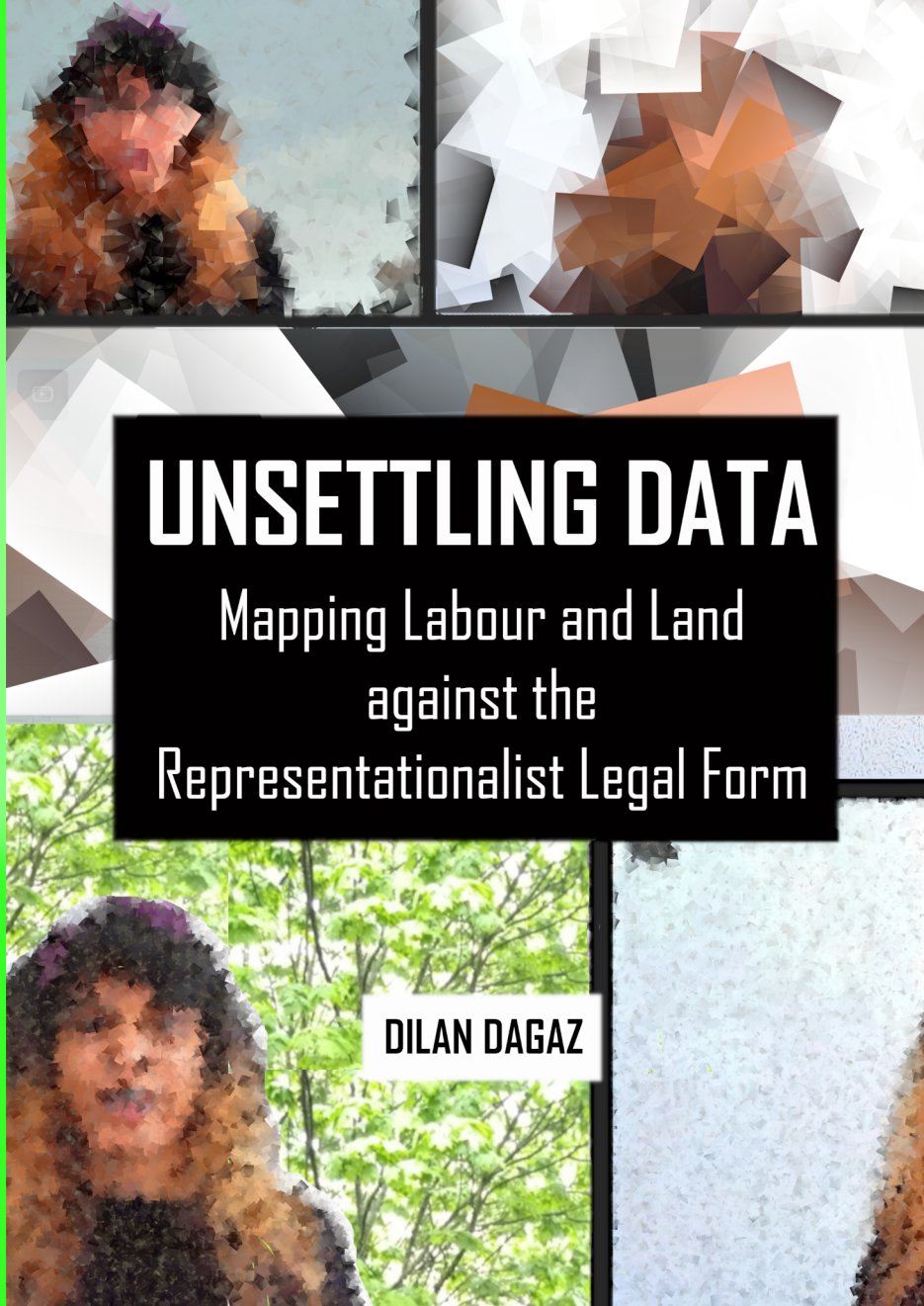


"Deeply thought-provoking work that unsettles our assumptions about data and the digital political economy in original ways."

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— Joris van Hoboken, Author of Search Engine Freedom and Professor of Information Law, University of Amsterdam



# UNSETTLING DATA

Mapping Labour and Land  
against the  
Representationalist Legal Form

DILAN DAGAZ

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What prevents data governance law from redressing the widespread exploitation of labour and land rampant across the data economies of our digital Earth? Unsettling Data answers this question by scrutinising the legal grammar of 'data' to expose the persistence of hierarchical power relations between the observer and the observed.

Unsettling Data will be of interest to readers in critical legal theory, law and humanities, law and political economy, data protection, information law, AI governance, intellectual property as well as anyone seeking to understand the legal form or aesthetics of data from a critical lens.

