SGDs and the rule of law: the need to globalize the ethics of legal tech

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In the context of the rapid adoption and integration of legal technology at a global level, this blog will problematize the consequences of the bias of current discussions on the ethics of legal tech in the context of the Sustainable Development Goals (SDGs). The SDGs strongly emphasize the importance of the rule of law as a basis for development. While there is a fast-growing literature on the ethics of legal tech, this literature, and the problems identified and discussed, are problems characteristic of the U.S legal system. No attention is given to issues specifically relevant for the SDGs. This blog maps out an initial set of issues for critical discussion.

The rise of legal tech – and of new risks

The rise of 'legal tech' refers broadly to the use of technology, software and computer analytics to provide legal services and justice. Legal tech produces important changes in the legal practice, legal institutions and in the legal profession. While the legal field is premised on technology (clay tablets, alphabets, paper, the printing press), processes of digitization shape our understanding of legal problems and what is considered appropriate legal responses in new ways. Digitization refers to the collection, conversion, storage, and sharing of data and the use of digital technologies (e.g., mobiles, tablets, drones, biometric devices, computational applications in artificial intelligence, bespoke digital platforms and blockchain technology etc.,) to collect, analyze and disseminate information about claimants and plaintiffs, judge history, case law and emergent legal problems. Legal tech constitutes disruptive innovation because it shifts the time, cost and scope of knowledge production and management in law.

The U.S is home to most of the legal tech start up industry – and has been so for decades. The argument put forward in this blog is that as a starting point, it makes sense to think about legal tech as part of the larger project which legal anthropologist Laura Nader has called 'The Americanization of international law'. According to its promulgators, the rise of legal tech entails potential extensions of lawyering role through the transformation of legal practitioners into data brokers as well as the rise of new hybrid professions, such as legal knowledge engineer or legal technologist. This is a theory of change espousing optimistic and frequently utopian claims about the capacity of technology to improve legal practice, make it more affordable and accessible and lower the price of legal services. This approach is premised on a strong technological determinism: technology will work and work as intended without too many unforeseen consequences. This type of legal-tech change theory belongs to the broader category of technological utopianism, which regards technological progress as inevitable, apolitical, and problem-free and considers technology as a vehicle for 'achieving a 'perfect' society in the near future.

While the introduction of new technology may –finally – transform a conservative legal field, it also creates new forms of digital risk and new possibilities for digital harm to for lawyers and law firms, but also for their clients as well as for the citizen-users of financial services or government platforms. These risks and harms are frequently categorized as cybersecurity and/or due process/rule of law issues. However, legal technology is not neutral. Nor is it apolitical. Risk and bias matters: in the context of global dissemination, the rise of legal technology represents an unprecedented challenge to privacy, confidentiality and the rule of law. Small technical decisions in the design and implementation can create ripple effects with respect to the direct and distributive effects (on domestic legal cultures) of legal technology, particularly due to the potential for rapid and unreflective uptake in legal systems starved of capacity and resources.

The US bias of the legal tech literature and its implications

The academic literature on legal technology is heavily U.S centric and focused around progress narratives about types of technology, ways legal tech can improve lawyering and how innovative legal tech may be the answer to a host of access to justice challenges. A fast-growing bifurcating legal technology ethics literature mirrors this geographic bias and deals with problems and structures characteristic of the U.S legal system:

The first prong is partly descriptive and normative – accounting for the rise of ethics issues related to technology, and the growing normative framework around professional standards demarcating a duty of technological competence – as well as identifying new forms of malpractice. Important topics includes change in the lawyer-client relationships, in particular in relation to Duty of care and due diligence for protection of confidentiality and against intrusion; competence in e-discovery and responsibility for the organization of services. This also involves due diligence responsibility for 'non-lawyer' assistance, cybersecurity protection and vendor provision of cloud computing services. Attention has also been given to evolving norms addressing lawyer and judge use and abuse of social media, tweeting, Facebook and blogging social media in court and beyond.

The second and more critical branch of the ethics literature takes as its point of departure the tension between regulation of the legal profession and the means and methods and objectives of disruptive innovation. This concerns the ethical issues arising for clients but also with respect to how legal tech challenges the ethics of the legal profession on an everyday and systemic level. This second strand is highly critical of the so-called 'legal futurists'—tech evangelists who promulgate the inevitability and advantages of a technologized approach to lawyering— and argue that they fail to properly understand the responsibilities of the legal profession, that the underlying perspective on technology is too optimistic, that they promulgate 'bad' values by uncritically adopting the salespoints of big tech and legal tech, that they underplay the ethics challenge at hand, and that they mix academic work and stuff they want to sell in a problematic manner (for example here, here, and here).

In the context of the rapid adoption and integration of legal technology at a global level, the geographic bias of both advocates and critics means the uptake of legal

technology in jurisdictions elsewhere (and in particular in the global South) and the particular ethics issues that might arise have been given little – if any – critical attention. Much of the existing technology has been developed and trained on U.S data and is relevant to the rationalities, processes and values of common law systems. This means that we need a much better understanding of the costs and tradeoffs arising from the transplantation of legal tech and the potential ramifications for the realizations of the SDGs. What follows is an initial scoping:

Pointers for critical reflection

The digital divide: Key challenges involve the persistence of a digital divide between nations, regions and demographics (class, gender, ethnicity) with respect to access to ICT, in terms of limited infrastructure for connectivity, inability to afford gadgets or the data power, software and cybersecurity protections required for using legal tech safely and effectively – or limitations due to heavily controlled/censored access to the internet or specific software. This also includes attendant gaps in digital literacy leaving swaths of the population, civil society or legal profession behind with respect to the ability to critically engage with, optimize or resist the use of legal technology when accessing law and legal institutions.

Experimentation in a Global south context: There are longstanding and well-articulated concerns about the use of data in fragile and resource-poor settings: data is non-existent, incomplete or of poor quality (due to collection problems or digital shadows); data suffers from bias; effective data analysis is hampered by low levels of data literacy in the practitioner community and so forth. Following in the historical footsteps of technological imperialism, Experimental applications of ICTs and digital data are occurring in the absence of agreed normative frameworks and accepted theory to guide their ethical and responsible use. As governments are increasingly becoming sophisticated users of surveillance technology, legal tech is also becoming a site of ethical precariousness, as sensitive data flow from clients to lawyers, or individuals and organizations using gadgets, platforms and services.

Data colonialism: The question of data does not only concern data as a source of harm. It also raises the question of who owns the data? The data colonialism literature argues that digital society represents the continuation of capitalism's insatiable search for markets and labor, as well as the control of populations. Populations are trackable, monitored, commodified, and subjected to the pervasive power of corporate greed and state. Critical legal scholarship is increasingly interested in the processes of exploitation and subjectification of social life as resource for data extraction in the Global south. Legal technology appears to constitute an important part of the toolbox for this development.

Finally, the main stakeholders in the effort to globalize legal technology are market actors, not governments. Attention must be paid to how the *framing of problems* in the legal system of the Global south shifts to problematizations being amenable to technological innovation and intervention and the interests of technology stakeholders. This also includes focusing on agenda shaping in the legal tech context, how research on legal tech and the ethics of legal tech is funded, how expertise is constituted and who gets a seat around the table, and the politics of the

interests of expertise and the motivations of academics and practitioners involved in this debate.

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