CHAPTER IX

The Old…and the New? Elements for a General Theory of Institutional Change: The Case of Paperless Justice

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Demain ça s'dit ben. Aujourd'hui c'est du déjà dit
Hier, y'a pu rien à faire, Vaut mieux faire c'qu'on peut
'Vec c'qu'on peut faire[1]

The inevitable effects of the digital revolution have been heralded as being just around the corner in the field of law. Yet law is one of the only spheres that still resists the integration of new technologies even though these technologies have completely changed the landscape in a wide range of public service sectors: health care, education, and public transit, among many others.

We have to acknowledge that revolutions are rare. They are generally compelled by necessity, practical requirements, or whim. The reasons for such upheavals are enshrined afterward. They are drawn from this or that work that no one had read…or that everyone had criticized. Once these reasons become a reality, proponents, believing it is impossible to turn back (which is a cardinal virtue of rupture), claim to have "done the right thing" for the "right reason," forgetting that there exist three other possibilities in this matrix.

However, grand ideas struggle against existing habits, as there are never any ideas or standards more clear than those already to be found in custom.[2] This customary nature makes them all the more persuasive.

How can we explain that, on the institutional level, innovations take such a long time to go beyond prophecy? This question raises the broader issue of social change, a problem that has been the focus of a current of contemporary sociology. Through it runs a subtextual consideration of how to spur individuals, groups, and institutions to action. In the specific context of the use of new technologies in the field of law, such resistance to change has been especially clear. Twenty years ago, in Quebec, judges of the various courts still did not have access to personal computers. Even today, paper remains the primary vector for legal communication.

The problem posed by the computerization of legal services lies in the need for shared action that engages all stakeholders in the system in a specific initiative. For example, the simple service of documents accompanying the initiation or progression of legal action supposes that all of the entities concerned agree on that system of information exchange and the technology that makes it possible: digitalization of documents in a recognized format, use of a given mode or platform for transmitting and sharing files (a kind of digital court clerk), sharing of equivalent computer skills, and such. With respect to procedure, it is inevitable that there will be questions about the legal impact of new practices. However, all of the above shows mainly that any form of social innovation sooner or later requires a form of collective commitment.

This commitment is all the more necessary when it is a response to practical needs and unanimously censured problems, in particular with respect to waiting times and costs of the justice system. The advent of digital technology in the legal field takes place amid opposing institutional, financial, and strategic interests such that, on the practical level, the common good may conflict with the interests of various stakeholders.

Yet the problem of opposing interests is only one manifestation, among others, of a broader problem concerning the difficulties involved in reforming highly institutionalized fields, such as justice.[3] The radical transformation of large systems has always raised the problem of motivating stakeholders who are affected and constrained by such change. Lenin complained about the working class's inability to gain awareness of its collective interest and to take action to its own advantage.[4] Machiavelli identified the same difficulty in imposing any change at all on institutions: "the innovator has for enemies all those who have done well under the old conditions, and lukewarm

defenders in those who may do well under the new."[5] Contemporary political sociology has studied individuals' intransigence with respect to collective reforms that would nonetheless improve their personal condition: "This logic is fortified at the individual level by the twofold observation that…his or her personal contribution will hardly affect the chances of obtaining the collective good and that the conduct adopted, in whatever direction, will probably go unnoticed."[6] It follows that no stakeholder involved feels a duty to take initiative without the support of exclusive incentives, in other words, specific advantages from which he or she could directly (and often personally) benefit.[7]

Analysis of how stakeholders think is an avenue of study often surveyed by theorists of change, and it remains one of the most fruitful approaches in contemporary sociology. However, the present text shall instead explore change from a more process-related perspective. What I mean by this is that I will study opposing effects, as well as reference points, norms, and mechanisms, that have the consequence of improving or limiting the chances that change will occur or that there will be evolution in ideas, structures, or social practices. While this does not make it possible to predict the way a society, institution, or simple organization may change, it provides a structure for the analysis of these processes. This text suggests elements of an inductive theory of institutional change. The introduction of technological innovations in legal activities will be used here as a laboratory. As illustrations, I will also use other examples from the recent history of the justice system or taken from everyday life. However, this is an ambitious project, and its goals will only be partly met. In the end, this paper offers only a general hypothesis (a model), the heuristic value of which remains to be shown. Thus, for now, aspects of the theory are evoked rather than demonstrated.

Innovations and the Scope of Social Change: Three Levels

Within any *field of social action*, changes involve both symbolic and instrumental dimensions.[8] The symbolic dimension refers to systems of ideas that are shared by members of the group, to reference ideologies, and to vectors of meaning: ritualized practices, allegories and emblems, beliefs and common knowledge, principles with ontological or self-referential authority, et cetera. The instrumental dimension refers, in contrast, to concrete or structural forms of action

based on "practical reasons" that normally justify them: habits that are complementary and predictable, constant conjunction of cause and effect, shared common sense supporting a set of "naturalized," in other words self-evident, practices.

The stabilization of social relations depends largely on the constancy of these symbolic and instrumental references. Thus, practices and habits, and the symbolic meanings on which they are based, reinforce one another. Within a stable community, interpersonal relations essentially transit through these symbolic and instrumental conventions. Both are thus reified in society. They are generally relayed on the institutional level by a series of incentive-creating or imperative norms: rules and systems that control practices and principles that support them. These norms are the enshrinement within a society of a certain state of social relations, and they support established forms of socialization and their social meaning. For this reason, they can be obstacles to any practical or cultural innovation that could challenge them, and therefore, they play a conservative role.

On the analytical level, and to facilitate analysis, we can therefore identify three levels of action: referential (essentially symbolic), normative (institutional), and practical (organizational) relationships.[9] The referential level is the most heavily laden with meaning, while the organizational level is more concerned with the instrumental level and refers to relational and material imperatives directly related to actions. Between these two extremes, the normative (institutional) level refers to the structure of formal (and positive) norms that enshrine and bind, from a legal perspective, the form and meaning of social action within the group, community, or society studied. The normative level is consequently a conduit for and link between the symbolic and instrumental dimensions of action (Table 1).

Table 1: Level of Action of Instrumental and Symbolic Dimensions

	+ + Symbolic Dimensions	– – Instrumental Dimensions
Referential Normative Practical	↓	↑
	– – Symbolic Dimensions	+ + Instrumental Dimensions

Naturally, these three levels of action are related in complementary ways, and their mutual integration is the very condition for their stability within a given institution. This is a portrait of a highly institutionalized social field. At the same time, changes that can be experienced on any of these levels of action (no matter what the source) necessarily create dissonance with the other levels. The internal reworking of practices and meanings that such changes can require within the established community can then have many different outcomes depending on whether the changes are transposed in a positive way to the other levels of action, whether their expressions and (practical or symbolic) consequences are purely and simply rejected, or whether the changes are adapted in some way into the frameworks of practices, norms, and thought recognized by the members of the institution. In the latter case, innovations would be completely reinterpreted by stakeholders within already recognized, legitimized parameters. In any case, we can suppose that the more smoothly an innovation can integrate into established practical, normative, and symbolic categories, the more likely it is to easily penetrate the various levels of institutional action. This idea is the foundation for our general hypothesis. Two more specific hypotheses conclude this text.

Another variable in question concerns the cultural and social (referential), institutional (normative), and organizational (practical) *context* in which change can occur. It is likely that some contexts are more conducive than others to changes in practices, norms, and dominant ideas: political crises, chronic dissatisfaction regarding courts, severe dysfunctionality of an institution, or major incompatibility between the institution's norms, practices, or claimed purposes and its real operation. Such contextual conditions can challenge the equilibrium of systems that have become too "frozen," that have lost their reason for being, or whose historical legitimacy that can no longer be justified or is no longer seen as self-evident. Some theorists have pointed out the cycles that go along with social movements and that tend to explain the periodical predisposition of stakeholders in a system toward change.[10] Here, we will discuss the effects of context, but we will focus more on the interplay of opposing processes that limit, block, or permit change within stable institutions.

Our goal is to provide a framework for analysis of the conditions for stabilization and change within highly institutionalized fields of action. By proposing a distinction between the (self-)referential,

normative, and practical dimensions of action, the typology used here highlights the different levels of action through which we can study the conditions that determine how an institution becomes stable or changes. Their purpose is therefore essentially analytic, given that these levels of action could be intellectualized or defined otherwise.

For the purpose of this analysis, properly speaking, there is no necessary distinction between innovations flowing from social or cultural change and those that could be born from changes in technology or techniques since, in the final analysis, technological changes are conditions for change that are ultimately social. Our intention is also to point out that such changes can be supported by cultural and therefore symbolic changes. Thus, we can assume that, no matter what form of technological change is envisaged, its chances of penetrating the field of practical action are not based purely on function but more broadly on normative and cultural issues, for the reasons of consistency and dissonance explained above. The proposed model is of general scope and can be used to identify salient points in any reform of practices, norms, and categories of action in highly institutionalized fields of action beyond the legal system. Backtracking, in order to provide further details about the preceding in the specific framework of the legal system, we will first study the (symbolic and instrumental) dimensions at stake in each level of action.