**Dilan Dagaz** is an unsettling witch and queer mystic, with research interests at the intersection of magic, law, science, and the nature of reality. He has previously served as a Lecturer (Assistant Professor) in Law at the University of Exeter and holds a PhD in Legal Sciences summa cum laude from the Humboldt University of Berlin. Having worked under different names with the civil society and academia across India, Germany, and UK, Dilan holds significant international experience of policy advocacy, research communication, teaching and organising on issues of digital rights, net neutrality, media law, algorithmic regulation, data governance, and intellectual property. More about his work can be found on his website [www.theunsettlingwitch.com](http://www.theunsettlingwitch.com).

# UNSETTLING DATA

## MAPPING LABOUR AND LAND AGAINST THE REPRESENTATIONALIST LEGAL FORM

### I. NOTE ON RESEARCH METHOD

- Driven by interest in **politics of disciplinary knowledge production**, particularly the politics of legal knowledge production beyond normative accounts i.e., **Boundary work of law**: How is the distinction between the 'legal' and 'non-legal' made, and its politics.
- **'Thin description'** to connect disparate fields of research (Prof. Ruha Benjamin)
- **Co-productive approach** to law & technology (Prof. Sheila Jasanoff, Prof. Kieran Tranter)

### II. SUMMARY OF CENTRAL ARGUMENT

- That the boundary between 'non-law' and 'law' drawn by data governance law as part of its legal form in its conceptualisation of data is construed through a representationalist worldview that creates exploitative power relations through categories of the observer and the observed.
- That as part of the 'non-legal' of the modern legal form, representationalism manifests in the construction of *data as resource within the ontology/ epistemology dichotomy*. Whereas as part of the 'legal' of the modern legal form, the same representationalism is co-produced in the construction of *data as a thing within the person/ thing dichotomy*.
- That the legal form of data governance obscures forms of power relations inaugurated through representationalist practices across global value chains in the digital political economy.

### III. KEY CONTRIBUTION OF THE WORK

#### A. KEY CONTRIBUTION IN THE FIELD OF LAW AND HUMANITIES—

(1) **Development of the concept of representationalism (while accounting for power relations) in the context of data production**, drawing upon the work of Indigenous Studies scholar Prof. Linda Tuhiwai Smith and new materialist scholar Prof. Karen Barad. 3 major premises of representationalism are developed as follows (Chapter 2):

- (a) Separation made between ontological and epistemological claims.
- (b) Creation of ontological gap between observer/observed, mediation of gap through category of epistemology.
- (c) Hierarchy between observer and the observed.

(2) **Synthesis of representationalism with the work of legal aesthetics** scholar Prof. Christoph Menke on the politics of the modern legal form or aesthetics to develop an analytical framework to map how representationalism is enacted within the modern legal form of data. (Chapters 2, 3-5). Whereby the modern legal form is characterised by *Selbstreflektion*, ie. The distinction between 'law' and 'non-law' made within the law that has political implications activated through its enabling and permissive features (Chapters 2, 3, 4).

#### B. KEY CONTRIBUTION IN THE FIELD OF LAW AND TECHNOLOGY (DATA GOVERNANCE) —

(1) **Creation of an alternative historicised account of data governance (in European/EU economic contexts) that illustrates how representationalism operates in the modern legal form** through (1) the non-legal construction of data as a resourcing instrument, a number, and as a resource (Chapter 3) and (2) the legal construction of data as a commodity and legal thing across the fields of open data, free flow of data and data protection (Chapter 5). Builds on the work of Profs. Madhavi Sunder, Anupam Chander & Julie Cohen on the politics of the public domain (Chapters 4-5).

(2) **Non-representationalist countermapping of data production and the role of data governance law in value production and exploitation within the Global Value Chains of data** using the figures of (a) the **Uber driver** and Marxist anthropologist Dr. Biju Mathew's work on value generation by Uber (Chapter 6) and (b) **sentient land** and the work of Indigenous Studies scholars Dr. Vanessa Watts & Prof. Vine Deloria Jr. on Place-Thought framework (Chapter 7).

