

JUSTICE IN DIGITAL TECHNOLOGIES: OPPORTUNITIES AND CHALLENGES

INTERNATIONAL SUMMER SCHOOL 2023

Oladeji M. Tiamiyu and Nicolás Parra Herrera

Description

This course aims to explore the kinds of dispute processing systems developed and implemented in new and emerging digital technologies. The course also deals with the challenges and complexities these designs bring to the notion of justice and our capacity to resolve, manage, and prevent conflict by addressing the following problems: what can we learn about dispute resolution from processes influenced by digital technologies? what are the implications of digitizing justice? What are the appropriate contours of online dispute resolution (ODR) in a world where technology is more ubiquitous? What are the costs and benefits of using big data, artificial intelligence, and blockchain technologies as supportive tools for managing conflict? To delve into these questions, the course will be structured as a seminar to collaboratively think together about these topics and invite international pioneers in the field to share their visions and the obstacles they encounter in digitizing justice and in the broader ODR industry.

The prevalent narrative is that the covid pandemic compelled courts, online platforms, and businesses to create ways of resolving and preventing conflicts without requiring in-person processes. We challenge this narrative by exploring dispute system design principles in digital technologies before the pandemic occurred. Particularly, we will explore the emergence of online dispute resolution in e-commerce (e.g. eBay), online community-based dispute resolution (e.g. Wikipedia dispute resolution model), the blockchain model of online dispute resolution (e.g. Kleros), content moderation in social media as a dispute system design problem (e.g. Facebook Oversight Board), and consumer protection (e.g. *Resolución en Línea*, Cámara de Comercio de Santiago). The course will unpack the potential of online dispute resolution in these digital technologies and the trade-offs involved.

Tentative course outline (some of the modules might have more than one session)

| MODULES | ISSUES | ASSIGNMENTS |
|--|---|---|
| Introduction to digital justice and online dispute resolution (ODR). | <p><i>Setting the stage and basic vocabulary</i></p> <p>The scope and limitations of procedural justice.</p> <p>Democratic legitimacy v. Procedural efficiency.</p> <p>History of Digital Justice and ODR.</p> <p>Differences and similarities (if any)</p> | <p>Readings</p> <p>-Bone, Robert, The Process of Making Process, 87 Georgetown Law Journal, (1999) (excerpts), 919-920, 933-934, 939-940.</p> <p>-Solum, Lawrence, Procedural Justice 78 S. California Law Review, 181 (2004) (excerpts).</p> <p>-Susskind, Richard, Justice according to the Law in Digital Courts and the Future of Justice, chapter 7.</p> <p>-Katsch, Ethan, Online Dispute Resolution (ODR): A Look At History in Daniel Rainey, Ethan Katsh, and Mohamed S. Abdel Wahab. <i>Online Dispute Resolution - Theory and Practice: A Treatise on Technology and Dispute Resolution</i>. Vol. Second edition. The Hague: Eleven International Publishing, 2021, 1-17.</p> |

