



EDITORIAL

Court Administration at a Time of Uncertainty

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Dear readers

This issue of the *Journal* comes during a time of great uncertainty and change. As the old Chinese curse goes, 'may we live in interesting times' (although the saying appears to be apocryphal, as no actual Chinese source has ever been cited, according to the reliable editors at Wikipedia). But these are interesting times indeed. We have compiled a collection of articles on court-related themes that have lurked in the background over the last few years, but have been pushed to the fore as a result of the global pandemic. These include the judiciary's perennial quest for independence, the erosion of political freedoms and civil liberties across the world, the increasing use of technology and artificial intelligence and their positive as well as negative impacts on society in general and court systems in particular.

Ingo Keilitz argues that the coronavirus pandemic has accelerated some pre-existing trends, giving authoritarian leaders and 'surveillance capitalists' presumptive license to 'reprogram' our sensibilities about data privacy and civil liberties that may be irreversible. Keilitz explores the adjustments that courts and justice systems around the world may need to make to deliver justice in the face of these challenges. In a thought-provoking piece, Keilitz argues that judicial leaders need to place greater emphasis on good governance in the judicial branch and focus on finding a new narrative, 'one that is less combative, one that aggressively eschews the past's sharply polarized relationships between the judicial branch and the other two branches of government, and one that makes people partners instead of opponents.'

Kamil Jonski and Wojciech Rogowski examine the deterioration of law-making standards in Poland's legislative power that exacerbated the constitutional crisis and undermined confidence in Polish courts' independence. In their analysis, they aptly recall Urbinati's (2019) thesis that "populists work incessantly to prove that their ruling leader is an incarnation of the voice of people and should stand against and above all other representative claimants and repair the fault of constitutional democracy."

Md Milan Hossain traces the separation of magistrates' courts in Bangladesh from the executive power of government and analyses the extent to which the 12 mandatory directions of the *Masdar Hossain* judgment, known as the separation of powers case, have been fulfilled. The analysis shows that only a handful of the directions have been fulfilled since 2007,

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while no effective actions have been taken to implement the rest of the directions for the purpose of ensuring the separation and independence of the judiciary.

Olugasa Olubukola examines Nigeria's criminal justice administration in light of the new legislative provisions that seek to expand the application of ICT facilities in the criminal justice system. Ideally, ICT could usefully be integrated throughout the criminal justice system to promote the effective and efficient automation of administering criminal justice. In the new era of social distancing and the COVID-19 pandemic, such reform, he argues, will be imperative.

Anastasia Konina examines the plan to implement an automated case and registry management system (CRMS) in Canada's Federal Courts. She argues that while there are significant benefits associated with the introduction of the CRMS system, the implementation of it poses significant risks to judicial independence. Particularly, she scrutinizes how CRMS may undermine the security of judicial information and how automation of procedures may adversely affect the procedural independence of the judiciary. To address these risks, she proposes the establishment of a specialized standard-setting committee that will monitor the CRMS implementation process.

Gustavo Ferro, Victoria Oubiña and Carlos Romero explore the potential and limitations of using Data Envelopment Analysis (DEA) to determine the relative efficiency levels between labour courts in Argentina. Their technical analysis of court data involving 80 courts over a six-year period shows the inherent difficulties involved in applying DEA frontier analysis to evaluate relative efficiency in courts where the choice of inputs and dependent variables is complex and sometimes difficult to correlate with key organisational 'outputs'. Their analysis of the efficiency scores with respect to the chosen determinants recognises that more variables, outside the chosen sample, can help explain the variance in the scores.

Dory Reiling explores the use of artificial intelligence (AI) in courts. The article provides an excellent overview of the issues that courts and technology-providers must grapple with in the future, by focusing on two main questions: (1) how can artificial intelligence be useful for courts and judges, and (2) what is needed to make artificial intelligence useful? Reiling provides practical examples of the benefits, as well as limitations, of AI in the context of judicial decision-making by recalling the words of the creators of the digital assistant *Siri*, who pointed out that, 'if a machine is to be able to recognize a cat with 95% certainty, we need about 100,000 pictures of cats.' Reiling concludes that the best practical use of AI so far lies in the structuring of large amounts of information, which could make the administration of justice more efficient; whereas the use of AI for advisory and forecasting functions is still inhibited due to the lack of reliable 'big data' and other technological limitations.

Roman Kuibida, Liana Moroz and Roman Smaliuk examine the status of Ukraine's justice and judicial systems in the country's eastern regions or oblasts of Donetsk and Luhansk. Following the Russian Federation's annexation of Ukraine's Crimea, pro-Russian separatist militia invaded those regions, deployed military force and seized territory then established their own rebel governance frameworks complete with police, prosecution and court systems. The article explores the adverse consequences of this regional war for Ukrainian citizens residing in those oblasts of access to justice. It also ponders the long-term consequences of these alien justice systems and the challenges of restoring Ukraine's sovereign justice institutions once a meaningful peace agreement is achieved.

Colin Rule pens a book review of *Online Courts and the Future of Justice* by Richard Susskind (Oxford University Press, 2019). Rule deftly portrays Susskind's vision for the future role of online courts in civil disputes and their effect on the processing of disagreements and claims that is likely to occur. The book review provides a nice contrast between Reiling's practical assessment of 'what works now' with Susskind's 'what may work' or 'will be likely' to work in online courts of the future. Rule's analysis of Susskind's book is bolstered by his own extensive expertise and experiences in the area of online dispute resolution, especially from an ODR technology point of view.

Competing Interests

The authors have no competing interests to declare.

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