<table>
<tr><td align="center">

**6S 2022 Sketch Groups Template**
**Staccato Project Design**

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**Use this sketch -- either quickly or more comprehensively -- to draw out an ethnographic research design -- for your own project or just for practice. Do this sketch many times for different kinds of possible projects -- thinking of it as calisthenics for ethnography.**

**For the 6S 2022 workshop, select one of the sites|initiatives|problem-domains below to design a project for -- thinking first about different types of projects that could be done for the site|initiative|problem-domain you have selected, then about a specific project design, filling in the graphic below. Don't describe your own primary project. This is an exercise in rapid research imagining that you should spend about three hours on -- honing your capacity for "analysis as craft." The sketch can be done individually or collaboratively (the latter is more fun). Feel free to reach out to members in your group if you want to do this collaboratively. Responses can be roughly drafted and in bullet points. Fill in as much as you can in the allotted time, purposely working fast. Prioritize work on "Overview / Research Questions," "Methods and Data Resources" and "Theoretical Frames and Data Analysis." All of the sites|initiatives|problem-domains we've listed as options somehow relate to climate change. We fully understand that climate change is not a central focus for many of you (though it is context for all). We chose options within the climate change problem space so that the collection of proposals the group comes up with points to an array of STS research possibilities within any particular problem space.**

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**TITLE**
Understanding American Privacy Law Scholars' Techno-legal Imaginaries

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**RESEARCHER/S**
María P. Angel

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**ABSTRACT, INTELLECTUAL MERIT, BROAD IMPACT**

The increasing relevance of algorithms has, in recent years, started to act as a turning point in American legal scholars' discourse about privacy. The past decade has seen an intense focus of scholars on scrutinizing the lack of transparency and accountability, coded bias, and discriminatory effects of machine processing of data. In this process, privacy has been slowly transformed into a post-algorithmic right that, rather than protecting individuals from traditional privacy harms (e.g., public disclosure of private facts), is expected to act as a tool for the government to protect society against algorithmic-driven harms (e.g., algorithmic discrimination, online manipulation, procedural injustice in automatic decision-making systems, etc.).

This evolution in the privacy law scholars' conception of privacy could be explained through technological essentialist approaches that highlight how essential qualities of novel technologies drive change in society and particularly in law. However, this story about technological disruption tends to disregard the social aspects of technology. Therefore, in an intent to achieve a more complex and sophisticated understanding of the algorithmic turn in the American privacy law scholars' conception of privacy, this project seeks to explore the "techno-legal imaginaries" of contemporary American privacy law scholars.

Building on nascent legal scholarship about the "legal construction of technology"; on Science, Technology, and Social Studies (STS) literature about "sociotechnical imaginaries," the "sociology of "expectations," and "anticipatory governance;" and on other theoretical terms proposed in Political, Cultural, and Social Theory to describe individual or collective feelings/beliefs about technological developments; the primary aim of this research is to identify and characterize the American privacy law scholars' visions about the desirable futures that could be achieved through the regulation of technoscientific innovation. For doing so, I intend to advance an archival investigation of (i) the pool of papers presented at the Privacy Law Scholars Conferences (PLSC) between 2008 and 2020, and (ii) the law review articles published between 2008 and 2020 and referenced in the aforementioned set of papers. In addition, I plan to conduct semi-structured interviews of a purposely drawn representative sample of the American privacy legal scholars who authored those papers.

"Techno-legal imaginaries" have the power to shape how sociotechnical legal problems are imagined and shaped and how they are answered in different legal communities. In that sense, this research will benefit society, by providing us with a new theoretical framework for better understanding the thoughts and ideas of American privacy law scholars. Despite being considered a secondary authority with no formal binding effects in the legal system, privacy law scholarship has played a determinant role in the formulation of privacy law in the United States. Therefore, if we want to improve future privacy law and policy in America, we should better understand the thoughts and ideas of one of the relevant social groups who may be devising the legal rationale that both courts and legislatures will later employ in drafting (post-algorithmic) privacy law in the United States.

In addition, in terms of intellectual merit, this research will introduce the new theoretical concept of "techno-legal imaginaries" and provide a case of it. After this research, this concept will be available to other law and STS scholars to characterize the thoughts and ideas of other relevant social groups within the legal community. In addition, this dissertation will join previous law scholarship efforts to avoid "technological essentialism." But unlike previous efforts, this project will extend this discussion from the Social Construction of Technology (SCOT) to the Co-production perspective. In this sense, it will contribute to larger ideas in STS about the co-production of socio-techno-legal relations, providing evidence of some of the ways in which the cognitive, the technological, the social, and the legal interact and become entangled.

