Book Review

Penny Crofts and Honni van Rijswijk (2021) *Technology*. Abingdon: Routledge

Kieran Tranter
Queensland University of Technology, Australia

In the efficiently titled *Technology*, Australian cultural legal studies team Penny Croft and Honni van Rijswijk pack in a substantial challenge and reworking of technology law. Published in the celebrated 'New Trajectories of Law' series edited by Adam Geary and Colin Perrin, the book is confined to 50,000 words. However, Croft and van Rijswijk paint within this more constrained canvas to excellent effect. In doing so, they present the theoretical material and some exemplars of what 'critical technology law' as a distinct field of enquiry might look like.

To properly locate this book, the obvious needs to be addressed. The obvious is that the present is awash with dreams of anxieties about technological futures. This pregnancy of the present for an imminent future—a future that is already present—is ambrosia for modern lawyers. Law for the moderns was a machine of temporal mastery. Law in the present was something to be enacted whereby the future could be made known.[1] Because of this intimate association with time, modern lawyers have had a particular enthusiasm for worrying and writing about technology. Michael Guihot recently suggested that technology law has a coherence as an 'approach that binds the threads of the technologies and their various applications and regulatory responses together'.[2] The 'technology–application–regulation' tripartite of technology law renders it especially modern. It is a practical project of responding to 'disruption' through enacting normative orders.[3]

It is into the safe and practical discourse of technology law that this book intrudes; indeed, it disrupts. Technology law's practical orientation on modernist legalities means that as an 'enterprise' it rests on two foundations. The first is a taking seriously of the popular and mainstream cultural imagery around specific technologies,[4] such as automation threatens human agency, biotechnology has a 'yuck factor'. The second is the legacy of modern law, that law and the study of law is a formalist exercise involving working with the posited rules of either a specific nation or a supernational entity.[5] This book dynamites these expectations. Expressly and clearly located within critical traditions, the authors immediately bring two rarely identified discourses into play in relation to technology law.

The first is critical technology studies, to problematise and become aware of complexity and nuance around the cultural imageries of technologies. Technology is not imagined as a thing descending to disrupt society; rather, it is social, complex and

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[1] Tranter, "Law, the Digital and Time."
[2] Guihot, "Coherence in Technology Law", 340.
[3] Tranter, "Disrupting Technology Disrupting Law."
[4] Tranter, "The Speculative Jurisdiction."
[5] Tranter, "The Law and Technology Enterprise."

complicit. Croft and van Rijswijk guide their readers through the intellectual commitments *behind* technological optimism,[6] pessimism[7] and ambivalence.[8] In doing so, they introduce technology law to a broader set of theorists on technology but also show the location of influential technology law scholars, such as Roger Brownsword and Shoshana Zuboff, within critical technology studies.

The second discourse is the critical legal studies tradition, broadly understood to include feminist legal studies and cultural legal studies. Whereas building the book upon critical technology studies allows Croft and van Rijswijk to challenge the unthought cultural imaginary around technology in technology law, critical legal studies allows them to challenge the practical positivism that informs technology law's conception of law and the proper forms of legal analysis. They provide a portal through which law and the practical enterprise of regulating for technological futures can be understood as culture, power and is contested and contestable. In short, they engage with power at an essential level: they describe how technologies and also legalities are expressions of, and shape, power assemblages.

This firm location within critical discourses is also the strength of the subsequent chapters. Instead of addressing disruption arising from a populist imaging of a technology by working with rules and normative orders, Croft and van Rijswijk engage with historical configurations of law and technology through working with and thinking about the historical slave trade, the connection between the emergence of negligence and industrial capitalism and the transformation in the ways of thinking about theft.[9] It grounds their much more critical and thoughtful account of the rule of law and the technological imagery. They come from a suitably critical location that they can discern, unlike most technology law scholars, that rule of law discourse is NOT inherently compatible with liberal or cosmopolitan accounts of individual rights and freedoms.[10] Where technology-focused scholars struggle to deal with and account for platform power, they have the intellectual resources to understand the platforms as not something new but as corporations whose morality and doing in the world is well identified.[11] Finally, they bring feminist legal critiques to the emerging debates in algorithm studies about bias in rule application. In doing so, they bring 40 years of theorising and exposing the hidden gender in form and application within supposedly 'neutral' power exercising decision-making systems to the forefront.[12] Their conclusion should be stamped as an addendum to all the tepid scholarship discussing 'ethics' of artificial intelligence: 'Critical theory suggests it will not be enough to push more diverse institutions and data sets—that instead, we need to look at the relevant concepts and the material histories'.[13]

My criticism of this book is not really a criticism. It ends abruptly, possibly because of the limited word length for the series. There is a richness of theoretical material synthesised in the book that begs for a longer study. There seems to be an abrupt end to the text, where more chapters and then more reflection on the chapters would be a fantastic contribution to the 'criticalisation' of technology law. However, in exposing technology law to critical discourses on technology and law, Croft and van Rijswijk provide resources, ideas and framing that can inspire and enable more diverse, more critically engaged technology law scholarship.

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[6] Crofts, Technology, 5–7. Although I will challenge Crofts and van Rijswijk's position of 'new materialist' or technofeminist theorists like Donna Haraway and Rosi Braidotti within the affirmative camp (5–6); as I have argued, they are profoundly ambivalent about technology (Tranter, Living in Technical Legality, 105–106). They represent a challenge to strands of critical feminism that locate technology as a primary manifestation of the phallic desires of totalising and dominating patriarchy but not burdened by the utopian dreams of technological professed by classic economics or transhumanist.

[7] Crofts, Technology, 7–15

[8] Crofts, Technology, 15–16.

[9] Crofts, Technology, 29–47.

[10] Crofts, Technology, 51–64.

[11] Crofts, Technology, 66–81.

[12] Crofts, Technology, 85–97.

[13] Crofts, Technology, 97.

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