

# Techno-Optimism & Access to the Legal System

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*Abstract: For legal technologists, apps raise the prospect of putting the law in the hands of disadvantaged people who feel powerless to deal with their legal problems. These aspirations are heartening, but they rest on unrealistic assumptions about how people living in poverty deal with legal problems. People who are poor very rarely resort to the law to solve their problems. In the situations when they do seek solutions, they confront educational and material impediments to finding, understanding, and using on-line legal tools effectively. Literacy is a significant barrier. More than 15 percent of all adults living in the United States are functionally illiterate, meaning that, at best, they read at the fourth-grade level. Inadequate access to the Internet and limited research skills compound the challenges. To reach people from marginalized groups, access-to-justice technologies need to be integrated with human assistance.*

Imagine a world where a man convicted of a crime can use an app to legally expunge his record so he can get a job.<sup>1</sup> Or where a cleaning lady paid by the hour can use an app to figure out whether her employer is stealing her wages.<sup>2</sup> Or where a tenant can use an app to document the mold growing in her bathroom and get her landlord to follow the law and eliminate the mold.<sup>3</sup>

For legal technologists, apps like these raise the prospect of putting the law in the hands of disadvantaged people who feel powerless to deal with their legal problems. Self-help apps aim to enable users to address their legal issues themselves, educate them about the legal system, and motivate them to pursue their rights and seek positive political change.<sup>4</sup>

To their creators, self-help tools represent an important step toward fulfilling the democratic promise that law be accessible to everyone and redressing power imbalances in the legal system that stem from economic and other forms of inequality.

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In this techno-optimistic vision, self-help technologies will loosen the control of lawyers over the legal system and lead to a broader collective capacity to address the system's failings and the conditions of poverty more generally.<sup>5</sup>

These aspirations are attractive, but they rest on unrealistic assumptions about how people living in poverty actually deal with legal problems. In particular, they overlook the cultural, material, and educational hurdles this group confronts when attempting to find legal help. People who are poor rarely resort to the law to solve their problems.<sup>6</sup> In 2017, the Legal Services Corporation found that the large majority of people who face legal problems don't seek legal assistance or even information.<sup>7</sup> Many people don't look for help because they believe they can handle their problems on their own. Some African Americans, a separate study concluded, are deeply distrustful of the civil legal system because of their experiences with the criminal justice system.<sup>8</sup>

Others don't know where to turn, and many do not even recognize that their problems have legal dimensions.<sup>9</sup> It turns out, too, that knowledge about which problems are legal varies with the type of problem. The large majority of poor people know they need to go to court to seek adjustments to their family arrangements, like adopting a child or getting a divorce. But they might not know that severe asthma caused by mold in a rental unit or getting unfairly fired from a job is also a legal problem. Yet housing and employment problems have the most significant material effects on poor people's lives.<sup>10</sup>

Even when people recognize that their problem is legal, they face significant impediments to finding, understanding, and using online legal tools effectively. A recent study found that only half of people with household incomes at \$30,000 or below have broadband Internet access at

home. Cell phones are ubiquitous among the wealthy and middle class in the United States, yet one-third of poor Americans do not own one.<sup>11</sup> Nearly half of low-income households reach their data caps on a monthly basis or are forced to cancel their service because they can't pay for it.<sup>12</sup>

People living in poverty often do not have the literacy and computer skills needed to use legal digital tools effectively. Although efforts are being made to simplify the process of searching online for legal information for people without legal expertise, finding trustworthy and applicable resources on the Internet is a major challenge for low- and middle-income people.<sup>13</sup>

The problem is significantly compounded by America's low literacy rates. Some 14 percent of all adults living in the United States are functionally illiterate.<sup>14</sup> Another 30 percent can only read and understand common phrases. Altogether, this means that close to half of the adult U.S. population struggles as readers.<sup>15</sup> And this segment of the population is disproportionately poor, meaning that an even higher percentage of the people who need civil legal services are illiterate or barely literate.<sup>16</sup>

In the face of these challenges, the legal self-help movement has put significant energy into creating "plain language" resources written at a sixth-grade level or below, but there are likely to be limits to how intelligible laws can be made to people with limited literacy.<sup>17</sup> The law is word-heavy, and full of technical and complex concepts. For poor people, the struggle of dealing with chronic scarcity of money and food and lack of physical security makes it even more difficult to absorb and act on legal information.<sup>18</sup>

Many of these limitations apply equally to most other technologies created in recent years to bridge the justice divide.

With thirty million self-represented litigants in state courts every year, many state courts have installed kiosks in clerks offices and self-help centers for self-represented litigants that produce tailored pleadings and other legal documents.<sup>19</sup> Despite the enthusiasm surrounding them, without human assistance, these tools can only provide limited help to litigants.