## OVERVIEW / RESEARCH QUESTIONS

"Technological essentialist" approaches tend to disregard the social aspects of technology. As law scholar Jack M. Balkin (2015) has adequately stated, "[t]he characteristics of a new technology, in short, are partly the product of current use and partly the work of human imagination about potential affordances and opportunities, dangers and threats." (p. 47). In that sense, when analyzing a given change in law apparently produced by technology, the characteristics of that given technology are not the only aspects that should be considered. Rather, the interplay of the cognitive, the technological, the social, and the legal should be necessarily explored. Likewise, Margot E. Kaminski (2017) also argues against the story about the disruptive character of technology for the law, which portrays "technology as some outside force that acts upon the law" (Kaminski, 2017, p. 591). As an alternative, she highlights the importance of considering the legal context and the process of legal construction of technology. In Kaminski's words, "we should identify and analyze how the law constructs technology, rather than yielding to a narrative that a technology is intrinsically disruptive" (p. 593). Similarly, Meg Leta Jones (2018) also proposes the term "Legal Construction of Technology" or "techno-legal construction," to link the field of Law and Technology with Science, Technology, and Social Studies (STS), and particularly, with the STS perspective often referred to as the Social Construction of Technology (SCOT). Initially proposed by Trevor J. Pinch and Wiebe E. Bijker (1984), SCOT is a theoretical and methodological endeavor nested in STS, which attempts to describe the construction of technical artefacts through the eyes of "relevant social groups." According to Jones, "[t]he legal construction of technology focuses on law as a cultural corner of societies with its own customs and rituals, players and roles, institutions and relationships, and rules and power—and how this cultural corner makes sense of a technology, technological system, or technological concept" (2018, p. 281).

In alignment with these positions, I intend to achieve a more complex and sophisticated understanding of the algorithmic turn in the American privacy law scholars' conception of privacy. For doing so, as Phase II of my dissertation, this research seeks to explore the "techno-legal imaginaries" of contemporary American privacy law scholars, which may have influenced the way they think about privacy. "Techno-legal imaginaries" are defined, for the purpose of this project, as "visions of a given legal community about the desirable futures that could be achieved through the regulation of technoscientific innovation, and which are animated by shared feelings and beliefs about advances in science and technology."

Therefore, this project looks to build upon Jones's proposed link between the field of Law and Technology and STS. However, I intend to extend this link from SCOT to the co-production perspective, where the concept of "sociotechnical imaginaries" (Jasanoff & Kim, 2009; 2015) is nested in. As Sheila Jasanoff (2004b) has pointed out, the problem with sticking to the Social Constructivist approach that inspired Jones is that "the discourse of social construction tends to inhibit the symmetrical probing of the constitutive elements of both society and science that forms the essence of the S&TS research agenda" (p. 20). In contrast, "[t]he term co-production reflects this self-conscious desire to avoid both social and technoscientific determinism in S&TS accounts of the world" (p. 20). Thus, by proposing and digging into the "techno-legal imaginaries" of contemporary American privacy law scholars, this research looks to account for the dialectical, bi-directional relationship that exists between algorithms and scholars' visions, beliefs, and feelings about technology, and which may be shaping their novel conceptions about privacy.

## BACKGROUND AND SIGNIFICANCE

In terms of intellectual merit, this research will introduce the new theoretical concept of "techno-legal imaginaries" and provide a case of it. After this research, this concept will be available to be applied to other relevant social groups within the legal community. In addition, this dissertation will join previous law scholarship efforts to avoid "technological essentialism" and instead tie the field of Law and Technology to the field of STS. But unlike previous efforts, this project will extend this discussion from the Social Construction of Technology (SCOT) to the Co-production perspective. In

this sense, it will contribute to larger ideas in STS about the co-production of socio-techno-legal relations, providing evidence of some of the ways in which the cognitive, the technological, the social, and the legal interact and become entangled.

Moreover, this research will benefit society, by providing us with a new framework to improve the analysis, formulation, and implementation of privacy law and policy in the United States. If American courts and legislatures have recurrently granted privacy law scholars' intellectual work a dominant position for law and policy purposes, we need to be able to better understand the thoughts and ideas of the people behind that work. For doing so, understanding American privacy law scholars' techno-legal imaginaries seems like a good start. By interrogating the scholars' visions about the desirable futures that could be achieved through the regulation of technoscientific innovation (i.e., "techno-legal imaginaries"), as well as their feelings and beliefs about technology, we can make better sense of the reach and scope of the legal rationales that may be employed by courts and legislatures in the future in drafting the next generation of privacy law in America.

## LITERATURE REVIEW

- o   Literature on the legal construction of technology.
- o   Literature on desired futures of legal actors.

