# SYMPOSIUM

## DATA IN BUSINESS & SOCIETY

*by*
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Data, it is sometimes said, is the world's new oil.[1] Unlike the days when information was transmitted in print form, data is transmitted at the touch of a fingertip through the click of a mouse or a push of an icon on a phone app. Algorithms and computing systems have drastically expanded the scope, speed, and volume of access and use of data for consumers.[2] Additionally, businesses, in variety of forms, including business-to-business, business-to-consumer, online, and even brick-and-mortar, have employed data to interact with other businesses and with consumers. Data has drastically expanded in use throughout business and society, and has changed how

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[1] Michael Palmer, *Data Is the New Oil*, ANA MKTG. MAESTROS BLOG (Nov. 3, 2006, 5:43 AM), https://ana.blogs.com/maestros/2006/11/data_is_the_new.html; Lauren Henry Scholz, *Big Data Is Not Big Oil: The Role of Analogy in the Law of New Technologies*, 86 TENN. L. REV. 863 (2020). Data scientist Clive Humby coined the phrase "Big Data is the New Oil" on a panel at a 2006 marketing conference held at Northwestern's Kellogg School of Management. *See* WORLD ECON. F., PERSONAL DATA: THE EMERGENCE OF A NEW ASSET CLASS 5 (2011).

[2] Tabrez Y. Ebrahim, *Algorithms in Business, Merchant–Consumer Interactions, & Regulation*, 123 W. VA. L. REV. 873, 878, 887 (2021).

individuals interact with the legal system.[3] Beyond transforming transmission of information, new technologies that utilize data are transforming how law and digital technology interact in powerful ways and have raised new legal and policy considerations, including: (1) data governance and digital platforms; (2) artificial intelligence, machine learning, algorithms, and data-driven innovation; and (3) data protection and privacy.[4]

Data provides opportunities for businesses, individuals, and society to interact with the legal system through digital technology. Moreover, data gathered through digital technology is stressing the aims, interpretation, and scope of doctrines, institutions, and interactions in the legal system.[5] Beyond assisting businesses and consumers gain access and provide new interactions, linkages, and networks, data and digital technology can help analyze behavioral patterns at an unprecedented scale, speed, and volume to assess what is going on with the users of devices and digital systems.[6] The insights gained from the gathered data can be used in many ways by businesses and have impacts on law and society. Some common themes include accountability, automation, bias, competition, efficiency, fairness, linkages, scale, and

[3] *See* Solon Barocas & Andrew D. Selbst, *Big Data's Disparate Impact*, 104 CALIF. L. REV. 671, 693, 722 (2016); Woodrow Barfield, *Towards a Law of Artificial Intelligence*, *in* RESEARCH HANDBOOK ON THE LAW OF ARTIFICIAL INTELLIGENCE 27–29 (Woodrow Barfield & Ugo Pagallo eds., 2018); REGULATING ARTIFICIAL INTELLIGENCE 1–10 (Thomas Wischmeyer & Timmo Rademacher eds., 2020).

[4] *See* DAVID S. EVANS & RICHARD SCHMALENSEE, MATCHMAKERS: THE NEW ECONOMICS OF MULTISIDED PLATFORMS 40–45 (2016); ALGORITHMS AND LAW (Martin Ebers & Susana Navas eds., 2020); Michal S. Gal, *Limiting Algorithmic Coordination*, 38 BERKELEY TECH. L.J. 173 (2023); Alicia Solow-Niederman, *Administering Artificial Intelligence*, 93 S. CAL. L. REV. 633 (2020); Kristin Johnson, Frank Pasquale & Jennifer Chapman, *Artificial Intelligence, Machine Learning, and Bias in Finance: Toward Responsible Innovation*, 88 FORDHAM L. REV. 499 (2019); Alexandra Dana Meilă, *Sustainable Urban Mobility in the Sharing Economy: Digital Platforms, Collaborative Governance, and Innovative Transportation*, 10 CONTEMP. READINGS L. & SOC. JUST., no. 1, 2018, at 130, 130–36; Uma Rani & Parminder Jeet Singh, *Digital Platforms, Data, and Development: Implications for Workers in Developing Societies*, 41 COMPAR. LAB. L. & POL'Y J. 263, 267, 274, 279–81 (2019); Raúl Carrillo, *Seeing Through Money: Democracy, Data Governance, and the Digital Dollar*, 57 GA. L. REV. 1207 (2023); Ariel Dobkin, *Information Fiduciaries in Practice: Data Privacy and User Expectations*, 33 BERKLEY TECH. L.J. 1 (2018); Thomas D. Haley, *Data Protection in Disarray*, 95 WASH. L. REV. 1193, (2020); Woodrow Hartzog & Neil Richards, *Privacy's Constitutional Moment and the Limits of Data Protection*, 61 B.C. L. REV. 1687, 1689–92 (2020).