The Referential Level of Action

This is the level that is most heavily symbolically laden. Every field of social action is based on ideas, world views, ideologies, and values that, although broadly shared with other fields over the course of the same period, are embodied in ways specific to each individual institution.[11]

All major change in the systems of thought of a community of action is equivalent to a change in its social program. It is inevitable that such transformations, which are probably relatively unusual, modify the balance or meaning of the norms and practices of the institutions that such transformations penetrate. At the least, they make it difficult to maintain previous frames of reference. For example, in Quebec, the government's assumption of responsibility for education occurred at the same time as the religious framework of reference was wearing out, and the Church was consequently finding it difficult to maintain its grasp on public education. It was inevitable that this change in frame of reference would have consequences for

the values, norms, and practices of educational institutions. This upheaval in social ideas would also have equivalent effects on higher education and, beyond the educational milieu, on healthcare institutions, social security systems, criteria for acknowledging established authority, and practices in all these areas of action at once. In short, paradigm shifts inevitably lead to major (and sometimes swift) changes in all related levels of action. We then witness change in the criteria that anchor "normality." However, these developments often occur in conjunction with the replacement of established social frameworks, such as in the example mentioned above, in which the Church was replaced by the state, and the clergy by the public service.

These upheavals can be of different scope, and affect some spheres of social activity rather than others. For example, in the area of scientific research, Thomas Kuhn provides a good explanation of how paradigm changes occur when the number of incompatibilities between hypotheses and facts becomes so great as to generate a crisis with respect to the trust that, until then, was placed in the explanatory capacity of previous theories. Thus, it seems that crisis plays a major role in the emergence of new theories. As Kuhn says,

> So long as the tools a paradigm supplies continue to prove capable of solving the problems it defines, science moves fastest and penetrates most deeply through confident employment of those tools. The reason is clear. As in manufacture so in science—retooling is an extravagance to be reserved for the occasion that demands it. The significance of crises is the indication they provide that an occasion for retooling has arrived.[12]

Indeed, these "shifts" frequently pave the way for deeper changes. There is rarely an intermediate state between conceptions of the world that are too different in terms of their foundations.[13] The established paradigm is then overthrown and gives way to alternative paradigms. This movement has consequences on all levels of institutional action.

The scope of these upheavals explains why they systematically clash with the power of inertia, if not the immobility of many components of the institution. At the very least, this situation explains why overturning terms and ideologies is so difficult to envisage. We can suppose that this difficulty rings even truer within older institutions. Indeed, the older the principle on which one claims such institutions

are established, the more highly it is venerated. Within institutions where levels of action are very interlocked, any change in norms and practices, if not habits, is quickly treated as a challenge to superior principles that have been more or less enshrined. This difficulty arises especially in the legal system, which often likes to trace its origins back to the Roman Empire. Its foundations then become difficult to challenge, unless we are willing to admit that principles established 2,000 years ago have lost all relevance.

One of the difficulties that accompanies paradigm changes is related to the fact that ways of thinking (ideologies and systems of ideas) that support and give meaning to the action of an institution always have many components, each structured in relation to the others, so that it is difficult to challenge only one but not the whole. In law and justice, 500 years of political philosophy strengthen the meaning and central nature of these same principles, and this is not counting the work invested by the courts themselves in justifying their own actions. Changing the system of reference (the paradigm) thus amounts to trading one "sacred history" for another.

This is especially the case in law and justice. Paradoxically, the legitimacy of the institution is traditional (in the Weberian sense) and survives on the fringes of the forms of legal-rational legitimacy that it nonetheless guarantees. This is a fact to which attention is rarely drawn. Moreover, in the minds of the majority of citizens, law is above all valued for its normative dimension, in other words, for its moral meaning.[14] Ideals of justice people the collective imagination. Those who embody the judicial institution do not hesitate to reference them, with the help of *palais de justice* (the French term for courthouses, literally "palaces of justice") and officers "of justice." The legal institution is consistent with the prophecy of a world based on the legal equality of those subject to the law and on the impartiality of judges, whose function it is to "carry out justice."[15] It thus finds itself displaying a transcendent character. It has its priests and liturgical dress.[16] Sometimes we speak of *temples de la justice* ("temples of justice").[17] It has its own iconography: the gavel, tablets of the laws, and scales of justice held out by a blindfolded Themis…who also serves as enforcer, with sword in hand. To all of this is added a lexicon created out of Roman brocade and notions forged in the High Middle Ages, all of which ensures the mystification of the profane. In this institution, a religion is practiced whose constant rituals and antiquated formalism are periodically the

subjects of television series.[18] The legitimacy of law thus flows from a form of staging. It carries meaning "in itself."

It is immediately apparent that we will think twice before shaking the columns of such a "temple." Such support from symbols and meanings explains why any innovation would be received with skepticism, if not suspicion, and this is often the case.

When it comes to computerizing justice activities (which is a reform that *a priori* involves very few normative aspects), players hold to these interlocking principles so as to cast doubt on the worth of practices that would nonetheless enable the institution to fulfil the practical requirements of its own mission. Consequently, no change to the system can be seriously envisaged. The introduction and conclusion of the text by Daniel Weinstock provide good illustrations of the neutralizing effects of this process:

> Let us therefore take it for granted that cyberjustice would entail major improvements in access to justice. Instead, I would like to look at the risks that could flow from over use of virtual tools in the legal context. I am beginning with the hypothesis that the *design* of any complex social institution has to take a multitude of values into account, values that are sometimes in tension. While use of virtual platforms may be an improvement in terms of access to justice, does it entail risks in relation to other values that are just as central for legal institutions, risks that could significantly reduce the improvements brought about by the introduction of new technologies?[19]

Any change in instituted practices raises, at all the other levels of action, deep questions about principles, the discussion of which can only cast doubt on the historical, philosophical, and ideological legitimacy of the innovations that one is attempting to inject.[20] From this perspective, a reform of legal and court practices runs the risk of never taking hold if it is not accompanied by ideological or normative justifications that could replace those that currently support the legitimacy of the system. The new *totalizing* discourse should ideally offer a completely new set of values and references able to reverse the direction and dispel the legitimacy of the previous paradigm, which has been based on procedural formalism and supposed symmetry of rights, third-party impartiality, rule of law, and the absolute positivity of standards of reference useful for managing disputes and regulating behaviour.

The principles and categories that could establish a new global discourse on justice are thus meaningless unless they impose a complete overturning of accepted reference points. The former discourse on justice would then vanish, leaving only an aftertaste of dust and broken promises. In its most radical form, and for the purposes of this exercise, such an upheaval would require, for example, establishing competition between opposing principles: autonomy rather than authority, or peacemaking rather than social order.[21] In the best of cases, the new paradigm has to build another world of reference points that render the established discourse obsolete (meaningless if not non-signifying). Thus, at the time of Galileo, one of the greatest difficulties that the theologians faced was to know whether the moon was a star, whether it was inhabited, and, if so, how the inhabitants could be descended from Adam and Eve.[22]

Many of these upheavals are based on the idea of social reappropriation of justice. Such reappropriation would directly benefit from the integration of digital technologies into justice: digital mediation platforms and diversification of digital means of dispute resolution, electronic court offices, accessible dockets, videoconferencing, access to clear, user-friendly legal standards by internet, email subpoenas and appearances, self-representation using digital technology, and so on. These are all practices that could reduce legal costs, naturally, but above all they make law something other than a monopoly in the hands of specialists. This re-establishes the meaning of law as a common good, if not as an everyday, public activity. However, all of this requires replacing one symbolic system (that of the truth of law and authority) with another: the autonomy of choice and constant adjustment of expectations and practices.

This form of upheaval in reference points is described in the text by Clément Camion,[23] who suggests that the notion of justice be made considerably broader. However, it is immediately clear what kind of a change in categories of reference such an exercise would require.

Because it presupposes reworking the very ideas that are the foundations of judicial activities, such an upheaval in the criteria underlying the justice system requires redefining what guarantees the legitimacy of the institution, and, by extension, that of its best-established and most ritualized practices. Thus, it does not suffice to replace one promise of justice with another.

In any case, such a shift in ideas inevitably opens up space for experimentation that can test other practices, other ideas, and other forms of authority, which are themselves based on criteria of legitimacy different from those that were, until then, taken as certain. A period of destabilization will follow, which soon creates nostalgia for the stability of the preceding period.

The question is whether such a complete upheaval in reference points is indispensable to the reform of public institutions (in this case, legal institutions), even though it would, at least in theory, facilitate the reform. In a frozen system, can we change something without having to change everything…at all levels of action? *A priori*, this necessity seems inevitable. Yet it is a point of view that we will temper below. For now, we have to accept that such a change in perspective can occur only in the *context* of almost total upheaval of established reference points and that it probably cannot occur unless there is redefinition of the very meaning of social life and the function of institutions. The upheaval would probably have effects in all areas of action (beginning with institutions), from our relationship with the environment to the relationship between men and women, parents and children, merchants and consumers, politicians and citizens, and so on.

Yet, such upheavals can occur only in revolutionary contexts or during social and political crises that are so deep that they require and justify a drastic change in collective and institutional living conditions.[24] In such cases, we speak of a *fluid political context*.[25]

Aside from such often unforeseeable (or at least unforeseen) contexts, established paradigms have every chance of enduring and of reinforcing established norms and practices. This said, aside from the fact that these revolutionary contexts are unusual, history teaches us that the objective conditions that accompany such major changes are rarely strictly ideological. For example, the French Revolution is probably easier to explain by the economic conditions of the period (the famous price of bread on July 14, 1789) than by the ideals promoted by the Enlightenment, even though those ideals gave direction to and provided a historical interpretation of the action. In any case, it is inevitable that such a movement toward de-institutionalization be followed by a strong movement toward re-institutionalization. Indeed, the enshrinement of a new "sacred history" and the stabilization of new standards (i.e., new norms) and new practices fulfil an ongoing need for establishing forms of socialization.[26] Table 2 provides a summary of these considerations.

