THE MORALITY OF LAW AND TECHNOLOGY

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In *The Morality of Law*, American legal philosopher Lon Fuller argued that law possesses a set of legitimating principles, an "inner morality" that sets law apart.[1] Rules lacking in these principles—for example, rules that are secret, unclear, retroactive, or conflicting—may not qualify as law at all. Or anyway, have no place in a rule of law.

Fuller published *The Morality of Law* in 1964. His two most prominent contemporaries—H.L.A. Hart and Ronald Dworkin—quickly posed the same objection: Fuller's principles are less about morality than about *craftmanship*.[2] Hart seized upon Fuller's observation that principles of law are independent of the law's substantive aims, "just as the principles of carpentry are independent of whether the carpenter is making hospital beds or torturer's racks."[3] Hart goes on to note that poisoning, too, has an inner logic. This does not make the activity moral.[4]

I'm no Fuller, of course, though I am honored that my book has elicited commentary from some of my field's leading voices. Nor have I argued that law and technology possesses an inner morality. At most, I expect law and technology scholars to identify and articulate a normative baseline by which to assess the status quo and proscribe reform. Yet the responses in this volume make me question whether I was normative enough. Is there a morality of law and technology after all?

"Something in common across the legal subfields that have well-recognized methodologies," writes Professor Kristen Thomasen, "is that these fields usually articulate a *raison d'etre*—a normative purpose around which its community will coalesce. . . . Methodology is driven by purpose."[5] Law and economics valorizes efficiency. Animal law is interested in non-human welfare. Thomasen's

* Virginia and Prentice Bloedel Professor, University of Washington. I cannot thank participants in this symposium, or the wonderful editors at the *Boston University Law Review*, enough. Thank you for engaging so robustly with my work. *Law and Technology* is far from a finished project. I look forward to being in dialogue for years to come.

[1] LON L. FULLER, THE MORALITY OF LAW (1964).

[2] H.L.A. Hart, *Book Review*, 78 HARV. L. REV. 1281 (1965).

[3] *Id.* at 1285.

[4] Dworkin makes in essence the same point using the example of the "internal morality of blackmail." Ronald Dworkin, *Philosophy, Morality, and Law—Observations Prompted by Professor Fuller's Novel Claim*, 113 U. PA. L. REV. 668, 679-80 (1965).

[5] Kristen Thomasen, *Locating Meaning in the Methods of Law & Technology*, 106 B.U. L. REV. ONLINE 39, 41-42 (2026).

response, like her important work generally, surfaces the ways the field of law and technology advances Western liberal values and protects the status quo.[6] She urges a shift in the field, toward a more "radical" reimaging of society built upon the perspectives of the oppressed.[7] There are breadcrumbs of this agenda in my book, she notes, but Thomasen was hoping for a loaf.

Professor Jessica Eaglin shares some of Thomasen's normative priors. Her specific concern centers around exclusion.[8] If law and technology refers, as I argue, only to the ways law engages with "physical or digital artifacts or systems,"[9] perhaps there is no place for critique that engages technology as but one social fact of many, or that conceives of race and other constructs as forms of technology themselves.[10] Eaglin is a phenomenal scholar of law, technology, and race—one whom I cite repeatedly in the book. I take very seriously her concern that the "big" tent I envision isn't big enough, perhaps leaving the least sheltered out in the rain.

In my head, if not on the page, I imagine critical scholarship like that of Thomasen and Eaglin could engage with my approach in two ways. First, it might be possible to follow the book's methodology through the selection of a proactive, anti-subordination agenda. I'm thinking, for example, of the work of Professor I. Bennett Capers, arguing inter alia that technology could play a role in deracializing law enforcement,[11] or invoking Afrofuturist technology in imagining an anti-racist Fourth Amendment.[12]

Second, the book's approach may add value anywhere legal scholars, in any subfield, have to grapple with the slippery social fact of technology. Just as law and technology scholarship that engages with race can and should attend to decades of critical race theory, so might the critical legal tradition look to law and technology scholarship to interrogate the role of artifacts and systems in reinscribing racial and other hierarchies. Technology may not be the whole story, but where it shows up, a methodical approach is helpful in the unpacking. I locate the importance and impact of Thomasen's and Eaglin's scholarship precisely in their deep sophistication around both topics. In my view, they are

[6] *Id.* at 42.

[7] *Id.* at 43.

[8] Jessica M. Eaglin, *Self-Definition in Legal Scholarship*, 106 B.U. L. REV. ONLINE 35, 37-38 (2026).

[9] RYAN CALO, LAW AND TECHNOLOGY: A METHODICAL APPROACH 23 (2025).

[10] *Cf.* RUHA BENJAMIN, RACE AFTER TECHNOLOGY: ABOLITIONIST TOOLS FOR THE NEW JIM CODE (Polity Press 2019).

[11] *See generally* I. Bennett Capers, *Race, Policing, and Technology*, 95 N.C. L. REV. 1241 (2017). Elizabeth Joh and Neal Katyal have made similar claims. *See generally* Elizabeth E. Joh, *Discretionless Policing: Technology and the Fourth Amendment*, 95 CALIF. L. REV. 199 (2007); Neal Kumar Katyal, *Architecture as Crime Control*, 111 YALE L.J. 1039 (2002).

[12] *See generally* I. Bennett Capers, *Afrofuturism, Critical Race Theory, and Policing in the Year 2044*, 94 N.Y.U. L. REV. 1 (2019).

scholars of law and technology *and* critical theory. And each subfield informs the other.

Professors Evan Selinger and Woodrow Hartzog's critique takes a different normative angle. They see the book as constructive but a bit Pollyanna. "If lawmakers do not intervene early and forcefully," Selinger and Hartzog write, "we know that the cycle of regulatory inaction will continue indefinitely due to normalization and a host of dependency effects."[13] It is all well and good to acknowledge differing approaches to regulating emerging technology, they say. But in reality: "Our current moment, where surveillance only increases and we grow ever more vulnerable to data abuses, has already revealed that there are only so many realistic options on the table."[14]

I agree with Selinger and Hartzog that we are, as of 2026, sleepwalking into dystopia. I, too, wish something would interrupt the government's dogmatic slumber. That's just not this book. As Professor Ari Waldman's commentary reflects, "[l]aw and technology scholarship tends to want to be so of-the-moment that it forgets how old some law and technology questions really are."[15] This does not describe Selinger or Hartzog, whose work closely attends to history. But presumably the converse is also true. Waldman calls our attention to technologies and mores of the eighteenth century.[16] What about the twenty-second? My greatest ambition for *Law and Technology: A Methodical Approach* is that it retains its utility even if information capitalism loosens its moribund grip.

[13] Evan Selinger & Woodrow Hartzog, *On Predicting and Stopping Dystopia*, 106 B.U. L. REV. ONLINE 45, 46 (2026).

[14] *Id.* at 49.

[15] Ari Ezra Waldman, *Doing Legal Scholarship Bet-ter*, 106 B.U. L. REV. ONLINE 31, 31 (2026).

[16] *Id.* at 33.