

Private Law of Data: Concepts, Practices, Principles & Politics

Dr. Przemysław Pałka

The goal of the project is to illuminate the mechanisms through which private law – civil law, economic law and privately made rules in contracts – facilitates the development of the data society. The project is of high theoretical significance – these mechanisms have not yet been accounted for in the legal scholarship, neither the Polish nor the anglophone – as well as of high practical significance. Dynamic developments of data collection and analytics technologies, as well as widespread reliance on devices and services generating data as a “byproduct” of, e.g., shopping, browsing the Internet or simply moving around a city, caused a commotion in legal scholarship. Legal academics wrote a lot about how the law should react to the changes in technology, in order to safeguard values like privacy, autonomy or security, while at the same time not hinder efficiency or social innovation. Such an approach posits law as a reactive force, which must respond, “keep up with” the technological changes happening, supposedly, in no connection to the law itself. This project takes a different approach, putting forward a hypothesis that private law – together with economic and technical factors – constitutes a creative force, contributing to the development of the data society.

In order to test this hypothesis, this project will seek answers to four specific research questions. First, how are the concepts of “data” and “information” used in legal and political discourses, and how two replace these ambiguous terms with categorizations increasing the explanatory power of legal language? Second: what are the contents of privately made norms governing social relations concerning data, stipulated in terms of service and privacy policies of online platforms and mobile apps? Third: what principles of private law stand in conflict with what principles of the personal data protection law, and how the former can legitimize widespread collection of data about persons? And fourth: what questions regarding the future of the law governing the data society are legal, and what are political?