Table 2: Change and Stability Factors for Collective Reference Points

Referential Level of Action	Change Factors	Stability Factors
Context	• Tensions and contradictions between social reference points and actual experiences • Upheaval in criteria for institutional legitimacy • Challenges of authority figures • Requirements favouring social reappropriation of justice	• Pacification and stability of social relations • Esteem for public institutions • Legitimacy of established social statuses and authority figures • Consistency between social and institutional systems of reference
Process	• Upheaval in collective priorities and the social program • Fluidity of ideas and social categories (What is justice?) • Existence of competing, known, structured paradigms • Legitimacy of conveyers of competing ideologies	• Preponderance of traditional forms of legitimacy • Inflexibility and complementarity of social categories and ideas • Symbolization and ritualization of community life • Consensus on values in public opinion and within elite groups

Finally, let us recall that if one thing can be learned from major historical changes, it is how robust established categories, practices, and reference points are. As I have already noted, in these matters "the dead seize the living." Sometimes after having been promoted in new terms, emergent principles are retranslated into the former terminology before they have had the chance to exist on their own. When this happens, what had been rejected returns. Perhaps this is the only way that social innovations can make a sustainable mark in the framework of highly institutionalized social fields such as justice. This will be the subject of the conclusion of the present text.

The Normative Level of Action

The ideas and systems of meaning that are the foundations for justice as understood in legal theory and political philosophy (meanings that partly determine social expectations) cannot be translated into material or relational terms except within a specific normative framework.

This refers to a set of more or less formalized norms that establish the frameworks for action in which the practical activities of stakeholders in a given field take place.[27] Immediate examples include constitutional, legislative, and regulatory provisions that establish the content of positive law. Legality becomes a marker for legitimacy and, by extension, at least on the institutional level, legality becomes the very criterion for legitimacy.

However, these frameworks themselves involve the projection of normativity, resulting from an extension of primary normativity and expressed in the form of objective constraints at all levels of action. For the justice system, this refers to the set of rules required to regulate relationships among stakeholders in the field. What is in question is thus not so much shared practices or habits but rather known references that those to whom the rules apply can use: the practical rules of the various courts of justice, norms drawn from case law and gradually acknowledged by the courts, the division of legal practice into different professional areas, the distribution of institutional and jurisdictional functions (in particular the balancing of interactions between judges and practitioners), the court schedule, performance indicators, codes of professional deontology, tables of legal fees (where applicable), and the breakdown of roles relating to the various functions of the justice system (security, court office personnel, bailiffs, prothonotaries, justices of the peace, judges, etc.).

In these cases, normativity acts as an obstacle to change, as we have already said. By fixing the legal categories of action, such obstacles stabilize, through time, the accepted, predictable forms taken by activities in the field. This *standardization* institutionalizes stakeholders' practices. Compliance is ensured through specific bodies, including tribunals and courts with specific jurisdictions; professional orders; management and discipline committees; and specialized institutions (e.g., detention centres and penitentiaries) with specific resources, whether public (linked to the state's governing functions) or private, especially within professional corporations (bar associations, chambers of judicial officers, etc.).

Once established, these norms (which include all of the reference points considered as constraining by stakeholders in the field, whether those reference points have been stated or not[28]) impose a framework for action situated halfway between symbolic foundations and concrete practices. Indeed, all institutionalized fields of action have specific borders corresponding to the characteristics of a legal

"system" or "order," depending on the theory chosen.[29] In all cases, a specific regulatory space is established, designed to apply to equally specific stakeholders. This is especially the case of judicial activity. This said, healthcare and educational institutions work in the same way, and are also structured around specific, stable forms of normativity. By making forms of action objective, the translation into norms of these shared practices fixes reference points that are imperative for stakeholders in the field but also for social observers who are not part of the field. As such, this translation institutionalizes the reference points by fostering social legitimization of the action both inside and outside the field of action itself.

Every field of action is haunted by its own process of becoming frozen. This slide toward formalism is even more obvious in highly institutionalized fields of action. Since each system evolves through a series of sedimentary layers, the normative reference points of each system constantly become more complex. Complexification is part of the evolution of all stable fields of action and gives rise to four considerations.

The first lies in *the weight of previous norms* in relation to subsequent norms. All new norms (if they do not amend the old ones) have to be based on already established norms, even when the functionality of the older norms is becoming increasingly uncertain. On the level of its meaning, a norm's long history often gives it symbolic strength that confers pre-eminence. It is thus inevitable that, over a long period, norms that are introduced have to take into account the prior nature and thus precedence of already established norms. It follows that, even when they become obsolete, such ancient norms survive "in the hollows" of all the mechanisms in which their precedence has been taken into account. Prior normative choices thus impose themselves on later norms and over-determine the latter's content. By backtracking, we sometimes find that a norm's meaning is dependent on another that has disappeared.

The *second* consideration is related to the social and ideological conditions that inevitably preside over the establishment of a norm of any kind. If we take into account the fact that most norms are not designed to establish abstract principles but rather to solve practical problems, it is inescapable that rules defined within a system will be *marked by historical, cultural, financial, or organizational conditions existing at the time of their establishment*. It again follows that there is a form of hegemony of origins from which the system can no longer break

away and which determines a general direction that is difficult to correct. Each norm retains the marks of the reasons that justified its definition. The difficulty comes from the fact that the legal shaping of the world is essentially a "conservative" activity. It always enshrines standards that were given precedence over others at a certain point in social history, by perpetuating them.[30] The tendency for stakeholders in a highly institutionalized field is therefore to give established norms intrinsic worth, since stability of action is generally considered a good in itself. This is the postulate that establishes the entire systemic analysis. The stability of a system is a condition for its own functionality and, at the same time enshrines its closure and, by extension, its confinement.[31] As initial significations—and original meanings—gradually wear away, and as practical justifications are lost to the mists of time, norms come to have no meaning other than the intrinsic value that we give to their stability. They thus become absorbed into their symbolic function alone. Paradoxically, their imagined worth far exceeds their use, and replacing them with another norm becomes all the more difficult. This tendency makes the replacement of long-established norms by other norms extremely unpredictable, even when the new norms are designed to solve very concrete problems encountered by stakeholders at the practical level of action. For example, in court, the principle of adversarial debate is still considered valid in itself, even though it is not always certain that it is conducive to discovering the truth. This question arises in particular with respect to expert witnesses.

Third, the *stratified normative* structure of highly institutionalized fields fosters constant complexification of their areas of action. The complexification generates problems entirely specific to stakeholders in the field and bodies responsible for regulating the field. For example, in justice, certain innovations are blocked by considerations that would surprise those less familiar with the subtleties of legal normativity. The Quebec bar association long opposed family mediation because it feared losing part of its monopoly over family law. Its arguments against such mediation included appealing to the deontological rule that a lawyer can represent only one party at a time. Developments have shown that this makes sense only in the context of disputes between spouses, which is precisely what family mediation is designed to prevent. Thus, the way the field evolves tends to entail that emergent problems are increasingly the fruits of the system's own complexity. The system has to deal with problems

it creates for itself, so that new norms are designed above all to solve problems created by earlier norms. This is the simplest definition that can be given of what Teubner calls legal autopoiesis.[32] This inward-looking arrangement is clearly not conducive to the integration of other referential norms, in particular because they would require complete recalibration of the initial normativity. Since rules are interpreted in light of one another, it is inevitable that this inter-normative dynamic would make it even more difficult to integrate foreign standards into the system. We thereby avoid a form of normative reworking and, by extension, de-institutionalization of the field. Normativity's conservative function is thus confirmed.

Finally, although it establishes the "normal" forms of action, the statement of norms nonetheless constitutes, for stakeholders in the field, a space for discussion of the conditions for their practices and interactions. Despite the imperative scope of many institutionalized rules, the normative level of action provides a space for negotiation involving a number of components of the system. The negotiation space also circumscribes the acknowledged players in the field. Thus, normativity sets the scene for a form of institutional mediation between interests, the legitimacy of which is later recognized at the practical level of action. It establishes the conditions that guarantee the appropriation of the field by a set number of agents who mutually recognize one another. Hermeneutic analysis explains the interplay involving the interpretation of normativity in function of the necessities and characteristics of the action, so that the norms are often used as a framework for deliberation on the expectations of stakeholders in the field and the innovations that can be accepted.[33] It is thus inevitable that such normativity is consistent with the crystallized interests of such agents and enshrines their power relationships. It follows that normativity, notwithstanding the claim of stability that ensures its continuity, is often the product of ongoing renegotiation among stakeholders in the field. This shapes the "political dimension" of institutional normativity.

However, this latitude is not infinite, and therefore, the normative level of action remains fundamentally a moderating structure, and norms remain reproduction mechanisms. Thus, unless there is a major change in ideas or practices, this level of action's function is to resist any innovation that could challenge the consistency of what it circumscribes. This is particularly the case when the suggested innovations come from outside the field of action in question. There

is a *limit of compatibility* beyond which the established norm resists change. The resistance can go so far as to marginalize or exclude certain innovations from the domain of legitimate practices. We can suppose that the more foreign the proposals are to stakeholders, the less likely they are to be integrated with ease. This is especially the case within fields of action with highly integrated, complementary components, as we see in judicial action. It follows that only practical necessity can foster a possible change (or re-interpretation of the content) of norms, especially if the necessity is supported by a change in social reference points or a compulsory change in practices, itself brought about by generalized change in social practices.[34]

With respect to integrating the advances offered by digital technology into legal activities, the same difficulties arise as those entailed by renegotiating the norms for the operation of the justice system as a whole. Technological changes do not have the normative neutrality that they are often ascribed, which is why we speak of "technical standards." As norms, they have to complement all of the normative standards recognized in the system. Consequently, introducing such norms gives rise to the same difficulties that accompany the addition or replacement of any legal norm. Even today, computerization of court files does not encounter many obstacles in the form of technical operating difficulties; rather, obstacles are due to the fact that computerization makes available sensitive information that used to be difficult to access. It thus violates a tacit rule in favour of a form of discretion regarding personal information contained in such files. The possibilities offered by technological advances thus have to be adjusted to the explicit or tacit norms that already govern justice activities.

