

Book Review

Roger Brownsword (2024) *The Future of Governance: A Radical Introduction to Law*. Routledge

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Roger Brownsword's latest book, *The Future of Governance: A Radical Introduction to Law*, serves as a continuation of his earlier works and can be regarded as a gateway to all of them.¹ In this book, Brownsword presents what he refers to as a 'radical' introduction to law, aimed at students of law, legal practitioners, academics, and even laypeople with a keen interest in the subject (p. ix).

Brownsword further explicates three fundamental threads from a radical perspective: i) what it means for lawyers to view law as a mode of governance, ii) to think inside and outside the box, and iii) the importance of emerging technologies as both a challenge and an opportunity for the law's governance (p. 16). In adopting a radical perspective, he rejects the negative characterisation that law has nothing to do with civilising people and therefore young people seeking to become civilised should not attend law schools. Instead, he argues that the law's governance is entirely concerned with civilising processes and that law schools must leave no room for doubt on this matter (p. 18-22).

Brownsword argues that what humanity requires is at least adequate governance, whether it comes from an improved version of law's governance or from alternative, more effective modes of governance (p. 25). Therefore, he asserts that law is a component, or a subset, of governance, and should not be regarded as the sole mechanism. To illustrate, he takes a radical stance by explicating Lawrence Lessig's well-known 'code is law' argument.² Lessig's claim, as Brownsword presents it, positions 'law' as the zenith, with code elevated to that level by analogy. However, for Brownsword, law itself is not the highest tier, but simply one among various forms of governance. From this standpoint, both code and law function as mechanisms of governance, albeit through different interfaces. Law expresses itself through explicit rules that individuals are expected to follow, whereas code embeds these rules directly into the systems with which people interact. Despite these structural differences, both aim to regulate behaviour and are therefore treated as equivalent modes of governance (p. 26).

Brownsword further distinguishes the different dimensions of how lawyers think. Drawing on Max Tegmark's *Life 3.0*,³ he reappropriates Tegmark's evolutionary framework to structure the idea of 'thinking like a lawyer' (p. 272). While the comparison remains analogical, both models hinge on the notion of evolutionary transition. According to Brownsword, there are three different ways of thinking that characterise the lawyer's mindset, and each belongs to a different paradigm regarding law's governance: Law 1.0 (doctrinal coherentism), Law 2.0 (rule-based regulatory), and Law 3.0 (techno-regulatory) (p. 54).

¹ Brownsword, Law 3.0; Brownsword, Law, Technology and Society; Brownsword, Technology, Humans, and Discontent with Law.

² Lessig, Code and Other Laws of Cyberspace.

³ Tegmark, Life 3.0.



Law 1.0 represents the traditional legal mindset. Law students are trained to ‘think within a box,’ encouraged to adopt a doctrinal coherentist reasoning style. The main concern is to produce solutions using the flexibility of the existing legal principles, while at the same time not undermining the integrity of the doctrine. For Brownsword, this dimension of thinking reflects a reliance on inherited and existing principles when facing novel legal problems (p. 55). He illustrates this through Judge Frank Easterbrook’s 1990s dismissal of cyberlaw.⁴ At the time, Easterbrook characterised the field as the ‘law of the horse’, arguing that general legal principles were sufficient to address issues raised by emerging technologies. From Brownsword’s perspective, this position exemplifies the limitations of Law 1.0 thinking. Seen from today’s vantage point, Easterbrook not only underestimated the legal significance of technological change but also overstated the adaptability of existing principles (p. 261-262).

In contrast, the Law 2.0 mindset diverges from traditional frameworks. Its emphasis shifts away from merely adapting existing principles and towards designing new governance structures that address emerging risks. In this dimension of thinking, the law aims to develop specialised, flexible, and agile frameworks that can respond to the rapidly evolving social and technological landscapes. A lawyer who adopts this mindset focuses on finding solutions to contemporary challenges by thinking beyond the confines of the Law 1.0 box. At this juncture, the questions posed are certainly valid, yet the existing framework continues to serve a role (p. 56-57).

