Epilogue

What Is Legal Innovation?

ABSTRACT

In the epilogue, the editors reflect on the series of conversations. They revisit the definition of 'legal innovation' and what they have learned about it through the discussions. Their perspective on legal innovation is twofold. On the one hand, technology transforms the reality of law and fundamentally changes the way we access and experience law and justice. On the other hand, law evolves, adapts to changes in society, but can also facilitate and implement innovation. They conclude by considering what it takes to initiate legal innovation.

Speakers   Felix Steffek and Mihoko Sumida

Sumida: This conversation series was a really fun and enlightening experience. I very much enjoyed thinking about legal innovation and technology with our guests and students. While our research project 'Legal Systems and Artificial Intelligence' is still in its infancy, it was great to be inspired by the best concepts explained by the best guests we can think of. To have received so much support and to have the opportunity to publish these conversations – well, I am just thrilled! Against this background, I thought that we, the organisers, could present what we have arrived at through this experience – with each other and sharing it with our readers.

DEFINING LEGAL INNOVATION

Sumida: My understanding is that the concept of 'legal innovation' is similar to the 'theory of legal evolution', which captures the 'adaptation' of law to changes and innovations in the environment, including society and the economy. In discussing what legal innovation is, it would be a bit perverse to treat it as if it were a legal rule and define its requirements and effects in order to establish a basis for discussion.

If legal innovation was treated in this way, the discussion would not be able to proceed. On this point, Felix, as you suggested the term 'legal innovation' for this conversation series: what did you mean by 'legal innovation'?

Steffek: When I proposed that the topic of this conversation series should be 'legal innovation', I had two things in mind. *First*, technology is transforming the reality of law in the sense that it is fundamentally changing our access to and experience of the law. Therefore, I thought that this course should deal with advances in technology dealing with the law, i.e. LawTech. Artificial intelligence (AI) can be used to gather information about the law, analyse the law, predict the law and communicate the law. Blockchain technology can be used to design smart contracts. Smart contracts will not always rely on public authorities to enforce the performance of contracts. Instead, this can be achieved by algorithms. It is important to understand how technology will affect the administration of law and what will drive such changes.

Second, there is also a change on 'the other side': innovation from the side of the law, responding to a new reality. Like technology, law is not static, it evolves. In many cases, such evolution occurs in stages. External shocks can also significantly change the structure of law. How will the use of advanced technology and Big Data affect the law? I thought it would be useful to engage with the forms and causes of the change in law. In this course, I wanted to examine these changes through the lens of technology. This also means recognising the importance of the contribution of lawmakers in creating change in society. By lawmakers, I mean both public ones, such as parliaments and courts, and private ones, such as professional service providers and professional associations. It will be interesting to see how lawmakers in this broader sense react to current technological advances.

Looking at legal innovation from these two perspectives – technology and law – raises the question of priorities. Will technology dominate the law, for example, when contracts become algorithms that do not require a legal system? Or will the law prevail over technology, for example, will parliaments come to ban certain algorithms and regulate others? Or will there be a future cooperation between technology and law, where law adapts to technological progress and technology respects the normative constraints imposed by law? The world we live in today faces many challenges, and I am thrilled that we live in a time where these questions are being asked. So, the modern age we are living in provides us with a wonderful opportunity to think about 'legal innovation'. That is what I was thinking.

It is true that legal innovation has a completely different dimension compared with legal norms. In that sense, I agree with your proposal to introduce the theory of evolution into the way in which we think about law. Professor Simon Deakin has written ground-breaking articles on applying evolutionary principles to law.

NOW IS THE TIME TO TACKLE STRUCTURAL PROBLEMS

Sumida: The challenges we face 'here and now' are large, deep and numerous, with many of them raising fundamental questions. Especially for Japan, which is facing a

number of social and economic structural problems, Professor Koda has made the important point to use the post-COVID-19 period as a chance for progress. There is a need for a radical new approach that is not an extension of the old system. Specifically, we must turn to innovation that uses technology to solve social problems. He also spoke of his expectations for legal innovation as a way of thinking about how law should reflect innovation, how legislation should be drafted and interpreted and how legal innovators should be facilitated.