As we have said, choosing a technical standard inevitably imposes a norm with universal scope on a broad set of stakeholders. We have shown above that normativity is also a space of ongoing negotiation in which the interests of those involved are at stake. The texts by Kramer as well as by Balbino de Carvalho Ferreira describe the difficulties that such negotiated choices suppose in large institutional groups, as is the case in the European Union and Brazil, where players from a number of jurisdictions clash as they are forced to come to agreements on the choice of technical norms and conditions for integrating them. Consequently, we have to take into account the fundamentally normative nature of the technology, whether the normativity is intrinsic to the standard chosen by the stakeholders in the system or associated with shifts in meaning that

it imposes on various established legal norms. In all cases, this tension explains the special difficulty surrounding the integration of digital technologies into fields of action that are highly institutionalized and therefore subject to strong normative structures.

Again, the *effects of context* can favour or block a normative reform. This is in the case, in particular, when reinterpretation of a norm that was, until that time, well established requires that we recalibrate the meanings of many other norms. However, we can suppose that the resistance of peripheral norms can lead to *a minima* integration of new reference points, so as to reduce the need to perform complete normative rebalancing in the field. Thus, the latest reform of the Quebec *Code of Civil Procedure* (*Code*) in favour of more systematic recourse to "private dispute prevention and resolution" provides, in article 1, that "Parties must consider private prevention and resolution processes before referring their dispute to the courts." Naturally, it follows that such alternative dispute resolution does not interfere throughout legal proceedings, once they have been put in motion. Similarly, the *settlement conferences* that used to be integrated within the *Code* remain optional and are circumscribed by certain specific provisions. In consequence, all of these normative adjustments remain marginal in relation to the general conduct of proceedings and the system of normativity applicable within the field. Table 3 provides a reminder of some of the contextual and procedural conditions for normative change and stability.

This said, there is nothing to prevent such a normative upheaval from being favoured by a major adjustment of social practices and ideas (concerning the entire society in question as new generations become players) or an institutional crisis on a public scale—or that systematically blocks the norm-governed operation of the institution. The inventory of the many present dysfunctions of the judicial system tends however to show that even in the face of striking disorganization of all of a system's functionalities, the reference normativity continues to preserve forms of action and their formal legitimacy. Moreover, it manages to do so despite erosion of confidence in the courts, the tendency for individuals to self-represent, long waiting times inconsistent with the requirements of fairness (especially when the parties do not have equal resources), systematic monopolization of court time by commercial companies and public institutions, escalating use of expert testimony, failure to recover awards obtained

through class action proceedings, lack of access to evidence in pending proceedings through dockets, lack of credible statistics on courts, the inability of most bar association members to earn a living from judicial activities, criticism concerning the way judges are appointed at the federal level, et cetera.

Table 3: Change and Stability Factors for Normative Reference Points

Normative Level of Action	Change Factors	Stability Factors
Context	• Development of a new criterion for normative legitimacy • Challenge to the normative effectiveness of a standard • Systematic contradictions among established norms • Dissatisfaction of a major stakeholder with respect to established norms • Change in power relations among stakeholders in the field	• Reduction of normativity to its symbolic dimension • Complete freezing of the field and reduction of its activity with respect to its own normativity (ritualization) • Continuity of the financial or cultural conditions that are the foundations for the established normativity • Stability of the players and the power relations internal to the field, and mutual neutralization of initiatives
Process	• Ongoing negotiation concerning the shared meaning of norms • Integration of a norm that is "compatible" with the others • Capacity of a new norm to change the balance of the normative whole • External imposition of another normativity	• Precedence of prior norms over new norms • Survival of established norms after they have become obsolete • Incapacity of new norms to impose themselves without requiring recalibration of established norms • Strong normative integration of the symbolic and practical dimensions of action

This shows the strength of law. Once articulated, the norm takes the place of the truth, or at least of abstract consensus on conditions for practice, despite all the evidence. Legal normativity thus often resists need, and it is inevitable that by becoming immured in this way, it places limits on the integration of many social and technical innovations into the everyday activities of the courts.

The Organizational and Practical Level of Action

There is a Chinese proverb that says one cannot look at the stars when there is a nail through one's shoe. This can be interpreted in many different ways, but the principle remains the same: practical contingencies can defeat any inspiration. Above all, the proverb reminds us that we cannot escape the tyranny of habits and of material, financial, and relational constraints on action—in short, the instrumental dimensions of action. They nail us to the ground. These are precisely the constraints that govern the practical (organizational) level of legal activity: model forms and legal documents, the nature of equipment and facilities, interactive computerized platforms (or their absence), methods of filing documents, the ergonomics of the location, et cetera. Here, we are speaking of the empirical aspects of legal activities and stakeholders' practical responses to logistical and normative constraints placed on their activity. The practical level of action acts as infrastructure for the referential level of action that provides its justification. We can also think of normative consensus that governs the way such constraints are taken into account. This is "materialization" of legal normativity.[35] Internalization of these norms and constraints by stakeholders is supported by a series of *practical reasons*, in other words, reasons that come to be seen as obvious and that justify existing forms of behaviour and conventions that are recognized in a field.[36] These are "forms of socialization" in the sense defined by the sociologist Georg Simmel,[37] and they are understood here as the standardized forms taken by interactions between players engaged in an ongoing relationship in a specific field of social activity. These forms of socialization determine the arrangement and conditions of sustainable exchange. They produce and guarantee a degree of stability of action, which makes behaviour predictable. Each social field thus establishes a space of mutual recognition and socialization: we can tell who belongs and who does not. This can be seen in the difference in treatment received by those who are represented in court and those who self-represent. The judge uses different titles (*Maître* or Counsellor, versus Mr. or Ms.), which distinguish those who belong to the system from those who do not.[38]

In the end, standardization of exchanges is conducive to making relations systematically routine. It ensures that expectations and initiatives become objective and framed in procedure. Naturally, there are disadvantages to such gradual stabilization of practices.

Simmel considers it to be a *tragedy of culture* that, in complex societies, individuals have a propensity to reduce their relations to formal conventions imposed upon them by the milieu. This limits the chances that these forms of socialization will be given new content. New forms of socialization that could favour ongoing changes in social life periodically appear in every field of action. Yet, if there is no constant tension between new and old forms of socialization, these same social relations risk turning gradually into habits. Established routine thus carries its own justification within itself. It confines practices to ritualization and does not aim to provide active functionality but rather formal necessity. Thus, it is only very recently that we have been able to eliminate the compulsory use of "legal-sized" paper in procedure, although this possibility may still be provided. The instrumental dimension of action is at once absorbed into its symbolic dimension: the permanence of paper.[39]

The immense savings that society draws from having many different forms of socialization (i.e., standardization of practices) flow from the possibility given to each individual to interact with a growing number of individuals in a depersonalized manner; in other words, without having to challenge one's own personality, feelings, or inner life. As we have already said, each milieu generates its own *forms of socialization.* This is the case in particular of the legal world, where what is at stake is not only integration of the rules imposed by the normative level of action but also the shaping of the attitudes, reflexes, and habits specific to the field of action where those practices are recognized. This explains why legal practitioners treat their entrance into the profession as a form of initiation. The internalization of these formalized reference points and "naturalized" reflexes accentuates the establishment of a "being-together" characteristic of each field of action. Here, the justice system is only one especially typical example of tendencies encountered in nearly every institution.[40] These tendencies often make specialized fields look esoteric to those who are excluded from them.[41] The very respect for forms and conventions ends up gaining value in itself. Moreover, the permanence of established forms gains the value of a "constant" in the social equation. This tendency can be seen everywhere. For example, although today the majority of men and women do not smoke, most of the shirts they wear continue to have a pocket which is the right size for a pack of cigarettes, and we are in consequence called upon to use it for something else, such as for carrying a pen, a cell phone, or business cards.[42]

The effects of this formalization (of this respect for form) are themselves strengthened by the complementarity and *automatic* nature of established practices. Replaying the same sequences of actions creates extraordinary savings in terms of thought and initiative. Once proceedings are launched, what follows can be read like a musical score. These tendencies have been seen in the criminal justice system but also in civil proceedings.[43]

At this level of action, habits and forms of socialization are directly associated with other imperatives of practice: division of labour, the structure and hierarchy of relationships in litigation firms (articling students, junior and senior associates, and partners), the financial structure of the office and the business model, the nature of relations between clients and professionals, and so on. Consequently, formalized practices and stakeholders' interests are associated with the same "organizational culture." However, this culture is anchored in a field of material constraints that strengthen one another. Thus, management of financial and human resources is intertwined with stakes concerning the implementation of social innovations. The difficulties in implementing settlement conferences can thus be explained partly by reluctance to have judges intervene very early in cases that "would in any case settle themselves long before they went to court." Implementation of this practice thus faced the obstacle of essentially financial imperatives introduced under the cover of "good administration of justice."

On the level of mutual adjustment of practices, the same problems arise in the justice system as at the referential and normative levels of action: adjustment and interlocking of reference points, practices, and habits. Practices, which are parts of series or refer to one another, structure a whole that is difficult to change. Judicial action is first and foremost built on stakeholders' mutual expectations, then on a system of action from which it becomes difficult to depart without voluntarily placing oneself out of the game. On the sociological level, shared practices are vectors for real social interactions. Thus, except in cases of marginal practices that can complement, without compromising, already accepted activities, consistency of action is inevitably required and protects the legal field from any radical innovation.