[5] *See* RESEARCH HANDBOOK ON BIG DATA LAW (Ronald Vogl ed., 2021); *see also* Caryn Devins, Teppo Felin, Stuart Kauffman & Roger Koppl, *The Law and Big Data*, 27 CORNELL J.L. & PUB. POL'Y 357 (2017).

[6] *Cf.* Daniel Susser, *Decision Time: Normative Dimensions of Algorithmic Speed*, *in* PROC. 5TH ACM CONF. ON FAIRNESS, ACCOUNTABILITY & TRANSPARENCY 1410–20 (2022).

transparency.[7] Data use today impacts law in multiple ways in connection with other disciplines, and in so doing, suggests a myriad of tensions, reassessments, and proposals for what the law should be and what our society values.[8] As data use evolves and permeates businesses and society, we must ask what the potential benefits and potential harms are, how the law is impacted and what may constitute legal issues, what the response for law and society should be, and why it matters for businesses, government, lawyers, and society.

By making it possible to gather, organize, and assess unprecedented amounts of data, digital technology raises new legal and policy considerations. This means that new frameworks and interpretations for law and digital technology are worthy of debate and discussion, and it suggests that many aspects of business and society are ripe for disruption. For all of these reasons, this year's Fall Forum, "Data in Business & Society," hosted at Lewis & Clark Law School, provided a venue for inspiring, invigorating, and stimulating discussions about these topics to help scholars, practicing lawyers, in-house counsel, and law students better understand how, why, and where data is more important than ever. The insights gained from the presentations and articles from the Fall Forum can be used in many ways. This Introduction provides a few common themes throughout the presentations and these articles: (1) data governance and digital platforms; (2) artificial intelligence, machine learning, algorithms, and data-driven innovation; and (3) data protection and privacy. Yet the value of implications for data in business and society reaches far broader. The insights gained from this Fall Forum demonstrate the power of using data and new digital technology to both better understand and improve our society.

The success of the Fall Forum event, no doubt, was in no small measure due to the Lewis & Clark Law Review agreeing to publish selected proceedings as part

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[7] *See* THE CAMBRIDGE HANDBOOK OF THE LAW OF ALGORITHMS (Woodrow Barfield ed., 2021); Robert Brauneis & Ellen P. Goodman, *Algorithmic Transparency for the Smart City*, 20 YALE J.L. & TECH. 103, 107–08, 110, 132 (2018); Tabrez Y. Ebrahim, *Automation & Predictive Analytics in Patent Prosecution: USPTO Implications & Policy*, 35 GA. STATE U. L. REV. 1185, 1185, 1196, 1230–37 (2019); Andrew Burt, *The AI Transparency Paradox*, HARV. BUS. REV. (Dec. 13, 2019), https://hbr.org/2019/12/the-ai-transparency-paradox; Sylvia Lu, *Algorithmic Opacity, Private Accountability, and Corporate Social Disclosure in the Age of Artificial Intelligence*, 23 VAND. J. ENT. & TECH. L. 1 (2020); Zach Y. Brown & Alexander MacKay, *Competition in Pricing Algorithms* 1 (Harv. Bus. Sch., Working Paper No. 20-067, 2021); Frederik J. Zuiderveen Borgesius, *Strengthening Legal Protection Against Discrimination by Algorithms and Artificial Intelligence*, 24 INT'L J. HUM. RTS. 1572, 1572–73 (2020); Peter Seele, Claus Dierksmeier, Reto Hofstetter & Mario D. Schultz, *Mapping the Ethicality of Algorithmic Pricing: A Review of Dynamic and Personalized Pricing*, 170 J. BUS. ETHICS 698, 698–702 (2019).

[8] *See* Ari Ezra Waldman, *Algorithmic Legitimacy*, *in* THE CAMBRIDGE HANDBOOK OF THE LAW OF ALGORITHMS, *supra* note 7, at 107, 114–15; David Beer, *The Social Power of Algorithms*, 20 INFO. COMMC'N SOC'Y 1, 3–5 (2017); S. C. Olhede & P.J. Wolfe, *The Growing Ubiquity of Algorithms in Society: Implications, Impacts, and Innovations*, PHIL. TRANSACTIONS ROYAL SOC'Y, Sept. 13, 2018, at 1, 1–16.

of a symposium issue—to provide readers an understanding of how modern digital technology has revolutionized the use of data in a variety of applications. The pressing need for legal academic study into the contemporary developments of data, paired with the relative importance of the issue to businesses and society, had the predictable effect of producing excellent article submissions for this issue. While the surplus of excellent scholarship presented at the conference speaks to the clear appetite for more work in this emerging field, we hope that the articles in this symposium provide representations of perspectives that tackle some (though inevitably not all) of the myriad ways data, digital technology, law, business, and society touch on each other.