

**DATA-DRIVEN PERSONALISATION IN MARKETS,  
POLITICS AND LAW**

The most fascinating and profitable subject of predictive algorithms is the human actor. Analysing big data through learning algorithms to predict and pre-empt individual decisions gives a powerful tool to corporations, political parties and the state. Algorithmic analysis of digital footprints, as an omnipresent form of surveillance, has already been used in diverse contexts: behavioural advertising, personalised pricing, political micro-targeting, precision medicine, and predictive policing and prison sentencing. This volume brings together experts to offer philosophical, sociological, and legal perspectives on these personalised data practices. It explores common themes such as choice, personal autonomy, equality, privacy, and corporate and governmental efficiency against the normative frameworks of the market, democracy and the rule of law. By offering these insights, this collection on data-driven personalisation seeks to stimulate an interdisciplinary debate on one of the most pervasive, transformative, and insidious socio-technical developments of our time.

Uta Kohl is Professor of Commercial Law at Southampton Law School. Her previous work on IT law issues includes *Jurisdiction and the Internet* (Cambridge University Press, 2007) and *The Net and the Nation State* (Cambridge University Press, 2016). She acted as the Human Rights Trustee on the board of the Internet Watch Foundation (2014–2020) and is currently exploring the legal treatment of memories, funded by a Leverhulme grant on the Privacy of the Dead.

Jacob Eisler is Associate Professor at Southampton Law School where he focuses on democratic theory, election law, and corruption. Prior to joining Southampton Law School, he was the Yates-Glazebrook Fellow in Law at Jesus College, University of Cambridge, and clerked for the Honorable Gerard E. Lynch, Federal Second Circuit Court of Appeals.

# Data-Driven Personalisation in Markets, Politics and Law

Edited by

**UTA KOHL**

University of Southampton

**JACOB EISLER**

University of Southampton



**CAMBRIDGE**  
UNIVERSITY PRESS

Cambridge University Press & Assessment

978-1-108-83569-5 — Data-Driven Personalisation in Markets, Politics and Law

Edited by Uta Kohl, Jacob Eisler

Frontmatter

[More Information](#)



**CAMBRIDGE**  
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,  
a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of  
education, learning and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781108835695](http://www.cambridge.org/9781108835695)

DOI: 10.1017/9781108891325

© Cambridge University Press & Assessment 2021

This publication is in copyright. Subject to statutory exception and to the provisions  
of relevant collective licensing agreements, no reproduction of any part may take  
place without the written permission of Cambridge University Press & Assessment.

First published 2021

*A catalogue record for this publication is available from the British Library.*

*Library of Congress Cataloging-in-Publication Data*

NAMES: Kohl, Uta, editor. | Eisler, Jacob, 1982- editor.

TITLE: Data-driven personalisation in markets, politics and law / edited by Uta Kohl, University of Southampton;  
Jacob Eisler, University of Southampton.

DESCRIPTION: Cambridge, United Kingdom; New York, NY: Cambridge University Press, 2021. | Includes index.

IDENTIFIERS: LCCN 2021000184 (print) | LCCN 2021000185 (ebook) | ISBN 9781108835695 (hardback) |

ISBN 9781108813082 (paperback) | ISBN 9781108891325 (epub)

SUBJECTS: LCSH: Law–Statistical methods. | Big data.

CLASSIFICATION: LCC K212 .D38 2021 (print) | LCC K212 (ebook) | DDC 343.09/99–dc23

LC record available at <https://lcn.loc.gov/2021000184>

LC ebook record available at <https://lcn.loc.gov/2021000185>

ISBN 978-1-108-83569-5 Hardback

ISBN 978-1-108-81308-2 Paperback

Cambridge University Press & Assessment has no responsibility for the persistence  
or accuracy of URLs for external or third-party internet websites referred to in this  
publication and does not guarantee that any content on such websites is, or will  
remain, accurate or appropriate.