## METHODS AND DATA RESOURCES

**Archival investigation**

The Privacy Law Scholars Conference (PLSC) is a paper workshop conference that has been crafted in the United States since 2008, annually assembling a wide array of privacy law scholars and practitioners who engage in scholarship related to information privacy law. Thanks to this recurrent event, a privacy "community of discourse" (Hollinger, 1985) has been created, being composed of intellectuals who are essentially peers, who share well-defined questions and are conscious of their common engagement with them, and who share a language and a national culture. Considering these circumstances as an opportunity, this research will be conducted through an archival investigation of all the papers of the PLSC that: (i) were presented at that conference between 2008 and 2020; (ii) have been authored by American scholars with any type of legal academic title from the US or abroad; and (iii) ended up being published online, either as a paper, a draft (on SSRN), or a book chapter.

To analyze these papers, which in total sum up 388,[1] I will draw on guidance from the discursive contextual approach of intellectual history (Hollinger, 1985) to conduct a qualitative study of discourse over these documents. By understanding the group of authors of the aforementioned documents as a "community of discourse," and the discourse as "a social as well as an intellectual activity (…) [which] entails interaction between minds, and (…) revolves around something possessed in common" (p. 132), I will look to identify the salient visions, perceptions, beliefs, commitments, and attitudes towards technology and technology regulation that are shared by the participants of this community. By these means, I expect to be able to make sense of the American privacy law scholars' "techno-legal imaginary(ies)." In particular, I hope to understand what are the algorithms' promises that have captured the American privacy law scholars' imagination (e.g., certain imagined affordances or given metaphors), where do they come from, what are the sociotechnical legal problems that—according to the scholars—they pose, what are the specific feelings and beliefs that they awake in them, and what are the specific visions of desirable futures that those feelings and beliefs animate.

I am aware that there can be a sample selection bias in the PLSC papers, since non-random data is being selected for analysis. Rather, as a selection criterion I am relying on the PLSC conference filtering, which until 2020 required invitation to attend. Therefore, my sample of papers may not be representative of the community of American privacy law scholars and may be affected by the own biases of its organizers. Looking to control for this effect, I am going to complement my initial sample of papers with the law review articles also published between 2008 and 2020 and referenced in the aforementioned pool of PLSC papers. In this way, I expect to achieve a more representative sample of papers and therefore, American privacy law scholars.

**Semi-structured interviews**

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[1] Between 2008 and 2020, 735 papers were presented at the PLSC. However, I had a random/distributed access rate of almost 53%, only being able to find online and retrieve 388 papers.

Like in the case of "sociotechnical imaginaries," the exploration of "techno-legal imaginaries" should also draw from a variety of methods of interpretative research and analysis to allow the researcher to inquire into social meaning-making (Jasanoff & Kim, 2015). Therefore, in addition to the archival research, I also plan to conduct semi-structured interviews of a purposely drawn representative sample of American privacy legal scholars whose works I have previously reviewed. This will allow me to access first-person accounts to have a deeper dive into the feelings, beliefs, and visions that animate and make up the scholars' "techno-legal imaginary."

The representativeness of the sample of interviewees will be measured in terms of the two trends of the algorithmic turn found in Phase I of my dissertation: (i) scholars who use the concept of privacy to identify novel data-driven harms as privacy harms; and (ii) scholars who acknowledge data-driven harms as different harms but propose privacy law (existent or novel) as the adequate framework to address them. Therefore, I expect to interview a similar amount of scholars for each of these trends. Within each trend, I also expect the sample of scholars to reflect the gender distribution typically found in a PLSC (which according to my calculations, oscillates around 59% men and 41% women).

The semi-structure of each interview will be carefully tailored in advance, to consider the specifics of each author's work, as well as her role in the privacy discourse as a whole. However, their flexible and "conversational" format will also ensure that I can have freedom for probes and follow-up questions, and if necessary, the opportunity to encourage elaboration, clarification, reflection, and illustration (Soss, 2014).
Regarding access to the sample of interviewees, I will ask my Ph.D. advisor and Committee Chair, who is a regular and active participant of the PLSC, to introduce me through email to the previously selected American privacy law scholars.

It is noteworthy that on October 29, 2021, the University of Washington Human Subjects Division (HSD) determined that my proposed activity is human subjects research that qualifies for exempt status (Category 2).

## THEORETICAL FRAMES & DATA ANALYSIS

My theoretical framework is composed by:
- o   "Sociotechnical imaginaries"
- o   Sociology of "expectations"
- o   "Anticipatory governance"

Political, Cultural, and Social Theory that describes individual or collective feelings/beliefs about technological developments.