Steffek: Similarly, the social problem-solving approach was mentioned by Ludwig Bull, the founder of a LegalTech start-up. Legal innovation should contribute to normative goals, such as improving well-being and achieving justice through law. The two vectors of law and technology that I mentioned earlier can be understood in terms of social and economic change and law. When an innovative technology is invented, such as blockchain-based value transfer, legislators will develop new rules on how to fit it into the existing legal system. Interestingly, social and technological change will often precede and the law will follow. On the other hand, there may be a form of law reform that aims to bring about changes in society first, such as the liberalisation of the law of professional legal services to provide legal service providers with a framework to accommodate technology-based legal services.

INITIATING LEGAL INNOVATION

Steffek: The actors of legal innovation may be public institutions – e.g. parliaments and courts producing statutes and case law – or private ones – e.g. commercial actors and consumers producing company articles of association and contracts. While the former concerns the public order, innovative private ordering is no less important and often precedes public legal innovations. In this sense, legal innovation can be understood more broadly to include not only formal law, e.g. statutes and contracts, but also legal practice, e.g. court procedures and modes of operation of law firms. Again, both public and private actors are involved in legal practice.

Sumida: It is an important point to take a broad view of the actors of legal innovation. However, we should not forget Sir Geoffrey Vos, one of the highest judges in England and Wales who is leading the digital transformation of civil justice, and his idea of civil justice as economic infrastructure. I was overwhelmed by the persuasive power of his logic.

Steffek: That's very true (laughs). As far as the private actors are concerned, good corporate governance will generate profits by using technology to solve people's problems and improve people's lives. I agree with the direction set by the Ministry of Economy, Trade and Industry (METI) in Japan. My own summary of the 5Ds of corporate governance changes brought about by technology is as follows: (1) Data: more and better data analysis; (2) De-centralisation: less central direction and oversight; (3) Democratisation: a stronger relationship between social welfare and governance; (4) Disruption: fundamental changes in corporate governance and (5) Design: more pre-design of legal relationships and less post-dispute litigation.

Sumida: I have studied the METI study group's proposals. Its direction of integrating AI governance into corporate governance was inspired by the insights of our joint research project's UK Principal Investigator, Professor Simon Deakin of the University of Cambridge. Based on many years of research on corporate governance in Japan, he investigated the prospects for a period of radical change brought about by technology and came to the conclusion that Japan's long-standing characteristics can be resilient.

In that sense, there is no need to be quick and assume that the Japanese language – with its ambiguities – is unsuitable for AI. This is supported by the spectacular results of AI research based on Chinese language texts. The point made by AI researcher Dr Yamada that as long as the data environment is in place, AI research can proceed and improve prediction accuracy, is also very encouraging for Japanese readers. I am sure that they will share the sense of longing that the direction of Japan's policy is right and that we are waiting for its realisation as soon as possible.

INNOVATING ACCESS TO JUSTICE

Steffek: In a recent development related to our research project, the OECD has launched the project 'Digital Transformation for Access to Justice: Towards a People-centred Justice System'. The project is led by the Access to Justice Team of the OECD under the guidance of Dr Tatyana Teplova and the Latvian Court Administration. I have the great honour of being the scientific advisor of this project. This project is still in progress and the final report is still in draft form. Against this background, all my comments are preliminary.

The report is based on a questionnaire which was sent to the OECD Member countries. The questionnaire covers four areas in terms of access to justice and technology: strategies and institutions, technology for legal services, technology for dispute resolution services and data-driven access to justice. The responses show that the digital transformation of justice services is driven by the demand for high-quality and differentiated access to justice. This transformation has been facilitated by advances in technology, limited by public resource constraints and accelerated by the COVID-19 pandemic. The flexibility and willingness of citizens in these countries to accept technological changes in justice services during the pandemic were also reported to be excellent. At the same time, care must be taken to avoid the formation of a digitally abandoned citizen base. Overall, the speed and depth of integration of technology into judicial services varies across countries. Some countries are taking a progressive approach, while others are still searching for direction.

