Towards a research agenda for the Digital Legal Studies

Digital Legal Studies is an emerging field of scholarship that aims to advance our understanding of how digital technologies interact with law and justice. To define the developing discipline and outline possible future research themes and approaches, this document was developed as a collaborative effort by the participants of the Digital Legal Lab's winter school "Data, personalization, and the law 2023", which took place from 4 to 8 December 2023 in Leiden, the Netherlands.

Over the course of the week, the participants were invited to reflect upon the common subjects, methodologies, and challenges that emerge in their own research, in order to think towards a joint research agenda for the field of Digital Legal Studies. The synthesis of these discussions is outlined below: in *part one*, the common research themes are summarised, as they emerged in the conversations. *Part two* outlines what the winter school participants consider as the common challenges for Digital Legal Studies. In *part three*, some possible future research directions are mapped, based on the ideas of the winter school's community. The discussions were informed by prior scholarship, shaping the inception of the syllabus for the Digital Legal Studies (*part four*).

We consider this a living document aiming to contribute to a further discussion on how to shape the field of Digital Legal Studies to comprehensively address the emerging law and technology issues.

Shared research themes in the Digital Legal Studies

According to the participants of the winter school, Digital Legal Studies as a field of research deals with examining the prevalent issues related to digital harms to the individuals and society that are currently under-addressed and/or under-regulated. For instance, these can refer to exploitations of vulnerability, harms to autonomy, dignity, free speech, or privacy, and concerns related to transparency and accountability of digital technologies.

It came to light that research in this regard broadly concerns the governance of data collection, accumulation, and use; the protection of fundamental rights; cybersecurity and liability aspects; and the governance of the internet more broadly. Moreover, such research is often situated in the context of digital platforms as new public sphere intermediaries and their expansion into fields beyond the 'digital'. Often, a cross-cutting theme of research projects is how to balance and reconcile the different, and sometimes diverging, interests that are at play. Lastly, it is increasingly evident that Digital Legal Studies is situated at the intersection of diverse regulatory regimes, which necessitates nurturing a genuine interdisciplinary skillset.

Common challenges for the Digital Legal Studies

From the deliberations, it emerged that one of the biggest challenges is the lack of common notions and definitions. Namely, even the concept as fundamental as *fairness* might have different implications to a legal scholar, a philosopher, and a computer scientist. As Digital Legal Studies is bringing together different kinds of disciplines and expertise, having a joint vocabulary is of paramount importance; closing the gap in understanding is, in this sense, essential to overcome misaligned research intentions and outcomes.

Another challenge that needs attention is related to the fact that the conventional public-private divide might be increasingly becoming irrelevant. That is, the division of tasks between private actors and public regulators and their legitimacy requires an immediate rethink against the growing power(s) of the digital technology providers and their relationship to the 'state'.

Future research questions and approaches for the Digital Legal Studies

Winter school participants highlighted the need to do more normative research, in order to determine the shared notions such as *public interest* and their role in the regulation of the digital technologies. At the same time, more empirical research is also called for, especially as regards the design and use of socio-technical systems. Moreover, required in light of the growing number of regulatory frameworks, further research on institutional and enforcement aspects is required.

These approaches shall combine a variety of methods: doctrinal and comparative legal research, critical approaches, computational methods, qualitative studies like interviews or focus groups etc. A more bottom-up approach and cooperation with stakeholders from practice would be desired, as would paying attention to the global dimension and insights from the Global South.

Suggested readings for the Digital Legal Studies

In this part, the selected readings, as suggested by the winter school participants, are listed. Additional literature for the Digital Legal Studies is also available in the syllabus for the winter school.

Bradford, Anu. 2023. Digital Empires: The Global Battle to Regulate Technology. New York: Oxford University Press. https://academic.oup.com/book/46736.

Charlesworth, Andrew. 2021. 'Regulating Algorithmic Assemblages: Looking beyond Corporatist AI Ethics'. In Data-Driven Personalisation in Markets, Politics and Law, edited by Uta Kohl and Jacob Eisler, 1st ed., 243–62. Cambridge University Press. https://doi.org/10.1017/9781108891325.019.

Custers, Bart and Malgieri, Gianclaudio. 202). 'Priceless data: why the EU fundamental right to data protection is at odds with trade in personal data'. Computer Law & Security Review, 45.

Eggenschwiler, Jacqueline. 2018. 'A Typology of Cybersecurity Governance Models'. St Antony's International Review 13 (2): 64–78.

Floridi, Luciano. 2016. The 4th Revolution: How the Infosphere Is Reshaping Human Reality. Oxford: Oxford University Press.

Graef, Inge and van der Sloot, Bart. 2022. 'Collective data harms at the crossroads of data protection and competition law: Moving beyond individual empowerment'. European Business Law Review, 33(4).

Helberger, Natali. 2020. 'The Political Power of Platforms: How Current Attempts to Regulate Misinformation Amplify Opinion Power' Digital Journalism, 8(6).

Lastowka, F. Gregory. 2010. Virtual Justice: The New Laws of Online Worlds. Yale University Press. https://doi.org/10.12987/9780300146134.

Matsumi, Hideyuki and Solove, Daniel J. 2023. 'The Prediction Society: Algorithms and the Problems of Forecasting the Future'. Available at SSRN, dx.doi.org/10.2139/ssrn.4453869.

Murray, Andrew. 2007. The Regulation of Cyberspace: Control in the Online Environment. Routledge-Cavendish. http://catdir.loc.gov/catdir/toc/ecip0616/2006020898.html.

Owen, Richard, Phil Macnaghten, and Jack Stilgoe. 2012. 'Responsible Research and Innovation: From Science in Society to Science for Society, with Society'. Science and Public Policy 39 (6): 751–60. https://doi.org/10.1093/scipol/scs093.

Poell, Thomas & Nieborg, David, and van Dijck, Jose. 2019. Platformisation. Internet Policy Review, 8(4). https://doi.org/10.14763/2019.4.1425.

Purtova, Nadya and van Maanen, Gijs. 2023. 'Data as an economic good, data as a commons, and data governance'. Law, Innovation, and Technology, 10.1080/17579961.2023.2265270.

Sharon, Tamar. 2021. 'From hostile worlds to multiple spheres: towards a normative pragmatics of justice for the Googlization of health'. Med Health Care and Philos 24, 315–327. https://doi.org/10.1007/s11019-021-10006-7.

Van der Sloot, Bart and van Schendel, Sascha. 2021. 'Procedural law for the data-driven society'. Information & Communications Technology Law, 30(3).

Taylor, Linnet. 2017. 'What is Data Justice? The case for connecting digital rights and freedoms globally'. Big Data & Society, 4(2).