| | | |
|--|--|---|
| | <p>between digital justice and online dispute resolution (ODR).</p> | <p>-Susskind, Richard, <i>The Future of Courts, The Practice</i>, Vol. 6 (5), 2020. Link.</p> <p>-Lessig, Lawrence, "Code is Law," and "Sovereignty" in <i>Code 2.0</i>. (New York: Basic Books), 1-9.</p> <p>-Separating the People from the Problem: Colin Rule and the rise of online dispute resolution, <i>The Practice</i>, Center on the Legal Profession, Harvard Law School. Link.</p> <p>Other resources (optional)</p> <p>Solow-Niederman, Alicia, <i>Emerging Digital Technology and "The Law of the Horse,"</i> UCLA L. Rev. Online (2019), https://www.uclalawreview.org/emerging-digital-technology-and-the-law-of-the-horse/.</p> <p>The National Center for Technology and Dispute Resolution (Working papers, bibliography, principles and standards). Link.</p> <p>**Felstiner, William, Abel, Richard, and Sarat, Austin. <i>The Emergence and Transformation of Disputes: Naming, Blaming, and Claiming...</i> Law & Society Review. Vol. 15. No. 3-4 (1980-1981). (excerpts)</p> <p>** Parra, Nicolas, <i>Resolución de Conflictos en Línea (ODR)</i>, Justice Center for the Americas (CEJA), 2021. Link.</p> |
| <p>Digitizing Justice:</p> <p>The rise of online dispute resolution in e-commerce.</p> | <p>E-commerce.</p> <p>What is ODR?</p> <p>Disputes and conflicts in e-commerce.</p> <p>Resolución en Línea (Cámara de Comercio de Chile).</p> <p>Case study: eBay.</p> | <p>Readings</p> <p>-Katsh, Ethan, and Orna Rabinovich-Einy, 'E-commerce and the Internet of Money' in <i>Digital Justice: Technology and the Internet of Disputes</i> (New York, 2017).</p> <p>-Rule, Colin. "Designing a Global Online Dispute Resolution System: Lessons Learned from eBay." <i>University of St. Thomas Law Journal</i>, vol. 13, no. 2, Winter 2017, pp. 354-369. <i>HeinOnline</i>, https://heinonline-org.ezp-prod1.hul.harvard.edu/HOL/P?h=hein.journals/usthomlj13&i=361.</p> <p>Podcast</p> <p>Convergence. Episode 1: Colin Rule: Online Dispute Resolution Origin Stories. Host: Tiamyu Oladeji. Link.</p> <p>Special guest (TBD)</p> |
| <p>Digitizing Justice with Blockchain and Cryptocurrency.</p> | <p>Blockchain and online dispute resolution.</p> <p>Crowdsourcing decision-making.</p> <p>Cryptocurrency and dispute resolution.</p> <p>Case study: Kleros.</p> | <p>Readings</p> <p>De Filippi, Primavera. <i>Blockchain and the Law: The Rule of Code</i>, Cambridge, MA and London, England: Harvard University Press, 2018, p. 13-32.</p> <p>Lesage, Clément, Ast, Federico, and George, William, Kleros, Short Paper v.1.0.7, September 2019. Link.</p> <p>The Kleros Handbook of Decentralized Justice, <i>Kleros.IO</i>. p. 23-30.</p> <p>Podcast</p> |

| | | |
|---|---|---|
| | | <p>Convergence. Episode 2: Federico Ast and Sophie Nappert, Blockchain ODR. Host: Tiamyu Oladeji. Link.</p> <p>Special guest (TBD)</p> |
| <p>Digitizing Justice: Truth claims, history, and community-based dispute resolution.</p> | <p>Community online dispute-resolution.</p> <p>ArbCom.</p> <p>Case study: Wikipedia.</p> | <p>Readings</p> <p>Jemielniak, Dariusz, Conflict Resolution on Wikipedia in Common Knowledge?: An Ethnography of Wikipedia, Stanford University Press (2014), 59-85.</p> <p>Konieczny, Pitor, Decision making in the self-evolved collegiate court: Wikipedia’s Arbitration Committee and its implications for self-governance and judiciary in cyberspace, <i>International Sociology</i> Volume 32, Issue 6, (November 2017) p.755-774.</p> <p>Other resources</p> <p>Wikipedia. Wikipedia Dispute Resolution Model. Link.</p> |
| <p>Digitizing Justice: Digitizing Courts</p> | <p>Are courts a service or a place?</p> <p>Online family divorce.</p> <p>China’s Internet Court.</p> <p>Digitizing the Courtroom.</p> | <p>Readings</p> <p>Susskind, Richard, <i>Online Courts and the Future of Justice</i>, London: Oxford University Press (2019), 1-70.</p> <p>Guo, Internet court's challenges and future in China. <i>The Computer Law and Security Report</i>, 40 (2021).</p> <p>Zhuang, Frank and Tony Tang. “How do China’s Internet Courts Work?” <i>China Law & Practice</i> (Jan 22, 2019)</p> |
| <p>Digitizing Justice: Social media and content moderation.</p> | <p>Facebook Oversight Board.</p> <p>Content moderation as a dispute resolution, management, and prevention problem.</p> | <p>douek, Evelyn, Content Moderation as Systems Thinking, <i>Harvard Law Review</i> Vol. 136 (forthcoming).</p> <p>Sullivan, Mark “Exclusive: The Harvard professor behind Facebook’s oversight board defends its role,” <i>Fast Company</i> (July 9, 2019).</p> <p>Klonick, Kate, “The Facebook Oversight Board: Creating an Independent Institution to Adjudicate Online Free Expression,” <i>Yale Law Journal</i> 129, no. 8 (June 2020): 2418-2499 (excerpts).</p> |
| <p>Conclusion. A Framework for Digitizing Justice.</p> | <p>Mapping Digitizing Justice.</p> <p>The strands of ODR.</p> | <p>Oladeji, Tiamyu, The Impending Battle for the soul ODR: Evolving Technologies and Ethical Factors Influencing the Field, <i>Cardozo Journal of Conflict Resolution</i>, 23(1), 75.</p> <p>Wing, Leah, Janet Martinez, Ethan Katsh, and Colin Rule. “Designing Ethical Online Dispute Resolution Systems: The Rise of the Fourth Party.” <i>Negotiation Journal</i> 37, no. 1 (January 2021): 49–64. https://doi.org/10.1111/nejo.12350.</p> <p>Kuang, Cliff “Can A.I. Be Taught to Explain Itself?,” <i>N.Y. Times Magazine</i> (Nov. 21, 2017), https://www.nytimes.com/2017/11/21/magazine/can-ai-be-taught-to-explain-itself.html</p> <p>Optional</p> |