## IV. INTERVENTIONS IN EXISTING DISCOURSES

### MAJOR INTERVENTIONS—

- **On instrumentalist/crisis theoretical-methodological approaches in dominant discourses in the fields of data governance/law and technology:** Suggests Co-Productive Approach to Law and Technology to open up inquiry into new kinds of questions about tech governance generally and data governance specifically.
- **On whether the 'posthuman' agency of new data technologies should be accounted for:** Shifts the terms of discourse to account for the (human and unhuman) agency of the observed and the Earth in data production.
- **On the usefulness of the distinction of the legal categories of personal and non-personal data for tackling exploitative power in digital society:** Illustrates how both categories underpinned by representationalist assumptions of data as epistemological resource, and unable to address the power hierarchies shaped by representationalism.
- **On the missing legal discourse on the entanglements of the issues of exploitation in the digital political economy & those of representation and human/posthuman agencies** (and by extension, privacy, digital subjectivity, & knowledge production etc.): Explains how this discursive separation is a technique of power that enables silences on power relations shaped through the representationalist modern legal form of data.
- **On the theoretical-methodological approaches for the analysis of law and politics:** Offers a shift away from analyses of power in the context of law that is rooted in either institutional mechanisms or identity-based subjectivity to instead trace the politics of legal knowledge production that is enacted through formal means (legal aesthetics) illustrating the politics of Selbstreflektion and boundary work undertaken by law.
- **On the limitations of the algorithmic management discourse in context of the data economy:** Illustrates how the focus on data as an instrument for algorithmic management tends to obscure the centrality of politics of data production to digital firms like Uber.
- **On Indigenous theories of knowledge/IDS:** Situates them in relation to Western/westernised legal discourses on data governance, allowing for learning and critique + groundwork for future critical comparative research.

### MINOR INTERVENTIONS—

- **On the FAT/FAccT discourse:** Challenges the usefulness of the discourse of bias and accuracy in the context of data and data technologies, by illustrating that data in contemporary digital society is produced within a representationalist hierarchy and never neutral.
- **On the data colonialism discourse:** Contextualises and exposes the limitations of existing data colonialism discourses that focus merely on access/distribution questions or that entrench representationalist assumptions.
- **On the politics of intradisciplinary boundaries:** Illustrates how the demarcated separation of certain issues as data governance while others as labour or environmental law issues reifies representationalism in law.

## Book Details

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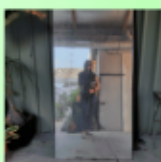
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Discussants:



Cristina Cochior,  
Varia and FHNW  
Basel



Prof Angela Daly,  
University of  
Newcastle (AU)



Dr Ozan Kamiloglu,  
London South Bank  
University



Prof (retd.) Usha  
Raman, University  
of Hyderabad



Nayantara  
Ranganathan,  
Independent



Prof Joris van Hoboken,  
University of  
Amsterdam



Dilan Dagaz  
Author

## Book Discussion: *Unsettling Data* by Dilan Dagaz

### About the Book

What prevents data governance law from redressing the widespread exploitation of labour and land rampant across the data economies of our digital Earth? *Unsettling Data* answers this question by scrutinising the legal grammar of 'data' to expose the persistence of hierarchical power relations between the observer and the observed. The role of the modern legal form in fortifying and obscuring these power relations is elucidated. Proposing representationalism as the framework to map these hidden yet pervasive power relations, the book reveals how the representationalist legal form serves to delink the agency of the data subject from unjust labour and land exploitation in the digital political economy. Highlighting the importance of Indigenous/Adivasi perspectives for unsettling the philosophical core of Western(ised) data governance, *Unsettling Data* argues for the formal reconceptualisation of data as the entangled

human and unhuman agencies implicated in its production; paving the way for a new legal grammar of data rooted in relational reciprocity.

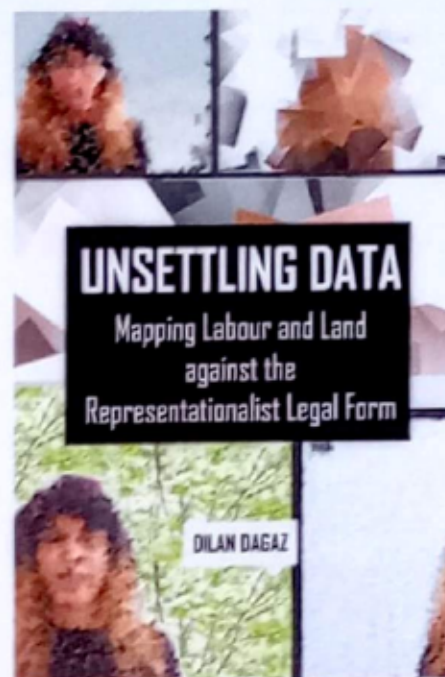
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### About the Author

Dilan Dagaz is an independent researcher and writer based in the UK. He has previously served as a Lecturer (Assistant Professor) in Law at the University of Exeter and holds a PhD in Legal Sciences summa cum laude from the Humboldt University of Berlin. Having worked under different names with the civil society and academia across India, Germany, and UK, he holds significant international experience of policy advocacy, research communication, teaching and organising on issues of digital rights, net neutrality, media law, algorithmic regulation, data governance, and intellectual property. Stepping away from academia and the mainstream legal world, Dilan currently practises as a witch, with research interests at the intersection of magic, law, science, and the nature of reality.

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S2.09 (Warwick Law School)

Centre for Interdisciplinary Methodologies (CIM)

Centre for the Law, Regulation and Governance of the Global Economy (GLOBE)



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