Contents

<i>List of Figures</i>	<i>page</i> ix
<i>List of Tables</i>	xi
<i>List of Contributors</i>	xiii
<i>Preface</i>	xv

PART I INTRODUCTION: THEORETICAL PERSPECTIVES

1	The Pixelated Person: Humanity in the Grip of Algorithmic Personalisation <i>Uta Kohl</i>	3
2	Personalisation and Digital Modernity: Deconstructing the Myths of the Subjunctive World <i>Kieron O’Hara</i>	37
3	Personalisation, Power and the Datafied Subject <i>Marc Welsh</i>	55
4	Personal Data and Collective Value: Data-Driven Personalisation as Network Effect <i>Nick O’Donovan</i>	74

PART II THEMES: PERSONAL AUTONOMY, MARKET CHOICES AND THE PRESUMPTION OF INNOCENCE

5	Hidden Personal Insights and Entangled in the Algorithmic Model: The Limits of the GDPR in the Personalisation Context <i>Michèle Finck</i>	95
---	--	----

vi	<i>Contents</i>	
6	Personalisation, Markets, and Contract: The Limits of Legal Incrementalism <i>TT Arvind</i>	108
7	‘All Data Is Credit Data’: Personalised Consumer Credit Score and Anti-Discrimination Law <i>Noelia Collado-Rodriguez and Uta Kohl</i>	124
8	Sentencing Dangerous Offenders in the Era of Predictive Technologies: New Skin, Same Old Snake? <i>David Gurnham</i>	142
	PART III APPLICATIONS: FROM PERSONALISED MEDICINE AND PRICING TO POLITICAL MICRO-TARGETING	
9	‘P4 Medicine’ and the Purview of Health Law: The Patient or the Public? <i>Keith Syrett</i>	159
10	Personalised Pricing: The Demise of the Fixed Price? <i>Joost Poort and Frederik Zuiderveen Borgesius</i>	174
11	Data-Driven Algorithms in Criminal Justice: Predictions as Self-fulfilling Prophecies <i>Pamela Ugwudike</i>	190
12	From Global Village to Smart City: Reputation, Recognition, Personalisation, and Ubiquity <i>Daithí Mac Síthigh</i>	205
13	Micro-targeting in Political Campaigns: Political Promise and Democratic Risk <i>Normann Witzleb and Moira Paterson</i>	223
	PART IV THE FUTURE OF PERSONALISATION: ALGORITHMIC FORETELLING AND ITS LIMITS	
14	Regulating Algorithmic Assemblages: Looking beyond Corporatist AI Ethics <i>Andrew Charlesworth</i>	243
15	Scepticism about Big Data’s Predictive Power about Human Behaviour: Making a Case for Theory and Simplicity <i>Konstantinos V. Katsikopoulos</i>	263

Cambridge University Press & Assessment  
978-1-108-83569-5 — Data-Driven Personalisation in Markets, Politics and Law  
Edited by Uta Kohl, Jacob Eisler  
Frontmatter  
[More Information](#)

	<i>Contents</i>	vii
16	<b>Building Personalisation: Language and the Law</b> <i>Alun Gibbs</i>	277
17	<b>Conclusion: Balancing Data-Driven Personalisation and Law as Social Systems</b> <i>Jacob Eisler</i>	288
	<i>Index</i>	307

Figures

10.1	‘According to you, should such practices be prohibited?’ (N = 1,233)	<i>page</i> 179
10.2	‘Would you find it acceptable if a web store gives a discount to you/others based on your/their online behaviour (such as the websites you/they have visited before)?’(N = 1,233)	180
10.3	Net acceptability of different forms of price discrimination and dynamic pricing (N = 1,202)	181

Tables

4.1 Tech sector business models by type of network effect	<i>page</i> 81
6.1 Personalisation and contract	111
6.2 Privacy and the use of data	117



## Contributors

**TT Arvind** Professor, York Law School, University of York, York, England

**Frederik Zuiderveen Borgesius** Professor, iHub (Interdisciplinary Hub for Security, Privacy and Data Governance), Radboud University, The Hague, the Netherlands

**Andrew Charlesworth** Professor of Law, Innovation & Society, School of Law, University of Bristol, Bristol, England

**Noelia Collado-Rodriguez** Lecturer, Faculty of Law, University of A Coruña, A Coruña, Spain

**Jacob Eisler** Associate Professor, Southampton Law School, University of Southampton, Southampton, England

**Michèle Finck** Senior Research Fellow, Max Planck Institute for Innovation and Competition, Munich, Germany

**Alun Gibbs** Associate Professor, Southampton Law School, University of Southampton, Southampton, England

**David Gurnham** Professor of Criminal Law and Interdisciplinary Legal Studies, Southampton Law School, University of Southampton, Southampton, England

**Konstantinos V Katsikopoulos** Associate Professor, Department of Decision Analytics and Risk, University of Southampton, Southampton, England