PLAN OF WORK

Winter and Spring quarter 2023:
- o   Select and contact a sample of up to twelve (12) authors to be interviewed, and design tailored questionnaires for the semi-structured interviews.
- o   Conduct semi-structured interviews of the purposely drawn representative sample of American privacy legal scholars.
- o   Hire human transcription services and systematize interviews.

Summer quarter 2023:
- o   Finish conducting semi-structured interviews and systematizing transcriptions.
- o   Revisit and, if necessary, improve the definition and characterization of the proposed concept of "techno-legal imaginaries."
- o   Based on the archival investigation and the semi-structured interviews, write a paper for publication about the "techno-legal imaginaries" of American privacy law scholars.

Fall quarter 2023:

- o Write down the corresponding sections of my dissertation about the American privacy law scholars' "techno-legal imaginaries" and what can they further tell us about privacy's algorithmic turn.
- o Apply to conferences (e.g., Law & Humanities Junior Scholars Workshop; ACM Conference on Fairness, Accountability, and Transparency; Global Meeting on Law and Society).

Winter quarter 2024:
- o Apply to conferences (e.g., PLSC; Science and Democracy Network (SDN) Annual Meeting; Society for Social Studies of Science (4S) Annual Meeting; We Robot Conference)

Spring, Summer, and Fall quarters 2024:
- o Attend conferences where the paper has been accepted.
- o If not published yet, submit paper for journal publications.

## CHALLENGES AND ETHICAL CONSIDERATIONS

- o My positionality in the interviews (interviewer / privacy scholar).

## VALIDITY AND EVALUATION

## PREPARATION AND WORK THUS FAR

## REFERENCES

## DATA MANAGEMENT PLAN

The data that I will collect through the archival research and the semi-structured interviews will be stored in Microsoft Excel spreadsheets, PDFs, and Microsoft Word documents on my Google Drive account. Also, and with the previous written consent of the interviewees, I will video and audio-record each semi-structured interview through Zoom, so that they can be later transcribed (through human transcription services) for searchability, and I can directly refer back to specific details of the interviews during the analysis phase. If for any reason participants do not wish to be recorded, I will keep detailed notes of our conversations.

The data that I will collect is composed of arguments and informed opinions of American privacy law scholars on non-sensitive issues about their scholarship and their visions of the desirable futures that could be achieved through the regulation of technoscientific innovation ("techno-legal imaginaries"). Therefore, it will not touch on sensitive or private information that may raise privacy concerns. In any case, in the consent form that I will provide them before beginning the interview, I will let them know that they do not need to answer any questions if they do not feel comfortable about it or if they consider that doing so could potentially cause them risks of harm, discomforts, or hazards.

In the same sense, the disclosure of the information collected through my proposed research methods would have very little or no risk of physical, psychological, social, economic, legal, or educational advancement harm to the American privacy law scholars. However, I will still adopt the following data security protections to protect the audiovisual recordings and the transcripts of the semi-structured interviews: limited access, no shared passwords, strong passwords, changing passwords, report loss of data, and data disposal.

Finally, aside from conferences participation and paper publications, I plan to make my data available to others per request.

**FURTHER NOTES**

POINTERS

- Make sure to come up with a title (though this is hard and always feels -- and is -- reductive).

- The abstract should describe your project significance, aims, methods, expected findings/contributions (intellectual merit) and expected societal implications (broad impact).  Describe each in a sentence.

- In the Overview / Research Questions, try to articulate the scales, systems or objects that will be foregrounded in the project, and its context|location (geographic, ecologic, geopolitical, discursive, etc).  Include both theoretical and empirical questions, and a description of the types of data you will generate and mobilize. End with a few statements about what the project will push against (methodological nationalism or essentialist constructs of identity or place, for example).

- In the Literature Review section for a literature review, describe two to four topical literatures that you will build on and contribute to through this research.  See Annual Reviews for ideas but reach for bibliodiversity.

- In the methods section, describe *what you will do, where and with whom* -- and the different kinds of data and insight these activities will produce. Consider, for example, how you might include multisited ethnography (Marcus 1995, a tale of implosion (Dumit 2014), tactile analytics (Patricia Alvarez Astacio 2021), drawing as analysis (Rachel Douglas-Jones 2021), or archive ethnography (Fortun et al. 2021).

- In the section for theoretical frames, describe the basic theoretical insights that you can mobilize in your study design, data collection, analysis, and writing. You could mobilize understanding of "the subaltern," for example, or Foucaultian ideas about discourse and subject formation.  This can be a long list with very cursory descriptions.  Note that this section is not usually included in a proposal submitted to funders -- but should be part of your thinking and dialogue with collaborators

- In building your references, reach for bibliodiversity and a transnational field of reference.