In short, a new practice is all the more likely to become effectively integrated within the repertoire of forms of established action if it can do so without causing any clashes. This brings to mind the

way word processing has replaced typing and dictaphones have replaced stenography. They rapidly fit into the niche already established by practice. By contrast, a new practice may require complete retooling of ways of doing things. Such a practice can manage to impose itself only out of necessity, which makes it imperative that a large part of the repertoire of accepted practices can "theoretically" be modified. However, we know of very few cases likely to lead to such a change. For example, in courts of justice, despite the rapid development of televisual communication technologies in social spaces (Skype, videoconferencing, etc.), hearings are still conducted in the presence of the parties and witnesses.[44] In the context of a pilot project conducted in the judicial district of Longueuil, Quebec, the simple use of the telephone to notify the parties of the filing of an application initiating proceedings was considered a veritable innovation in case management. The year was 2010, and the project was able to advance only within the framework of a written protocol between the Court of Québec and the regional bar association. As we have said, the practical dimensions of action are identified by their material nature. Thus, the need to adapt spaces, schedules, budgets, human resources, and means of communication often slows innovation. Many innovations thus become "impossible to implement."[45]

Can we hope that a change at the normative level of action would be able to generate changes on the level of day-to-day practices? A study of the legal system is especially revealing in this respect. Justice is just one field of action that is not entirely in control of its normativity. Unlike certain self-regulated systems (e.g., small organizations, whether they are private or have a social purpose), some of the legal field's normativity is defined by the legislator. The series of amendments to the Quebec *Code of Civil Procedure* provides ample demonstration of the difficulty of imposing true changes regarding established legal practices "from the top," even when such change is set out in legislation. Indeed, the new provisions just recently adopted concerning abuse of procedure are still systematically evaded today. Judges and practitioners continue to refer to the body of case law and to prior concepts that the *Code of Civil Procedure* was very explicitly designed to replace: the notion of "colour of right," for example, still counts in such cases, despite the opposite presumption provided for in the *Code*.[46] Once again, the dead seizes the living. It is a syndrome along the lines of that experienced by people who have lost an arm or leg but still feel its presence and injury. As Machiavelli says, "while

the laws of a city are altered to suit its circumstances, its institutions rarely or never change; whence it results that the introduction of new laws is of no avail, because the institutions, remaining unchanged, corrupt them."[47]

On the level of practical action, as on the normative level, formalism has often been a cemetery for social innovation. For example, regarding divorce, the constraints imposed on ex-spouses have never gone beyond the obligation to be informed that there are family-mediation services supported by the Minister of Justice. In order to evade this obligation, practitioners send their clients to attend an information session just before instituting the proceedings in question. Once a "pink passport" (in other words, the document showing that the client has indeed attended the session) has been obtained, the proceedings can go forward as usual since the legal obligations have been formally met. Likewise, it is probable that the provisions of the new *Code* concerning mediation and settlement will fail due to professional habits and reflexes characteristic of legal practice, despite strong calls for a *change in legal culture*.[48] A model clause added at the end of every demand letter will probably suffice to evade the application of measures favouring forms of private dispute prevention and resolution. Thus, the practices that we believed we could amend will be perpetuated.

However are some *contexts* more favourable than others to changes to deeply frozen or highly ritualized practices? In the most highly institutionalized fields, such as the public sphere and the legal system, the problem arises in the same terms as in a major company. As we have said a number of times, it is the interlocking of ideological references and systems of ideas, norms, and practices that makes it difficult to introduce new categories and practices. Sometimes the tensions that arise between the different levels of institutional action consolidate the *status quo* instead of fostering change. This is the case in particular when the consistency of a level of action is sufficient to resist changes that would seek to impose a different action. Thus, a return to square one is often a necessary condition for maintaining a degree of institutional peace (Table 4).

At the practical level of action, as we have said, all innovations are confronted with the tyranny of habit. We can once again suppose that these constraints cannot be avoided except when stakeholders' interests are directly related to the innovations that one is attempting

to introduce. The advantages promised by innovations then establish a consensus based on practical, material, financial, or relational necessities. Once again, the most certain changes are based on necessity. In most organizations, no one is persuaded to change the accounting or computer system until its support service says it will no longer be providing updates. The change then occurs on the basis of a constraint that cannot be avoided.

Table 4: Change and Stability Factors for Practical Reference Points

Practical Level of Action	Change Factors	Stability Factors
Context	• Proven inefficiency of the legal system (delays, etc.) • Discrediting of archaic practices in justice system • Challenge of the personal and institutional costs of justice • Denunciation of difficulties inherent to the system: proceedings dropped, self-representation, etc.	• Effective access to civil and family justice at appropriate cost • Public expression of approval of judicial activities and judges' roles • High media visibility of cases consistent with public opinion • Positive outcomes of proceedings involving parties of disproportionate size
Process	• Integration of non-intrusive innovations • Response to specific shared (functional or financial) needs • Rebalancing of all practices in the field • Injection of specific resources for implementing the innovation	• Rejection of innovations threatening the balance of established practices • Functional distortion of innovating practices • Incorporation of innovating practices into the established judicial trajectory • Marginalization of innovations with respect to the usual organizational process

Other changes can occur if the advantages of the new practice are such that it would be irrational to do without it. However, even when stakeholders have a "common" interest in changing their practices, that interest has to meet the needs of each stakeholder in order to avoid mutual neutralization of those interests. In a zero-sum game,

it is to each individual's advantage to avoid paying for a change that, initially, benefits other "players." However, such a change supposes that all the stakeholders in the field are in favour of it. As we noted above, new practices are more difficult to institute when "the innovator has for enemies all those who have done well under the old conditions." In such cases, any major stakeholder has the power to stop all the others from adopting the change. This situation has constantly slowed the rate of change in the justice system. The subdivision of functions (and balance of powers) among judges, practitioners, and the other organized stakeholders in the legal world (departments of justice, public security, court office personnel, courthouse administration) has often defeated ideas that could change power relations or simply the habits and interests of a given stakeholder. It follows that none of them feel they have the power to impose anything on the others. For example, community settings (NGOs) and initiatives regarding alternative and restorative justice (in criminal proceedings) have systematically remained on the margins of the justice system, whereas these "resources" have rapidly become recognized in the healthcare and social services systems.[49] Justice is a closed system.

However, we have to acknowledge that certain *contexts* are more favourable than others to the development, recognition, and integration of social and technological innovations. Over the course of the last 30 years, the creation of legal aid and the development of a special jurisdiction for small claims, the establishment of class action proceedings, and the recognition of family mediation have changed the landscape of justice from time to time, at least on the level of practices. However, we have to note that, in all cases, these innovations have been duplicates of practices and structures that have been experimented with elsewhere for decades. Moreover, all of these innovations have had the benefit of major financial investment in their establishment, so that they could be integrated without asking anything of existing stakeholders. These two conditions are characteristic of the instrumental dimensions that dominate the practical level of action. We also have to observe that, once integrated into the justice system, these innovations have taken already existing paths or have been developed at the margins of the system.

Nonetheless, some conditions are more conducive than others to experimenting with new practices. This is an issue we will discuss in the last part of this text. Thus, the redeployment of resources by

the Quebec government—a context favourable to innovation in terms of reference points, norms, and practices—fostered a number of major changes in social activity in a very large number of fields. On this topic, Pierre Moscovici has spoken of contexts through which a norm of originality flows, more conducive to experimentation. Since such contexts are unusual, we have to identify the conditions for ongoing change within highly institutionalized systems, such as the legal system. Only by taking these avenues into account can we get around institutional obstacles of the kind often encountered in the justice system, in particular with respect to digital re-engineering of legal activities.

Innovation in Institutions: The Art of "Working With What We Have"

Once again, Machiavelli's words are germane:

> But since old institutions must either be reformed all at once, as soon as they are seen to be no longer expedient, or else gradually, as the imperfection of each is recognized, I say that each of these two courses is all but impossible.[50]

It does not follow that reform is impossible. Machiavelli's remark refers to two possible avenues for change: *total* or *partial*. We have already shown that *total* change makes sense only in contexts where reference points, norms, and practices are dissolved. Even in the relatively rare cases where change seems to have helped to advance history, we cannot avoid a reflexive return to old categories of reference. We have also already shown that the tyranny of instituted forms does not spare changes of much lesser scope. Thus, the conditions for the advent of these changes are probably much more important to the integration of new institutional practices than the simple fact that they are innovations. Fashionability is rarely sufficient unto itself.

The format of this text does not allow a systematic exploration of the various forms and strategies that could favour the spread of innovations and their integration into the repertoire of instituted practices. At most, we can simply mention a number of avenues that make such integration possible.

As a sub-hypothesis, in continuity with the preceding paragraphs, we can suppose that an innovation is all the more likely to

occur in a highly institutionalized field if it begins by changing stakeholders' habits rather than their ideas or reference categories and norms. The latter changes would follow changes in practices rather than precede them. We would then be acting directly on the practical level of action; in other words, on the very level of organization where action becomes concrete and brings into play direct interactions among stakeholders in the field.

A second sub-hypothesis drawn from considerations discussed here also suggests that these innovations are all the more likely to take root if they mobilize the proponents of change and the stakeholders in the field in complementary ways. The next part of this text focuses mainly on these conditions. We will thus discuss two internal processes that favour the institutionalization of new social practices: the strategy of vectors and the strategies of absorption and retailoring. The former concerns the initiators of innovations and the latter, the receiving stakeholders.