Law 3.0, on the other hand, leaves the box behind in favour of a more radical grounding and focuses on the following question: What will happen when law embraces technology as a tool for governance, or when governance relies entirely on technology? Law 3.0 governs not only through rules but also by directly turning technological tools into instruments of governance. Design, software, architecture or algorithms can partially replace rules or function alongside them. Thus, law evolves to a level where it is not only rules that shape behaviour, but where technology itself participates in the governance function. There are two precursors to this mindset: i) Taking humans out of the governance loop. So, automated rule-based governance. ii) Taking rules out of the governance loop. So, governing through the ‘technological management’ of the places and spaces in which the governed act (p. 58).

In response to the criticism that ‘Law 3.0 is also a box,’ Brownsword concedes that a conceptual structure (a kind of ‘box’) to frame the idea is inevitable. The point here is not the inevitability of boxes, but that the Law 1.0 has become intellectually inadequate and dysfunctional (p. 273). Therefore, when these three dimensions of thinking are considered holistically, thinking like a lawyer no longer means merely applying existing frameworks, but also comprehending regulation and technology within a governance-oriented framework.

Brownsword posits that law’s governance should be attuned to both the risks and opportunities presented by emerging technologies, but should be radically rethought. Drawing on Moore’s Law, he emphasises that it is no longer possible for the doctrinal coherentist thinking to catch up with the momentum of technology (p. 260). As we transition from Law 1.0, which reflects on the past, to Law 3.0, which looks toward the future, it is crucial for the law’s governance to evolve into a function that is not only reactive but also forward-looking. Law’s governance must now prioritise not only the maintenance of order but also the design of the future. Otherwise, it may find itself stuck in a cycle of continual reaction. In this regard, Brownsword reminds us that the mission of law school education is not merely to teach legal rules or to accustom students to thinking with a Law 1.0 mindset; it is to understand why human communities need governance, how law responds to this need, and what tensions it produces (p. 272).

Throughout the book, Brownsword traces the development of a radical perspective on law’s governance, beginning with his legal education in the UK and drawing on both shifts in his own lawyer thinking and the broader transformation of law in response to the status quo and zeitgeist. He connects with readers by weaving in examples from his experience as both student and teacher. Alongside specific statutes, cases, and judgments, he shows how various aspects of legal theory are integrated into legal education and practice. Taken together, Brownsword provides a concise but holistic overview, helping readers situate themselves within a wider context rather than being drawn into the confines of a single statute or case. This approach also illustrates how crises, frustrations, and the changes brought about by the day, often following periods of inertia or stagnation, shape legal development and, at times, influence the adoption of new laws or the reinterpretation of existing ones.

Although Brownsword’s book is an introduction, it touches on many of the ‘key concepts’ inherent in law from a holistic perspective, but, as an introduction, it does not examine them in depth. In a way, this book outlines why law’s governance should be viewed from a radical perspective and why adopting such a view is no longer optional. In this sense, Brownsword is

⁴ Easterbrook, “Cyberspace and the Law of the Horse,” 207-216.

indeed taking a radical step, one that invites criticism. Yet to engage with his position, even in dissent, is already to enter into the very line of thinking the book advocates.

Bibliography

- Brownsword, Roger. *Law, Technology and Society: Re-imagining the Regulatory Environment*. London: Routledge, 2019.
- Brownsword, Roger. *Technology, Humans, and Discontent with Law: The Quest for Good Governance*. London: Routledge, 2023.
- Brownsword, Roger. *Law 3.0: Rules, Regulation, and Technology*. London: Routledge, 2020.
- Easterbrook, Frank H. "Cyberspace and the Law of the Horse" *University of Chicago Legal Forum* no 7 (1996): 207–216.
- Lessig, Lawrence. *Code and Other Laws of Cyberspace*. New York: Basic Books, 1999.
- Tegmark, Max. *Life 3.0*. Harlow: Penguin Books, 2018.