**Uta Kohl** Professor, Southampton Law School, University of Southampton, Southampton, England

**Daithí Mac Síthigh** Professor of Law and Innovation, Queen's University, Belfast, Northern Ireland

**Nick O'Donovan** Senior Lecturer, Future Economies Research Centre, Manchester Metropolitan University, Manchester, England

**Kieron O'Hara** Emeritus fellow, Web and Internet Science Group, Electronics and Computer Science, University of Southampton, Southampton, England

**Maira Paterson** Adjunct Professor, Faculty of Law, Monash University, Melbourne, Australia

**Joost Poort** Associate Professor Institute for Information Law (IViR), University of Amsterdam, Amsterdam, the Netherlands

**Keith Syrett** Professor of Public Health Law, Centre for Health, Law, and Society, School of Law, University of Bristol, Bristol, England

**Pamela Ugwu-dike** Associate Professor in Criminology, Economic, Social and Political Sciences Department University of Southampton, Southampton, England

**Marc Welsh** Lecturer, Department of Geography and Earth Sciences, Aberystwyth University, Aberystwyth, Wales

**Normann Witzleb** Associate Professor, Faculty of Law, The Chinese University of Hong Kong, and Monash University, Melbourne, Australia

## Preface

It is almost certain that your life is awash in data-driven personalisation, which gathers your personal information and compares it to personal information gathered about others to provide tailored outputs and decisions. It's shifted your life in the past day, probably in the past hour, and – if you're reading this on a screen – perhaps in the past minute. It has tried to influence what you buy, what media you watch, who you vote for, how you spend your time, what you believe, who you want to be. In short, the very things that make you you.

Yet the omnipresence of data-driven personalisation does not mean it is easily perceived or controlled by those it influences. This personalisation is often implemented through machine learning algorithms that are subtly embedded into day-to-day life. The most familiar type may be the humble internet advertisement, which predicts, rather than just echoes, your latest interests and desires. But as this book shows, personalisation ranges far wider than that, shaping interactions with private and public parties, with both a predictable influence in domains of technological innovation (think Facebook and Uber) as well as surprising infiltrations into domains as old as human society itself (think politics, medicine and law enforcement).

This collection of articles examines data-driven personalisation in all its hopeful potentials and insidious dangers. In its critiques, this collection emphasises diversity of perspective – while it is unified by an interest in law and governance, its focus is on the parallels and themes that cut across topics, private and public, personal and systemic, philosophical and practical. Methodologically it emphasises interdisciplinary analysis and draws from disciplines as diverse as philosophy, economics, penology, systems theory, survey methods and medical ethics.

In light of the disruptive potential of personalisation, for good or ill, we hope you are able to gain three benefits from this book. Firstly, we hope it provides a better sense of what personalisation is, how predictive analytics works and how it is profoundly changing society, and often not for the better. Secondly, we hope you

have the chance to see how it operates in specific contexts, or has particular ramifications. And finally – leaning on the last word of the title of this volume, *law* – we hope you come to see how you can, both as a person and as a participant in a number of communities, work to discipline and shape personalisation.

This book can be approached in any number of ways. It has been arranged to form a narrative that is coherent yet retains the individual voices of the authors, and reading it straight through will provide a diverse set of perspectives on personalisation, guided by an introduction and conclusion that seek to tie together the topics at hand. To this end, the chapters are grouped into parts. The first part looks at the general principles and themes of personalisation, serving not merely as an introduction but as a critical context. The second looks at different key themes and methodological approaches to personalisation. The third part consists of topic-specific chapters, emphasising applications to particular domains and problems. The fourth part offers critical and reflective perspectives on personalisation, with a focus on critical broad-view consideration. Yet the chapters are also sufficiently independent, offering readers the possibility to go for specific topics of interest. Your reasons for reading this book will change how you approach it. We would only note that it is meant to accommodate being read both as a single volume and as a collection of contributions.

This book had its genesis in a conference held at the University of Southampton in June 2019. The conference was arranged by Professor Uta Kohl, Professor James Davey and Dr Jacob Eisler and was generously supported by the University of Southampton Faculty of Social Sciences and Southampton Law School. For support of both the conference and this edited volume, we would like to thank Professor Brenda Hannigan, Professor David Gurnham, Professor Nina Jorgensen and Clare Old in particular.

We would also like to take this chance to extend our thanks to Matthew Gallaway, our editor at Cambridge University Press, who has proven both his patience and his expertise during the process of writing this volume. We would also like to thank Julie Duran-Gelléri for providing prompt, thoughtful and extraordinarily attentive editing.