Sumida: It is a very interesting project. I am looking forward to the publication of the report. By the way, the Japanese team of our research project is tackling a serious social issue in the online-first era: anonymous defamation on the internet.[1]

---

[1]   Our research project 'Legal System and Artificial Intelligence' is carrying out AI development experiments in collaboration with the research project 'Explainable Dispute Resolution Prediction Models for Civil Disputes' (JST Strategic Creative Research Promotion Project ACT-X: JPMJAX20AM), conducted by Hiroaki Yamada, in cooperation with LIC Inc.

Of course, AI is already used to detect hate crimes, but this is mostly based on learning large amounts of data from social networking sites. In contrast, our approach is to develop and test a prediction system for civil dispute resolution, using civil judgments as training data. We aim to see how far we can go in solving the problem of bias, which has become prominent in recent years.

When I started this research, I realised that court proceedings that produce the learning data in the form of judgments are not only a matter for me as a legal scholar, but also a matter for technology experts. As a legal scholar, but also as a 'technology conscious' person, I am curious to see what the courts will do. I am particularly focused on privacy. It has a direct impact on the data environment.

Take the example, where a family court investigation officer published an academic paper on a juvenile protection case that he was in charge of, first in a prominent journal and later in a book. The Japanese Supreme Court, while taking into account the characteristics of the juvenile protection case, denied any violation of privacy in view of the manner of publication and the fact that the purpose of the publication was 'to promote an important public interest'.[2] This decision reversed the decision of the High Court, which had found an invasion of privacy.

When I came across this judgment, I felt that the term 'important public interest' implies the intention to protect the environment in which the collaboration between judges and family court investigation officers, who have a background in psychology and psychiatry, can function effectively. This has supported the quality of judicial decisions in juvenile protection cases. In the context of the new business model for providing legal services, Professor Mari Sako talked about multidisciplinary teams as a keyword for the future of legal professionals. However, it can be said that the 'correctness' of judicial decisions in difficult cases, such as juvenile protection cases, has traditionally been ensured by working in multidisciplinary teams. In addition, providing a one-stop solution by collaborating with other actors in dispute resolution is also important in the context of human-centred judicial innovation.

Having been exposed to the idea of automation of 'execution' using technology, I felt that this also requires the generation of compatible data – an issue that you have pointed out as a new mission for lawyers and data scientists. From the point of view of preparing for such a digital transformation, I think that the recent decision of the Supreme Court of Japan points in the right direction.

Felix, I saw that you have been appointed Director of the Law Tripos at the University of Cambridge, where you will also be working on curriculum development for the Faculty of Law.

Steffek: I like your point of view on technology consciousness! A legal innovator is not a bystander to change, but an agent of change. As regards teaching law and technology at Cambridge, I am currently developing a LawTech Workshop for our

---

[2] Japanese Supreme Court Judgement, 9 October 2020, Supreme Court Reports (civil cases) vol. 74, no. 7, p. 1807.

students.[3] The main idea is that this Workshop should not focus on the law as it regulates the use of technology. Hence, the Workshop will not focus on intellectual property law or data law. Instead, it will concentrate on technology as it is used in legal practice. For example, we will have a demonstration on the screen in a classroom for the students, of what a legal database looks like, how a machine learning algorithm is constructed and how it develops predictions. I hope this will be a worthwhile learning experience for the students as many read and discuss LawTech, but not that many law students have seen the technology in operation. However, it is only after seeing and understanding the relevant technology that one can really discuss its ethical implications.

Sumida: Because legal innovators are experimenting, experimenting and experimenting again.

---

[3] Felix Steffek, 'Technology and Law: A Research and Teaching Agenda' (2019) 1155 New Business Law 41 (in Japanese).