Regulation of Legal Analytics

Legal analytics – the use of computational data analysis tools and techniques to analyse data on the operation of the legal system (such as legislation or case law) or on the operations of legal professionals and enterprises – is an established but rapidly-developing field. It includes many different approaches, such as ‘artificial intelligence’ systems that attempt to predict the outcomes of litigation; automated contract review, pleadings and contract drafting; access to justice tools that support non-lawyers in engaging with legal processes; and business-focused tools that assist law firm managers in making decisions on marketing, hiring and other aspects of the bottom line.

The recent expansion in availability and functionality of these tools has caused concern in some jurisdictions and led to some regulation, with more likely to come in the future. First of all, while the provision of legal services is generally a regulated sector from country to country, the exact scope of that regulation varies from jurisdiction to jurisdiction. The development of legal analytics has led to litigation, for example over services that assist couples in preparing documents for a non-contentious divorce. The outcomes of these cases have diverged: in England and Wales, the Family Court has ruled that assisting couples to prepare paperwork for a non-contentious divorce is not prohibited there, while in France, the Court of Appeal for Aix-en-Provence found a similar service was providing unauthorised legal advice. These examples may be motivated by protectionism or by the need to ensure that consumers are not exploited by insufficiently educated or unethical providers; or indeed, by a mix of both.

A second, and perhaps more concerning, approach is a specific ban, such as that in France. This prohibits the use of legal analytics on judicial decision-making, and was enacted in the wake of studies which seemed to demonstrate very different patterns of outcomes in asylum decision-making. This could be explained by the civil law’s view of the judge as an anonymous and interchangeable *fonctionnaire* or by an unwillingness to be held accountable for biased processes.

A third source of potential regulation is data protection and privacy law, which will also vary widely between jurisdictions and in some contexts (particularly the EU) could significantly limit the development of legal analytics.

The regulation of these tools is still contested, therefore, both as a matter of practice and in terms of the justifications provided for them. This PhD would research this contestation. It should consider how analytics offer opportunities for better access to justice, greater transparency and accountability, and more consistent and fairer legal processes. It should also consider the extent to which market forces, technological limitations, and the uncomputability of the law may hinder such positive developments. It should explore the implications that this has for the regulation of analytics and their adoption by practitioners, judges, and courts.

Representative research questions could include:

* What are the strengths and weaknesses of analytics techniques as applied to law?
* What approaches to regulation of (new) legal services are adopted in different jurisdictions worldwide, and to what extent are these focused on protecting consumers or on vested interests?
* Are legal analytics an economic activity which should be regulated by the European Union, as part of the common market, and if so, to what degree of harmonisation and with what level of competence retained by the Member States?
* What are the implications of data protection and privacy laws, which are developing rapidly in many jurisdictions worldwide, for legal analytics?
* How can the governance of legal analytics foster better access to justice?