

Consistency and Change with Judicial Decision Support Systems

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One of the most prominent tensions in law is the tension between the aspiration for clarity, predictability and consistency, and the need to constantly adapt the law – to new legal ideas or to social and technological changes. Judicial decision support systems (JDSSs) can be an important tool in achieving a desired balance. JDSSs are computerized systems, which are based on the legal state of affairs, and are designed to assist judges in their decision making process. They take into account the characteristics – facts and findings – of the case, and by applying the system's algorithm on them suggest a decision for the judge. The algorithm can be based on rules, on a database of previous cases or on learning and inferring from past cases. The judge then can apply her discretion and decide whether to accept the system's outcome or deviate from it.

On the one hand, JDSSs can narrow the uncertainty in the judicial systems, since they operate in a predetermined way. Moreover, if they are available to the public, then it can be easier for parties – or to future litigants – to evaluate their situation in the legal proceedings and to determine their actions according to it. In this manner, JDSSs can offer a more complex and effective alternative to the traditional legal definitions or formal rules.

On the other hand, it is debatable how JDSSs can deal with changes resulting from legal policy, social changes technological ones. It can be argued that computerized systems are constant and are not changing easily, while the human judiciary can adapt quickly to changes. In the paper I opine that JDSSs can accommodate change and be adjusted to new approaches or conditions. However, since there are different types of JDSSs – according to the algorithm they use – adaptations vary from one type to another. As will be elaborated in the paper, while some systems can adapt to gradual changes without any effort, other systems require constant maintenance in order to accommodate day to day changes. Nevertheless, when major changes occur, the second type of JDSSs can be reprogrammed more easily.

The proposed paper will show how JDSSs can contribute significantly to the reliability of the judicial system, without neglecting the inherent trait of law – its

ability to constantly change. The examination will be based on the special features of the different JDSSs. It will introduce the possibilities embedded in JDSSs along with shedding some light on adjudication as it is conducted today.