| | | |
|--|--|---|
| | | Richard M. Re and Alicia Solow-Niederman, “Developing Artificially Intelligent Justice,” 22 STAN. TECH. L. REV. ___ (2019). |
|--|--|---|

Professors

Oladeji M. Tiamiyu is a Senior Clinical Fellow at the Harvard Negotiation and Mediation Clinical Program. Prior to joining HNMCP, Oladeji was an Online Dispute Resolution Fellow with the Resolution Systems Institute in Chicago, Illinois where he helped in developing a pilot online dispute resolution program for family law disputes. Oladeji has also worked with the Truth and Reconciliation Commission and Constitutional Review Commission in The Gambia. He has experience as a teacher in Reunion Island off the coast of Madagascar and as a community organizer with Organizing for America in Ohio. Oladeji has been a member of teaching teams for Harvard Law School’s Negotiation Workshop, an executive-level program at the Harvard Negotiation Institute, and with the Harvard Graduate School of Education. He is also a Negotiations Advisor to social entrepreneurs focused on developing climate change solutions at Harvard’s Innovation Lab. He is a member of the Massachusetts Bar and the Illinois Bar, holds a B.A. in Political Science, *magna cum laude*, from the University of Toledo, and a J.D. from Harvard Law School. He is the author of many papers including *The Impending Battle for the Soul of Online Dispute Resolution*.

Nicolas Parra-Herrera is a doctoral candidate at Harvard Law School. He is also a Graduate Fellow at the Program on Negotiation at HLS and a researcher at the Radcliffe Institute at Harvard University. He was an advisor to the Justice Studies Center for the Americas (CEJA) at OEA to develop a conceptual framework for digital justice and online dispute resolution. He has been a professor at the International Summer School at Universidad de los Andes for the last four years teaching a wide array of courses on the topics of Negotiation, Mediation, Dispute System Design, Adaptive Leadership, and Law & Film. He has been a coach and teaching fellow at Harvard Kennedy School, Harvard Law School, and Harvard College on Economic Justice, The Politics of Change, and Applying Adaptive Leadership. He holds a B.A. in Philosophy, *magna cum laude*, an M.A. in Philosophy, *cum laude*, and a law degree, *magna cum laude*, from Universidad de los Andes, and an LL.M. from Harvard University. He has published five books and authored many papers on legal theory, legal interpretation and reasoning, dispute resolution, moral philosophy, and law and humanities.