The Strategy of Vectors of Change

Study of past reforms tends to show that the modernization of a highly institutionalized social milieu depends on the ability of proponents to present the innovation in forms that are already recognized in the system. This is the hypothesis of *vectors of change*.[51] This strategy can take different paths. Here we will explore a few. The principle is very simple: social and technological innovations are all the more likely to be included in the repertoire of recognized practices in justice if they take familiar forms of socialization.

Aside from the effects of context, of which we have already spoken, some factors are obviously likely to favour the institutional integration or absorption of a social or technological innovation. In all cases, such innovations have to be advocated by a certain number of stakeholders in the institution. Naturally, they can be inspired by initiatives that have appeared or were developed at the fringes of the system. Likewise, for reasons specific to the practical level of action, the cost of accessing and implementing such innovations has to be reduced to a minimum. This is especially true if the innovations take on known forms of action or temporarily duplicate those forms until they replace them.

There are many historical examples of these effects of form. In Paris, the plastic brooms used by streetcleaners look like the twig

brooms used in the nineteenth century. The first automobiles were essentially horse carts with motors, and the first fridges were ice boxes in which the ice compartment had been replaced by a compressor.

Justice practices inspired by digital technology have a reasonable chance of taking hold only if they involve a simple transposition of established forms of socialization. For example, while electronic service of proceedings has a reasonable chance of rapidly becoming established as a new procedural standard, this is less the case for online dispute resolution platforms, which are much more likely to remain on the margins of the institution specifically because they directly challenge current legal practices. Similarly, the establishment of digital dockets and electronic registries will have more chance of crossing the threshold and becoming legal practices if they reproduce the categories and reference points imposed by the former paper methods: docket number in function of district and jurisdiction, cases filed according to parties' names, and so on. In contrast, use of new ergonomics or a different division of content (even though this would be possible using digital means) would be likely to slow down their implementation. Thus, the fact that computers were able to cross the border into office technology in less than a decade at the end of the twentieth century is partly because computer keyboards have the same key configuration as nineteenth-century typewriters. Yet the purpose of that configuration was mainly to limit the speed of typing and prevent the hammers from jamming when they were struck simultaneously. Still today, the iPhone uses the QWERTY keyboard in North America and the AZERTY keyboard in France, even though most users write their texts "with two thumbs" and do not know the origin of their keyboard.[52]

This strategy can take several different paths. The simplest is a series of "small lateral steps." For example, the establishment of an electronic registry (and filing of evidence using electronic means) is much easier to envision if most of the proceedings are already written in digital form and easy to file in PDF format. Filing them through an electronic registry would require only one more small lateral step. Likewise, the development of a publicly accessible digital docket, which would make all case materials available, is, in relation to electronic filing, only another small lateral step. In one of the texts included in this work, Kramer says that electronic sending of legal documents is all the easier to imagine if it requires only a shift from one mode of transmission to another.

Evidently, even at the most instrumentalized level of action, these changes always have symbolic dimensions. Maintaining lexical conventions is one of the constraints involved. In contrast, using categories inspired or suggested by the computer industry is probably the worst way to foster change. Re-using everyday lexical forms with which the stakeholders in the field identify is more consistent with the small-lateral-step strategy. The integration of computer technology into legal institutions then becomes only a variation on an activity, and the activity loses none of the meaning that it had in the framework of a given procedural sequence. Whether it is sent by email, fax, bailiff, or registered mail, a subpoena remains a subpoena.

In short, a new practice is more likely to be integrated within a judicial institution if it is already part of the personal habits of the stakeholders in the field. Widespread use of the communication platform offered by Skype has, in all likelihood, had more impact on the use of videoconferencing in court than all the pleas in favour of a digital revolution in justice. Here again, the small-lateral-step strategy seems best, and it is immediately apparent what role is played by the gradual succession of generations. Similarly, on the level of argumentation, the fact that administrative courts already generally use these communication technologies demonstrates their "transferability" within civil and criminal jurisdictions. Their institutional legitimacy is now virtually a given. Thus, justice simply imitates itself. In contrast, there is no worse discourse than that of *digital prophecy*, foretelling a complete reconfiguration of our categories of thought and action.[53] As we have said, the same applies to a new prophecy that would propose *in abstracto* a complete upheaval in the foundations of "judicial" justice. Future changes at least require, first, personal, daily appropriation.

This appropriation concerns not only the stakeholders in the justice system, but also non-stakeholder individuals who have to play a role within the system, as is the case of those who self-represent in court.[54] Regarding these individuals, it is not certain that we have to cite the "digital divide" and unequal level of "numeracy" as sources of unfair access to justice, at least in a society where 86% of households have internet access.[55] In contrast, 80% of Quebecers consider that they do not have access to the courts.[56] It is thus reasonable to suppose that internet platforms designed to assist individuals dealing with legal problems will probably facilitate such access. It is at least doubtful that these means of access would suddenly become

the cause of additional unfairness, as Daniel Weinstock seems to suggest in this work. All things being equal, the illiteracy rate is probably a much greater barrier to access to justice than the unequal level of individuals' numeracy. In this vein, the diversity of habits and forms of communication offered by computerization is probably a solution to the problem posed by the large proportion of functionally illiterate people in our societies.[57]

Finally, coming back more specifically to traditional actors in the justice system, it is reasonable to consider that any change in practice will find better support within innovative environments than in the fringes among those most allergic to innovation. This notion of innovative environment, defined in a very broad way, encompasses many different things, depending on whether we are referring to technological, economic, or regional development. Some characteristics of these environments are, however, often noted: the proximity of actors associated with the innovation of practices; special relationships between those involved in practical operations and those doing basic and applied research (essentially academia); and development of new practical conditions for action in a controlled, consensual framework, which is generally a presupposition of experimental and pilot projects. Here also, integration of and experimentation with practices will be easiest when they are likely to draw upon the established skills of the new generation of legal experts (practitioners, judges, clerks, etc.).

Retailoring Strategies

Innovations suggested in a highly institutionalized field of action must not only be proposed in a pragmatic way but must also be relayed by players in the field. We are referring directly to the ability of these actors to "retailor" these innovations to their advantage. Here, we are returning to the concrete dimensions of the action as it can be envisaged, entirely enveloped in financial, material, and relational considerations.

Here again, the small-lateral-step strategy is most likely to facilitate deployment of an innovation. At least it makes the actions less costly and risky. By any standards, innovations are probably easier to integrate into a field of practice if every actor sees them as advantageous in terms of costs and benefits, whether on the level of profitability (more instrumental) or reputation (more symbolic). The

notion of "retailoring" refers to integration of the categories and practices associated with innovations into actors' daily activities at the lowest cost possible.

This integration may be in response to the need to cover judicial practices with the trappings of modernity. The ongoing association of justice with archaic forms of procedure is probably more useful in films than in the contemporary reality of those who have to use the courts. The cost of photocopying briefs filed at the Court of Appeal or the Supreme Court alone is sufficient to persuade any client of the virtues of a USB key.[58] However, this is assuming that the lawyers acting as counsel do not base part of their revenue on the difference between the real cost of a photocopy and the fee charged to the client for making it. In any case, it is probable that, sooner or later, the legitimacy of justice will suffer from the nostalgic image in which it is clothed.[59] On another, very empirical scale, a change in practice will be all the more likely to be integrated into the field in a positive way if it meets (or, at least, does not interfere with meeting) the material, financial, and relational needs in question, and if it does not place the actors who subscribe to it at a disadvantage in relation to those who continue to resist the innovation. Indeed, the change has to provide the actor who uses the innovation with an empirical advantage until the innovation is "naturalized."

On the level of action, these practical innovations are all the more likely to become included in the repertoire of actions if they can be remodelled to fit into the framework of established practices. We can therefore speak of a form of colonization of innovation by instituted practices. For example, the pre-court mediation practices promoted by the provisions of the new Quebec *Code of Civil Procedure* are all the more likely to be integrated into the practical field if they can be used strategically by players (in particular to draw out or shorten the length of proceedings). In this sense, the concerns raised by Weinstock on the risk of a strategic takeover of new digital technologies do not take into account that such calculations are intrinsic parts of social activity and inevitable responses to the constraints imposed by each field of practice. Naturally, this can be turned into a question of applied ethics, but can it be avoided, and is it not the case that practitioners already "strategically" exploit the current malfunctions of the archaic justice system? Since retailoring these innovations is a condition for their acceptance into the repertoire of practices (and constraints) in the field, the strategic use that

practitioners and judges are likely to make of them is a condition for their integration into the institution.

Finally, we cannot exclude the symbolic weight associated with judicial practices themselves, even though this is a dimension that is more incidental at the practical level of action, where we are now situated. However, we can wonder if retailoring a number of socially valued practices and transposing them on the level of judicial action is not the most efficient way to bring justice into the digital age. After all, the essential rites maintained by the Catholic Church have benefited from retailoring older practices, essentially of "pagan" inspiration. There is nothing to prevent judicial ritualization from doing the same. For example, the various courts of Quebec have just recently permitted the use of Twitter in court, in response to repeated requests by the media.[60] In short, we have to question judicial reception of the most ordinary digital social practices and, by extension, the conditions presiding over gradual renewal of the repertoire of judicial practices "from the bottom up," under the pressure of new technologies.

In a nutshell, any innovation has to find a clear part to play in the pre-established system of interests in the field of action into which it is meant to be integrated. Combined with a strategic approach to vectors of change, recourse to the interests of stakeholders in the field and to their ability to colonize the innovating practices is probably one of the conditions that makes the integration of innovations into the institution most certain. Therefore, identifying the normative and referential conditions for such integration is more likely to follow this move toward integration than to precede it. This is, at least, the hypothesis of change through social practices that the present text puts forth, even if it means that the conditions for a broader collective movement should also be explored, while avoiding the supposition that ideas always precede action, which is probably only the case over much longer periods than those we are studying here.

