legal mechanisms that would minimize improper access to and use of sensitive data (especially by data miners), without sacrificing the aspects of online accessibility that meaningfully facilitate justice-system transparency.

In the final analysis, the chapters in this section are consistent with Winner’s advice in the epigraph to this introduction. While Beauchard, Lupo, Reynolds, and Vermeys accept that cyberjustice initiatives and technology more generally *can* facilitate improvements in the human condition, they call for careful and critical consideration of the impact of technological artefacts on a range of fundamental justice values that are key to ensuring and improving access to justice.

Notes

- 1 Langdon Winner, *The Whale and the Reactor: A Search for Limits in an Age of High Technology* (Chicago: The University of Chicago Press, 1986) at 5 and 17.