Self-help technologies can play a useful role in assisting low- and moderate-income people, but they may not be the most effective means to redress power imbalances produced by income, racial, and other forms of inequality. To reach people from marginalized groups, legal technologies need to be supplemented by other strategies.

A complementary, and potentially more effective, approach puts tools in the hands of people in positions of trust – nonlegal professionals, community leaders, and others – so they can function as intermediaries between disadvantaged people and the legal system. The Legal Risk Detector app permits social workers who serve the home-bound elderly to conduct “legal health checks” to identify their clients’ potential legal problems.<sup>20</sup> Through a series of simple questions, the app allows a social worker to determine whether a client has a landlord-tenant, health care, or consumer-debt problem, or is a victim of financial exploitation or physical abuse. If the social worker discovers a potential issue, he or she can link the client to legal resources and connect the client with an attorney.<sup>21</sup> The app allows a service provider to spot problems early and make an intervention before they turn into crises.

Prohibitions against the unauthorized practice of law, which exist in every state, present a substantial barrier to this approach. As of 2018, there have been no publicized attempts to enforce these bans

against nonprofit organizations. Nevertheless, they lead nonlawyers who want to assist people to find legal help to steer clear of activities that appear to overlap with providing legal advice, preparing documents, or doing other tasks that might be characterized as practicing law. In most states, the practice of law is defined broadly and vaguely.<sup>22</sup> As a consequence, providers of nonlegal services are reluctant to go beyond providing general information about the law. As a recent report of the Pew Research Center showed, among African Americans and poor people who go to libraries, half seek help finding information from librarians, making libraries potential sites for assisting disadvantaged people with legal problems.<sup>23</sup> But librarians, like other nonlawyer service providers, are wary of crossing the line by providing individualized guidance that could be construed as giving legal advice.<sup>24</sup>

Legal technologists seeking to build effective access apps might borrow a strategy now being developed to address health care disparities experienced by disadvantaged groups. In areas with high concentrations of African Americans, barber-shops and hair salons are promising settings for providing medical screening and referral services for people who underuse preventive health services. In one study reported in *The New England Journal of Medicine*, barbers working with pharmacists on-site provided black patrons with information promoting healthy habits, blood-pressure screening, and medication. The result was dramatically decreased rates of high blood pressure among those patrons.<sup>25</sup> The success of the approach turned on the long-term relationship of trust between the clients and their barbers. Medical-legal partnerships, in which health care providers and lawyers offer services together, reflect a similar strategy.<sup>26</sup>

There are still relatively few legal technologies intended for trusted intermediaries, but they have great potential. Unlike self-help tools, they do not depend on people being able to identify their legal problems in advance, so they eliminate an important barrier to obtaining help. They also do not require a person in need of help to seek it. Instead, they offer resources where that person lives or spends time. They rely on a relationship of trust between the person in need of legal assistance and the person providing it. That person can provide empathy and reassurance, as well as knowledgeable guidance. By assisting poor people to solve their problems, this approach holds the promise of increasing their capacity for self-determination and improving their lives.

Tools for intermediaries that address housing, employment, or consumer-debt problems might be embedded in a range of community institutions, such as churches, libraries, tenant associations, or bodegas and nail salons. If these types of tools are found to be effective and proliferate, they can contribute to an ecosystem that provides more integrated service delivery and addresses poor people's legal needs at any earlier stage. Simultaneously, these tools can create a corps of "justice actors" and be part of a larger strategy of collective empowerment by educating members of marginalized communities about the potential, as well as the limits, of the legal system to serve their needs.

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#### ENDNOTES

- <sup>1</sup> MDExpungement, <https://www.mdexpungement.com/>.
- <sup>2</sup> Unreleased demonstration app developed by Georgetown University Law Center students.
- <sup>3</sup> JustFix.nyc, <https://www.justfix.nyc/>.
- <sup>4</sup> Richard Susskind and Daniel Susskind, *The Future of the Professions* (Oxford: Oxford University Press, 2015).
- <sup>5</sup> Ibid.
- <sup>6</sup> Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study* (Chicago: American Bar Foundation, 2014), 14; and Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* (Washington, D.C.: Legal Services Corporation, 2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.
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- <sup>16</sup> Kutner et al., *Literacy in Everyday Life*, 32.
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- <sup>19</sup> National Center for State Courts, “Self-Help Resources,” <https://www.ncsc.org/topics/access-and-fairness/self-representation/state-links.aspx?cat=Self%20Help%20Information%20Resources%20and%20Centers>.
- <sup>20</sup> Center for Elder Law and Justice, “Legal Risk Detector App,” <https://elderjusticenyc.org/resources/legal-risk-detector-app/>. Students at Georgetown University Law Center built this tool in collaboration with an organization serving the aging. The app is built in the software platform Neota Logic that does not require an app’s developer to know how to code.
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