Conclusion: Change Through Transformation of Practices

Between change as an idea (at all levels of action at the same time) and the practice of change (the practical reduction of innovations) we find the conditions for reform of public institutions, or at least of highly institutionalized fields of action. In the context of previous work on healthcare reforms, we have shown that, regarding front-line services, the development of family medicine clinics preceded their promotion

(based on the symbolism of relationships between doctors and patients) and translation into law. Thus, practices evolved before philosophical justifications and the normative frameworks that later provided support for them. Naturally, these movements occurred soon after one another, but this was thanks to the rapid reactions of political actors and government legal specialists. In fact, the parameters of this reform were first experimented with and adopted by actors in the field themselves (in other words, at the level of action) before becoming the subjects of change on the normative and symbolic, or referential levels of actions. Developed in response to practical needs, these innovations later benefitted from being invested with meaning. Similarly, the first theoretical work on the future of mediation and settlement practices also benefitted from broad practical experience with those innovations and from their empirical endorsement.[61]

We can thus speak of "bottom to top" change, if not of "induced" change. When all is said and done, even with regard to technological innovation, it is less the digital revolution that establishes the parameters of our collective life than the conditions of its resurgence in our society.

Demain ça s'dit ben. Aujourd'hui c'est du déjà dit
Hier, y'a pu rien à faire, Vaut mieux faire c'qu'on peut
'Vec c'qu'on peut faire

U.F.O., Plume et Cassonade

This paper was originally written in French. Thanks go to Mary Baker and to Emily Grant for the translation.

Notes

1 Lyrics from U.F.O., by Plume et Cassonade. "Tomorrow, it sounds good. Today, it's already been talked about. Yesterday, there's nothing we can do about it. It's best to do what we can with what we can do." [Our translation.]

2 These intuitions can already be found in the works of Portalis and Montesquieu. See Jean-Étienne-Marie Portalis, "Discours préliminaire sur le projet de Code civil," in *Écrits et discours juridiques et politiques*, (Presses universitaires d'Aix-Marseille, 1988), at 21–34 and Montesquieu, *The Spirit of the Laws*, Book 1, § 3.

3 Pascale Laborier, Pierre Noreau, Marc Rioux and Guy Rocher, *Les réformes en santé et en justice: le droit et la gouvernance* (Québec City: PUL, 2008), 286 pages.

4 Lenin, *What is to be Done?*, online: <https://www.marxists.org/archive/lenin/works/1901/witbd/index.htm>, at 347–530.

5 Machiavelli, *The Prince*, online: <https://www.gutenberg.org/files/1232/1232-h/1232-h.htm>.

6 Charles Tilly, "Individualisme, mobilisation et action collective," in *Sur l'individualisme*, eds. Pierre Birnbaum and Jean Leca (Paris: Presses de la Fondation nationale des sciences politiques, 1986), at 247. [Our translation.]

7 Mancus Olson, *The Logic of Collective Action* (Cambridge, MA: Harvard University Press, 1965), at 76–87.

8 This text has been inspired by general sociology. It borrows from many different sources. For example, I have used the notion of *field of action* relatively freely. Pierre Bourdieu employs a much more specific definition of this notion. From a closely related perspective, Norbert Élias uses instead the notion of *social configuration*. I am referring generally to a network made up of interactions linking social actors in a stable, complementary manner. The interactions determine a set of specific relationships that are empirically observable. In this text, this is especially related to consequences of institutionalization of social fields, in Berger and Luhmann's sense. Classical sociology has often used the notion of *institution* to designate stable sets of relationships and activities. This is a notion that is also used here. The concept of institution has often been associated with the idea of a structured society sure of its permanence. The same goes for the notion of *system*, which I also use as an equivalent. In the sense employed here, a system or institution (let us think of the justice system) is nothing more than a field of action that is especially well integrated. It can be said to be highly institutionalized. It follows that change is more difficult to institute within it than in new fields that are still developing. In such a field of action, institutionalization has been acquired. This does not mean that change is impossible. That is the subject of this article. Here, we approach such change based on an analysis of different *levels of action*. Similar theoretical approaches can be found in the work of Talcott Parsons and Alain Touraine, whose ideas have inspired me.

9 Although they are named differently here for the purposes of this article, these three levels correspond on the theoretical level to the three levels of institutionalization defined in an older text. They refer, respectively (and in a more dynamic way), to self-referential, instituting, and identity processes. See Pierre Noreau, "Comment la législation est-elle

possible? Objectivation et subjectivation du lien social," *McGill Law Journal* 47:1 (November 2001): 195–236. The main purpose of the terms used in the present text is to show the analytical utility of these three levels of analysis for studying conditions for stabilization and change in a field of action that is already highly institutionalized: the legal system. These texts are complementary, but their respective purposes should be kept in mind when reading them.

10 Albert O. Hirshman, *Bonheur privé, action publique* (Paris: Fayard, coll. Pluriel, 2013), 258 pages.

11 Thus, the certainty of a special relationship between humans and the gods, the existence of a certain order in the world, or that one has a predestined fate clearly guides the actions of members of a community in ways different from that of a community based on belief in non-determination of personal life and the collective promotion of the values of freedom and individual responsibility, as is generally the case in secularized societies. Different frameworks of reference thus determine equally different systems of justification. They have the potential to penetrate into all aspects of individual and collective action.

12 Thomas S. Kuhn, *The Structure of Scientific Revolutions*, 2d ed. (Chicago: University of Chicago Press, 1970), at 76.

13 As Alexis de Tocqueville reminds us in another context, between two inverse movements, for example, slavery and independence, "il n'y a point d'état intermédiaire qui soit durable" (no intermediate position can last). Alexis De Tocqueville, *De la démocratie en Amérique*, Volume 2 (Paris: Pagnerre, 1848), at 327–328.

14 Pierre Noreau and Pierre-Oliver Bonin, "Devenir juriste: étude sur la socialisation juridique des étudiants en droit" [forthcoming], 30 pages.

15 François Ost, *Dire le droit, faire justice*, (Brussels: Bruylant, coll. Penser le droit, 2012), 210 pages.

16 Antoine Garapon notes that in secularized societies, the judge has in a way replaced the priest: Antoine Garapon, *Bien juger* (Paris: Éditions Odile Jacob, 2001), at 224–225.

17 Association Française pour l'Histoire de la Justice, *La Justice en ses temples: Regards sur l'architecture judiciaire en France*, (Paris: Editions Errance; Poitiers: Éditions Brissaud, 1992), 328 pages.

18 In this book, Daniel Weinstock describes these more symbolic than real dimensions: "In a recent work and a series of articles, Linda Mulcahy put forward the hypothesis that people's feeling of respect for their legal institutions, and the related legitimacy and authority, is partly a function of their architecture. The architecture of courthouses (which are called 'Palais de Justice' in French, something that we should think about!) has always incorporated ideas about the important role of justice in society. At a certain time, according to Mulcahy, the goal was to

reflect the sacred nature of justice in the architecture and location of courts. […] Mulcahy has also expressed reservations about the use of virtual platforms in the context of court proceedings. […] court proceedings are socially important forms of ritual. The introduction of screens that in some cases replace embodied agents could make the proceedings seem less special by allowing people to testify elsewhere than in a highly ritualized space" (Chapter 10, p. 312 of this volume). Along the same lines, see: Louis Émond, "Le jugement entre droit et pédagogie," in *Les cadres théoriques et le droit*, ed. Georges Azzaria, (Cowansville, 2013), at 323–345.

19 Chapter 10, p. 305 of this volume.

20 We find equivalent procedures in literature on the introduction of alternative dispute resolution (ADR). See, for example, Richard Abel, "Conservative Conflict and the Reproduction of Capitalism: The Role of Informal Justice," *International Journal of the Sociology of Law* 9 (1981):245–267, and by the same author, "The Contradictions of Informal Justice," in *The Politics of Informal Justice*, Vol. 1, ed. Richard Abel (London, UK: Academic Press, Inc., 1982), at 267–320. The same goes for the principles of community justice. See Adam Crawford, *The Local Government of Crime: Appeals to Community and Partnerships*. (Oxford: Clarendon Press [Clarendon Studies in Criminology], 1999), 384 pages.

21 We can create many more oppositions, and thereby construct a conception of justice and law very different from the one that the Western world has inherited, by favouring authenticity over mystification, substance over formalism, equality over hierarchy, public service over the institution "in itself," prevention over remedy, support over command, functionality and rationality of solutions over their strict legality, consent over sanction or submission, citizen over "those subject to law," innovation over tradition, transparency of conventions over opacity of concepts and principles, continuity of human relationships over the triumphant rupture of the one who is found to be right, negotiated norms over the arbitrariness of a forgotten rule drawn from a great book of laws, etc.

22 Bertrand Russel, *Religion and Science* (London: Thornton Butterworth, 1935).

23 Chapter 11, pp. 317ff of this volume.

24 Examples of this are armed conflict, a worldwide economic crisis, or a climate or natural disaster. The interplay of generations may favour such shifts, as may public or political exploitation, or collective reaction to a situation that suddenly takes on emblematic or even historical meaning, as was the case in Tunisia during the Arab Spring.

25 Michel Dobry, *Sociologie des crises politiques: la dynamique des mobilisations multisectorielles*, 3rd edition (Paris: Presses des Sciences politiques), first published 1986, 432 pages.

26 Georg Simmel, "Disgression (sic) sur le problème: comment la société est-elle possible?," in *Georg Simmel: la sociologie et l'expérience du monde moderne*, ed. Patrick Watier, (Paris: Méridiens-Klincksieck, 1986), at 26. See also Joachin Israel, "Simmel et quelques problèmes fondamentaux de la connaissance," *Société* 37 (1991):237–240.

27 On the notion of framework of action, see Pierre Lascoumes and Évelyne Serverin, "Le droit comme activité sociale: pour une approche wébérienne des activités juridiques," *Droit et Société* 9:1 (1988):165–187.

28 They are thus considered "rules of the art."

29 On the notion of legal system, see: Michel Van de Kerkove and François Ost, *Le système juridique entre ordre et désordre* (Paris: P.U.F., 1998), 254 pages, and Guy Rocher, "Pour une sociologie des ordres juridiques," *Les Cahiers de droit* 29:1 (1988):91–120.

30 André-Jean Arnaud, "À la recherche d'un statut épistémologique propre," in *Le droit trahi par la sociologie*, ed. André-Jean Arnaud, (Paris: LGDJ [coll. Droit et Société], 1997), at 61–72. The most patent effects of this continuation can be seen above all in the cases of norms established to deal with temporary or context-dependent problems. For example, the provisions concerning civil union, which were adopted in 2002 to get around the problem of same-sex union (recognized in 2004) continue to apply today, and there are over 130 references to them in the *Civil Code of Québec*. All of this is a good illustration of the "continuity" of norms established on a succession of strata. In the same sense, in France, in many towns, household waste is recycled differently depending on whether it is glass (placed in containers at certain intersections) or other recyclable items (plastic, paper, metal), which are all gathered together. This differentiated (and probably more costly) procedure may seem surprising unless we take into account the fact that glass began to be recycled before the other items, and was for a time given precedence over them. Since the established rules and practices concerning glass were maintained, they still justify separate pick-up today, thereby confirming superposition of norms and the tendency of systems to continue temporary solutions even after more encompassing, efficient solutions have been found.

31 Günther Teubner, *Le droit un système autopoïétique* (Paris: PUF (coll. *Les voies du droit*), 1993), 196 pages, and Ost and de Kerkove, ibid.

32 Teubner, ibid. Likewise, regarding legislation understood as a vector of more all-encompassing normativity, most of the legislation that is now enacted by parliaments is designed essentially to amend existing legislation, in other words, to solve problems created by prior versions of laws, and this goes on until the general economics of the legislation in question is lost in the confusion of additions and norms, the purpose of which has been obscured.

33 On ongoing redefinition of the meaning of a norm, read the excellent article by Michelle Cumyn and Mélanie Samson, "La méthode juridique en quête d'identité," in *Les cadres théoriques et le droit*, ed. Georges Azzaria (Cowansville: Éditions Yvon Blais, 2013), at 57–92.

34 As an illustration, we can wonder whether electronic notification of legal proceedings might greatly reduce bailiffs' professional activities, which date back to antiquity. The debates concerning such virtual operations would draw from all levels of action (referential, normative, and practical) to require the maintenance of old, established notification methods.

35 Max Weber, *Le savant et le politique*, translated by Julien Freund, (Paris: Plon, collection « 10/18 », 1959), 183 pages.

36 These notions are borrowed from Pierre Bourdieu, *Raisons pratiques. Sur la théorie de l'action* (Paris: Le Seuil, 1994), 251 pages.

37 Simmel, ibid.

38 J. Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants: Final Report*, May 2013, 147 pages.

39 Similarly, exchanges with courts and judges outside of the strict jurisdictional function remained systematically by mail, even when email had long been the norm in other institutional settings. Now electronic communications have become more common within the legal institution, but exchanges nonetheless long involved both mail and digital means simultaneously.

40 Mary Douglas, *How Institutions Think* (Syracuse, N.Y.: Syracuse University Press, 1986).

41 Thus, receiving a court decision often generates different reactions depending on whether we look at public opinion or the assessment by members of the legal community. While criticism sometimes rains down from the side of opinion, legal practitioners are often full of admiration for the way an attorney presented evidence or the judge's skill in managing the case. Examples of this include the cases of Jian Ghomeshi, Guy Turcotte, and Andrée Ruffo.

42 Taking the clothing metaphor all the way, we can wonder what the purpose of neck ties and sleeve buttons is. Their functions are lost in the history of men's haberdashery.

43 Pierre Noreau, Jean Proulx, Serge Brochu, and Gilles Rondeau, "Innovation sociale en matière pénale: du clivage des professions à l'anarchie organisée," in *Le pénal en action. Le point de vue des acteurs*, eds. Guy Lemire, Pierre Noreau, and Claudine Langlois (P.U.L., 2004), at 131–153.

44 Here again, the world of justice does not escape the tyranny of habit, even when it would be advantageous to replace some habits by others, and we end up finding intrinsic virtues in practices that may no longer have the

functionality (or the necessary nature) that they used to have. For example, when analyzing use of videoconferencing in court, Daniel Weinstock supports the presence of the parties and witnesses in court because it facilitates assessment of their credibility and the proximity that it makes possible between the parties and the judge so that "both the guilty and the accusers, can recognize one another mutually as members of the same community." We might be tempted to note that this proximity is in contradiction with the principle that courts must deal with situations, not individuals, and that making such situations objective (rather than personalizing them) is intrinsically associated with the principle of legality. From this perspective, videoconferencing and use of negotiation platforms would, on the contrary, favour depersonalization of cases and make it possible to avoid the risk that, when assessing the facts and the law, the decision maker or third party might take subjective considerations into account. Nonetheless, the stumbling block encountered by these new technologies probably comes from the fact that they require that we replace a form of socialization, which is established, by another, which is not. All justifications are good if they support the status quo.

45 In a different but comparable context, the failure experienced by the inventors of so-called French Revolutionary Time (which was a form of decimal time proposed during the French Revolution, and would have divided the day into ten equal units) can be explained largely by the need to change not only the faces of all existing clocks and watches, but also part of the internal workings of the mechanisms. Online: <https://fr.wikipedia.org/wiki/Temps_décimal> (accessed on April 2, 2016).

46 See in particular this report on the implementation of the new norms concerning SLAPPs, online: <https://www.youtube.com/watch?v=ER6ocRIqwqw> (accessed on March 30, 2016).

47 Machiavelli, *Discourses on the First Decade of Titus Livius*, trans. Ninian Hill Thomson, Book 1, Chapter XVII.

48 Élisabeth Corté, Speech by the Honourable Élisabeth Corte, Chief Justice of the Court of Québec, September 4, 2014, "Cérémonie d'ouverture des tribunaux," 19 pages, online: <http://www.barreaudemontreal.qc.ca/loads/DocumentsActivites/JourneeduBarreau20140904/2014-all-JEC_Corte.pdf>.

49 In contrast, when they have been integrated, it has generally involved copying, as is the case with legal aid and community justice centres. In comparison, see the directory set up by the Ministère de la Santé et des Services sociaux, online: <http://www.msss.gouv.qc.ca/repertoires/dependances/> (accessed on April 1, 2016).

50 Machiavelli, *Discourses on the First Decade of Titus Livius*, trans. Ninian Hill Thomson, book 1, chapter XVII.

51 Concerning change in institutions, Machiavelli says: "Whoever takes upon him to reform the government of a city, must, if his measures are

to be well received and carried out with general approval, preserve at least the semblance of existing methods, so as not to appear to the people to have made any change in the old order of things; although, in truth, the new ordinances differ altogether from those which they replace. For when this is attended to, the mass of mankind accept what seems as what is; nay, are often touched more nearly by appearances than by realities." Machiavelli, *supra* note 50, chapter XXV.

52 For reasoned praise of "two-thumb" writing, see online: <http://www.slate.fr/story/114155/taper-ordinateur-deux-doigts-rapide> (accessed on April 9, 2016).

53 For an interesting example of this prophetic pompousness, online: <http://www.csc.com/fr/ds/71138/71285-révolution_numérique_7_tendances_qui_vont_changer_le_monde> (accessed on April 9, 2016).

54 Macfarlane, ibid.

55 On this, consult the findings of the studies by CÉFRIO, online: <http://www.cefrio.qc.ca/netendances/equipement-et-branchement-internet-des-foyers-quebecois-en-2015/la-grande-majorite-des-foyers-quebecois-sont-branches-a-internet/> (accessed on April 10, 2016).

56 This finding has remained constant ever since the first studies on the issue conducted in 1993 by the Centre de droit préventif du Québec.

57 Nonetheless, transposing judicial activities into digital form will not eliminate a number of inequities in the judicial system, in particular, concerning the opposition of *Repeater* and *One-shooter* knowledge and skills referred to in Kramer's text in this work.

58 For example, in the case between Claude Robinson and Cinar Corporation, the photocopy costs of the file submitted to the court amounted to $150,000. Online: <https://voir.ca/societe/2013/01/23/claude-robinson-claude-robinson-devant-la-cour-supreme-le-dernier-round/> (accessed on April 9, 2016).

59 It is useful to recall that individuals' level of trust in the justice system is rarely above 50%. In this sense, we can subscribe to Daniel Weinstock's remarks in the present work: "However, it is not sufficient for the justice system to produce equity, or at least that it not deepen inequalities. It also has to inspire trust among citizens." It at least seems that the present system does not manage to do this and that we have to try something else.

60 Similarly, the media visibility acquired in recent years by judges assigned to preside over certain commissions of inquiry (Gomery, Bastarache, Charbonneau), the work of which has been broadcast on television, probably explains the increase in public trust in the courts. It is likely that this will also favour an eventual reform of rules concerning cameras in court.

61 Pierre Noreau, *Droit préventif: le droit au-delà de la loi* (Montréal: Éditions juridiques Thémis, 2016), first published 1993, 165 pages.

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